

Requested by Representative OLSON

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2613**

1 On page 1 of the printed bill, line 3, delete “813.012,”.

2 In line 6, delete “Section 2” and insert “Sections 2 and 2a” and delete  
3 “is” and insert “are”.

4 Delete lines 14 through 29.

5 On page 2, delete lines 1 through 36, and insert:

6 **“SECTION 2a. (1) As used in this section, “drug” has the meaning**  
7 **given the term in ORS 475.005.**

8 **“(2) In a prosecution under ORS 813.010 for driving while under the**  
9 **influence of intoxicants other than a prosecution involving**  
10 **intoxicating liquor, a controlled substance or an inhalant, it is an af-**  
11 **firmative defense that:**

12 **“(a)(A) The defendant obtained a drug pursuant to a prescription**  
13 **issued by a licensed health care professional authorized to prescribe**  
14 **drugs. The defendant consumed the drug in the prescribed or recom-**  
15 **mended dosage and followed all directions and warnings relating to**  
16 **consumption of the drug, including directions, if any, from the man-**  
17 **ufacturer of the drug, the pharmacist who provided the drug to the**  
18 **defendant and the licensed health care professional who prescribed or**  
19 **recommended the drug to the defendant; or**

20 **“(B) The defendant obtained a drug that is available without a**  
21 **prescription, the defendant consumed the drug in the recommended**

1 dosage and followed all directions and warnings related to the con-  
2 sumption of the drug; and

3 “(b) The defendant experienced a reaction to the drug that the de-  
4 fendant could not reasonably have anticipated and that caused the  
5 defendant to be impaired while driving a vehicle.

6 “(3) A defendant may not introduce evidence of the affirmative de-  
7 fense described in subsection (2) of this section unless the defendant  
8 gives notice of intent to do so in writing filed with the court and  
9 served on the prosecuting attorney at least 21 days before the first  
10 trial date set for the case. The notice must specify the drug the de-  
11 fendant consumed.

12 “(4) By giving notice under subsection (3) of this section, the de-  
13 fendant consents to full release to the prosecuting attorney of the  
14 defendant’s medical records, if any, that relate to the defendant’s  
15 consumption of the drug, including any medical advice given in asso-  
16 ciation with the drug and any copies of prescriptions for the drug the  
17 defendant consumed.

18 “(5) The affirmative defense described in subsection (2) of this sec-  
19 tion may be asserted only with respect to a drug that is specified in  
20 the notice given under subsection (3) of this section, and may not be  
21 asserted when intoxicating liquor, a controlled substance or an  
22 inhalant, or any combination of intoxicating liquor, a controlled sub-  
23 stance or an inhalant, is pleaded in the accusatory instrument.

24 “SECTION 3. ORS 813.010 is amended to read:

25 “813.010. (1) A person commits the offense of driving while under the in-  
26 fluence of intoxicants if the person drives a vehicle while the person:

27 “(a) Has 0.08 percent or more by weight of alcohol in the blood of the  
28 person as shown by chemical analysis of the breath or blood of the person  
29 made under ORS 813.100, 813.140 or 813.150; **or**

30 “(b) Is under the influence of [*intoxicating liquor, a controlled substance*

1 *or an inhalant; or]*

2 “[*(c) Is under the influence of any combination of intoxicating liquor, an*  
3 *inhalant and a controlled substance]* **an intoxicant or a combination of**  
4 **intoxicants.**

5 “(2) A person may not be convicted of driving while under the influence  
6 of intoxicants on the basis of being under the influence of a controlled sub-  
7 stance, [*or*] an inhalant **or any other drug, as that term is described in**  
8 **section 2 of this 2017 Act**, unless the fact that the person was under the  
9 influence of a controlled substance, [*or*] an inhalant **or any other drug, as**  
10 **that term is described in section 2 of this 2017 Act**, is pleaded in the  
11 accusatory instrument and is either proved at trial or is admitted by the  
12 person through a guilty plea.

13 “(3) A person convicted of the offense described in this section is subject  
14 to ORS 813.020 in addition to this section.

15 “(4) Except as provided in subsection (5) of this section, the offense de-  
16 scribed in this section, driving while under the influence of intoxicants, is  
17 a Class A misdemeanor and is applicable upon any premises open to the  
18 public.

19 “(5)(a) Driving while under the influence of intoxicants is a Class C fel-  
20 ony if the current offense was committed in a motor vehicle and the person  
21 has, at least three times in the 10 years prior to the date of the current of-  
22 fense, been convicted of, or been found to be within the jurisdiction of the  
23 juvenile court for an act that if committed by an adult would be, any of the  
24 following offenses in any combination:

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

26 “(i) This section; or

27 “(ii) The statutory counterpart to this section in another jurisdiction.

28 “(B) A driving under the influence of intoxicants offense in another ju-  
29 risdiction that involved the impaired driving or operation of a vehicle, an  
30 aircraft or a boat due to the use of [*intoxicating liquor, a controlled sub-*

1 *stance, an inhalant or any combination thereof]* **an intoxicant or a combi-**  
2 **nation of intoxicants.**

3 “(C) A driving offense in another jurisdiction that involved operating a  
4 vehicle, an aircraft or a boat while having a blood alcohol content above  
5 that jurisdiction’s permissible blood alcohol content.

6 “(b) For the purposes of paragraph (a) of this subsection, a conviction or  
7 adjudication for a driving offense in another jurisdiction based solely on a  
8 person under 21 years of age having a blood alcohol content that is lower  
9 than the permissible blood alcohol content in that jurisdiction for a person  
10 21 years of age or older does not constitute a prior conviction or adjudi-  
11 cation.

12 “(6) In addition to any other sentence that may be imposed, the court  
13 shall impose one or more of the following fines on a person convicted of  
14 driving while under the influence of intoxicants as follows:

15 “(a) For a person’s first conviction, a minimum of \$1,000.

16 “(b) For a person’s second conviction, a minimum of \$1,500.

17 “(c) For a person’s third or subsequent conviction, a minimum of \$2,000  
18 if the person is not sentenced to a term of imprisonment.

19 “(d) For a person who drives a vehicle while the person has 0.15 percent  
20 or more by weight of alcohol in the blood of the person as shown by chemical  
21 analysis of the breath or blood of the person made under ORS 813.100, 813.140  
22 or 813.150, a minimum of \$2,000.

23 “(7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a  
24 court may impose on a person convicted of driving while under the influence  
25 of intoxicants if:

26 “(a) The current offense was committed in a motor vehicle; and

27 “(b) There was a passenger in the motor vehicle who was under 18 years  
28 of age and was at least three years younger than the person driving the  
29 motor vehicle.”.

30 On page 13, delete lines 37 through 45.

1 On page 14, delete lines 1 through 4.

2 In line 5, delete “21. Section 2” and insert “20. Sections 2 and 2a”.

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