

# Senate Bill 529

Sponsored by Senator BOQUIST (at the request of Brad Craig) (Pre-session filed.)

## 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**.

Eliminates driving while under influence of intoxicants diversion program.

## A BILL FOR AN ACT

Relating to the driving while under the influence of intoxicants diversion program; creating new provisions; amending ORS 1.525, 40.015, 135.886, 137.109, 137.225, 746.265, 802.200, 802.220, 802.240, 813.023, 813.025, 813.130, 813.170, 813.270, 813.430, 813.510, 813.600, 813.602, 813.606 and 813.635; and repealing ORS 137.108, 813.200, 813.210, 813.215, 813.220, 813.222, 813.225, 813.230, 813.233, 813.235, 813.240, 813.245, 813.250, 813.252, 813.255, 813.260, 813.630 and 813.645.

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

## ELIMINATION OF DRIVING WHILE UNDER INFLUENCE OF INTOXICANTS DIVERSION PROGRAM

**SECTION 1. ORS 137.108, 813.200, 813.210, 813.215, 813.220, 813.222, 813.225, 813.230, 813.233, 813.235, 813.240, 813.245, 813.250, 813.252, 813.255, 813.260, 813.630 and 813.645 are repealed.**

## CONFORMING AMENDMENTS

**SECTION 2.** ORS 813.270 is amended to read:

813.270. The Intoxicated Driver Program Fund is created to consist of moneys placed in the fund under ORS 813.030 [*and 813.240*] or as otherwise provided by law and of gifts and grants made to the fund for carrying out the purposes of the fund. The moneys in the fund may be used only for the following purposes:

*[(1) To pay for providing treatment for individuals who enter diversion agreements under ORS 813.200 and who are found to be indigent. Payment for treatment under this subsection may include treatment for problem drinking, alcoholism or drug dependency. Payment shall be made as provided by the Director of the Oregon Health Authority by rule to agencies or organizations providing treatment.]*

*[(2) To pay for evaluation as provided by law of programs used for diversion agreements.]*

*[(3)] (1) To pay the cost of administration of the fund by the Oregon Health Authority.*

*[(4) To pay for materials, resources and training supplied by the authority to those persons, organizations or agencies performing the screening interviews or providing education or treatment to persons under diversion agreements.]*

*[(5)] (2) To pay for providing treatment programs required under ORS 813.020 and treatment or*

**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 information programs required under ORS 471.432 for individuals who are found to be indigent.

2 [(6)] (3) To pay for special services required to enable a person with a disability, or a person  
3 whose proficiency in the use of English is limited because of the person's national origin, to par-  
4 ticipate in treatment programs that are [*used for diversion agreements under ORS 813.200 or are*]  
5 required under ORS 813.020. This subsection applies:

6 (a) Whether or not the person is indigent; and

7 (b) Only to special services required solely because of the person's disability or limited profi-  
8 ciency in the use of English.

9 **SECTION 3.** ORS 1.525 is amended to read:

10 1.525. (1) The Supreme Court shall adopt one or more forms for the following purposes:

11 (a) A form of uniform violation citation for the purposes of ORS 153.045;

12 (b) A form of uniform criminal citation without complaint for the purposes of ORS 133.068;

13 (c) A form of uniform criminal citation with complaint for the purposes of ORS 133.069; **and**

14 (d) Any form of uniform citation for categories of offenses as the court finds necessary or  
15 convenient[; *and*]

16 [*(e) A uniform petition for a driving while under the influence of intoxicants diversion agreement*  
17 *for the purposes of ORS 813.210*].

18 (2) If changes are made to a uniform citation form under this section, the Supreme Court shall  
19 make a reasonable effort to minimize the financial impact of the changes on the state agencies and  
20 political subdivisions of this state that use the uniform citation form. Where possible, the effort to  
21 minimize the financial impact shall include a reasonable time for the state agencies and political  
22 subdivisions to exhaust their existing supplies of the citation form before the changes become ef-  
23 fective.

24 (3) Except as provided in subsection (4) of this section, the uniform citation forms adopted by  
25 the Supreme Court under this section must be used by all enforcement officers, as defined in ORS  
26 153.005, when issuing a violation citation or criminal citation.

27 (4) The uniform citation forms adopted by the Supreme Court under this section need not be  
28 used for:

29 (a) Offenses created by ordinance or agency rule governing parking of vehicles; or

30 (b) Offenses created by the ordinances of political subdivisions.

31 **SECTION 4.** ORS 40.015 is amended to read:

32 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

33 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS  
34 305.501;

35 (b) The small claims department of a circuit court as provided by ORS 46.415; and

36 (c) The small claims department of a justice court as provided by ORS 55.080.

37 (2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal  
38 actions and proceedings and to contempt proceedings except those in which the court may act  
39 summarily.

40 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-  
41 ceedings.

42 (4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

43 (a) The determination of questions of fact preliminary to admissibility of evidence when the issue  
44 is to be determined by the court under ORS 40.030.

45 (b) Proceedings before grand juries, except as required by ORS 132.320.

1 (c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

2 (d) Sentencing proceedings, except proceedings under ORS 138.012 and 163.150, as required by  
3 ORS 137.090 or proceedings under ORS 136.765 to 136.785.

4 (e) Proceedings to revoke probation, except as required by ORS 137.090.

5 (f) Proceedings conducted in a reentry court under section 29, chapter 649, Oregon Laws 2013.

6 (g) Issuance of warrants of arrest, bench warrants or search warrants.

7 (h) Proceedings under ORS chapter 135 relating to conditional release, security release, release  
8 on personal recognizance, or preliminary hearings, subject to ORS 135.173.

9 (i) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2)  
10 and 419C.400 (4).

11 *[(j) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine*  
12 *whether a driving while under the influence of intoxicants diversion agreement should be allowed or*  
13 *terminated.]*

14 *[(k)]* (j) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of  
15 ORS 40.105 and 40.115.

16 **SECTION 5.** ORS 40.015, as amended by section 37, chapter 649, Oregon Laws 2013, is amended  
17 to read:

18 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

19 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS  
20 305.501;

21 (b) The small claims department of a circuit court as provided by ORS 46.415; and

22 (c) The small claims department of a justice court as provided by ORS 55.080.

