

## SENATE AMENDMENTS TO SENATE BILL 397

By COMMITTEE ON JUDICIARY

April 30

1 On page 1 of the printed bill, delete line 3 and insert “813.021, 813.240 and 813.602.”.

2 Delete lines 5 through 30 and delete page 2 and insert:

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

5 **“SECTION 2. Notice of ignition interlock device installation and negative reports. (1)(a)**  
6 **As used in this section, ‘negative report’ includes a report of tampering with an ignition**  
7 **interlock device, unauthorized removal of an ignition interlock device, lockout or a test vio-**  
8 **lation recorded by an ignition interlock device.**

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

11 **“(2) This section applies only to a person who has had an ignition interlock device in-**  
12 **stalled as a condition of a driving while under the influence of intoxicants diversion agree-**  
13 **ment under ORS 813.602 (3).**

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

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

19 **“(b) The district attorney or city prosecutor.**

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

22 **“(5) Each time a provider has access to an ignition interlock device that the provider**  
23 **installed, the provider shall download all reports recorded on the device. If the provider**  
24 **downloads a negative report, the provider shall submit the negative report, in a form pre-**  
25 **scribed by rule by the department, to:**

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

29 **“(b) The district attorney or city prosecutor.**

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

32 **“SECTION 3. Consequence for negative reports generated from ignition interlock device.**  
33 **(1)(a) As used in this section, ‘negative report’ includes a report of tampering with an ig-**  
34 **niton interlock device, unauthorized removal of an ignition interlock device, lockout or a**  
35 **test violation recorded by an ignition interlock device.**

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

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

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

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

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

18 (1)(a) As used in this section, ‘negative report’ includes a report of tampering with an ig-  
19 nition interlock device, unauthorized removal of an ignition interlock device, lockout or a  
20 test violation recorded by an ignition interlock device.

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

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

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

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

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

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

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

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

42       “(c) Any other relevant factors.

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

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

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

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

7       “**SECTION 5.** ORS 813.602 is amended to read:

8       “813.602. (1) Except as provided in subsection (2) of this section, when a person is convicted of  
9 driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-  
10 nance, the Department of Transportation, in addition to any other requirement, shall require that  
11 the person [*install*] **have installed** and [*use*] **be using** an approved ignition interlock device in any  
12 vehicle operated by the person:

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

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

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

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

27       “(a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a munic-  
28 ipal ordinance and any of the following crimes as part of the same criminal episode:

29       “(A) Any degree of murder.

30       “(B) Manslaughter in the first or second degree.

31       “(C) Criminally negligent homicide.

32       “(D) Assault in the first degree.

33       “(b) Aggravated vehicular homicide.

34       “(c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a munic-  
35 ipal ordinance and the person’s driving privileges are revoked under ORS 809.235 (1)(b) and later  
36 ordered restored under ORS 809.235 (4).

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

43       “(b) A court may exempt a person from the condition in a diversion agreement to [*install*] **have**  
44 **installed** and [*use*] **be using** an ignition interlock device if the court determines that the person  
45 meets the requirements for a medical exemption in accordance with rules adopted by the department

1 under this section. A person granted a medical exemption under this paragraph shall carry proof  
2 of the medical exemption with the person while operating any vehicle.

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

7 “[5] *The department may waive, in whole or in part, or defer the defendant’s responsibility to pay*  
8 *all or part of the costs under subsection (4) of this section if the defendant meets the criteria for*  
9 *indigence established for waiving or deferring such costs under subsection (6) of this section. If the*  
10 *defendant’s responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described*  
11 *in subsection (4) of this section must be paid from the Intoxicated Driver Program Fund.*]

12 “[6] *The department, by rule, shall establish criteria and procedures it will use for qualification*  
13 *to waive or defer costs described under subsection (4) of this section for indigence. The criteria must*  
14 *be consistent with the standards for indigence adopted by the federal government for purposes of the*  
15 *Supplemental Nutrition Assistance Program.*]

16 “[7] *At the end of the suspension or revocation resulting from the conviction, the department shall*  
17 *suspend the driving privileges or right to apply for driving privileges of a person who has not sub-*  
18 *mitted proof to the department that an ignition interlock device has been installed or who tampers with*  
19 *an ignition interlock device after it has been installed.*]

20 “[8] *If the department imposes a suspension under subsection (7) of this section for failing to*  
21 *submit proof of installation, the suspension continues until the department receives proof that the ig-*  
22 *nitiation interlock device has been installed. If the department does not receive proof that the ignition*  
23 *interlock device has been installed, the suspension shall continue for:]*

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

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

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

29 “[9] *If the department imposes a suspension under subsection (7) of this section for tampering with*  
30 *an ignition interlock device, the suspension continues until:]*

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

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

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

36 “[10] *A person whose driving privileges or right to apply for privileges is suspended under sub-*  
37 *section (7) of this section is entitled to administrative review, as described in ORS 809.440, of the*  
38 *action.*]

39 “[11] (4) The department shall adopt rules permitting medical exemptions from the require-  
40 ments of installation and use of an ignition interlock device under [subsections (1), (2) and (3) of] this  
41 section.

