

Senate Bill 7

Sponsored by Senator COURTNEY (Presession 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**.

Provides that person commits offense of driving while under influence of intoxicants or offense of operating boat while under influence of intoxicants if person drives vehicle or boat and has 0.05 percent or more by weight of alcohol in person's blood.

A BILL FOR AN ACT

1
2 Relating to offenses committed while under the influence of intoxicants; creating new provisions; and
3 amending ORS 811.182, 813.010, 813.130, 813.131, 813.210, 813.300, 813.410, 813.602 and 830.510.

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

5 **SECTION 1.** ORS 813.010 is amended to read:

6 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
7 the person drives a vehicle while the person:

8 (a) Has [0.08] **0.05** percent or more by weight of alcohol in the blood of the person as shown by
9 chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

10 (b) Is under the influence of intoxicating liquor, cannabis, a controlled substance or an inhalant;
11 or

12 (c) Is under the influence of any combination of intoxicating liquor, cannabis, a controlled sub-
13 stance and an inhalant.

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

18 (3) A person convicted of the offense described in this section is subject to ORS 813.020 in ad-
19 dition to this section.

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

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

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

29 (i) This section; or

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

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

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

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

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

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

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

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

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

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

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

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

25 **SECTION 2.** ORS 811.182, as amended by section 13, chapter 76, Oregon Laws 2018, is amended
 26 to read:

27 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the
 28 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if
 29 the hardship permit violated is based upon a suspension or revocation described in subsection (3)
 30 or (4) of this section.

31 (2) Affirmative defenses to the offense described in this section are established under ORS
 32 811.180.

33 (3) The offense described in this section, criminal driving while suspended or revoked, is a Class
 34 B felony if the suspension or revocation resulted from any degree of murder, manslaughter,
 35 criminally negligent homicide or assault resulting from the operation of a motor vehicle, if the sus-
 36 pension or revocation resulted from aggravated vehicular homicide or aggravated driving while
 37 suspended or revoked or if the revocation resulted from a conviction for felony driving while under
 38 the influence of intoxicants.

39 (4) The offense described in this section, criminal driving while suspended or revoked, is a Class
 40 A misdemeanor if the suspension or revocation is any of the following:

41 (a) A suspension under ORS 809.411 (2) resulting from commission by the driver of any degree
 42 of recklessly endangering another person, menacing or criminal mischief, resulting from the opera-
 43 tion of a motor vehicle.

44 (b) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS
 45 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content

1 of:

2 (A) ~~[0.08]~~ **0.05** percent or more by weight if the person was not driving a commercial motor ve-
3 hicle;

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

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

6 (c) A suspension of commercial driving privileges under ORS 809.510 resulting from failure to
7 perform the duties of a driver under ORS 811.700.

8 (d) A suspension of commercial driving privileges under ORS 809.510 (6) where the person's
9 commercial driving privileges have been suspended or revoked by the other jurisdiction for failure
10 of or refusal to take a chemical test to determine the alcoholic content of the person's blood under
11 a statute that is substantially similar to ORS 813.100.

12 (e) A suspension of commercial driving privileges under ORS 809.520.

13 (f) A revocation resulting from habitual offender status under ORS 809.640.

14 (g) A suspension resulting from any crime punishable as a felony with proof of a material ele-
15 ment involving the operation of a motor vehicle, other than a crime described in subsection (3) of
16 this section.

17 (h) A suspension for failure to perform the duties of a driver under ORS 811.705.

18 (i) A suspension for reckless driving under ORS 811.140.

19 (j) A suspension for fleeing or attempting to elude a police officer under ORS 811.540.

20 (k) A suspension or revocation resulting from misdemeanor driving while under the influence
21 of intoxicants under ORS 813.010.

22 (L) A suspension for use of a motor vehicle in the commission of a crime punishable as a felony.

23 (5) In addition to any other sentence that may be imposed, if a person is convicted of the offense
24 described in this section and the underlying suspension resulted from driving while under the influ-
25 ence of intoxicants, the court shall impose a minimum fine of at least \$1,000 if it is the person's first
26 conviction for criminal driving while suspended or revoked and a minimum fine of at least \$2,000 if
27 it is the person's second or subsequent conviction.

28 (6)(a) The Oregon Criminal Justice Commission shall classify a violation of this section that is
29 a felony as crime category 4 of the rules of the commission.

30 (b) Notwithstanding paragraph (a) of this subsection, the commission shall classify a violation
31 of this section that is a felony as crime category 6 of the rules of the commission, if the suspension
32 or revocation resulted from:

33 (A) Any degree of murder, manslaughter or criminally negligent homicide or an assault that
34 causes serious physical injury, resulting from the operation of a motor vehicle; or

35 (B) Aggravated vehicular homicide or aggravated driving while suspended or revoked.

