

House Bill 3140

Sponsored by Representative NOBLE (at the request of Governor's Advisory Committee on DUII)

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**.

Makes changes to statutes related to operating vehicle or boat while under influence of intoxicants that reference controlled substances to clarify applicability to psilocybin.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to psilocybin; creating new provisions; amending ORS 801.272, 807.060, 809.235, 809.260,
3 809.730, 813.010, 813.040, 813.131, 813.140, 813.150, 813.215, 813.220, 813.430, 813.602, 821.250,
4 830.325, 830.365, 830.505, 830.515, 830.520, 830.525 and 830.815; and declaring an emergency.

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

6 **SECTION 1.** ORS 801.272 is amended to read:

7 801.272. "Field sobriety test" means a physical or mental test, approved by the Department of
8 State Police by rule after consultation with the Department of Public Safety Standards and Training,
9 that enables a police officer or trier of fact to screen for or detect probable impairment from
10 intoxicating liquor, cannabis, **psilocybin**, a controlled substance or an inhalant, or any combination
11 of intoxicating liquor, cannabis, **psilocybin**, a controlled substance and an inhalant.

12 **SECTION 2.** ORS 807.060 is amended to read:

13 807.060. The Department of Transportation may not grant driving privileges to a person under
14 a license if the person is not eligible under this section. The following are not eligible for a license:

15 (1) A person under 16 years of age.

16 (2)(a) A person under 18 years of age who is not an emancipated minor, unless the application
17 of the person is signed by the person's mother, father or legal guardian. A person who signs an ap-
18 plication under this paragraph may have the driving privileges canceled as provided under ORS
19 809.320.

20 (b) A person under 18 years of age who does not meet the requirements of ORS 807.065.

21 (3) Notwithstanding subsection (2) of this section, a person under 18 years of age is not eligible
22 for a commercial driver license.

23 (4) A person the department determines has a problem condition involving alcohol, cannabis,
24 **psilocybin**, controlled substances or inhalants as described under ORS 813.040.

25 (5) A person the department reasonably believes has a mental or physical condition or impair-
26 ment that affects the person's ability to safely operate a motor vehicle upon the highways.

27 (6) A person the department reasonably believes is unable to understand highway signs that
28 warn, regulate or direct traffic.

29 (7) A person who is required to make future responsibility filings but has not made filings as
30 required.

31 (8) A person who cannot be issued a license under the Driver License Compact under ORS

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.

1 802.540.

2 (9) A person who is not subject to the Driver License Compact under ORS 802.540 but whose
 3 driving privileges are currently under suspension or revocation in any other state upon grounds
 4 which, if committed in this state, would be grounds for the suspension or revocation of the driving
 5 privileges of the person.

6 (10) A person who has been declared a habitual offender under ORS 809.640. A person declared
 7 not eligible to be licensed under this subsection may become eligible by having eligibility restored
 8 under ORS 809.640.

9 (11) A person whose driving privileges are canceled in this state under ORS 809.310 until the
 10 person is eligible under ORS 809.310.

11 (12) A person while the person's driving privileges are revoked in this state.

12 (13) A person during a period when the person's driving privileges are suspended in this state.

13 (14) A person who holds a current out-of-state license or driver permit or a valid Oregon license
 14 or driver permit. A person who is not eligible under this subsection may become eligible by sur-
 15 rendering the license, driver permit or out-of-state license or driver permit to the department before
 16 issuance of the license. Nothing in this subsection authorizes a person to continue to operate a
 17 motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS
 18 807.062 to obtain an Oregon license or permit.

19 (15) A person who has not complied with the requirements and responsibilities created by cita-
 20 tion for or conviction of a traffic offense in another jurisdiction if an agreement under ORS 802.530
 21 authorizes the department to withhold issuance of a license.

22 (16) A person who has not complied with the requirement of ORS 813.022 (1).

23 **SECTION 3.** ORS 809.235 is amended to read:

24 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving
 25 privileges be permanently revoked if the person is convicted of any degree of murder and the court
 26 finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the
 27 death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in
 28 the first or second degree resulting from the operation of a motor vehicle, criminally negligent
 29 homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from
 30 the operation of a motor vehicle.

31 (b) The court shall order that a person's driving privileges be permanently revoked if the person
 32 is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010
 33 or if the person is convicted for a third or subsequent time of any of the following offenses in any
 34 combination:

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

36 (i) ORS 813.010; or

37 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction.

