

(Including Amendments to Resolve Conflicts)

B-Engrossed Senate Bill 397

Ordered by the House June 1
Including Senate Amendments dated April 30 and House Amendments
dated June 1

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies laws regarding ignition interlock devices.

A BILL FOR AN ACT

1
2 Relating to driving while under influence of intoxicants; creating new provisions; amending ORS
3 813.602; and repealing sections 2, 3, 4, 5, 6 and 7, chapter ___, Oregon Laws 2015 (Enrolled
4 House Bill 2660).

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Sections 2 to 4 of this 2015 Act are added to and made a part of the Oregon**
7 **Vehicle Code.**

8 **SECTION 2. Notice of ignition interlock device installation and negative reports. (1)(a)**
9 **As used in this section, "negative report" includes a report of tampering with an ignition**
10 **interlock device, unauthorized removal of an ignition interlock device, lockout or a test vio-**
11 **lation recorded by an ignition interlock device.**

12 **(b) The Department of Transportation may by rule further define what constitutes a test**
13 **violation.**

14 **(2) This section applies only to a person who has had an ignition interlock device installed**
15 **as a condition of a driving while under the influence of intoxicants diversion agreement un-**
16 **der ORS 813.602 (3).**

17 **(3) After an ignition interlock device is installed, the provider that installed the device**
18 **shall notify:**

19 **(a) The court that required the device to be installed or the court's designee, including**
20 **but not limited to an agency or organization certified by the Oregon Health Authority under**
21 **ORS 813.025; and**

22 **(b) The district attorney or city prosecutor.**

23 **(4) Notice of the installation must be given within seven business days of installing the**
24 **ignition interlock device.**

25 **(5) Each time a provider has access to an ignition interlock device that the provider in-**
26 **stalled, the provider shall download all reports recorded on the device. If the provider**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 downloads a negative report, the provider shall submit the negative report, in a form pre-
2 scribed by rule by the department, to:

3 (a) The court that required the device to be installed or the court's designee, including
4 but not limited to an agency or organization certified by the Oregon Health Authority under
5 ORS 813.025; and

6 (b) The district attorney or city prosecutor.

7 (6) The provider shall submit a negative report as provided in subsection (5) of this sec-
8 tion within seven business days of downloading the report.

9 **SECTION 3. Consequence for negative reports generated from ignition interlock device.**

10 (1)(a) As used in this section, "negative report" includes a report of tampering with an ig-
11 nition interlock device, unauthorized removal of an ignition interlock device, lockout or a
12 test violation recorded by an ignition interlock device.

13 (b) The Department of Transportation may by rule further define what constitutes a test
14 violation.

15 (2) Notwithstanding ORS 813.602 (1)(b) or (c), (2) or (3), the requirement to have an ig-
16 nition interlock device installed in a vehicle continues until the person submits to the de-
17 partment a certificate from the ignition interlock device provider stating that the device did
18 not record a negative report for the last 90 consecutive days of the required installation pe-
19 riod. The department shall remove the ignition interlock device requirement from the
20 person's driving record as soon as practicable after the department receives the certificate.

21 (3) If there is a negative report during the last 90 consecutive days, the person shall
22 continue to use an ignition interlock device beyond the period required under ORS 813.602
23 (1)(b) or (c), (2) or (3) until the person submits a certificate, in a form prescribed by rule by
24 the department, to the department from the ignition interlock device provider stating that
25 the device has not recorded a negative report for 90 consecutive days, beginning on the date
26 of the most recent negative report.

27 (4) This section does not apply to a defendant who is granted an order to vacate the re-
28 quirement to install an ignition interlock device under section 4 of this 2015 Act.

29 **SECTION 4. Motion to vacate requirement to install and use ignition interlock device.**

30 (1)(a) As used in this section, "negative report" includes a report of tampering with an ig-
31 nition interlock device, unauthorized removal of an ignition interlock device, lockout or a
32 test violation recorded by an ignition interlock device.

33 (b) The Department of Transportation may by rule further define what constitutes a test
34 violation.

35 (2) A defendant may apply by motion to the court in which a driving while under the in-
36 fluence of intoxicants diversion agreement described in ORS 813.230 was entered for an order
37 vacating the requirement to install and use an ignition interlock device if the defendant:

38 (a) Has complied with the condition of the diversion agreement described in ORS 813.602
39 (3) for at least six consecutive months and provides a certificate to the court from the ig-
40 nition interlock device provider stating that the device has not recorded a negative report;
41 and

42 (b) The defendant has entered into and is in compliance with any treatment program that
43 the person is required to participate in as a condition of diversion.