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

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

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

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

44 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject
45 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of

1 intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered
2 against the person.

3 (b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test
4 discloses a blood alcohol content of [0.08] **0.05** percent or more by weight. The person will fail a test
5 for purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

6 (A) [0.08] **0.05** percent or more by weight if the person was not driving a commercial motor ve-
7 hicle;

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

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

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

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

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

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

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

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

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

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

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

34 (f) If the person refuses a breath test under ORS 813.100, or refuses a urine test under ORS
35 813.131 and 813.132, the person is subject to a fine of at least \$500 and not more than \$1,000.

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

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

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

1 the number of days the permit will be effective.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (a) The person takes the breath test described in ORS 813.100 and the test discloses a blood
45 alcohol content of less than [0.08] **0.05** percent; or

1 (b) The person is involved in an accident resulting in injury or property damage. A urine test
2 may be requested under this paragraph regardless of whether a breath test has been requested and
3 regardless of the results of a breath test, if one is taken.

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

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

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

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

17 **SECTION 5.** ORS 813.210 is amended to read:

18 813.210. (1) After an accusatory instrument has been filed charging the defendant with the of-
19 fense of driving while under the influence of intoxicants, a defendant may file with the court a pe-
20 tition for a driving while under the influence of intoxicants diversion agreement described in ORS
21 813.200. The petition:

22 (a) Must be filed within 30 days after the date of the defendant's first appearance on the sum-
23 mons, unless a later filing date is allowed by the court upon a showing of good cause. For purposes
24 of this paragraph, the filing of a demurrer, a motion to suppress or a motion for an omnibus hearing
25 does not constitute good cause.

26 (b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea
27 or a no contest plea or after commencement of any trial on the charge whether or not a new trial
28 or retrial is ordered for any reason.

29 (c) Notwithstanding paragraph (a) of this subsection, may be filed up to 14 days after the date
30 the prosecuting attorney sends the laboratory test results of the defendant's urine or blood sample
31 analysis to the defendant's attorney or, if the defendant is unrepresented, the defendant, if:

32 (A) The accusatory instrument alleges that the defendant was driving under the influence of
33 intoxicants and alleges that at the time the conduct occurred the defendant was under the influence
34 of a controlled substance or an inhalant;

35 (B) The defendant has not received notice of what the defendant's blood alcohol content was at
36 the time the conduct occurred or if at the time the conduct occurred the defendant had less than
37 [0.08] **0.05** percent by weight of alcohol in the blood; and

38 (C) A police officer obtained a urine or blood sample from the defendant.

39 (2) The defendant shall pay to the court, at the time of filing a petition for a driving while under
40 the influence of intoxicants diversion agreement, a filing fee established under ORS 813.240. The
41 court may make provision for payment of the filing fee by the defendant on an installment basis.
42 The court may waive all or part of the filing fee in cases involving indigent defendants. The filing
43 fee paid to the court under this subsection shall be retained by the court if the petition is allowed.
44 The filing fee shall be distributed as provided by ORS 813.240.

45 (3) The defendant shall pay to the agency or organization providing the screening interview, at

1 the time the petition is allowed, the fee required by ORS 813.240 (3).

2 (4)(a) Unless otherwise provided under paragraph (b) of this subsection, the defendant shall pay
3 to the court any court-appointed attorney fees agreed to under ORS 813.200 (4)(i). Payments shall
4 be made prior to the end of the diversion period on a schedule determined by the court.

5 (b) The court may waive all or part of the court-appointed attorney fees agreed to under ORS
6 813.200 (4)(i).

7 (5) The defendant shall begin paying to the court any restitution ordered under ORS 137.108.
8 Payments shall be made during the diversion period on a schedule determined by the court.

9 (6) The defendant shall cause a copy of the petition for a driving while under the influence of
10 intoxicants diversion agreement to be served upon the district attorney or city attorney. The district
11 attorney or city attorney may file with the court, within 15 days after the date of service, a written
12 objection to the petition and a request for a hearing.

13 **SECTION 6.** ORS 813.300 is amended to read:

14 813.300. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
15 committed by a person driving a motor vehicle while under the influence of intoxicants, if the
16 amount of alcohol in the person's blood at the time alleged is less than [0.08] **0.05** percent by weight
17 of alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that
18 may be used with other evidence, if any, to determine whether or not the person was then under the
19 influence of intoxicants.

20 (2) Not less than [0.08] **0.05** percent by weight of alcohol in a person's blood constitutes being
21 under the influence of intoxicating liquor.