38 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 39 impaired driving of a vehicle due to the use of intoxicating liquor, cannabis, **psilocybin**, a controlled
 40 substance, an inhalant or any combination thereof.

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

43 (c) For the purposes of paragraph (b) of this subsection, a conviction for a driving offense in
 44 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content
 45 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years

1 of age or older does not constitute a prior conviction.

2 (2)(a) A person whose driving privileges are revoked as described in subsection (1) of this sec-
 3 tion may file a petition in the circuit court of the county in which the person's driving privileges
 4 were revoked for an order restoring the person's driving privileges. A petition may be filed under
 5 this subsection no sooner than 10 years after the person is:

6 (A) Released on parole or post-prison supervision for the crime for which the person's driving
 7 privileges were revoked and any other crimes arising out of the same criminal episode;

8 (B) Sentenced to probation for the crime for which the person's driving privileges were revoked,
 9 unless the probation is revoked, in which case the petition may be filed no sooner than 10 years
 10 after the date probation is revoked; or

11 (C) Sentenced for the crime for which the person's driving privileges were revoked, if no other
 12 provision of this paragraph applies.

13 (b) Notwithstanding paragraph (a) of this subsection, if during the revocation period for the
 14 crime for which the person was convicted the person is convicted of a criminal offense involving a
 15 motor vehicle, the person may file a petition to restore driving privileges as described in paragraph
 16 (a) of this subsection no sooner than 10 years from the date of the most recent conviction involving
 17 a motor vehicle.

18 (c) The district attorney of the county in which the person's driving privileges were revoked
 19 shall be named and served as the respondent in the petition.

20 (3) The court shall hold a hearing on a petition filed in accordance with subsection (2) of this
 21 section. In determining whether to grant the petition, the court shall consider:

22 (a) The nature of the offense for which driving privileges were revoked.

23 (b) The degree of violence involved in the offense.

24 (c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the
 25 conviction that resulted in the revocation.

26 (d) The recommendation of the person's parole officer, which shall be based in part on a psy-
 27 chological evaluation ordered by the court to determine whether the person is presently a threat to
 28 the safety of the public.

29 (e) Any other relevant factors.

30 (4) The court shall order a petitioner's driving privileges restored if, after a hearing described
 31 in subsection (3) of this section, the court finds by clear and convincing evidence that the petitioner:

32 (a) Is rehabilitated;

33 (b) Does not pose a threat to the safety of the public; and

34 (c) If the sentence for the crime for which the petitioner's driving privileges were revoked re-
 35 quired the petitioner to complete an alcohol or drug treatment program, has completed an alcohol
 36 or drug treatment program in a facility approved by the Director of the Oregon Health Authority
 37 or a similar program in another jurisdiction.

38 (5) Upon receiving a court order to restore a person's driving privileges, the department may
 39 reinstate driving privileges in accordance with ORS 809.390, except that the department may not
 40 reinstate driving privileges of any person whose privileges are revoked under this section until the
 41 person complies with future responsibility filings.

42 **SECTION 4.** ORS 809.260 is amended to read:

43 809.260. (1) Whenever a person who is 17 years of age or younger, but not younger than 13 years
 44 of age, at the time of committing any offense described in subsection (2) of this section, is deter-
 45 mined by a juvenile court to have committed one of the offenses described in subsection (2) of this

1 section, the court may order suspension of the person's driving privileges upon:

2 (a) The person's second or subsequent adjudication for an offense described in subsection (2) of
3 this section;

4 (b) The person's first adjudication if the person has previously entered into a formal account-
5 ability agreement under ORS 419C.230 for an offense described in subsection (2) of this section; or

6 (c) The person's first adjudication if the offense involved the operation of a motor vehicle.

7 (2) Subsection (1) of this section applies to any offense involving the delivery, manufacture or
8 possession of controlled substances, or any offense described in ORS 475B.341, 475B.346 or 475B.349.

