

House Bill 2614

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Allows for blood test to be taken to determine presence of controlled substances or inhalants for purpose of Motorist Implied Consent Law.

Provides that person who operates motor vehicle upon premises open to public or highways of this state is deemed to have given consent to submit to drug recognition evaluation under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending
3 ORS 135.815, 813.095, 813.100, 813.120, 813.130, 813.131, 813.132, 813.150, 813.160 and 813.310.

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

5 **SECTION 1.** ORS 813.095 is amended to read:

6 813.095. (1) A person commits the offense of refusal to take a test for intoxicants if the person
7 refuses to:

8 (a) Take a breath **or blood** test when requested to do so in accordance with the provisions of
9 ORS 813.100; or

10 (b) Take a urine **or blood** test when requested to do so in accordance with the provisions of
11 ORS 813.131 and 813.132.

12 (2) The offense described in this section, refusal to take a test for intoxicants, is a specific fine
13 traffic violation. The presumptive fine for refusal to take a test for intoxicants is \$650. The fine
14 described in this section is in addition to any other consequence prescribed by law for refusal to
15 take a test for intoxicants.

16 **SECTION 2.** ORS 813.100 is amended to read:

17 813.100. (1) Any person who operates a motor vehicle upon premises open to the public or the
18 highways of this state shall be deemed to have given consent, subject to the **Motorist** [*implied*
19 *consent law*] **Implied Consent Law**, to a chemical test of the person's:

20 (a) Breath, [*or of the person's blood if the person is receiving medical care in a health care facility*
21 *immediately after a motor vehicle accident,*] for the purpose of determining the alcoholic content of
22 the person's blood;

23 (b) **Blood for the purpose of determining the alcoholic content of the person's blood; or**

24 (c) **Blood for the purpose of determining the presence of controlled substances or**
25 **inhalants in the person's blood.** [*if the person is arrested for driving a motor vehicle while under*
26 *the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance.*]

27 (2) **This section applies to any person who is arrested for driving a motor vehicle while**
28 **under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance.**

29 (3) A test shall be administered upon the request of a police officer having reasonable grounds

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 to believe the person arrested to have been driving while under the influence of intoxicants in vio-
 2 lation of ORS 813.010 or of a municipal ordinance. Before the test is administered the person re-
 3 quested to take the test shall be informed of consequences and rights as described under ORS
 4 813.130.

5 [(2)] (4) [No] A chemical test of the person’s breath or blood [shall] **may not** be given[,] under
 6 [subsection (1) of] this section[,] to a person under arrest for driving a motor vehicle while under the
 7 influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, if the person refuses
 8 the request of a police officer to submit to the chemical test after the person has been informed of
 9 consequences and rights as described under ORS 813.130.

10 [(3)] (5) If a person refuses to take a test under this section or if a breath test under this section
 11 discloses that the person, at the time of the test, had a level of alcohol in the person’s blood that
 12 constitutes being under the influence of intoxicating liquor under ORS 813.300, the person’s driving
 13 privileges are subject to suspension under ORS 813.410 and the police officer shall do all of the
 14 following:

15 (a) Immediately take custody of any driver license or permit issued by this state to the person
 16 to grant driving privileges.

17 (b) Provide the person with a written notice of intent to suspend, on forms prepared and pro-
 18 vided by the Department of Transportation. The written notice shall inform the person of conse-
 19 quences and rights as described under ORS 813.130.

20 (c) If the person qualifies under ORS 813.110, issue to the person, on behalf of the department,
 21 a temporary driving permit described under ORS 813.110.

22 (d) Within a period of time required by the department by rule, report action taken under this
 23 section to the department and prepare and cause to be delivered to the department a report as de-
 24 scribed in ORS 813.120, along with the confiscated license or permit and a copy of the notice of in-
 25 tent to suspend.

26 [(4)] (6) If a blood test under this section discloses that the person, at the time of the test, had
 27 a level of alcohol in the person’s blood that constitutes being under the influence of intoxicating
 28 liquor under ORS 813.300, the person’s driving privileges are subject to suspension under ORS
 29 813.410 and the police officer shall report to the department within 45 days of the date of arrest that
 30 the person failed the blood test.