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

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

27 **SECTION 7.** ORS 813.410 is amended to read:

28 813.410. (1) If the Department of Transportation receives from a police officer a report that is
29 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of
30 the person in this state on the 30th day after the date of arrest or, if the report indicates that the
31 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described
32 under this section, the department determines that the suspension would not be valid as described
33 in this section. A suspension of driving privileges imposed under this subsection shall be for a period
34 of time established under ORS 813.420.

35 (2) If the department receives from a police officer a report pursuant to ORS 813.120 and the
36 person holds commercial driving privileges and the person was driving a motor vehicle or commer-
37 cial motor vehicle and refused to submit to a test under ORS 813.100 or the person was driving a
38 commercial motor vehicle and submitted to a breath or blood test and the person's blood, as shown
39 by the test, had 0.04 percent or more by weight of alcohol, the department shall suspend the person's
40 commercial driving privileges on the 30th day after the date of arrest or, if the report indicates that
41 the person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing de-
42 scribed under this section, the department determines that the suspension would not be valid as
43 described in this section. A commercial driving privileges suspension imposed under this subsection
44 shall be for a period of time established under ORS 809.510 or 809.520.

45 (3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days

1 from the date the department sends notice of suspension, the department receives a written request
2 for a hearing from a person whose driving privileges or commercial driving privileges the depart-
3 ment proposes to suspend under this section, the department shall provide a hearing in accordance
4 with this section. Except as otherwise provided under this section, a hearing held by the department
5 under this section shall be subject to the provisions for contested cases, other than appeal pro-
6 visions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450
7 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is
8 not required to give any notice of intent to suspend or suspension in addition to that provided under
9 ORS 813.100.

10 (4) Except as provided in subsection (5) of this section, a hearing required by this section is
11 subject to all of the following:

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

14 (b) The administrative law judge shall conduct the hearing by telephone or other two-way elec-
15 tronic communication device.

16 (c) The department may authorize the administrative law judge to issue a final order in any
17 case.

18 (d) A person who requests a hearing under this section and who fails, without just cause, to
19 appear personally or through an attorney waives the right to a hearing. If a person waives a right
20 to a hearing under this paragraph, the department is not required to make any showing at hearing.

21 (e) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department shall
22 hold the hearing and issue a final order within 30 days of the date of the arrest or, if the person fails
23 a blood test, within 60 days from the date the department received the report of the failure.

24 (f) In connection with the hearing, the department or its authorized representative may admin-
25 ister oaths and shall issue subpoenas for the appearance of witnesses by telephone or other two-way
26 electronic communication device at the hearing requested by the person or the department and the
27 production of relevant documents.

28 (g) The hearing shall be recorded by whatever means may be determined by the department and
29 shall include testimony and exhibits, if any. The record of the proceedings may not be transcribed
30 unless requested by a party to the proceeding.

31 (5)(a) A person or a police officer may request that a hearing required by this section be con-
32 ducted in person.

33 (b) The department, by rule, shall establish the manner and time limitation requirements by
34 which a person or a police officer may request that a hearing be conducted in person.

35 (c) Unless there is an agreement between the person and the department that the hearing be
36 conducted elsewhere, a hearing requested under this subsection shall be held either in the county
37 where the alleged offense occurred or at any place within 100 miles of the place where the offense
38 is alleged to have occurred, as established by the department by rule.

39 (d) In connection with the hearing, the department or its authorized representative may admin-
40 ister oaths and shall issue subpoenas for the attendance of witnesses at the hearing requested under
41 this subsection by the person and the production of relevant documents.

42 (6) This subsection shall be narrowly construed so as to effect the legislative purpose of limiting
43 the scope of hearings under this section. The scope of a hearing under this section shall be limited
44 to whether the suspension is valid as described in this subsection. A suspension under this section
45 is valid if all of the following requirements have been met:

1 (a) The person, at the time the person was requested to submit to a test under ORS 813.100,
 2 was under arrest for driving while under the influence of intoxicants in violation of ORS 813.010 or
 3 a municipal ordinance.

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

7 (c) The person refused a test under ORS 813.100, or took a breath or blood test and the test
 8 disclosed that the level of alcohol in the person's blood at the time of the test was:

9 (A) ~~[0.08]~~ **0.05** percent or more by weight if the person was not driving a commercial motor ve-
 10 hicle;

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

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

13 (d) If the report under ORS 813.120 indicates that the person was driving a commercial motor
 14 vehicle, the vehicle was in fact a commercial motor vehicle as defined in ORS 801.208.

15 (e) The person had been informed under ORS 813.100 of rights and consequences as described
 16 under ORS 813.130.

17 (f) The person was given written notice required under ORS 813.100.

18 (g) If the person arrested submitted to a test under ORS 813.100, the person administering the
 19 test was qualified to administer the test under ORS 813.160.