23 (2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal  
24 actions and proceedings and to contempt proceedings except those in which the court may act  
25 summarily.

26 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-  
27 ceedings.

28 (4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

29 (a) The determination of questions of fact preliminary to admissibility of evidence when the issue  
30 is to be determined by the court under ORS 40.030.

31 (b) Proceedings before grand juries, except as required by ORS 132.320.

32 (c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

33 (d) Sentencing proceedings, except proceedings under ORS 138.012 and 163.150, as required by  
34 ORS 137.090 or proceedings under ORS 136.765 to 136.785.

35 (e) Proceedings to revoke probation, except as required by ORS 137.090.

36 (f) Issuance of warrants of arrest, bench warrants or search warrants.

37 (g) Proceedings under ORS chapter 135 relating to conditional release, security release, release  
38 on personal recognizance, or preliminary hearings, subject to ORS 135.173.

39 (h) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2)  
40 and 419C.400 (4).

41 *[(i) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine*  
42 *whether a driving while under the influence of intoxicants diversion agreement should be allowed or*  
43 *terminated.]*

44 *[(j)]* (i) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of  
45 ORS 40.105 and 40.115.

**SECTION 6.** ORS 135.886 is amended to read:

135.886. (1) After an accusatory instrument has been filed charging a defendant with commission of a crime other than driving while under the influence of intoxicants as defined in ORS 813.010, and after the district attorney has considered the factors listed in subsection (2) of this section, if it appears to the district attorney that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the district attorney may propose a diversion agreement to the defendant the terms of which are established by the district attorney in conformance with ORS 135.891. [A diversion agreement under this section is not available to a defendant charged with the crime of driving while under the influence of intoxicants as defined in ORS 813.010.]

(2) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the district attorney shall consider at least the following factors:

- (a) The nature of the offense; however, except as provided in subsection (3) of this section, the offense must not have involved physical injury to another person;
- (b) Any special characteristics or difficulties of the offender;
- (c) Whether the defendant is a first-time offender; if the offender has previously participated in diversion, according to the certification of the Department of Justice, diversion may not be offered;
- (d) Whether there is a probability that the defendant will cooperate with and benefit from alternative treatment;
- (e) Whether the available program is appropriate to the needs of the offender;
- (f) The impact of diversion upon the community;
- (g) Recommendations, if any, of the involved law enforcement agency;
- (h) Recommendations, if any, of the victim;
- (i) Provisions for restitution; and
- (j) Any mitigating circumstances.

(3) In determining whether diversion of a defendant who is a servicemember is in the interests of justice and of benefit to the defendant and the community, the district attorney shall consider all of the factors listed in subsection (2) of this section, including the nature of the offense, except that diversion may not be offered if the offense:

- (a) Involved serious physical injury to another person;
- (b) Is classified as a Class A or B felony and involved physical injury to another person;
- (c) Is described in ORS 163.365, 163.375, 163.395, 163.405, 163.408, 163.411 or 163.427; or
- (d) Involved domestic violence as defined in ORS 135.230 and, at the time the offense was committed, the defendant was subject to a protective order in favor of the victim of the offense.

(4) As used in this section:

(a) "Physical injury" and "serious physical injury" have the meanings given those terms in ORS 161.015.

(b) "Protective order" means:

(A) An order issued under ORS 30.866, 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750; or

(B) A condition of probation, parole or post-prison supervision, or a release agreement under ORS 135.250, that prohibits the defendant from contacting the victim.

**SECTION 7.** ORS 137.109 is amended to read:

137.109. (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685

1 limits or impairs the right of a person injured by a defendant's commission of a crime, **or** by a  
2 defendant's commission of a violation described in ORS 153.008, [*or by a defendant's commission of*  
3 *an act that has brought the defendant before the court for the purpose of entering into a driving while*  
4 *under the influence of intoxicants diversion agreement,*] to sue and recover damages from the defend-  
5 ant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pur-  
6 suant to ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685 may not be introduced  
7 in any civil action arising out of the facts or events that were the basis for the restitution. However,  
8 the court shall credit any restitution paid by the defendant to a victim against any judgment in favor  
9 of the victim in such civil action.

10 (2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for  
11 economic damages of a victim, that issue is conclusively determined as to the defendant if it is in-  
12 volved in a subsequent civil action.

13 **SECTION 8.** ORS 137.225 is amended to read:

14 137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at any time after the lapse  
15 of three years from the date of pronouncement of judgment, any defendant who has fully complied  
16 with and performed the sentence of the court and whose conviction is described in subsection (5)  
17 of this section by motion may apply to the court where the conviction was entered for entry of an  
18 order setting aside the conviction. A person who is still under supervision, or who is still  
19 incarcerated, as part of the sentence for the offense that is the subject of the motion has not fully  
20 complied with or performed the sentence of the court.

21 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-  
22 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-  
23 son may apply to the court that would have jurisdiction over the crime for which the person was  
24 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing  
25 the one-year period, time during which the arrested person has secreted himself or herself within  
26 or without this state is not included.

27 (c) A person whose sentence of probation was revoked may not apply to the court for entry of  
28 an order setting aside the conviction for which the person was sentenced to probation for a period  
29 of 10 years from the date of revocation.

30 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon  
31 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority  
32 to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given  
33 to contest the motion. The fingerprint card with the notation "motion for setting aside conviction,"  
34 or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department  
35 of State Police. Information resulting from the fingerprint search along with the fingerprint card  
36 shall be returned to the prosecuting attorney.

37 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction  
38 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the  
39 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the  
40 victim's last-known address.

41 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay  
42 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to  
43 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the  
44 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-  
45 gerprint card to the Department of State Police.

1 (d) In addition to the fee established under paragraph (c) of this subsection, when a person  
2 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established  
3 under ORS 21.135.

4 (e) The prosecuting attorney may not charge the defendant a fee for performing the require-  
5 ments described in this section.

