

Senate Bill 398

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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 **as introduced**.

Requires providers of ignition interlock devices to notify court that required device to be installed of any negative reports downloaded from ignition interlock device.

Permits court to order installation of ignition interlock device equipped with camera or similar technology if court does not terminate diversion agreement following negative report.

Increases fees paid to agency or organization conducting screening interview or diagnostic assessment.

Reorganizes laws related ignition interlock devices.

A BILL FOR AN ACT

1
2 Relating to ignition interlock devices; creating new provisions; and amending ORS 813.021, 813.240,
3 813.602, 813.604, 813.606 and 813.608.

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

5 **SECTION 1. Sections 2 and 3 of this 2015 Act are added to and made a part of ORS**
6 **chapter 813.**

7 **SECTION 2. Notice to court. (1) As used in this section, “negative report” includes a**
8 **report of tampering with an ignition interlock device, unauthorized removal of the ignition**
9 **interlock device, lockouts or test violations recorded by the ignition interlock device.**

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

13 **(3) After an ignition interlock device is installed, the provider that installed the device**
14 **shall notify the court that required the device to be installed that the device has been in-**
15 **stalled. Notice of the installation must be given within seven business days of installing the**
16 **ignition interlock device.**

17 **(4) Each time a provider has access to an ignition interlock device that the provider in-**
18 **stalled, the provider shall download all reports recorded on the device. If the provider**
19 **downloads a negative report, the provider shall notify the court. The provider must give no-**
20 **tice of the negative report within seven business days of downloading the negative report.**

21 **SECTION 3 Requirements following show cause hearing on diversion. (1) As used in this**
22 **section, “negative report” includes a report of tampering with an ignition interlock device,**
23 **unauthorized removal of the ignition interlock device, lockouts or test violations recorded**
24 **by the ignition interlock device.**

25 **(2) Subject to subsection (3) of this section, if a court does not terminate a person's**
26 **driving while under the influence of intoxicants diversion agreement following a show cause**
27 **hearing under ORS 813.255, the court may order the person to install an ignition interlock**

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 device that identifies the person operating the device by means of a camera or other tech-
 2 nology and that meets the requirements of rules adopted by the Department of Transporta-
 3 tion under subsection (4) of this section.

4 (3) Subsection (2) of this section applies only if:

5 (a) The person previously was required to install an ignition interlock device as a condi-
 6 tion of a driving while under the influence of intoxicants diversion agreement under ORS
 7 813.602 (3);

8 (b) One of the stated reasons for the proposed termination of the person's diversion
 9 agreement is that the person's ignition interlock device has produced a negative report; and

10 (c) The person does not at the time of the show cause hearing have an ignition interlock
 11 device installed that identifies the person operating the device by means of a camera or other
 12 technology and that meets the requirements of rules adopted by the department under sub-
 13 section (4) of this section.

14 (4) The department shall adopt rules that specify requirements for ignition interlock de-
 15 vices that are required to be installed under this section and shall publish a list of devices
 16 that meet the requirements. The devices listed must:

17 (a) Meet the requirements described in ORS 813.600; and

18 (b) Be capable of identifying the user of the device by means of a camera or other tech-
 19 nology.

20 **SECTION 4.** ORS 813.602 is amended to read:

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

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

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

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

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

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

42 (A) Any degree of murder.

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

44 (C) Criminally negligent homicide.

45 (D) Assault in the first degree.

1 (b) Aggravated vehicular homicide.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 [(b) *Except as provided in paragraph (c) of this subsection, two years after the ending date of the*

1 suspension resulting from a second or subsequent conviction; or]

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

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

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

10 [(12) When a person is required to install an ignition interlock device under subsection (2) or (3)
11 of this section, the provider of the device shall provide notice of any installation or removal of the de-
12 vice or any tampering with the device to the court that ordered installation of the device or to the
13 court's designee, including but not limited to an agency or organization certified by the Oregon Health
14 Authority under ORS 813.025.]

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

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

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

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

31 **SECTION 7. Suspension of driving privileges.** (1) At the end of the suspension or revo-
32 cation resulting from a conviction for driving while under the influence of intoxicants in vi-
33 olation of ORS 813.010 or of a municipal ordinance, the Department of Transportation shall
34 suspend the driving privileges or right to apply for driving privileges of a person who has not
35 submitted proof to the department that an ignition interlock device has been installed in any
36 vehicle operated by the person or who tampers with an ignition interlock device after it has
37 been installed.

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

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
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) If the department imposes a suspension under subsection (1) of this section for**
3 **tampering with an ignition interlock device, the suspension continues until:**

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

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

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

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

12 **SECTION 8.** ORS 813.021 is amended to read:

13 813.021. (1) When a court, in accordance with ORS 813.020, requires a person to complete a
14 screening interview and a treatment program, the court shall require the person to do all of the
15 following:

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

18 (b) Pay directly to the agency or organization conducting the screening interview a fee of
19 [~~\$150~~] **\$275.**

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

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

22 (2) The screening interview required by this section shall be conducted by an agency or organ-
23 ization designated by the court. The designated agency or organization must meet the standards set
24 by the Director of the Oregon Health Authority to conduct the screening interviews. Wherever
25 possible a court shall designate agencies or organizations to perform the screening interview that
26 are separate from those that may be designated to carry out a treatment program.