44 (3) The defendant shall cause to be served on the district attorney or city prosecutor a
45 copy of the motion for an order vacating the requirement to install and use an ignition

1 **interlock device under ORS 813.602 (3). The copy of the motion shall be served on the district**
2 **attorney or city prosecutor at the time the motion is filed with the court. The district at-**
3 **torney or city prosecutor may contest the motion.**

4 **(4) The court shall hold a hearing on a petition filed in accordance with subsection (2)**
5 **of this section. In determining whether to grant the petition, the court shall consider:**

6 **(a) The nature of the underlying crime for which driving privileges were suspended.**

7 **(b) The blood alcohol content of the defendant at the time of the arrest.**

8 **(c) Any other relevant factors.**

9 **(5) The court may vacate a defendant's requirement to install and use an ignition inter-**
10 **lock device under ORS 813.602 (3) if, after a hearing described in subsection (4) of this sec-**
11 **tion, the court finds by a preponderance of the evidence that the petitioner:**

12 **(a) Has complied with the condition of the diversion agreement described in ORS 813.602**
13 **(3) for at least six consecutive months with no negative reports; and**

14 **(b) Has entered into and is in compliance with any treatment program required as a**
15 **condition of diversion.**

16 **(6) When a court vacates a defendant's requirement to install and use an ignition inter-**
17 **lock device under ORS 813.602 (3), the court shall notify the department.**

18 **SECTION 5.** ORS 813.602 is amended to read:

19 813.602. (1) Except as provided in subsection (2) of this section, when a person is convicted of
20 driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-
21 nance, the Department of Transportation, in addition to any other requirement, shall require that
22 the person [*install*] **have installed** and [*use*] **be using** an approved ignition interlock device in any
23 vehicle operated by the person:

24 **(a) Before the person is eligible for a hardship permit. The requirement is a condition of the**
25 **hardship permit for the duration of the hardship permit.**

26 **(b) For a first conviction, for one year after [*the ending date of*] the suspension or revocation**
27 **caused by the conviction **ends**. Violation of the condition imposed under this paragraph is a Class**
28 **A traffic violation.**

29 **(c) For a second or subsequent conviction, for two years after [*the ending date of*] the suspension**
30 **or revocation caused by the conviction **ends**. Violation of the condition imposed under this para-**
31 **graph is a Class A traffic violation.**

32 **(2) When a person is convicted of a crime or multiple crimes as described in this subsection, the**
33 **department, in addition to any other requirement, shall require that the person [*install*] **have in-****
34 **stalled** and [*use*] **be using** an approved ignition interlock device in any vehicle operated by the
35 person for five years after the [*ending date of the*] longest running suspension or revocation caused
36 by any of the convictions **ends**. Violation of the condition imposed under this subsection is a Class
37 A traffic violation. A person is subject to this subsection when the person is convicted of:

38 **(a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal**
39 **ordinance and any of the following crimes as part of the same criminal episode:**

40 **(A) Any degree of murder.**

41 **(B) Manslaughter in the first or second degree.**

42 **(C) Criminally negligent homicide.**

43 **(D) Assault in the first degree.**

44 **(b) Aggravated vehicular homicide.**

45 **(c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal**

1 ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered
2 restored under ORS 809.235 (4).

3 (3)(a) Except as provided in paragraph (b) of this subsection **and section 4 of this 2015 Act**, the
4 court shall require as a condition of a driving while under the influence of intoxicants diversion
5 agreement that an approved ignition interlock device be installed and used in any vehicle operated
6 by the person during the period of the agreement when the person has driving privileges. In addition
7 to any action taken under ORS 813.255, violation of the condition imposed under this subsection is
8 a Class A traffic violation.

9 (b) A court may exempt a person from the condition in a diversion agreement to [*install*] **have**
10 **installed** and [*use*] **be using** an ignition interlock device if the court determines that the person
11 meets the requirements for a medical exemption in accordance with rules adopted by the department
12 under this section. A person granted a medical exemption under this paragraph shall carry proof
13 of the medical exemption with the person while operating any vehicle.