31 [(5)] (7) Nothing in this section precludes a police officer from obtaining a chemical test of the
 32 person’s breath or blood through any lawful means for use as evidence in a criminal or civil pro-
 33 ceeding including, but not limited to, obtaining a search warrant.

34 **SECTION 3.** ORS 813.130 is amended to read:

35 813.130. This section establishes the requirements for information about rights and consequences
 36 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and
 37 consequences:

38 (1) The information about rights and consequences shall be substantially in the form prepared
 39 by the Department of Transportation. The department may establish any form it determines appro-
 40 priate and convenient.

41 (2) The information about rights and consequences shall be substantially as follows:

42 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject
 43 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of
 44 intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered
 45 against the person.

1 (b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test
 2 discloses a blood alcohol content of 0.08 percent or more by weight. The person will fail a test for
 3 purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

- 4 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;
- 5 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or
- 6 (C) Any amount if the person was under 21 years of age.

7 (c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will
 8 be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will
 9 not affect the suspension. The suspension will be substantially longer if the person refuses a test.

10 (d) If the person refuses a **breath or blood** test or fails a **breath or blood** test under ORS
 11 813.100 and has an Oregon driver license or permit, the license or permit will be taken immediately
 12 and, unless the person does not currently have full valid driving privileges, a temporary driving
 13 permit will be issued to the person.

14 (e) If the person refuses a **breath or blood** test under ORS 813.100, the person is not eligible
 15 for a hardship permit for at least 90 days, and possibly for three years, depending on the following
 16 factors set forth in ORS 813.430:

17 (A) Whether the person is presently participating in a driving while under the influence of
 18 intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program
 19 in this or another jurisdiction; or

20 (B) Whether within the five years preceding the date of arrest any of the following occurred:

21 (i) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-
 22 ment Part) became effective;

23 (ii) The person was convicted of driving while under the influence of intoxicants in violation of
 24 ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as described in
 25 ORS 813.430;

26 (iii) The person was convicted of driving while under the influence of intoxicants in violation
 27 of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430; or

28 (iv) The person commenced participating in a driving while under the influence of intoxicants
 29 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
 30 another jurisdiction, as described in ORS 813.430.

31 (f) If the person refuses a **breath or blood** test under ORS 813.100, or refuses a urine **or blood**
 32 test under ORS 813.131 and 813.132, the person is subject to a fine of at least \$500 and not more
 33 than \$1,000.

34 (g) After taking a **breath or blood** test under ORS 813.100, the person will have a reasonable
 35 opportunity, upon request, for an additional chemical test for blood alcohol content to be performed
 36 at the person's own expense by a qualified individual of the person's choosing.

37 (h) The person has a right to a hearing to challenge the validity of the suspension before the
 38 suspension becomes effective. The person must make a written request to the department for such
 39 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.
 40 If the person loses at the hearing, the suspension will remain in effect during any court review of
 41 the hearing.

42 (i) If the person is issued a temporary driving permit under ORS 813.100, the information pro-
 43 vided to the person shall include the number of hours before the driving permit will be effective and
 44 the number of days the permit will be effective.

45 (j) The information provided to the person shall include the number of days within which a

1 person must request a hearing under ORS 813.410.

2 (k) The information provided to the person shall include the number of days within which a
3 hearing under ORS 813.410 will be held.

4 (L) The person may possibly qualify for a hardship permit in 30 days if the person fails a test,
5 depending on the person's driving record.

6 (3) If the person is driving a commercial motor vehicle, the information about rights and con-
7 sequences shall include, in addition to the provisions of subsection (2) of this section, substantially
8 the following:

9 (a) If the person refuses a **breath or blood** test under ORS 813.100 or submits to a breath or
10 blood test and the level of alcohol in the person's blood is 0.04 percent or more by weight, the
11 person's commercial driving privileges or right to apply for commercial driving privileges will be
12 suspended and no hardship permit authorizing the person to drive a commercial motor vehicle will
13 be issued. The suspension will be substantially longer if the person refuses a test.