6 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require  
7 the taking of such proofs as the court deems proper. The court shall allow the victim to make a  
8 statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court  
9 determines that the circumstances and behavior of the applicant from the date of conviction, or from  
10 the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside  
11 the conviction, or the arrest record as the case may be, the court shall enter an appropriate order  
12 that shall state the original arrest charge and the conviction charge, if any and if different from the  
13 original, date of charge, submitting agency and disposition. The order shall further state that posi-  
14 tive identification has been established by the Department of State Police and further identified as  
15 to Department of State Police number or submitting agency number. Upon the entry of the order,  
16 the applicant for purposes of the law shall be deemed not to have been previously convicted, or ar-  
17 rested as the case may be, and the court shall issue an order sealing the record of conviction and  
18 other official records in the case, including the records of arrest whether or not the arrest resulted  
19 in a further criminal proceeding.

20 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed  
21 by the court. A certified copy must be sent to the Department of Corrections when the person has  
22 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-  
23 rest or other proceeding shall be deemed not to have occurred, and the applicant may answer ac-  
24 cordingly any questions relating to its occurrence.

25 (5) The provisions of subsection (1)(a) of this section apply to a conviction for:

26 (a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person  
27 felony as that term is defined in the rules of the Oregon Criminal Justice Commission, only if:

28 (A)(i) Twenty years or more have elapsed from the date of the conviction sought to be set aside  
29 or of the release of the person from imprisonment for the conviction sought to be set aside, which-  
30 ever is later; and

31 (ii) The person has not been convicted of or arrested for any other offense, excluding motor  
32 vehicle violations, after the date the person was convicted of the offense sought to be set aside.  
33 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under  
34 this section shall be considered for the purpose of determining whether this subparagraph is appli-  
35 cable; or

36 (B) The Class B felony is described in paragraphs (b) to (e) of this subsection.

37 (b) Any crime punishable as a misdemeanor, including judgment of conviction for a misdemeanor  
38 pursuant to ORS 161.705.

39 (c) Unlawful possession of a controlled substance classified in Schedule I.

40 (d) An offense constituting a violation under state law or local ordinance.

41 (e) An offense committed before January 1, 1972, that, if committed after that date, would qualify  
42 for an order under this section.

43 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-  
44 tion do not apply to a conviction for:

45 (a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of

1 the crime was 65 years of age or older.

2 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the  
3 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS  
4 419B.005.

5 (c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when the offense constitutes  
6 child abuse as defined in ORS 419B.005.

7 (d) Criminally negligent homicide under ORS 163.145, when that offense was punishable as a  
8 Class C felony.

9 (e) Assault in the third degree under ORS 163.165 (1)(h).

10 (f) Any sex crime, unless:

11 (A) The sex crime is listed in ORS 163A.140 (1)(a) and:

12 (i) The person has been relieved of the obligation to report as a sex offender pursuant to a court  
13 order entered under ORS 163A.145 or 163A.150; and

14 (ii) The person has not been convicted of, found guilty except for insanity of or found to be  
15 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from  
16 setting aside the conviction under this section; or

17 (B) The sex crime constitutes a Class C felony and:

18 (i) The person was under 16 years of age at the time of the offense;

19 (ii) The person is:

20 (I) Less than two years and 180 days older than the victim; or

21 (II) At least two years and 180 days older, but less than three years and 180 days older, than  
22 the victim and the court finds that setting aside the conviction is in the interests of justice and of  
23 benefit to the person and the community;

24 (iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less  
25 than a specified age;

26 (iv) The victim was at least 12 years of age at the time of the offense;

27 (v) The person has not been convicted of, found guilty except for insanity of or found to be  
28 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from  
29 setting aside the conviction under this section; and

30 (vi) Each conviction or finding described in this subparagraph involved the same victim.

31 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section  
32 do not apply to:

33 (a) A conviction for a state or municipal traffic offense.

34 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion  
35 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,  
36 whether or not the other conviction is for conduct associated with the same criminal episode that  
37 caused the arrest or conviction that is sought to be set aside. A single violation, other than a motor  
38 vehicle violation, within the last 10 years is not a conviction under this subsection. Notwithstanding  
39 subsection (1) of this section, a conviction that has been set aside under this section shall be con-  
40 sidered for the purpose of determining whether this paragraph is applicable.

41 (c) A person who at the time the motion authorized by subsection (1) of this section is pending  
42 before the court is under charge of commission of any crime.

43 (8) The provisions of subsection (1)(b) of this section do not apply to[:]

44 [(a)] a person arrested within the three-year period immediately preceding the filing of the mo-  
45 tion for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated

1 with the same criminal episode that caused the arrest that is sought to be set aside. An arrest that  
 2 has been set aside under this section may not be considered for the purpose of determining whether  
 3 this [paragraph] **subsection** is applicable.

4 *[(b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as a  
 5 result of the person's successful completion of a diversion agreement described in ORS 813.200.]*

6 (9) The provisions of subsection (1) of this section apply to convictions and arrests that occurred  
 7 before, as well as those that occurred after, September 9, 1971. There is no time limit for making  
 8 an application.

9 (10) For purposes of any civil action in which truth is an element of a claim for relief or affir-  
 10 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest  
 11 or other proceeding be deemed not to have occurred do not apply and a party may apply to the  
 12 court for an order requiring disclosure of the official records in the case as may be necessary in the  
 13 interest of justice.

14 (11) Upon motion of any prosecutor or defendant in a case involving records sealed under this  
 15 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-  
 16 pening and disclosure of any records sealed under this section for the limited purpose of assisting  
 17 the investigation of the movant. However, such an order has no other effect on the orders setting  
 18 aside the conviction or the arrest record.

19 (12) Unless the court makes written findings by clear and convincing evidence that granting the  
 20 motion would not be in the best interests of justice, the court shall grant the motion and enter an  
 21 order as provided in subsection (3) of this section if the defendant has been convicted of one of the  
 22 following crimes and is otherwise eligible for relief under this section:

- 23 (a) Abandonment of a child, ORS 163.535.
- 24 (b) Attempted assault in the second degree, ORS 163.175.
- 25 (c) Assault in the third degree, ORS 163.165.
- 26 (d) Coercion, ORS 163.275.
- 27 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 28 (f) Attempted escape in the first degree, ORS 162.165.
- 29 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 30 (h) Intimidation in the first degree, ORS 166.165.
- 31 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 32 (j) Attempted robbery in the second degree, ORS 164.405.
- 33 (k) Robbery in the third degree, ORS 164.395.
- 34 (L) Supplying contraband, ORS 162.185.
- 35 (m) Unlawful use of a weapon, ORS 166.220.