14 [*(4) Except as provided in subsection (5) of this section, if an ignition interlock system is ordered*
15 *or required under subsection (1), (2) or (3) of this section, the person so ordered or required shall pay*
16 *to the provider the reasonable costs of leasing, installing and maintaining the device. A payment*
17 *schedule may be established for the person by the department.*]

18 [*(5) The department may waive, in whole or in part, or defer the defendant's responsibility to pay*
19 *all or part of the costs under subsection (4) of this section if the defendant meets the criteria for*
20 *indigence established for waiving or deferring such costs under subsection (6) of this section. If the*
21 *defendant's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described*
22 *in subsection (4) of this section must be paid from the Intoxicated Driver Program Fund.*]

23 [*(6) The department, by rule, shall establish criteria and procedures it will use for qualification to*
24 *wave or defer costs described under subsection (4) of this section for indigence. The criteria must be*
25 *consistent with the standards for indigence adopted by the federal government for purposes of the*
26 *Supplemental Nutrition Assistance Program.*]

27 [*(7) At the end of the suspension or revocation resulting from the conviction, the department shall*
28 *suspend the driving privileges or right to apply for driving privileges of a person who has not sub-*
29 *mitted proof to the department that an ignition interlock device has been installed or who tampers with*
30 *an ignition interlock device after it has been installed.*]

31 [*(8) If the department imposes a suspension under subsection (7) of this section for failing to submit*
32 *proof of installation, the suspension continues until the department receives proof that the ignition*
33 *interlock device has been installed. If the department does not receive proof that the ignition interlock*
34 *device has been installed, the suspension shall continue for:*]

35 [*(a) One year after the ending date of the suspension resulting from the first conviction;*]

36 [*(b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the*
37 *suspension resulting from a second or subsequent conviction; or]*

38 [*(c) Five years after the ending date of the longest running suspension or revocation resulting from*
39 *a conviction described in subsection (2) of this section.*]

40 [*(9) If the department imposes a suspension under subsection (7) of this section for tampering with*
41 *an ignition interlock device, the suspension continues until:*]

42 [*(a) One year after the ending date of the suspension resulting from the first conviction;*]

43 [*(b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the*
44 *suspension resulting from a second or subsequent conviction; or]*

45 [*(c) Five years after the ending date of the longest running suspension or revocation resulting from*

1 *a conviction described in subsection (2) of this section.]*

2 *[(10) A person whose driving privileges or right to apply for privileges is suspended under sub-*
3 *section (7) of this section is entitled to administrative review, as described in ORS 809.440, of the*
4 *action.]*

5 *[(11) (4) The department shall adopt rules permitting medical exemptions from the requirements*
6 *of installation and use of an ignition interlock device under [subsections (1), (2) and (3) of] this sec-*
7 *tion.*

8 *[(12) (5) When a person is required to install an ignition interlock device under subsection (2)*
9 *[or (3)] of this section, the provider of the device shall provide notice of any installation or removal*
10 *of the device or any tampering with the device to:*

11 *(a) The **supervising** court [that ordered installation of the device] or to the court's designee, in-*
12 *cluding but not limited to an agency or organization certified by the Oregon Health Authority under*
13 *ORS 813.025[.]; and*

14 *(b) **The district attorney or the city prosecutor.***

15 **SECTION 6. Sections 7 and 8 of this 2015 Act are added to and made a part of ORS**
16 **chapter 813.**

17 **SECTION 7. Fee Waiver.** (1) **Except as provided in subsection (2) of this section, if an**
18 **ignition interlock device is ordered or required under ORS 813.602, the person so ordered or**
19 **required shall pay to the provider the reasonable costs of leasing, installing and maintaining**
20 **the device. A payment schedule may be established for the person by the Department of**
21 **Transportation.**

22 (2) **The department may waive, in whole or in part, or defer the person's responsibility**
23 **to pay all or part of the costs under subsection (1) of this section if the person meets the**
24 **criteria for indigence established for waiving or deferring such costs under subsection (3) of**
25 **this section. If the person's responsibility for costs is waived, then notwithstanding ORS**
26 **813.270, the costs described in subsection (1) of this section must be paid from the**
27 **Intoxicated Driver Program Fund.**

28 (3) **The department, by rule, shall establish criteria and procedures for qualification to**
29 **waive or defer costs described under subsection (1) of this section for indigence. The criteria**
30 **must be consistent with the standards for indigence adopted by the federal government for**
31 **purposes of the Supplemental Nutrition Assistance Program.**