14 (b) The suspension of the person's commercial driving privileges or right to apply for commercial
15 driving privileges will be for the person's lifetime if the person refuses a test under ORS 813.100 or
16 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or
17 more by weight and:

18 (A) The person previously has been convicted of failure to perform the duties of a driver;

19 (B) The person previously has been convicted of a crime punishable as a felony and the person
20 was driving a motor vehicle at the time the offense was committed;

21 (C) The person previously has been convicted of driving a commercial motor vehicle while the
22 person's commercial driving privileges or right to apply for commercial driving privileges was sus-
23 pended or revoked for offenses committed while operating a commercial motor vehicle;

24 (D) The person previously has been convicted of any degree of murder, manslaughter or
25 criminally negligent homicide resulting from the operation of a commercial motor vehicle or assault
26 in the first degree resulting from the operation of a commercial motor vehicle;

27 (E) The person previously has been convicted of driving while under the influence of intoxicants;

28 (F) The person's commercial driving privileges previously have been suspended or revoked for
29 refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or

30 (G) The person's right to apply for commercial driving privileges previously has been suspended
31 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting
32 from the operation of a commercial motor vehicle.

33 (4) Nothing in this section prohibits the department from providing additional information con-
34 cerning rights and consequences that the department considers convenient or appropriate.

35 **SECTION 4.** ORS 813.131 is amended to read:

36 813.131. (1) Any person who operates a motor vehicle upon premises open to the public or the
37 highways of this state shall be deemed to have given consent, subject to the Motorist Implied Con-
38 sent Law, to a chemical test of the person's urine **or blood** for the purpose of determining the
39 presence of a controlled substance or an inhalant in the person's body if the person is arrested for
40 driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-
41 nance and either:

42 (a) The person takes [*the breath*] a **breath or blood** test described in ORS 813.100 and the test
43 discloses a blood alcohol content of less than 0.08 percent; or

44 (b) The person is involved in an accident resulting in injury or property damage. A urine **or**
45 **blood** test may be requested under this paragraph regardless of whether a breath test has been re-

1 requested and regardless of the results of a breath test, if one is taken.

2 (2) A police officer may not request a urine **or blood** test unless the officer is certified by the
3 Department of Public Safety Standards and Training as having completed at least eight hours of
4 training in recognition of drug impaired driving and the officer has a reasonable suspicion that the
5 person arrested has been driving while under the influence of a controlled substance, an inhalant
6 or any combination of an inhalant, a controlled substance and intoxicating liquor.

7 (3) A person asked to give a urine sample shall be given privacy and may not be observed by
8 a police officer when producing the sample.

9 (4)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
10 committed by a person driving a motor vehicle while under the influence of intoxicants, a valid
11 chemical analysis of a person's urine **or blood** is admissible as evidence and may be used with other
12 evidence, if any, to determine whether the person was driving while under the influence of
13 intoxicants.

14 (b) A chemical analysis of a person's urine **or blood** is valid under this subsection if analysis is
15 performed in an accredited or licensed toxicology laboratory.

16 **SECTION 5.** ORS 813.132 is amended to read:

17 813.132. (1) Except as otherwise provided in this section, a refusal to take a urine **or blood** test
18 requested under ORS 813.131 shall be treated for all purposes as a refusal to take a breath test. A
19 suspension imposed for refusal to take a urine **or blood** test shall be consecutive to any other sus-
20 pension imposed under the Motorist Implied Consent Law. If a person is subject to consecutive
21 suspensions, the length of time that must elapse before the Department of Transportation may
22 reinstate driving privileges or issue a hardship permit under ORS 813.520 shall be doubled.

23 (2) Before any test of urine **or blood** may be administered under ORS 813.131, in addition to
24 information described in ORS 813.130, the person asked to take the test shall be informed that if the
25 person refuses the test, the person's driving privileges will be suspended for the same time period
26 and with the same consequences as if the person had refused the breath test and that a suspension
27 for refusal of the urine **or blood** test will be consecutive to any other suspension under the Motorist
28 Implied Consent Law.

29 (3) Notwithstanding subsection (1) of this section, [no] suspension of driving privileges [shall]
30 **may not** be imposed for refusal to provide a urine **or blood** sample if the person provides doc-
31 umentation from a physician licensed by this state showing that the person has a medical condition
32 that makes it impossible for the person to provide a sample.