42 “[12] (5) When a person is required to install an ignition interlock device under subsection (2)  
43 [or (3)] of this section, the provider of the device shall provide notice of any installation or removal  
44 of the device or any tampering with the device to:

45 “(a) The **supervising** court [that ordered installation of the device] or to the court’s designee,

1 including but not limited to an agency or organization certified by the Oregon Health Authority  
2 under ORS 813.025[.]; and

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

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

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

11 **“(2) The department may waive, in whole or in part, or defer the person’s responsibility**  
12 **to pay all or part of the costs under subsection (1) of this section if the person meets the**  
13 **criteria for indigence established for waiving or deferring such costs under subsection (3) of**  
14 **this section. If the person’s responsibility for costs is waived, then notwithstanding ORS**  
15 **813.270, the costs described in subsection (1) of this section must be paid from the**  
16 **Intoxicated Driver Program Fund.**

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

21 **“SECTION 8. Suspension of driving privileges. (1) At the end of a suspension or revoca-**  
22 **tion resulting from a conviction as described in ORS 813.602, the Department of Transpor-**  
23 **tation shall suspend the driving privileges or right to apply for driving privileges of a person**  
24 **who has not submitted proof to the department that an ignition interlock device has been**  
25 **installed or who tampers with an ignition interlock device after it has been installed.**

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

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

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

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

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

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

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

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

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

1       “**SECTION 9.** ORS 813.021 is amended to read:

2       “813.021. (1) When a court, in accordance with ORS 813.020, requires a person to complete a  
3 screening interview and a treatment program, the court shall require the person to do all of the  
4 following:

5       “(a) Complete a screening interview for the purpose of determining appropriate placement of the  
6 person in a program for treatment for alcoholism, drug dependency or dependency on inhalants.

7       “(b) Pay directly to the agency or organization conducting the screening interview a fee of \$150.

8       “(c) Complete the treatment program to which the person is referred.

9       “(d) Pay for the treatment program to which the person is referred.

10       “(2) The screening interview required by this section shall be conducted by an agency or or-  
11 ganization designated by the court. The designated agency or organization must meet the standards  
12 set by the Director of the Oregon Health Authority to conduct the screening interviews. Wherever  
13 possible a court shall designate agencies or organizations to perform the screening interview that  
14 are separate from those that may be designated to carry out a treatment program.

15       “(3) An agency or organization doing a screening interview under this section may not refer a  
16 person to a treatment program that has not been approved by the Director of the Oregon Health  
17 Authority.

18       “(4) The agency or organization conducting a screening interview under this section shall mon-  
19 itor the progress of the person referred to the agency or organization. The agency or organization  
20 shall make a report to the referring court stating the person’s successful completion or failure to  
21 complete all or any part of the screening interview or of the treatment program to which the person  
22 was referred by the agency or organization. The report shall be in a form determined by agreement  
23 between the court and the agency or organization.

24       “**(5) A court or an agency or organization may not charge a person an additional fee to**  
25 **pay the costs incurred by the agency or organization in carrying out the duties of the agency**  
26 **or organization.**

27       “**SECTION 10.** ORS 813.240 is amended to read:

28       “813.240. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while  
29 under the influence of intoxicants diversion agreement as provided in ORS 813.210 is \$490. A fee  
30 collected under this subsection in the circuit court shall be deposited by the clerk of the court in  
31 the Criminal Fine Account. If the fee is collected in a municipal or justice court, \$290 of the fee  
32 shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Ac-  
33 count, and the remainder of the fee shall be paid to the city or county treasurer.

34       “(2) If less than the full filing fee is collected under subsection (1) of this section in a municipal  
35 or justice court, the money received shall be allocated first to the Department of Revenue for de-  
36 posit in the Criminal Fine Account.

37       “(3) In addition to the filing fee under subsection (1) of this section, the court shall order the  
38 defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.  
39 **A court or an agency or organization may not charge a defendant an additional fee to pay**  
40 **the costs incurred by the agency or organization in carrying out the duties of the agency or**  
41 **organization.**

42       “**SECTION 11. Applicability.** (1) **Sections 2 to 4, 7 and 8 of this 2015 Act and the amend-**  
43 **ments to ORS 813.602 by section 5 of this 2015 Act apply to offenses committed on or after**  
44 **the effective date of this 2015 Act.**

45       “(2) **The amendments to ORS 813.021 and 813.240 by sections 9 and 10 of this 2015 Act**

1 apply to offenses committed before, on or after the effective date of this 2015 Act.  
2 SECTION 12. Captions. The section captions used in this 2015 Act are provided only for  
3 the convenience of the reader and do not become part of the statutory law of this state or  
4 express any legislative intent in the enactment of this 2015 Act.”.

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