32 **SECTION 8. Suspension of driving privileges.** (1) **At the end of a suspension or revocation**
33 **resulting from a conviction as described in ORS 813.602, the Department of Transportation**
34 **shall suspend the driving privileges or right to apply for driving privileges of a person who**
35 **has not submitted proof to the department that an ignition interlock device has been in-**
36 **stalled or who tampers with an ignition interlock device after it has been installed.**

37 (2) **Subject to section 3 of this 2015 Act, if the department imposes a suspension under**
38 **subsection (1) of this section for failing to submit proof of installation, the suspension con-**
39 **tinues until the department receives proof that the ignition interlock device has been in-**
40 **stalled. If the department does not receive proof that the ignition interlock device has been**
41 **installed, the suspension shall continue for:**

42 **(a) One year after the ending date of the suspension resulting from a first conviction;**

43 **(b) Except as provided in paragraph (c) of this subsection, two years after the ending date**
44 **of the suspension resulting from a second or subsequent conviction; or**

45 **(c) Five years after the ending date of the longest running suspension or revocation re-**

1 **sulting from a conviction described in ORS 813.602 (2).**

2 **(3) Subject to section 3 of this 2015 Act, if the department imposes a suspension under**
3 **subsection (1) of this section for tampering with an ignition interlock device, the suspension**
4 **continues until:**

5 **(a) One year after the ending date of the suspension resulting from the first conviction;**

6 **(b) Except as provided in paragraph (c) of this subsection, two years after the ending date**
7 **of the suspension resulting from a second or subsequent conviction; or**

8 **(c) Five years after the ending date of the longest running suspension or revocation re-**
9 **sulting from a conviction described in ORS 813.602 (2).**

10 **(4) A person whose driving privileges or right to apply for privileges is suspended under**
11 **subsection (1) of this section is entitled to administrative review, as described in ORS 809.440.**

12 **SECTION 9. Applicability. Sections 2 to 4, 7 and 8 of this 2015 Act and the amendments**
13 **to ORS 813.602 by section 5 of this 2015 Act apply to offenses committed on or after the ef-**
14 **fective date of this 2015 Act.**

15 **SECTION 10. Captions. The section captions used in this 2015 Act are provided only for**
16 **the convenience of the reader and do not become part of the statutory law of this state or**
17 **express any legislative intent in the enactment of this 2015 Act.**

18 **SECTION 11. If House Bill 2660 becomes law, section 5 of this 2015 Act (amending ORS**
19 **813.602) is repealed and ORS 813.602, as amended by section 1, chapter __, Oregon Laws 2015**
20 **(Enrolled House Bill 2660), is amended to read:**

21 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while
22 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-
23 partment of Transportation, in addition to any other requirement, shall require that the person have
24 installed and be using an approved ignition interlock device in any vehicle operated by the person:

25 (a) Before the person is eligible for a hardship permit. The requirement is a condition of the
26 hardship permit for the duration of the hardship permit.

27 (b) For a first conviction, for one year after the ending date of the suspension or revocation
28 caused by the conviction. Violation of the condition imposed under this paragraph is a Class A
29 traffic violation.

30 (c) For a second or subsequent conviction, for two years after the ending date of the suspension
31 or revocation caused by the conviction. Violation of the condition imposed under this paragraph is
32 a Class A traffic violation.

33 (2) When a person is convicted of a crime or multiple crimes as described in this subsection, the
34 department, in addition to any other requirement, shall require that the person have installed and
35 be using an approved ignition interlock device in any vehicle operated by the person for five years
36 after the ending date of the longest running suspension or revocation caused by any of the con-
37 victions. Violation of the condition imposed under this subsection is a Class A traffic violation. A
38 person is subject to this subsection when the person is convicted of:

39 (a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
40 ordinance and any of the following crimes as part of the same criminal episode:

41 (A) Any degree of murder.

42 (B) Manslaughter in the first or second degree.

43 (C) Criminally negligent homicide.

44 (D) Assault in the first degree.

45 (b) Aggravated vehicular homicide.

1 (c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
2 ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered
3 restored under ORS 809.235 (4).