9 (3) Whenever a person who is 20 years of age or younger, but not younger than 13 years of age,
10 at the time of committing any offense described in subsection (4) of this section, is convicted or
11 determined by a juvenile court to have committed one of the offenses described in subsection (4) of
12 this section, the court may order suspension of the person's driving privileges upon:

13 (a) The person's second or subsequent conviction or adjudication for an offense described in
14 subsection (4) of this section;

15 (b) The person's first conviction or adjudication if the person has previously entered into a
16 formal accountability agreement under ORS 419C.230 for an offense described in subsection (4) of
17 this section; or

18 (c) The person's first conviction or adjudication if the offense involved the operation of a motor
19 vehicle.

20 (4) Subsection (3) of this section applies to any offense involving the possession, use or abuse
21 of alcohol, [*or*] cannabis **or psilocybin**.

22 (5) If a court has issued an order suspending driving privileges under this section, the court,
23 upon petition of the person, may review the order and may withdraw the order at any time the court
24 deems appropriate except as provided in the following:

25 (a) A court may not withdraw an order for a period of 90 days following the issuance of the
26 order if it is the first such order issued with respect to the person.

27 (b) A court may not withdraw an order for a period of one year following the issuance of the
28 order if it is the second or subsequent such order issued with respect to the person.

29 (c) Notwithstanding paragraph (a) of this subsection, a court may not withdraw an order for a
30 period of six months if the order is based on a determination or conviction involving controlled
31 substances.

32 (6) Upon receipt of an order under this section, the department shall take action as directed
33 under ORS 809.280.

34 **SECTION 5.** ORS 809.730 is amended to read:

35 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
36 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
37 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
38 convicted of:

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

40 (A) ORS 813.010; or

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

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

45 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a

1 blood alcohol content above that jurisdiction's permissible blood alcohol content;

2 (d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the oper-
3 ation of a motor vehicle in this state or in another jurisdiction; or

4 (e) Aggravated vehicular homicide under ORS 163.149 or aggravated driving while suspended
5 or revoked under ORS 163.196.

6 (2) For the purposes of subsection (1) of this section, a conviction for a driving offense in an-
7 other jurisdiction based solely on a person under 21 years of age having a blood alcohol content that
8 is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age
9 or older does not constitute a prior conviction.

10 (3) All seizure and forfeiture proceedings under this section shall be conducted in accordance
11 with ORS chapter 131A.

12 **SECTION 6.** ORS 813.010 is amended to read:

13 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
14 the person drives a vehicle while the person:

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

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

19 (c) Is under the influence of any combination of intoxicating liquor, cannabis, **psilocybin**, a
20 controlled substance and an inhalant.

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

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

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

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

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

36 (i) This section; or

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

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

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

44 (b) For the purposes of paragraph (a) of this subsection, a conviction or adjudication for a
45 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood

1 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a
 2 person 21 years of age or older does not constitute a prior conviction or adjudication.

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

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

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

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

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

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

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

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

18 **SECTION 7.** ORS 813.040 is amended to read:

19 813.040. This section establishes, for purposes of ORS 471.432 and 807.060, when a person has
 20 a problem condition involving alcohol, cannabis, **psilocybin**, controlled substances or inhalants. For
 21 purposes of ORS 471.432 and 807.060, a person has a problem condition involving alcohol, cannabis,
 22 **psilocybin**, controlled substances or inhalants if it is determined that the person has a problem
 23 condition in which the person's health or that of others is substantially impaired or endangered or
 24 the person's social or economic function is substantially disrupted because of the person's:

25 (1) Habitual or periodic use of:

26 (a) Alcoholic beverages; [or]

27 (b) Cannabis, unless the person holds a registry identification card as defined in ORS 475B.791;

28 or

29 **(c) Psilocybin; or**

30 (2) Use of or loss of the ability to control the use of controlled substances, inhalants or other
 31 substances with abuse potential, including a condition that may have developed:

32 (a) A physical dependence in which the body requires a continuing supply of a controlled sub-
 33 stance, an inhalant or a drug to avoid characteristic withdrawal symptoms; or

34 (b) A psychological dependence characterized by an overwhelming mental desire for continued
 35 use of a controlled substance, an inhalant or a drug.

36 **SECTION 8.** ORS 813.131 is amended to read:

37 813.131. (1) A person may be asked to provide a urine sample under ORS 813.140 or subsection
 38 (2) of this section.

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

45 (a) The person takes the breath test described in ORS 813.100 and the test discloses a blood

1 alcohol content of less than 0.08 percent; or

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

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

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

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

17 (b) A chemical analysis of a person's urine is valid if analysis is performed in an accredited or
 18 licensed toxicology laboratory.