36 (13) As used in this section, "sex crime" has the meaning given that term in ORS 163A.005.

37 **SECTION 9.** ORS 746.265 is amended to read:

38 746.265. (1) Subject to subsection (2) of this section, an insurer may consider the abstract of an  
 39 individual's nonemployment driving record under ORS 802.220 when evaluating the individual's ap-  
 40 plication to obtain or renew personal insurance, as defined in ORS 746.600, that provides automobile  
 41 liability coverage, uninsured motorist coverage, automobile medical payments coverage or automo-  
 42 bile physical damage coverage on an individually owned passenger vehicle, including pickup and  
 43 panel trucks and station wagons:

- 44 (a) For the purpose of determining whether to issue or renew the individual's policy.
- 45 (b) For the purpose of determining the rates of the individual's policy.



1 (2) For the purposes specified in subsection (1) of this section, an insurer that issues or renews  
2 a policy described in subsection (1) of this section may not consider any:

3 (a) Accident or conviction for violation of motor vehicle laws that occurred more than three  
4 years immediately preceding the application for the policy or for renewal of the policy; **or**

5 *[(b) Diversion agreements under ORS 813.220 that were entered into more than three years imme-*  
6 *diately preceding the application for the policy or for renewal of the policy; or]*

7 *[(c)]* (b) Suspension of driving privileges pursuant to ORS 809.280 (6) or (8) if the suspension is  
8 based on a nondriving offense.

9 (3) Subsection (2) of this section does not apply if an insurer considers an individual's nonem-  
10 ployment driving record under ORS 802.220 for the purpose of providing a discount to the individual.

11 **SECTION 10.** ORS 802.200 is amended to read:

12 802.200. In addition to any other records the Department of Transportation may establish, the  
13 department is subject to the following provisions concerning records:

14 (1) The department shall maintain records concerning the titling of vehicles in this state. The  
15 records under this subsection shall include the following:

16 (a) For vehicles issued a title by this state, the records shall identify the vehicle and contain  
17 the following:

18 (A) The name of the vehicle owner and any security interest holders in order of priority, except  
19 that a security interest holder need not be identified if the debtor who granted the interest is in the  
20 business of selling vehicles and the vehicles constitute inventory held for sale;

21 (B) The name of any lessor of the vehicle;

22 (C) The vehicle description; and

23 (D) Whether a certificate of title was issued for the vehicle.

24 (b) If the vehicle is an antique vehicle that is reconstructed, the records shall indicate that the  
25 vehicle is reconstructed.

26 (c) If the vehicle is a replica, the records shall indicate that the vehicle is a replica.

27 (d) Any other information concerning the titling of vehicles that the department considers con-  
28 venient or appropriate.

29 (e) All odometer disclosures and readings for a vehicle that are reported to the department un-  
30 der provisions of the vehicle code. The department shall keep the most recent version of records  
31 required under this paragraph in electronic form.

32 (f) If the vehicle has been reported to the department as a totaled vehicle under the provisions  
33 of ORS 819.012 or 819.014, the records shall indicate that the vehicle is a totaled vehicle unless the  
34 reason for the report was theft and the vehicle has been recovered.

35 (2) If a vehicle that has been registered or titled in another jurisdiction is registered or titled  
36 in this state, the department shall retain a record of any odometer readings shown on the title or  
37 registration documents submitted to the department at the time of registration or title.

38 (3) Except as otherwise provided in ORS 826.003, the department shall maintain records con-  
39 cerning the registration of vehicles required to be registered by the department. The records con-  
40 cerning the registration of vehicles may be stored along with records concerning the titling of  
41 vehicles. The records under this subsection shall include the following:

42 (a) For vehicles registered by the department, the records shall identify the vehicle and contain  
43 the following:

44 (A) The registration plate number assigned by the department to the vehicle;

45 (B) The name of the vehicle owner;

1 (C) The vehicle description and vehicle identification number; and

2 (D) An indication that the vehicle is a totaled vehicle if it has been reported to the department  
3 as a totaled vehicle under the provisions of ORS 819.012 or 819.014, unless the reason for the report  
4 was theft and the vehicle has been recovered.

5 (b) Any other information concerning the registration of vehicles that the department considers  
6 convenient or appropriate.

7 (4) The department shall maintain separate records for the regulation of vehicle dealers. The  
8 records required under this subsection shall include the following information about persons issued  
9 dealer certificates:

10 (a) The person's application for a vehicle dealer certificate.

11 (b) An alphabetical index of the name of each person applying for a vehicle dealer certificate.

12 (c) A numerical index according to the distinctive number assigned to each vehicle dealer.

13 (5) The department shall maintain a file on vehicles for which the title record is canceled under  
14 ORS 819.030. The records required under this subsection shall disclose the last registered owner of  
15 each vehicle, any security interest holder or holders and lessors of each vehicle as shown by the  
16 canceled title record for each vehicle and the make and year model for each vehicle.

17 (6) The department shall maintain a record of each agreement or declaration under ORS 802.500  
18 and 802.520.

19 (7) The department shall maintain separate and comprehensive records of all transactions af-  
20 fecting the Revolving Account for Emergency Cash Advances described under ORS 802.100.

21 (8) The department shall maintain suitable records of driver licenses, driver permits and iden-  
22 tification cards. The records required under this subsection shall include all of the following:

23 (a) An index by name and number.

24 (b) Supporting documentation of all driver licenses, driver permits or identification cards issued.

25 (c) Every application for a driver license, driver permit or identification card.

26 (d) All driver licenses or driver permits that have been suspended or revoked.

27 (e) For each driver license, driver permit or identification card, the Social Security number of  
28 the person to whom the driver license, driver permit or identification card is issued or proof that  
29 the person is not eligible for a Social Security number.

30 (f) For each commercial driver license and commercial learner driver permit, the Social Security  
31 number of the person to whom the license or permit is issued, or any other number or identifying  
32 information that the Secretary of the United States Department of Transportation determines ap-  
33 propriate to identify the person.