20 (h) If the person arrested submitted to a test under ORS 813.100, the methods, procedures and
 21 equipment used in the test complied with requirements under ORS 813.160.

22 (7) A suspension imposed under this section shall remain in effect pending any appeal or remand
 23 of a final order issued under this section and there shall be no stay of the suspension pending appeal
 24 or remand.

25 (8) Unless a person fails, without just cause, to appear personally or through an attorney at a
 26 hearing requested under this section, a person shall have the right to appeal any final order by the
 27 department after a hearing under this section by filing a petition. The following apply to this sub-
 28 section:

29 (a) The person shall file the petition in the circuit court for the county where the person resides
 30 or, if the person does not reside in Oregon, in the circuit court of the county in which the arrest
 31 took place within 30 days after issuance of the final order of the department.

32 (b) The court upon receipt of the petition shall set the matter for hearing upon 10 days' notice
 33 to the department and the petitioner unless hearing is waived by both the department and the
 34 petitioner.

35 **SECTION 8.** ORS 813.602 is amended to read:

36 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while
 37 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-
 38 partment of Transportation, in addition to any other requirement, shall require that the person have
 39 installed and be using an approved ignition interlock device in any vehicle operated by the person:

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

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

45 (c) For a second or subsequent conviction, for two years after the ending date of the suspension

1 or revocation caused by the conviction. Violation of the condition imposed under this paragraph is
2 a Class A traffic violation.

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

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

11 (A) Any degree of murder.

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

13 (C) Criminally negligent homicide.

14 (D) Assault in the first degree.

15 (b) Aggravated vehicular homicide.

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

19 (3)(a) Except as provided in paragraph (c) of this subsection, as a condition of a driving while
20 under the influence of intoxicants diversion agreement:

21 (A) The court shall require that an approved ignition interlock device be installed and used in
22 any vehicle operated by the person during the period of the agreement when the person has driving
23 privileges if:

24 (i) The person submitted to a chemical test of the person's breath or blood as required under
25 ORS 813.100 and the test disclosed a blood alcohol content of [0.08] **0.05** percent or more by weight;

26 (ii) The person refused to submit to a chemical test of the person's breath or blood; or

27 (iii) The person submitted to a chemical test of the person's breath, blood or urine as required
28 under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content of more than 0.00 per-
29 cent by weight but less than [0.08] **0.05** percent by weight and disclosed the presence of cannabis,
30 a controlled substance or an inhalant.

31 (B) The court may require that an approved ignition interlock device be installed and used in
32 any vehicle operated by the person during the period of the agreement when the person has driving
33 privileges if the person submitted to a chemical test of the person's breath, blood or urine as re-
34 quired under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content below [0.08] **0.05**
35 percent by weight.

36 (b) In addition to any action taken under ORS 813.255, violation of the condition imposed under
37 this subsection is a Class A traffic violation.

38 (c) A court may exempt a person from the condition in a diversion agreement to have installed
39 and be using an ignition interlock device if the court determines that the person meets the re-
40 quirements for a medical exemption in accordance with rules adopted by the department under this
41 section. A person granted a medical exemption under this paragraph shall carry proof of the medical
42 exemption with the person while operating any vehicle.

43 (4) The department shall adopt rules permitting medical exemptions from the requirements of
44 installation and use of an ignition interlock device under this section.

45 (5) When a person is required to install an ignition interlock device under subsection (2) of this

1 section, the service center providing the device shall provide notice of any installation or removal
2 of the device or any tampering with the device to:

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

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

6 **SECTION 9.** ORS 830.510 is amended to read:

7 830.510. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
8 committed by a person operating a boat while under the influence of any intoxicants, if the amount
9 of alcohol in the person's blood at the time alleged is less than [0.08] **0.05** percent by weight of al-
10 cohohol and shown by chemical analysis of the person's breath or blood, it is indirect evidence that
11 may be used with other evidence, if any, to determine whether or not the person was then under the
12 influence of intoxicants.

13 (2) Not less than [0.08] **0.05** percent by weight of alcohol in a person's blood constitutes being
14 under the influence of intoxicating liquor.

15 (3) Percent by weight of alcohol in the blood shall be based on grams of alcohol per 100 milli-
16 liters of blood or based on grams of alcohol per 210 liters of breath.

17 (4) For purposes of ORS 830.505 to 830.545, "boat" means a motorboat or sailboat.

18 **SECTION 10.** **The amendments to ORS 811.182, 813.010, 813.130, 813.131, 813.210, 813.300,**
19 **813.410, 813.602 and 830.510 by sections 1 to 9 of this 2019 Act apply to conduct occurring on**
20 **or after the effective date of this 2019 Act.**

21