19 **SECTION 9.** ORS 813.140 is amended to read:

20 813.140. Nothing in ORS 813.100, 813.131 or 813.132 is intended to preclude the administration
 21 of a chemical test described in this section. A police officer may obtain a chemical test of the breath
 22 or blood to determine the amount of alcohol in any person's blood or a test of the person's blood
 23 or urine, or both, to determine the presence of cannabis, **psilocybin**, a controlled substance or an
 24 inhalant in the person as provided in the following:

25 (1) If, when requested by a police officer, the person expressly consents to such a test.

26 (2) Notwithstanding subsection (1) of this section, from a person without the person's consent
 27 if:

28 (a) The police officer has probable cause to believe that the person was driving while under the
 29 influence of intoxicants and that evidence of the offense will be found in the person's blood or urine;
 30 and

31 (b) The person is unconscious or otherwise in a condition rendering the person incapable of
 32 expressly consenting to the test or tests requested.

33 **SECTION 10.** ORS 813.150 is amended to read:

34 813.150. In addition to a chemical test of the breath, blood or urine administered under ORS
 35 813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon request,
 36 at the person's own expense, reasonable opportunity to have any licensed physician and surgeon,
 37 licensed professional nurse or qualified technician, chemist or other qualified person of the person's
 38 own choosing administer a chemical test or tests of the person's breath or blood for the purpose of
 39 determining the alcoholic content of the person's blood or a chemical test or tests of the person's
 40 blood or urine, or both, for the purpose of determining the presence of cannabis, **psilocybin**, a con-
 41 trolled substance or an inhalant in the person. The failure or inability to obtain such a test or tests
 42 by a person shall not preclude the admission of evidence relating to a test or tests taken upon the
 43 request of a police officer.

44 **SECTION 11.** ORS 813.215 is amended to read:

45 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-

1 ditions:

2 (a) On the date the defendant filed the petition for a driving while under the influence of
 3 intoxicants diversion agreement, the defendant had no charge, other than the charge for the present
 4 offense, pending for:

5 (A) An offense of driving while under the influence of intoxicants in violation of:

6 (i) ORS 813.010; or

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

8 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 9 impaired driving of a vehicle due to the use of intoxicating liquor, cannabis, **psilocybin**, a controlled
 10 substance, an inhalant or any combination thereof; or

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

13 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-
 14 section within the period beginning 15 years before the date of the commission of the present offense
 15 and ending on the date the defendant filed the petition for a driving while under the influence of
 16 intoxicants diversion agreement.

17 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 (5)(a).

18 (d) The defendant was not participating in a driving while under the influence of intoxicants
 19 diversion program or in any similar alcohol or drug rehabilitation program in this state or in an-
 20 other jurisdiction on the date the defendant filed the petition for a driving while under the influence
 21 of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph
 22 by reason of participation in a diversion program or any similar alcohol or drug rehabilitation pro-
 23 gram as a result of the charge for the present offense or a charge for violation of ORS 471.430.

24 (e) The defendant did not participate in a diversion or rehabilitation program described in par-
 25 agraph (d) of this subsection within the period beginning 15 years before the date of the commission
 26 of the present offense and ending on the date the defendant filed the petition for a driving while
 27 under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion
 28 under this paragraph by reason of participation in a diversion program or rehabilitation program
 29 described in paragraph (d) of this subsection as a result of the charge for the present offense or a
 30 charge for violation of ORS 471.430.

31 (f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder,
 32 manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor
 33 vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition
 34 for a driving while under the influence of intoxicants diversion agreement.

35 (g) The defendant has not been convicted of an offense described in paragraph (f) of this sub-
 36 section within the period beginning 15 years before the date of the commission of the present offense
 37 and ending on the date the defendant filed the petition for a driving while under the influence of
 38 intoxicants diversion agreement.

39 (h) The defendant did not hold commercial driving privileges on the date of the commission of
 40 the offense.

41 (i) The defendant was not operating a commercial motor vehicle at the time of the offense.

42 (j) The present driving while under the influence of intoxicants offense did not involve an acci-
 43 dent resulting in:

44 (A) Death of any person; or

45 (B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

1 (2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in
 2 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content
 3 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years
 4 of age or older does not constitute a prior conviction.