34 (9) The Department of Transportation shall maintain a two-part driving record consisting of an  
35 employment driving record and a nonemployment driving record for each person as required under  
36 this subsection. All of the following apply to the records required under this subsection:

37 (a) The department shall maintain driving records on:

38 (A) Every person who is granted driving privileges under a driver license, driver permit or a  
39 statutory grant of driving privileges under ORS 807.020;

40 (B) Every person whose driving privileges have been suspended, revoked or canceled under this  
41 vehicle code;

42 (C) Every person who has filed an accident report under ORS 811.725 or 811.730; and

43 (D) Every person who is required to provide future responsibility filings under ORS 806.200,  
44 806.220, 806.230 or 806.240.

45 (b) In addition to other information required by this paragraph, the employment driving record

1 shall include all reports of drug test results that are made to the department under ORS 825.410 or  
 2 825.415. Notwithstanding any other provision of law, release of the portion of the employment driv-  
 3 ing record that shows drug test results reported under ORS 825.410 or 825.415 is permitted only in  
 4 accordance with ORS 802.202. The employment driving record shall also include all motor vehicle  
 5 accidents that the person is required to report under ORS 811.720, all suspensions of driving privi-  
 6 leges required to be placed on the record under ORS 809.280, all suspensions of the person's com-  
 7 mercial driving privileges that result from operation or use of a commercial motor vehicle and all  
 8 convictions of the person for violation of motor vehicle laws except convictions for offenses requir-  
 9 ing mandatory revocation or suspension of driving privileges under ORS 809.409, 809.411, 809.510 to  
 10 809.545 and 813.400, but shall include only such accidents, suspensions and convictions that occur  
 11 while the person is driving a motor vehicle:

12 (A) In the course of the person's employment when the person is employed by another for the  
 13 principal purpose of driving a motor vehicle;

14 (B) Carrying persons or property for compensation;

15 (C) In the course of the person's employment in the collection, transportation or delivery of mail  
 16 if the vehicle is government owned or marked for the collection, transportation or delivery of mail  
 17 in accordance with government rules;

18 (D) That is an authorized emergency vehicle;

19 (E) That is a commercial motor vehicle; or

20 (F) In the course of the person's employment with a federal, state or local government in a  
 21 public works project involving repair or maintenance of water, sewer or road systems.

22 (c) The nonemployment driving record shall include the person's:

23 (A) Motor vehicle accidents that the person is required to report under ORS 811.720, other than  
 24 the motor vehicle accidents that are included on the person's employment driving record;

25 (B) Suspensions, cancellations and revocations of licenses, permits and driving privileges; **and**

26 (C) Convictions for violation of the motor vehicle laws other than those included in the em-  
 27 ployment driving record including, for each violation of ORS 811.100 or 811.111, the speed at which  
 28 the person was convicted of traveling and the posted speed, the speed limit or the speed that con-  
 29 stitutes prima facie evidence of violation of the basic speed rule, as appropriate[; and]

30 [(D) *Diversion agreements entered into under ORS 813.220 within the preceding 15 years*].

31 (d) The department may record other entries to indicate correspondence, interviews, partic-  
 32 ipation in driver improvement programs or other matters concerning the status of the driving privi-  
 33 leges of the person.

34 (e) When a person from another jurisdiction applies for a driver license or driver permit issued  
 35 by this state, the department shall request a copy of the person's driving record from the other ju-  
 36 risdiction. At the time the person is issued a license in Oregon, the record from the other jurisdic-  
 37 tion shall become part of the driver's record in this state with the same force and effect as though  
 38 entered on the driver's record in this state in the original instance. The department by rule may  
 39 specify methods for converting entries from out-of-state records for use in Oregon.

40 (f) When a suspension of a driver permit, driver license or other driving privilege is placed on  
 41 the driving record under ORS 809.280 for failure to appear in court on a traffic crime, the depart-  
 42 ment shall note on the record that the suspension was for failure to appear in court and shall also  
 43 note the offense charged against the person on which the person failed to appear.

44 (g) The Department of Transportation, in consultation with the Department of State Police, shall  
 45 devise and implement a method of noting suspensions and revocations of driving privileges on the

1 record in such a way that police agencies can determine directly from the record what class of of-  
2 fense, as provided by law, is committed by a person who drives in violation of the suspension or  
3 revocation. If the Department of Transportation and the Department of State Police devise a mutu-  
4 ally agreeable alternative method of informing police agencies of the nature of a suspension or re-  
5 vocation and the consequences of its violation, the implementation of that method shall satisfy the  
6 duty of the Department of Transportation under this paragraph.

7 (10) The Department of Transportation shall maintain records of judgments or convictions sent  
8 to the department under ORS 810.375.

9 (11) The department shall maintain accident reports filed with the department under ORS  
10 810.460 and 811.725 to 811.735.

11 (12) The department shall maintain records of bank checks or money orders returned under ORS  
12 802.110.

13 (13) The department shall maintain records of trip permits issued by the department under ORS  
14 803.600, as provided under this subsection. The records required by this subsection shall include the  
15 following:

16 (a) A description of the vehicle sufficient to identify the vehicle.

17 (b) The person to whom the permit was issued.

18 (c) When the permit was issued.

19 (d) The type of permit issued.

20 (e) For registration weight trip permits, the maximum allowable registration weight permitted  
21 for operation under the permit.

22 (f) Any other information the department determines appropriate or convenient.

23 **SECTION 11.** ORS 802.220 is amended to read:

24 802.220. (1) Except as otherwise provided in this subsection and ORS 802.177, the records the  
25 Department of Transportation maintains under ORS 802.200 on vehicles are public records. The re-  
26 cords of vehicles registered under ORS 805.060 are not public records and are exempt from public  
27 inspection as provided under ORS 181A.220 and are for the confidential use of criminal justice  
28 agencies described under ORS 181A.010. The department may charge the fee established under ORS  
29 802.230 for furnishing information under this section concerning a vehicle or its owner.

30 (2) The department may charge the fee established under ORS 802.230 for furnishing to the  
31 public information from the records the department maintains under ORS 802.200 concerning driver  
32 licenses or driver permits.

33 (3) The records the department keeps under ORS 802.200 on judgments or convictions under ORS  
34 810.375 shall be open to the inspection of any person during reasonable business hours. Nothing in  
35 this subsection authorizes the release of personal information as defined in ORS 802.175.