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

30 (4) The agency or organization conducting a screening interview under this section shall moni-
31 tor the progress of the person referred to the agency or organization. The agency or organization
32 shall make a report to the referring court stating the person's successful completion or failure to
33 complete all or any part of the screening interview or of the treatment program to which the person
34 was referred by the agency or organization. The report shall be in a form determined by agreement
35 between the court and the agency or organization.

36 **SECTION 9.** ORS 813.240 is amended to read:

37 813.240. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while
38 under the influence of intoxicants diversion agreement as provided in ORS 813.210 is \$490. A fee
39 collected under this subsection in the circuit court shall be deposited by the clerk of the court in
40 the Criminal Fine Account. If the fee is collected in a municipal or justice court, \$290 of the fee
41 shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Ac-
42 count, and the remainder of the fee shall be paid to the city or county treasurer.

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

1 (3) In addition to the filing fee under subsection (1) of this section, the court shall order the
 2 defendant to pay [~~\$150~~] **\$275** directly to the agency or organization providing the diagnostic assess-
 3 ment.

4 **SECTION 10.** ORS 813.604 is amended to read:

5 813.604. (1) When a court orders installation of an ignition interlock device pursuant to ORS
 6 813.602, the court shall send a copy of the order to the Department of Transportation. The depart-
 7 ment shall note the requirement on the driving record of the person required to [*install*] **have** the
 8 device **installed**.

9 (2) The department may not issue a hardship permit under ORS 807.240 to any person who is
 10 ordered to [*install*] **have** an ignition interlock device **installed** on the person's vehicle until the
 11 person furnishes the department satisfactory proof that the device has been installed on any vehicle
 12 owned or operated by the person. The department shall determine by rule what constitutes satis-
 13 factory proof under this subsection.

14 (3) When the department issues a hardship permit to a person who is required to have an ig-
 15 nition interlock device, the department shall note on the permit that the device is required. The
 16 notation constitutes a limitation on the permit and a person who violates the limitation is
 17 punishable as provided in ORS 811.182 for criminal driving while suspended or revoked.

18 **SECTION 11.** ORS 813.606 is amended to read:

19 813.606. Notwithstanding ORS 813.604, if a person is required, in the course and scope of the
 20 person's employment, to operate a motor vehicle owned by the person's employer, the person may
 21 operate that vehicle without installation of an ignition interlock device if:

22 (1) The employer has been notified:

23 (a) That the employee is operating with a hardship permit restricted as provided in ORS 813.604;

24 (b) That the employee is operating on a fully reinstated license within the first year following
 25 suspension or revocation for the employee's first conviction of driving while under the influence of
 26 intoxicants;

27 (c) That the employee is operating on a fully reinstated license within the second year following
 28 suspension or revocation for the employee's second or subsequent conviction of driving while under
 29 the influence of intoxicants; or

30 (d) That the employee has driving privileges and is otherwise required to [*install*] **have** an ig-
 31 nition interlock device **installed** as a condition of a driving while under the influence of intoxicants
 32 diversion agreement; and

33 (2) The employee has proof of the notification and, if applicable, a fully reinstated license in the
 34 possession of the employee while operating the employer's vehicle in the course of employment.

35 **SECTION 12.** ORS 813.608 is amended to read:

36 813.608. (1) A person commits the offense of knowingly furnishing a motor vehicle without an
 37 ignition interlock device to someone who is not authorized to drive such a vehicle if the person
 38 rents, leases, lends or otherwise furnishes a motor vehicle to someone the person knows to have
 39 been ordered or required under ORS 813.602, to [*install*] **have** an ignition interlock device
 40 **installed**, and the motor vehicle is not equipped with such a device that is in working order.

41 (2) The offense described in this section, knowingly furnishing a motor vehicle without an ig-
 42 nition interlock device to someone who is not authorized to drive such a vehicle, is a Class A traffic
 43 violation.

44 **SECTION 13. Applicability.** (1) **Sections 2, 3, 6 and 7 of this 2015 Act and the amendments**
 45 **to ORS 813.602 by section 4 of this 2015 Act apply to driving while under the influence of**

1 **intoxicants diversion agreements entered into on or after the effective date of this 2015 Act.**

2 **(2) The amendments to ORS 813.021 and 813.240 by sections 8 and 9 of this 2015 Act apply**
3 **to offenses occurring on or after the effective date of this 2015 Act.**

4 **SECTION 14. Captions. The section captions used in this 2015 Act are provided only for**
5 **the convenience of the reader and do not become part of the statutory law of this state or**
6 **express any legislative intent in the enactment of this 2015 Act.**

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