5 (3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the
 6 conditions of subsection (1) of this section and the defendant has not been convicted of any other
 7 criminal offense involving a motor vehicle within the period beginning 15 years before the date of
 8 the commission of the present offense and ending on the date the defendant filed the petition for the
 9 second or subsequent driving while under the influence of intoxicants diversion agreement.

10 **SECTION 12.** ORS 813.220 is amended to read:

11 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
 12 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
 13 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
 14 ment. In making a determination under this section, the court:

15 (1) Shall consider whether the diversion will be of benefit to the defendant and the community.

16 (2) May take into consideration whether there was an early recognition by the defendant during
 17 the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug
 18 dependency would be beneficial.

19 (3) May take into consideration whether there is a probability that the defendant will cooperate
 20 with the diagnostic assessment and treatment agencies.

21 (4) May take into consideration whether the defendant will observe the restrictions contained
 22 in the diversion agreement.

23 (5) May take into consideration whether the offense was committed in a motor vehicle and
 24 whether there was a passenger in the motor vehicle who was under 18 years of age and at least
 25 three years younger than the defendant.

26 (6) Shall deny the petition for a driving while under the influence of intoxicants diversion
 27 agreement if the defendant failed to appear at an arraignment on the present offense without good
 28 cause.

29 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion
 30 agreement if, after the date the defendant filed the petition, the defendant was charged with or
 31 convicted of:

32 (a) An offense of driving while under the influence of intoxicants in violation of:

33 (A) ORS 813.010; or

34 (B) The statutory counterpart to ORS 813.010 in another jurisdiction;

35 (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 36 impaired driving of a vehicle due to the use of intoxicating liquor, cannabis, **psilocybin**, a controlled
 37 substance, an inhalant or any combination thereof; or

38 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
 39 blood alcohol content above that jurisdiction's permissible blood alcohol content.

40 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion
 41 agreement if the defendant participated in a driving while under the influence of intoxicants diver-
 42 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered
 43 into as a result of the charge for the present offense, in this state or in another jurisdiction after
 44 the date the defendant filed the petition.

45 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion

1 agreement if the defendant was charged with or convicted of an offense of aggravated vehicular
 2 homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the
 3 operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed
 4 the petition.

5 (10) Shall deny the petition for a driving while under the influence of intoxicants diversion
 6 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)(a).

7 (11) For the purposes of subsection (7) of this section, may not consider a conviction for a
 8 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood
 9 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a
 10 person 21 years of age or older as a prior conviction.

11 (12) May not deny the petition for a driving while under the influence of intoxicants diversion
 12 agreement solely on the basis that the defendant is a member of the Armed Forces of the United
 13 States, the reserve components of the Armed Forces of the United States or the National Guard and
 14 has been called or demonstrates that the defendant will be called to active duty, and the military
 15 service will impair the defendant's ability to complete the diversion program.

16 **SECTION 13.** ORS 813.430 is amended to read:

17 813.430. This section establishes circumstances under which ORS 813.420 requires an increase
 18 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase
 19 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
 20 ject to an increase in suspension time under this section if any of the following apply:

21 (1) The person is presently participating in a driving while under the influence of intoxicants
 22 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
 23 another jurisdiction.

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

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

27 (b) The person was convicted of:

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

29 (i) ORS 813.010;

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

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

32 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 33 impaired driving of a vehicle due to the use of intoxicating liquor, cannabis, **psilocybin**, a controlled
 34 substance, an inhalant or any combination thereof; or

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

37 (c) The person commenced participating in a driving while under the influence of intoxicants
 38 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
 39 another jurisdiction.

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

44 **SECTION 14.** ORS 813.602 is amended to read:

45 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while

1 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-
 2 partment of Transportation, in addition to any other requirement, shall require that the person have
 3 installed and be using an approved ignition interlock device in any vehicle operated by the person:

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

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

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

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

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

- 20 (A) Any degree of murder.
- 21 (B) Manslaughter in the first or second degree.
- 22 (C) Criminally negligent homicide.
- 23 (D) Assault in the first degree.

24 (b) Aggravated vehicular homicide.

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

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

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

33 (i) A chemical test of the person's breath or blood disclosed a blood alcohol content of 0.08
 34 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of
 35 the breath or blood;

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

37 (iii) A chemical test of the person's breath, blood or urine disclosed a blood alcohol content of
 38 more than 0.00 but less than 0.08 percent by weight of alcohol in the blood of the person as shown
 39 by chemical analysis of the breath or blood and disclosed the presence of cannabis, **psilocybin**, a
 40 controlled substance or an inhalant.