33 **SECTION 6.** ORS 813.150 is amended to read:

34 813.150. *[In addition to a chemical test of the breath, blood or urine administered under ORS*
35 *813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon request, at the*
36 *person's own expense, reasonable opportunity to have any licensed physician and surgeon, licensed*
37 *professional nurse or qualified technician, chemist or other qualified person of the person's own*
38 *choosing administer a chemical test or tests of the person's breath or blood for the purpose of deter-*
39 *mining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or*
40 *urine, or both, for the purpose of determining the presence of a controlled substance or an inhalant in*
41 *the person. The failure or inability to obtain such a test or tests by a person shall not preclude the*
42 *admission of evidence relating to a test or tests taken upon the request of a police officer.]*

43 **(1) In addition to a chemical test or tests of the breath, blood or urine administered un-**
44 **der ORS 813.100, 813.131 or 813.140 upon the request of a police officer, a person shall be**
45 **permitted upon request, at the person's own expense, reasonable opportunity to have any**

1 **licensed physician, licensed professional nurse, qualified technician, chemist or other quali-**
 2 **fied person, of the person's own choosing, administer a chemical test or tests of the person's:**

3 (a) **Breath or blood for the purpose of determining the alcoholic content of the person's**
 4 **blood; or**

5 (b) **Blood or urine for the purpose of determining the presence of a controlled substance**
 6 **or an inhalant in the person.**

7 (2) **The failure or inability of a person to obtain a chemical test or tests as described in**
 8 **subsection (1) of this section does not preclude the admission of evidence relating to a**
 9 **chemical test or tests taken upon the request of a police officer.**

10 **SECTION 7.** ORS 813.160 is amended to read:

11 813.160. (1) A chemical analysis is valid under ORS 813.300 if:

12 (a) It is an analysis of a person's blood for alcohol content and is performed in:

13 (A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology
 14 testing;

15 (B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

16 (C) A forensic laboratory established by the Department of State Police under ORS 181A.150
 17 that is accredited by a national forensic accrediting organization.

18 (b) It is an analysis of a person's breath and is performed by an individual possessing a valid
 19 permit to perform chemical analyses issued by the Department of State Police and is performed ac-
 20 cording to methods approved by the Department of State Police. For purposes of this paragraph,
 21 the Department of State Police shall do all of the following:

22 (A) Approve methods of performing chemical analyses of a person's breath.

23 (B) Prepare manuals and conduct courses throughout the state for the training of police officers
 24 in chemical analyses of a person's breath, which courses shall include, but are not limited to, ap-
 25 proved methods of chemical analyses, use of approved equipment and interpretation of test results
 26 together with a written examination on these subjects.

27 (C) Test and certify the accuracy of equipment to be used by police officers for chemical ana-
 28 lyses of a person's breath before regular use of the equipment and periodically thereafter at inter-
 29 vals of not more than 90 days. Tests and certification required by this subparagraph must be
 30 conducted by trained technicians. Certification under this subparagraph does not require a signed
 31 document.

32 (D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in
 33 accordance with one or more methods approved by the department.

34 (E) Issue permits to individuals according to their qualifications. Permits may be issued to police
 35 officers only upon satisfactory completion of the prescribed training course and written examination.
 36 A permit must state the methods and equipment that the police officer is qualified to use. Permits
 37 are subject to termination or revocation at the discretion of the Department of State Police.

38 (2) In conducting a chemical test of the blood, only a duly licensed physician or a person acting
 39 under the direction or control of a duly licensed physician may withdraw blood or pierce human
 40 tissue. A licensed physician, or a qualified person acting under the direction or control of a duly
 41 licensed physician, is not civilly liable for withdrawing any bodily substance, in a medically ac-
 42 ceptable manner, at the request of a peace officer.

43 (3) An individual who performs a chemical analysis of breath or blood under ORS 813.100,
 44 **813.131** or 813.140 shall prepare and sign a written report of the findings of the test that must in-
 45 clude the identification of the police officer upon whose request the test was administered.

