

Enrolled Senate Bill 397

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CHAPTER

AN ACT

Relating to driving while under influence of intoxicants; creating new provisions; amending ORS 813.602; and repealing sections 2, 3, 4, 5, 6 and 7, chapter 251, Oregon Laws 2015 (Enrolled House Bill 2660).

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

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

SECTION 2. Notice of ignition interlock device installation and negative reports. (1)(a) As used in this section, “negative report” includes a report of tampering with an ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test violation recorded by an ignition interlock device.

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

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

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

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

(b) The district attorney or city prosecutor.

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

(5) Each time a provider has access to an ignition interlock device that the provider installed, the provider shall download all reports recorded on the device. If the provider downloads a negative report, the provider shall submit the negative report, in a form prescribed by rule by the department, to:

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

(b) The district attorney or city prosecutor.

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

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

(1)(a) As used in this section, “negative report” includes a report of tampering with an ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test violation recorded by an ignition interlock device.

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

(2) Notwithstanding ORS 813.602 (1)(b) or (c), (2) or (3), the requirement to have an ignition interlock device installed in a vehicle continues until the person submits to the department a certificate from the ignition interlock device provider stating that the device did not record a negative report for the last 90 consecutive days of the required installation period. The department shall remove the ignition interlock device requirement from the person’s driving record as soon as practicable after the department receives the certificate.

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

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

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

(1)(a) As used in this section, “negative report” includes a report of tampering with an ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test violation recorded by an ignition interlock device.

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

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

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

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

(3) The defendant shall cause to be served on the district attorney or city prosecutor a copy of the motion for an order vacating the requirement to install and use an ignition interlock device under ORS 813.602 (3). The copy of the motion shall be served on the district attorney or city prosecutor at the time the motion is filed with the court. The district attorney or city prosecutor may contest the motion.

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

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

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

(c) Any other relevant factors.

(5) The court may vacate a defendant’s requirement to install and use an ignition interlock device under ORS 813.602 (3) if, after a hearing described in subsection (4) of this section, the court finds by a preponderance of the evidence that the petitioner:

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

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

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

SECTION 5. ORS 813.602 is amended to read:

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

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

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

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

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

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

- (A) Any degree of murder.
- (B) Manslaughter in the first or second degree.
- (C) Criminally negligent homicide.
- (D) Assault in the first degree.
- (b) Aggravated vehicular homicide.

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

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

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

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

[(5) The department may waive, in whole or in part, or defer the defendant's responsibility to pay all or part of the costs under subsection (4) of this section if the defendant meets the criteria for indigence established for waiving or deferring such costs under subsection (6) of this section. If the

defendant's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described in subsection (4) of this section must be paid from the Intoxicated Driver Program Fund.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The district attorney or the city prosecutor.

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

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

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

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

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

(2) Subject to section 3 of this 2015 Act, if the department imposes a suspension under subsection (1) of this section for failing to submit proof of installation, the suspension continues until the department receives proof that the ignition interlock device has been installed. If the department does not receive proof that the ignition interlock device has been installed, the suspension shall continue for:

- (a) One year after the ending date of the suspension resulting from a first conviction;
- (b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the suspension resulting from a second or subsequent conviction; or
- (c) Five years after the ending date of the longest running suspension or revocation resulting from a conviction described in ORS 813.602 (2).

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

- (a) One year after the ending date of the suspension resulting from the first conviction;
- (b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the suspension resulting from a second or subsequent conviction; or
- (c) Five years after the ending date of the longest running suspension or revocation resulting from a conviction described in ORS 813.602 (2).

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

SECTION 9. Applicability. Sections 2 to 4, 7 and 8 of this 2015 Act and the amendments to ORS 813.602 by section 5 of this 2015 Act apply to offenses committed on or after the effective date of this 2015 Act.

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

SECTION 11. If House Bill 2660 becomes law, section 5 of this 2015 Act (amending ORS 813.602) is repealed and ORS 813.602, as amended by section 1, chapter 251, Oregon Laws 2015 (Enrolled House Bill 2660), is amended to read:

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

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

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

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

(2) When a person is convicted of a crime or multiple crimes as described in this subsection, the department, in addition to any other requirement, shall require that the person have installed and

be using an approved ignition interlock device in any vehicle operated by the person for five years after the ending date of the longest running suspension or revocation caused by any of the convictions. Violation of the condition imposed under this subsection is a Class A traffic violation. A person is subject to this subsection when the person is convicted of:

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

- (A) Any degree of murder.
- (B) Manslaughter in the first or second degree.
- (C) Criminally negligent homicide.
- (D) Assault in the first degree.
- (b) Aggravated vehicular homicide.

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

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

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

- (i) The person submitted to a chemical test of the person's breath or blood as required under ORS 813.100 and the test disclosed a blood alcohol content of 0.08 percent or more by weight;
- (ii) The person refused to submit to a chemical test of the person's breath or blood; or
- (iii) The person submitted to a chemical test of the person's breath, blood or urine as required under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content of more than 0.00 percent by weight but less than 0.08 percent [*or more*] by weight and disclosed the presence of a controlled substance or an inhalant.

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

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

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

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

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

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

(b) The district attorney or the city prosecutor.

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

Sec. 8. (1) At the end of [a] the suspension or revocation resulting from a conviction [*as described in ORS 813.602*] **for driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance**, the Department of Transportation shall suspend the driving privileges or right to apply for driving privileges of a person who has not submitted proof to the

department that an ignition interlock device has been installed **in any vehicle operated by the person** or who tampers with an ignition interlock device after it has been installed.

(2) Subject to section 3 of this 2015 Act, if the department imposes a suspension under subsection (1) of this section for failing to submit proof of installation, the suspension continues until the department receives proof that the ignition interlock device has been installed. If the department does not receive proof that the ignition interlock device has been installed, the suspension shall continue for:

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

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

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

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

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

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

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

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

SECTION 13. If House Bill 2660 becomes law, sections 2, 3, 4, 5, 6 and 7, chapter 251, Oregon Laws 2015 (Enrolled House Bill 2660), are repealed.

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

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

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

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Kate Brown, Governor

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Jeanne P. Atkins, Secretary of State