41 (B) The court may require that an approved ignition interlock device be installed and used in
 42 any vehicle operated by the person during the period of the agreement when the person has driving
 43 privileges if the person submitted to a chemical test of the person's breath, blood or urine and the
 44 test disclosed a blood alcohol content below 0.08 percent by weight of alcohol in the blood of the
 45 person as shown by chemical analysis of the breath or blood.

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

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

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

10 (5) When a person is required to install an ignition interlock device under subsection (2) of this
11 section, the manufacturer's representative providing the device shall provide notice of any installa-
12 tion or removal of the device or any tampering with the device to:

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

15 (b) The district attorney or the city prosecutor; and

16 (c) The Oregon State Police.

17 **SECTION 15.** ORS 821.250 is amended to read:

18 821.250. (1) A person commits the offense of permitting dangerous operation of a snowmobile or
19 an all-terrain vehicle if the person is the owner or other person having charge or control of a
20 snowmobile or an all-terrain vehicle and the person knowingly authorizes or permits any person to
21 operate the vehicle across a highway who is:

22 (a) Incapable by reason of age, physical or mental disability; or

23 (b) Under the influence of intoxicating liquor, cannabis, **psilocybin**, controlled substances or
24 inhalants.

25 (2) In addition to other penalties provided by this section, operators or owners may be liable
26 as provided under ORS 821.310.

27 (3) The offense described in this section, permitting dangerous operation of a snowmobile or an
28 all-terrain vehicle, is a Class A traffic violation.

29 **SECTION 16.** ORS 830.325 is amended to read:

30 830.325. (1) A person under the influence of an intoxicating liquor, cannabis, **psilocybin**, an
31 inhalant or a controlled substance may not operate, propel or be in actual physical control of any
32 boat on any waters of this state.

33 (2) An owner of a boat or person in charge or in control of a boat may not authorize or know-
34 ingly permit the boat to be propelled or operated on any waters of this state by any person who is
35 under the influence of an intoxicating liquor, cannabis, **psilocybin**, an inhalant or a controlled sub-
36 stance.

37 **SECTION 17.** ORS 830.365 is amended to read:

38 830.365. (1) No person shall ride or manipulate any water skis, surfboard or similar device in a
39 reckless or negligent manner so as to endanger any person or property.

40 (2) No person shall operate a boat for the purpose of towing a person on water skis, surfboard
41 or similar device, and no person shall engage in waterskiing, surfboarding or similar activity at any
42 time after sunset and before sunrise. This subsection does not apply to a person while engaged in
43 a professional exhibition or to a person engaged in an activity authorized under ORS 830.375.

44 (3) No person shall operate or manipulate any boat, tow rope or other device by which the di-
45 rection or location of a person on water skis, surfboard or similar device may be affected or con-

1 trolled in a reckless or negligent manner so as to cause the person on water skis, surfboard or
2 similar device to collide with or strike against any person or object.

3 (4) No person shall ride or manipulate any water skis, surfboard or similar device while under
4 the influence of an intoxicating liquor, cannabis, **psilocybin**, or a controlled substance.

5 (5) No person shall operate a boat on any waters of this state, towing a person on water skis,
6 aqua-plane, surfboard, saucer, or similar device, unless there is in the boat another person, in addi-
7 tion to the operator, who is in a position to continuously observe the person being towed.

8 (6) Notwithstanding subsection (5) of this section, persons operating a boat to tow a water-skier
9 in an authorized competitive marine event, or engaged in practicing for a competitive water ski
10 event on a water ski course authorized by the State Marine Board, may use either a curved,
11 rearview mirror or another person, in addition to the operator, to continuously observe the person
12 being towed.

13 (7) No person shall operate any boat used for towing water skis, surfboards or similar devices
14 on the waters of this state unless the boat is equipped with and displays a warning flag as follows:

15 (a) The warning flag, also known as the "skier down" flag, shall be international orange or red
16 in color and shall be at least 12 inches in height and 12 inches in width.