36 (4) The department shall upon request furnish any person certified abstracts of the employment  
37 driving record and the nonemployment driving record of any person whose driving records are  
38 maintained under ORS 802.200. If an abstract of the employment driving record is not specifically  
39 requested, the department shall only furnish an abstract of the nonemployment driving record.  
40 Nothing in this subsection authorizes the release of personal information as defined in ORS 802.175.  
41 The department shall collect the fee established for abstracts of driving records under ORS 802.230.  
42 A certified abstract issued under this section shall not contain any of the following, unless the ab-  
43 stract is being requested under ORS 746.265 (3):

44 (a) Any accident or conviction for violation of motor vehicles laws that occurred more than  
45 three years immediately preceding a request for abstract.

1 (b) Any suspension ordered under ORS 809.220 after the department has received notice to  
 2 reinstate a person's suspended driving privileges under ORS 809.220.

3 *[(c) Any diversion agreement under ORS 813.220 entered into more than three years immediately*  
 4 *preceding a request for the abstract.]*

5 (5) Except as otherwise provided in this subsection, accident reports filed with the department  
 6 under ORS 811.725, 811.730 or 811.735 shall be without prejudice to the individual filing the report  
 7 and shall be for the confidential use of state administrative and enforcement agencies. The depart-  
 8 ment may use the confidential accident reports to provide the following information to the persons  
 9 described:

10 (a) Upon request, the department shall disclose the following information to any party involved  
 11 in the accident or to their personal representative or any member of the family of a party involved  
 12 in the accident:

13 (A) The identity of the owner, driver, occupants and the registration number of a vehicle in-  
 14 volved in the accident;

15 (B) The names of any companies insuring the owner or driver of a vehicle involved in the acci-  
 16 dent; and

17 (C) The names of any witnesses to the accident.

18 (b) The department shall furnish a certificate showing that a specified accident report has or  
 19 has not been made to the department upon demand of any person who has or claims to have made  
 20 such a report or upon demand of a court.

21 (6) The department shall tabulate and may analyze all accident reports to develop statistical  
 22 information based thereon as to the number and circumstances of traffic accidents. The department  
 23 shall publish information compiled under this section in the manner provided under ORS 802.050.

24 (7) Except as otherwise provided in this subsection, the records the department is required un-  
 25 der ORS 802.200 to maintain on trip permits issued under ORS 803.600 are public records. The de-  
 26 partment may charge a fee established under ORS 802.230 for furnishing information from the  
 27 records on trip permits. Nothing in this subsection authorizes the release of personal information  
 28 as defined in ORS 802.175.

29 (8) The records the department maintains under ORS 802.200 concerning odometer readings for  
 30 vehicles are public records. The department may separately furnish information concerning  
 31 odometer readings shown by its records. The department may charge the fee established under ORS  
 32 802.230 for information separately provided under this subsection. Nothing in this subsection au-  
 33 thORIZES the release of personal information as defined in ORS 802.175.

34 **SECTION 12.** ORS 802.240 is amended to read:

35 802.240. (1) In all actions, suits or criminal proceedings when the title to, or right of possession  
 36 of, any vehicle is involved, the record of title, as it appears in the files and records of the Depart-  
 37 ment of Transportation, is prima facie evidence of ownership or right to possession of the vehicle.  
 38 As used in this section, the record of title does not include records of salvage titles unless the re-  
 39 cord itself is the salvage title. Proof of the ownership or right to possession of a vehicle shall be  
 40 made by means of any of the following methods:

41 (a) The original certificate of title as provided under ORS 803.010.

42 (b) A copy, certified by the department, of the title record of the vehicle as the record appears  
 43 in the files and records of the department.

44 (2) Extrinsic evidence of authenticity is not required as a condition precedent to the admission  
 45 of a copy of a document relating to the privilege of any person to drive a motor vehicle authorized

1 by law to be filed and actually filed in the records of the department if the copy bears a seal pur-  
 2 porting to be that of the department and is certified as a true copy by original or facsimile signature  
 3 of a person purporting to be an officer or employee of the department. This subsection applies to  
 4 copies of a data compilation in any form. Copies of documents certified in accordance with this  
 5 subsection constitute prima facie evidence of the existence of the facts stated therein.

6 (3) A certified copy of a person's driving record, as maintained by the department:

7 [(a) *May be admitted as evidence in any hearing or proceeding under ORS 813.200 to 813.270.*]

8 [(b)] (a) Is prima facie evidence that the person named therein was duly convicted of each of-  
 9 fense shown by the record.

10 [(c)] (b) Is prima facie evidence that the person named therein [*is participating in or*] has par-  
 11 ticipated in [*a driving under the influence of intoxicants diversion program or in any similar*] **an** al-  
 12cohol or drug rehabilitation program in this state or in any other jurisdiction if the record shows  
 13 that the person has participated in such a program.

14 (4) Records and actions described in this subsection shall not be referred to in any way or ad-  
 15 mitted into evidence or be any evidence of the negligence or due care of any party at the trial of  
 16 any action at law to recover damages. This subsection applies to all of the following:

17 (a) The report required following an accident.

18 (b) Any action taken by the department to revoke or suspend a driver license or driver permit  
 19 or taken by the department under the financial responsibility requirements of the vehicle code or  
 20 the findings, if any, of the department upon which such action of the department is based.

21 (c) Any deposit of security required under the financial responsibility requirements of the vehi-  
 22 cle code.

23 (5) Except as provided in this subsection, the accident reports filed with the department under  
 24 ORS 811.725, 811.730 or 811.735 shall be without prejudice to the individual filing the report and no  
 25 such report shall be used as evidence in any trial, civil or criminal, arising out of an accident. The  
 26 following uses are allowable under this subsection:

27 (a) The certificate issued by the department under ORS 802.220 to show whether or not an ac-  
 28 cident report has been made to the department shall be used solely to prove a compliance or failure  
 29 to comply with the requirements that the accident report be made to the department.

30 (b) An accident report submitted under ORS 811.725 or 811.735 may be used in an administrative  
 31 hearing or an appeal from such hearing to support any suspension of driving privileges for:

32 (A) Failure to make reports required under ORS 811.725 or 811.735.