4 (3)(a) Except as provided in paragraph (c) of this subsection, as a condition of a driving while
5 under the influence of intoxicants diversion agreement:

6 (A) The court shall require that an approved ignition interlock device be installed and used in
7 any vehicle operated by the person during the period of the agreement when the person has driving
8 privileges if:

9 (i) The person submitted to a chemical test of the person's breath or blood as required under
10 ORS 813.100 and the test disclosed a blood alcohol content of 0.08 percent or more by weight;

11 (ii) The person refused to submit to a chemical test of the person's breath or blood; or

12 (iii) The person submitted to a chemical test of the person's breath, blood or urine as required
13 under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content of more than 0.00 per-
14 cent by weight but less than 0.08 percent [*or more*] by weight and disclosed the presence of a con-
15 trolled substance or an inhalant.

16 (B) The court may require that an approved ignition interlock device be installed and used in
17 any vehicle operated by the person during the period of the agreement when the person has driving
18 privileges if the person submitted to a chemical test of the person's breath, blood or urine as re-
19 quired under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content below 0.08 per-
20 cent by weight.

21 (b) In addition to any action taken under ORS 813.255, violation of the condition imposed under
22 this subsection is a Class A traffic violation.

23 (c) A court may exempt a person from the condition in a diversion agreement to have installed
24 and be using an ignition interlock device if the court determines that the person meets the re-
25 quirements for a medical exemption in accordance with rules adopted by the department under this
26 section. A person granted a medical exemption under this paragraph shall carry proof of the medical
27 exemption with the person while operating any vehicle.

28 (4) The department shall adopt rules permitting medical exemptions from the requirements of
29 installation and use of an ignition interlock device under this section.

30 **(5) When a person is required to install an ignition interlock device under subsection (2)**
31 **of this section, the provider of the device shall provide notice of any installation or removal**
32 **of the device or any tampering with the device to:**

33 **(a) The supervising court or to the court's designee, including but not limited to an**
34 **agency or organization certified by the Oregon Health Authority under ORS 813.025; and**

35 **(b) The district attorney or the city prosecutor.**

36 **SECTION 12.** If House Bill 2660 becomes law, section 8 of this 2015 Act is amended to read:

37 **Sec. 8.** (1) At the end of [*a*] **the** suspension or revocation resulting from a conviction [*as de-*
38 *scribed in ORS 813.602*] **for driving while under the influence of intoxicants in violation of ORS**
39 **813.010 or of a municipal ordinance**, the Department of Transportation shall suspend the driving
40 privileges or right to apply for driving privileges of a person who has not submitted proof to the
41 department that an ignition interlock device has been installed **in any vehicle operated by the**
42 **person** or who tampers with an ignition interlock device after it has been installed.

43 (2) Subject to section 3 of this 2015 Act, if the department imposes a suspension under sub-
44 section (1) of this section for failing to submit proof of installation, the suspension continues until
45 the department receives proof that the ignition interlock device has been installed. If the department

1 does not receive proof that the ignition interlock device has been installed, the suspension shall
2 continue for:

3 (a) One year after the ending date of the suspension resulting from [a] **the** first conviction;

4 (b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the
5 suspension resulting from a second or subsequent conviction; or

6 (c) Five years after the ending date of the longest running suspension or revocation resulting
7 from a conviction described in ORS 813.602 (2).

8 (3) Subject to section 3 of this 2015 Act, if the department imposes a suspension under sub-
9 section (1) of this section for tampering with an ignition interlock device, the suspension continues
10 until:

11 (a) One year after the ending date of the suspension resulting from the first conviction;

12 (b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the
13 suspension resulting from a second or subsequent conviction; or

14 (c) Five years after the ending date of the longest running suspension or revocation resulting
15 from a conviction described in ORS 813.602 (2).

16 (4) A person whose driving privileges or right to apply for privileges is suspended under sub-
17 section (1) of this section is entitled to administrative review, as described in ORS 809.440.

18 **SECTION 13. If House Bill 2660 becomes law, sections 2, 3, 4, 5, 6 and 7, chapter ___,**
19 **Oregon Laws 2015 (Enrolled House Bill 2660), are repealed.**

20 **SECTION 14. If House Bill 2660 becomes law, section 9 of this 2015 Act is amended to**
21 **read:**

22 **Sec. 9.** Sections 2 to 4, 7 and 8 of this 2015 Act and the amendments to ORS 813.602 by section
23 [5] 11 of this 2015 Act apply to offenses committed on or after the effective date of this 2015 Act.
24
