

Senate Bill 402

Sponsored by Senator BENTZ (at the request of Karri Doherty) (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**.

Directs Department of Transportation to expedite post-imposition hearing when driving privileges are suspended for physical or mental condition or impairment.

A BILL FOR AN ACT

1
2 Relating to driving privileges; amending ORS 809.440.

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

4 **SECTION 1.** ORS 809.440 is amended to read:

5 809.440. (1) When other procedures described under this section are not applicable to a suspen-
6 sion or revocation under ORS 809.409 to 809.423, the procedures described in this subsection shall
7 be applicable. All of the following apply to this subsection:

8 (a) The hearing shall be given before the department imposes the suspension or revocation of
9 driving privileges.

10 (b) Before the hearing, the department shall notify the person in the manner described in ORS
11 809.430.

12 (c) The hearing shall be in the county where the person resides unless the person and the de-
13 partment agree otherwise.

14 (d) The hearing shall be conducted by an administrative law judge assigned from the Office of
15 Administrative Hearings established under ORS 183.605.

16 (2) The following apply when administrative review is provided under any statute or rule of the
17 department:

18 (a) An administrative review shall consist of an informal administrative process to assure
19 prompt and careful review by the department of the documents upon which an action is based.

20 (b) It shall be a defense to the department's action if a petitioner can establish that:

21 (A) A conviction on which the department's action is based was for an offense that did not in-
22 volve a motor vehicle and the department's action is permitted only if the offense involves a motor
23 vehicle.

24 (B) An out-of-state conviction on which the department's action is based was for an offense that
25 is not comparable to an offense under Oregon law.

26 (C) The records relied on by the department identify the wrong person.

27 (c) A person requesting administrative review has the burden of showing by a preponderance
28 of the evidence that the person is not subject to the action.

29 (d) Actions subject to administrative review shall be exempt from the provisions of ORS chapter
30 183 applicable to contested cases, and from the provisions of subsection (4) of this section applicable
31 to post-imposition hearings. A suspension, revocation or cancellation may not be stayed during the

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 administrative review process or by the filing of a petition for judicial review. A court having ju-
2 risdiction may order the suspension, revocation or cancellation stayed pending judicial review.

3 (e) Judicial review of a department order affirming a suspension or revocation after an admin-
4 istrative review shall be available as for review of orders other than contested cases, and the de-
5 partment may not be subject to default for failure to appear in such proceedings. The department
6 shall certify its record to the court within 20 days after service upon the department of the petition
7 for judicial review.

8 (f) If the suspension or revocation is upheld on review by a court, the suspension or revocation
9 shall be ordered for the length of time appropriate under the appropriate statute except that the
10 time shall be reduced by any time prior to the determination by the court that the suspension or
11 revocation was in effect and was not stayed.

12 (g) The department shall adopt any rules governing administrative review that are considered
13 necessary or convenient by the department.

14 (3)(a) When permitted under this section or under any other statute, a hearing may be expedited
15 under procedures adopted by the department by rule. The procedures may include a limited time in
16 which the person may request a hearing, requirements for telephone hearings, expedited procedures
17 for issuing orders and expedited notice procedures.

18 **(b) A post-imposition hearing shall be expedited, if the person's driving privileges were**
19 **suspended under ORS 809.419.**

20 (4) When permitted under ORS 809.417, 809.419, 809.421 or 809.510 to 809.545, a hearing may be
21 a post-imposition hearing under this subsection. A post-imposition hearing is a hearing that occurs
22 after the department imposes the suspension or revocation of driving privileges. All of the following
23 apply to this subsection:

24 (a) The department must provide notice in the manner described in ORS 809.430 before the
25 suspension or revocation may take effect.

26 (b) Except as provided in this subsection, the hearing shall be conducted as a contested case in
27 accordance with ORS chapter 183.

28 (c) Unless there is an agreement between the person and the department that the hearing be
29 conducted elsewhere, the hearing shall be held either in the county where the person resides or at
30 any place within 100 miles, as established by the department by rule.

31 (5) The department has complied with a requirement for a hearing or administrative review if
32 the department has provided an opportunity for hearing or review and the person with the right to
33 the hearing or review has not requested it. Any request for hearing or review must be made in
34 writing.

35 (6) For any hearing described under this section, and for administrative review described under
36 this section, no further notice need be given by the department if the suspension or revocation is
37 based upon a conviction and the court gives notice, in a form established by the department, of the
38 rights to a hearing or review and of the suspension or revocation.

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