1 (4) Any individual having custody of the report mentioned in subsection (3) of this section shall,
2 upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

3 (5) The expense of conducting a chemical test as provided by ORS 813.100, **813.131** or 813.140
4 must be paid by the governmental unit on whose equipment the test is conducted or by the gov-
5 ernmental unit upon whose request the test was administered if no governmental unit's equipment
6 is used to conduct the test.

7 **SECTION 8.** ORS 813.310 is amended to read:

8 813.310. If a person refuses to submit to a chemical test under ORS 813.100 or refuses to consent
9 to chemical tests under ORS **813.131** or 813.140, evidence of the person's refusal is admissible in any
10 civil or criminal action, suit or proceeding arising out of acts alleged to have been committed while
11 the person was driving a motor vehicle on premises open to the public or the highways while under
12 the influence of intoxicants.

13 **SECTION 9.** ORS 135.815 is amended to read:

14 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall
15 disclose to a represented defendant the following material and information within the possession or
16 control of the district attorney:

17 (a) The names and addresses of persons whom the district attorney intends to call as witnesses
18 at any stage of the trial, together with their relevant written or recorded statements or memoranda
19 of any oral statements of such persons.

20 (b) Any written or recorded statements or memoranda of any oral statements made by the de-
21 fendant, or made by a codefendant if the trial is to be a joint one.

22 (c) Any reports or statements of experts, made in connection with the particular case, including
23 results of physical or mental examinations and of scientific tests, experiments or comparisons which
24 the district attorney intends to offer in evidence at the trial.

25 (d) Any books, papers, documents, photographs or tangible objects:

26 (A) Which the district attorney intends to offer in evidence at the trial; or

27 (B) Which were obtained from or belong to the defendant.

28 (e) If actually known to the district attorney, any record of prior criminal convictions of persons
29 whom the district attorney intends to call as witnesses at the trial; and the district attorney shall
30 make a good faith effort to determine if such convictions have occurred.

31 (f) All prior convictions of the defendant known to the state that would affect the determination
32 of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Com-
33 mission.

34 (g) Any material or information that tends to:

35 (A) Exculpate the defendant;

36 (B) Negate or mitigate the defendant's guilt or punishment; or

37 (C) Impeach a person the district attorney intends to call as a witness at the trial.

38 (2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after
39 arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If
40 the existence of the material or information is not known at that time, the disclosure shall be made
41 upon discovery without regard to whether the represented defendant has entered or agreed to enter
42 a guilty plea.

43 (b) Nothing in subsection (1)(g) of this section:

44 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-
45 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement

1 officers.

2 (B) Imposes any obligation on the district attorney to provide material or information beyond
3 the obligation imposed by the Oregon and United States Constitutions.

4 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of
5 ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine
6 the alcoholic content of the person's blood the district attorney shall disclose to a represented de-
7 fendant at least the following material and information within the possession or control of the dis-
8 trict attorney:

9 (a) Any report prepared by a police officer relating to field tests, interviews, observations and
10 other information relating to the charged offense;

11 (b) Any report relating to the test results;

12 (c) A copy of the form provided to the defendant under ORS 813.100 [(3)(b)] (5)(b); and

13 (d) Any checklist prepared by the operator of the instrument for the test.

14 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
15 defendant all of the information described in subsections (1) and (3) of this section except for the
16 personal identifiers of the victim and any witnesses.

17 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the
18 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial
19 court shall order the district attorney to disclose the personal identifiers of the victim and any
20 witnesses if the trial court finds that:

21 (A) The defendant has requested the information; and

22 (B)(i) The victim or witness is a business or institution and disclosure of the information would
23 not represent a risk of harm to the victim or witness; or

24 (ii) The need for the information cannot reasonably be met by other means.

25 (5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
26 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
27 of a victim or witness obtained under subsections (1) and (3) of this section.

28 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the
29 defendant the personal identifiers of a victim or witness if the court finds that:

30 (A) The defendant's lawyer has requested the district attorney to disclose the information to the
31 defendant;

32 (B) The district attorney has refused to disclose the information to the defendant; and

33 (C) The need for the information cannot reasonably be met by other means.