33 (B) Failure to comply with financial responsibility requirements or failure to comply with future  
 34 responsibility filings.

35 (6) A photocopy, facsimile copy, digital or electronic copy of an application for perfection of a  
 36 security interest by notation on a title under ORS 803.097 that is certified by the department is  
 37 proof of the date of perfection of the security interest unless the date is invalid as provided under  
 38 ORS 803.097.

39 (7) A report filed by a physician or health care provider under ORS 807.710 is confidential and  
 40 may not be admitted as evidence in any civil or criminal action. A report described in this sub-  
 41 section may be used in an administrative hearing or an appeal from an administrative hearing in  
 42 which an issue is the qualification of a person to operate a motor vehicle.

43 **SECTION 13.** ORS 813.023 is amended to read:

44 813.023. A person required to pay for a screening interview or treatment program under ORS  
 45 813.021[, 813.200, 813.210 or 813.240] who is eligible for the state medical assistance program or is

1 enrolled in a health benefit plan, as defined in ORS 743B.005, may utilize the state medical assist-  
2 ance program or health benefit plan as a third party payer for the costs of medically necessary  
3 chemical dependency services that are covered under the state medical assistance program or health  
4 benefit plan. The person remains responsible for the costs of the screening interview or treatment  
5 program, regardless of the amount of coverage or the failure of the third party payer to reimburse  
6 all of the costs.

7 **SECTION 14.** ORS 813.025 is amended to read:

8 813.025. A court may designate a single agency or organization to perform the screening inter-  
9 views and treatment programs described in ORS 813.021 [*and 813.260 (1)*] when the Director of the  
10 Oregon Health Authority certifies that:

11 (1) An agency or organization may accept such designations due to the lack of alternative  
12 agencies or organizations in the service area; or

13 (2) An agency or organization has applied to and been authorized by the Oregon Health Au-  
14 thority to operate a demonstration project that combines screening interviews and treatment pro-  
15 grams. The authority shall by rule set forth the conditions under which a demonstration project may  
16 be authorized.

17 **SECTION 15.** ORS 813.130 is amended to read:

18 813.130. This section establishes the requirements for information about rights and consequences  
19 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and  
20 consequences:

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

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

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

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

32 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

33 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

34 (C) Any amount if the person was under 21 years of age.

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

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

42 (e) If the person refuses a test under ORS 813.100, the person is not eligible for a hardship  
43 permit for at least 90 days, and possibly for three years, depending on [*the following factors set forth*  
44 *in ORS 813.430:*]

45 [(A) *Whether the person is presently participating in a driving while under the influence of*

1 *intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program in*  
2 *this or another jurisdiction; or]*

3 [(B)] whether within the five years preceding the date of arrest any of the following occurred:

4 [(i)] (A) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Re-  
5 placement Part) became effective;

6 [(ii)] (B) The person was convicted of driving while under the influence of intoxicants in vio-  
7 lation of ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as de-  
8 scribed in ORS 813.430; **or**

9 [(iii)] (C) The person was convicted of driving while under the influence of intoxicants in vio-  
10 lation of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430[;  
11 *or]*

12 [(iv)] *The person commenced participating in a driving while under the influence of intoxicants di-*  
13 *version program in this state or in any similar alcohol or drug rehabilitation program in this or an-*  
14 *other jurisdiction, as described in ORS 813.430].*

15 (f) If the person refuses a breath test under ORS 813.100, or refuses a urine test under ORS  
16 813.131 and 813.132, the person is subject to a fine of at least \$500 and not more than \$1,000.

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

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

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

28 (j) The information provided to the person shall include the number of days within which a  
29 person must request a hearing under ORS 813.410.

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

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

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

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

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



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

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

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

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

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

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

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

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

18 **SECTION 16.** ORS 813.170 is amended to read:

19 813.170. [(1)] Notwithstanding ORS 135.405 to 135.445, a person charged with the offense of  
20 driving under the influence of intoxicants shall not be allowed to plead "guilty" or "no contest" to  
21 any other offense in exchange for a dismissal of the offense charged. No district attorney or city  
22 attorney shall make any motion and no judge shall enter any order in derogation of this section.  
23 [*This section does not prohibit diversion as provided under ORS 813.200.*]

24 [(2)] *Notwithstanding ORS 135.881 to 135.901, a person charged with the offense of driving under*  
25 *the influence of intoxicants shall not be allowed to enter into any program of supervised performance*  
26 *or diversion except as provided under ORS 813.200.*

27 **SECTION 17.** ORS 813.430 is amended to read:

28 813.430. This section establishes circumstances under which ORS 813.420 requires an increase  
29 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase  
30 in the time before the Department of Transportation may issue a hardship permit. A person is sub-  
31 ject to an increase in suspension time under this section if any of the following apply:

32 (1) The person is presently participating in [*a driving while under the influence of intoxicants*  
33 *diversion program in this state or in any similar*] **an** alcohol or drug rehabilitation program in this  
34 or another jurisdiction.

35 (2) Within the five years preceding the date of arrest any of the following occurred:

36 (a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-  
37 ment Part) became effective.

38 (b) The person was convicted of:

39 (A) Driving while under the influence of intoxicants in violation of:

40 (i) ORS 813.010;

41 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction; or

42 (iii) A municipal ordinance in this state or another jurisdiction;

43 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
44 impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an  
45 inhalant or any combination thereof; or

1 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a  
2 blood alcohol content above that jurisdiction's permissible blood alcohol content.

3 (c) The person commenced participating in [*a driving while under the influence of intoxicants*  
4 *diversion program in this state or in any similar*] **an** alcohol or drug rehabilitation program in this  
5 or another jurisdiction.

6 (3) For the purposes of subsection (2)(b) of this section, a conviction for a driving offense in  
7 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content  
8 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years  
9 of age or older does not constitute a prior conviction.

