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SUMMARY

Provides that person commits offense of driving while under influence of intoxicants if person has blood alcohol level of 0.08 percent or more by weight within two hours after driving vehicle.

Creates affirmative defense.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to driving while under the influence of intoxicants; creating new provisions; amending ORS 163.118, 163.149, 163.185, 813.010, 813.011 and 813.300; and declaring an emergency.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 2. “Statutory counterpart” means a statute from another jurisdiction that has the same use, role or characteristics as an identified Oregon statute notwithstanding differences in substantive scope between the statutes. Another jurisdiction’s statute need not be the same or nearly the same as an identified Oregon statute to be considered a statutory counterpart.

SECTION 3. ORS 813.010 is amended to read:

813.010. (1) A person commits the offense of driving while under the influence of intoxicants if the person drives a vehicle while the person:

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

(b) Is under the influence of intoxicating liquor, cannabis, a controlled substance or an inhalant; *[or]*

(c) Is under the influence of any combination of intoxicating liquor, cannabis, a controlled substance and an inhalant~~].~~; **or**

(d) Within two hours after driving a vehicle, has 0.08 percent or more by weight of alcohol in the blood of the person, as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150.

(2) A person may not be convicted of driving while under the influence of intoxicants on the basis of being under the influence of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instrument and is either proved at trial or is admitted by the person through a guilty plea.

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

(4) Except as provided in subsection (5) of this section, the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon any premises open to the public.

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

(A) Driving while under the influence of intoxicants in violation of **this section**~~].~~.

[(i) This section; or]

[(ii)] (B) The statutory counterpart to this section in another jurisdiction.

[(B)] (C) [A] **Any** driving under the influence of intoxicants offense in

another jurisdiction that involved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor, cannabis, a controlled substance, an inhalant or any combination thereof.

[(C)] (D) [A] **Any** driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

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

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

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

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

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

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

(B) For a person who, within two hours after driving a vehicle, has 0.15 percent or more by weight of alcohol in the blood of the person, as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

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

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

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

(8) It is an affirmative defense to a charge of violating subsection (1)(d) of this section that the defendant consumed a sufficient quantity of alcohol after the time of driving a vehicle and before the administration of a chemical analysis of the defendant's breath or blood to cause the defendant's blood alcohol content to be 0.08 percent or more within two hours after driving. The court may not admit evidence of this defense unless the defendant notifies the prosecution in writing at least 21 days before the first trial setting of defendant's intent to assert the affirmative defense.

SECTION 4. ORS 813.011 is amended to read:

813.011. (1) Driving under the influence of intoxicants under ORS 813.010 shall be a Class C felony if **at least two times in the 10 years prior to the date of the current offense** the defendant has been convicted of [*driving under the influence of intoxicants in violation of ORS 813.010, or its statutory counterpart in another jurisdiction, at least two times in the 10 years prior to the date of the current offense.*] **any of the following offenses in any combination:**

(a) Driving under the influence of intoxicants in violation of ORS 813.010.

(b) The statutory counterpart, as defined in section 2 of this 2021 Act, to ORS 813.010 in another jurisdiction.

(c) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor, cannabis, a controlled substance, an inhalant or any combination thereof.

(d) An offense in another jurisdiction that involved driving or operating a vehicle, an aircraft or a boat while having a blood alcohol

content above that jurisdiction's permissible blood alcohol content.

(2) Once a person has been sentenced for a Class C felony under this section, the 10-year time limitation is eliminated and any subsequent episode of driving under the influence of intoxicants shall be a Class C felony regardless of the amount of time which intervenes.

(3) Upon conviction for a Class C felony under this section, the person shall be sentenced to a mandatory minimum term of incarceration of 90 days, without reduction for any reason.

SECTION 5. ORS 813.300 is amended to read:

813.300. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicants, if the amount of alcohol in the person's blood at the time alleged is less than 0.08 percent by weight of alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that may be used with other evidence, if any, to determine whether or not the person was then under the influence of intoxicants.

(2) Not less than 0.08 percent by weight of alcohol in a person's blood constitutes being under the influence of intoxicating liquor.

(3) Notwithstanding subsection (2) of this section, for purposes of the Motorist Implied Consent Law as defined in ORS 801.010, for a person who is under 21 years of age, any amount of alcohol in the blood constitutes being under the influence of intoxicating liquor.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood or based upon grams of alcohol per 210 liters of breath.

(5) ORS 813.010 (1)(d) may not be construed to limit the admissibility of any evidence of the amount of alcohol in a person's blood as shown by chemical analysis of the person's breath or blood, in any civil or criminal action, suit or proceeding arising out of the acts committed by the person driving a vehicle while under the influence of intoxicants.

SECTION 6. ORS 163.118 is amended to read:

163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life;

(b) It is committed intentionally by a defendant under the influence of extreme emotional disturbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the homicide that would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution;

(c) A person recklessly causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115; or

(d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart, **as defined in section 2 of this 2021 Act**, in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts, **as defined in section 2 of this 2021 Act**, in any jurisdiction; and

(ii) The victim's serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

(a) Assault in the first degree under ORS 163.185;

(b) Assault in the second degree under ORS 163.175; or

(c) Assault in the third degree under ORS 163.165.

(3) Manslaughter in the first degree is a Class A felony.

(4) It is an affirmative defense to a charge of violating:

(a) Subsection (1)(c)(B) of this section that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.

(b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

SECTION 7. ORS 163.149 is amended to read:

163.149. (1) Criminal homicide constitutes aggravated vehicular homicide when it is committed with criminal negligence, recklessly or recklessly under circumstances manifesting extreme indifference to the value of human life by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(a) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts, **as defined in section 2 of this 2021 Act**, in any jurisdiction; and

(b) The victim's death in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1) of this section applies are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125; or

(c) Criminally negligent homicide under ORS 163.145.

(3) It is an affirmative defense to a prosecution under this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

(4) Aggravated vehicular homicide is a Class A felony.

SECTION 8. ORS 163.185 is amended to read:

163.185. (1) A person commits the crime of assault in the first degree if the person:

(a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Intentionally or knowingly causes serious physical injury to a child under six years of age;

(c) Violates ORS 163.175 knowing that the victim is pregnant; or

(d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart, **as defined in section 2 of this 2021 Act**, in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts, **as defined in section 2 of this 2021 Act**, in any jurisdiction; and

(ii) The victim's death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(d)(B) of this section apply are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125;

(c) Criminally negligent homicide under ORS 163.145;

(d) Assault in the first degree under this section;

(e) Assault in the second degree under ORS 163.175; or

(f) Assault in the third degree under ORS 163.165.

(3) Assault in the first degree is a Class A felony.

(4) It is an affirmative defense to a prosecution under subsection (1)(d)(B)

1 of this section that the defendant was not under the influence of intoxicants
2 at the time of the conduct that resulted in the previous conviction.

3 **SECTION 9. This 2021 Act being necessary for the immediate pres-**
4 **ervation of the public peace, health and safety, an emergency is de-**
5 **clared to exist, and this 2021 Act takes effect on its passage.**

6