34 (6) As used in this section:

35 (a) "Personal identifiers" means a person's address, telephone number, Social Security number
36 and date of birth and the identifying number of a person's depository account at a financial insti-
37 tution, as defined in ORS 706.008, or credit card account.

38 (b) "Representative of the lawyer" has the meaning given that term in ORS 40.225.

39 (c) "Represented defendant" means a defendant who is represented by a lawyer in a criminal
40 action.

41 **SECTION 10.** ORS 813.120 is amended to read:

42 813.120. (1) A report required by ORS 813.100 shall disclose substantially all of the following
43 information:

44 (a) Whether the person, at the time the person was requested to submit to a test, was under
45 arrest for driving a motor vehicle while under the influence of intoxicants in violation of ORS

1 813.010 or of a municipal ordinance.

2 (b) Whether the police officer had reasonable grounds to believe, at the time the request was
 3 made, that the person arrested had been driving under the influence of intoxicants in violation of
 4 ORS 813.010 or of a municipal ordinance.

5 (c) Whether the person refused to submit to a test or if the person submitted to a breath or
 6 blood test whether the level of alcohol in the person's blood, as shown by the test, was sufficient
 7 to constitute being under the influence of intoxicating liquor under ORS 813.300.

8 (d) Whether the person was driving a commercial motor vehicle and refused to submit to a test
 9 or if the person submitted to a breath or blood test whether the level of alcohol in the person's
 10 blood, as shown by the test, was 0.04 percent or more by weight.

11 (e) Whether the person was informed of consequences and rights as described under ORS
 12 813.130.

13 (f) Whether the person was given written notice of intent to suspend required by ORS 813.100
 14 [(3)(b)] (5)(b).

15 (g) If the arrested person took a test, a statement that the person conducting the test was ap-
 16 propriately qualified.

17 (h) If the arrested person took a test, a statement that any methods, procedures and equipment
 18 used in the test comply with any requirements under ORS 813.160.

19 (2) A report required by ORS 813.100 may be made in one or more forms specified by the De-
 20 partment of Transportation.

21 **SECTION 11. (1) Any person who operates a motor vehicle upon premises open to the**
 22 **public or the highways of this state is deemed to have given consent to submit to a drug**
 23 **recognition evaluation upon the request of a police officer for the purpose of determining if**
 24 **the person is under the influence of intoxicants in violation of ORS 813.010 or a municipal**
 25 **ordinance. A police officer may request a person to submit to a drug recognition evaluation**
 26 **if:**

27 (a) **The police officer has reasonable suspicion that the person has been driving while**
 28 **under the influence of a controlled substance, an inhalant or any combination of an inhalant,**
 29 **a controlled substance and intoxicating liquor in violation of ORS 813.010 or a municipal or-**
 30 **dinance; and**

31 (b) **The police officer conducting the drug recognition evaluation is a certified drug re-**
 32 **cognition evaluation expert.**

33 (2) **If a person refuses or fails to submit to a drug recognition evaluation as required in**
 34 **subsection (1) of this section, evidence of the person's refusal or failure to submit to any**
 35 **nontestimonial portions of the drug recognition evaluation is admissible in any criminal or**
 36 **civil action or proceeding arising out of allegations that the person was driving while under**
 37 **the influence of intoxicants.**

38 (3) **The Department of State Police by rule:**

39 (a) **Shall establish the tests and observations required for drug recognition evaluations**
 40 **that are used for the purpose of determining whether a person is under the influence of**
 41 **intoxicants; and**

42 (b) **Shall establish minimum standards for certification of police officers as drug recog-**
 43 **nition evaluation experts.**

44 (4) **The department, in adopting rules under subsection (3) of this section, shall take into**
 45 **consideration the applicable minimum standards established by the International Association**

1 **of Chiefs of Police.**

2 **SECTION 12. Section 11 of this 2017 Act and the amendments to ORS 135.815, 813.095,**
3 **813.100, 813.120, 813.130, 813.131, 813.132, 813.150, 813.160 and 813.310 by sections 1 to 10 of this**
4 **2017 Act apply to conduct occurring on or after the effective date of this 2017 Act.**

5