10 **SECTION 18.** ORS 813.510 is amended to read:

11 813.510. This section establishes limitations that the Department of Transportation is required  
12 or permitted to place on hardship permits issued under ORS 807.240 to persons whose suspension is  
13 based upon a conviction for driving under the influence of intoxicants or upon ORS 813.100. Limi-  
14 tations placed on a hardship permit under this section are in addition to any limitations placed on  
15 the permit under ORS 807.240. A person's permit is subject to suspension or revocation as provided  
16 under ORS 807.240 if the department determines that the holder of the permit has violated any  
17 limitation placed upon the permit under this section. Violation of a limitation under this section is  
18 punishable as provided by ORS 811.175 or 811.182. The limitations are as described in the following:

19 (1) A hardship permit issued to the person shall limit the person's driving privileges:

20 (a) To the times, places, routes and days the department determines to be minimally necessary  
21 for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabili-  
22 tation program or to obtain required medical treatment for the person or a member of the person's  
23 immediate family; and

24 (b) To times, places, routes and days that are specifically stated.

25 (2) The person's driving privileges under the permit are subject to suspension or revocation if  
26 the person does not maintain a good driving record, as defined by the administrative rules of the  
27 department, during the term of the permit.

28 (3) If the person is in a rehabilitation program under ORS 813.500, the person must complete the  
29 rehabilitation program.

30 (4) The department may require the person to complete a driver improvement program under  
31 ORS 809.480 as a condition of the permit.

32 [*(5) If the person is involved in a diversion agreement under ORS 813.220 and 813.230, the de-*  
33 *partment may require the person to successfully complete the diversion program as a condition of re-*  
34 *tainin the permit.*]

35 [(6)] (5) The department shall condition the permit so that the permit will be revoked if the  
36 person is convicted of any of the following:

37 (a) Reckless driving under ORS 811.140.

38 (b) Driving under the influence of intoxicants under ORS 813.010.

39 (c) Failure to perform the duties of a driver under ORS 811.700 or 811.705.

40 (d) Fleeing or attempting to elude a police officer under ORS 811.540.

41 (e) Driving while suspended or revoked under ORS 811.175 or 811.182.

42 **SECTION 19.** ORS 813.600 is amended to read:

43 813.600. (1) The Department of Transportation, in consultation with the Transportation Safety  
44 Committee, shall establish a program for the use of ignition interlock devices by persons convicted  
45 of driving while under the influence of intoxicants and granted hardship permits under ORS 807.240

1 [and by persons who have entered into a driving while under the influence of intoxicants diversion  
2 agreement].

3 (2) The department shall adopt rules that specify requirements for ignition interlock devices that  
4 may be used and shall publish a list of devices that meet the requirements. The list may include  
5 devices that:

6 (a) Do not impede the safe operation of the vehicle;

7 (b) Have the fewest opportunities to be bypassed;

8 (c) Correlate well with established measures of alcohol impairment;

9 (d) Work accurately and reliably in an unsupervised environment;

10 (e) Require a deep lung breath sample or other accurate measure of blood alcohol content  
11 equivalence;

12 (f) Resist tampering and give evidence if tampering is attempted;

13 (g) Are difficult to circumvent, and require premeditation to do so;

14 (h) Minimize inconvenience to a sober user;

15 (i) Operate reliably over the range of automobile environments or automobile manufacturing  
16 standards;

17 (j) Are manufactured by a party who is adequately insured for product liability; and

18 (k) Have a label affixed in a prominent location warning that any person tampering with, cir-  
19 cumventing or otherwise misusing the device is subject to civil penalty.

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

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

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

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

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

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

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

41 (A) Any degree of murder.

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

43 (C) Criminally negligent homicide.

44 (D) Assault in the first degree.

45 (b) Aggravated vehicular homicide.

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

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

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

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

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

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

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

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

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

27 [(4)] (3) The department shall adopt rules permitting medical exemptions from the requirements  
 28 of installation and use of an ignition interlock device under this section.

29 [(5)] (4) When a person is required to install an ignition interlock device under subsection (2)  
 30 of this section, the provider of the device shall provide notice of any installation or removal of the  
 31 device or any tampering with the device to:

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

34 (b) The district attorney or the city prosecutor.

35 **SECTION 21.** ORS 813.606 is amended to read:

36 813.606. Notwithstanding ORS 813.604, if a person is required, in the course and scope of the  
 37 person's employment, to operate a motor vehicle owned by the person's employer, the person may  
 38 operate that vehicle without installation of an ignition interlock device if:

39 (1) The employer has been notified:

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

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

44 (c) That the employee is operating on a fully reinstated license within the second year following  
 45 suspension or revocation for the employee's second or subsequent conviction of driving while under

1 the influence of intoxicants; **and** [or]

2 [(d) That the employee has driving privileges and is otherwise required to install an ignition  
3 interlock device as a condition of a driving while under the influence of intoxicants diversion agree-  
4 ment; and]

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

7 **SECTION 22.** ORS 813.635 is amended to read:

8 813.635. (1)(a) As used in this section, “negative report” includes a report of tampering with an  
9 ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test vi-  
10 olation recorded by an ignition interlock device.

11 (b) The Department of Transportation may by rule further define what constitutes a test vio-  
12 lation.

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

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

25 [(4) This section does not apply to a defendant who is granted an order to vacate the requirement  
26 to install an ignition interlock device under ORS 813.645.]

27  
28 **APPLICABILITY**

29  
30 **SECTION 23.** The repeal of ORS 137.108, 813.200, 813.210, 813.215, 813.220, 813.222, 813.225,  
31 813.230, 813.233, 813.235, 813.240, 813.245, 813.250, 813.252, 813.255, 813.260, 813.630 and 813.645  
32 by section 1 of this 2017 Act and the amendments to ORS 1.525, 40.015, 135.886, 137.109,  
33 137.225, 746.265, 802.200, 802.220, 802.240, 813.023, 813.025, 813.130, 813.170, 813.270, 813.430,  
34 813.510, 813.600, 813.602, 813.606 and 813.635 by sections 3 to 22 of this 2017 Act do not apply  
35 to driving while under the influence of intoxicants diversion agreements entered into before  
36 the effective date of this 2017 Act. Diversion agreements entered into before the effective  
37 date of this 2017 Act shall continue to be governed by the law applicable to diversion agree-  
38 ments in effect immediately before the effective date of this 2017 Act.

39  
40 **CAPTIONS**

41  
42 **SECTION 24.** The unit captions used in this 2017 Act are provided only for the conven-  
43 ience of the reader and do not become part of the statutory law of this state or express any  
44 legislative intent in the enactment of this 2017 Act.