17 (b) When any person being towed by the boat becomes disengaged from the towline and is down
18 in the water, a person in the boat shall immediately display the warning flag aloft, visible from all
19 sides, as an indicator to other boats in the area that a person is down in the water. As long as the
20 downed person is in the water, the flag shall remain displayed to prevent danger to that person and
21 hazards to passing boats.

22 (c) The warning flag described in this section shall be displayed only under the conditions set
23 forth in paragraph (b) of this subsection or when other imminent danger exists.

24 **SECTION 18.** ORS 830.505 is amended to read:

25 830.505. (1) Any person who operates a boat on any waters of this state shall be deemed to have
26 given consent to submit to chemical tests of the person's breath for the purpose of determining the
27 alcoholic content of the person's blood if the person is arrested for operating a boat while under the
28 influence of intoxicants while in violation of ORS 830.325 or of a municipal ordinance. Tests shall
29 be administered upon the request of a peace officer having reasonable grounds to believe that the
30 person arrested was operating a boat while under the influence of intoxicants while in violation of
31 ORS 830.325 or of a municipal ordinance. Before the test is administered, the person requested to
32 take the test shall be informed of rights and consequences as described in ORS 830.545.

33 (2) Any person who operates a boat on any waters of this state shall be deemed to have given
34 consent to submit to chemical tests of the person's urine for the purpose of determining the presence
35 of cannabis, **psilocybin**, a controlled substance or an inhalant in the person's body if the person is
36 arrested for operating a boat while under the influence of intoxicants while in violation of ORS
37 830.325 or of a municipal ordinance. Tests shall be administered upon the request of a peace officer
38 having reasonable grounds to believe that the person arrested was operating a boat while under the
39 influence of intoxicants while in violation of ORS 830.325 or of a municipal ordinance. Before the
40 test is administered, the person requested to take the test shall be informed of rights and conse-
41 quences as described in ORS 830.545.

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

44 (4)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
45 committed by a person operating a boat while under the influence of intoxicants, a valid chemical

1 analysis of a person's urine is admissible as evidence and may be used with other evidence, if any,
 2 to determine whether the person was operating a boat while under the influence of intoxicants.

3 (b) A chemical analysis of a person's urine is valid if analysis is performed in an accredited or
 4 licensed toxicology laboratory.

5 (5) Within the time required by the State Marine Board by rule, the arresting officer shall report
 6 the following information to the board:

7 (a) Whether the person refused to physically submit to a test.

8 (b) Whether the person was informed of rights and consequences as described under ORS
 9 830.545.

10 (6) A report required by this section may be made on one or more forms provided by the board.

11 (7) Nothing in this section precludes a peace officer from obtaining a chemical test through any
 12 lawful means for use as evidence in a criminal or civil proceeding including, but not limited to, ob-
 13 taining a search warrant.

14 **SECTION 19.** ORS 830.515 is amended to read:

15 830.515. If a person refuses or fails to physically submit to chemical tests of the breath or urine
 16 as required by ORS 830.505, evidence of the person's refusal or failure to physically submit is ad-
 17 missible in any criminal or civil action or proceeding arising out of acts alleged to have been com-
 18 mitted while the person was operating a boat while under the influence of an intoxicating liquor,
 19 cannabis, **psilocybin**, an inhalant or a controlled substance.

20 **SECTION 20.** ORS 830.520 is amended to read:

21 830.520. Nothing in ORS 830.505 is intended to preclude the administration of chemical tests
 22 described in this section. A peace officer may obtain a chemical test of the blood to determine the
 23 amount of alcohol in any person's blood or a test of the person's blood or a test of the person's blood
 24 or urine, or both, to determine the presence of cannabis, **psilocybin**, an inhalant or a controlled
 25 substance in the person as provided in the following:

26 (1) If, when requested by a peace officer, the person expressly consents to such a test.

27 (2) Notwithstanding subsection (1) of this section, from a person without the person's consent
 28 if:

29 (a) The peace officer has probable cause to believe that the person was operating a boat while
 30 under the influence of an intoxicating liquor, cannabis, **psilocybin**, an inhalant or a controlled sub-
 31 stance and that evidence of the offense will be found in the person's blood or urine; and

32 (b) The person is unconscious or otherwise in a condition rendering the person incapable of
 33 expressly consenting to the test or tests requested.

34 **SECTION 21.** ORS 830.525 is amended to read:

35 830.525. In addition to chemical tests of the breath, blood or urine administered under ORS
 36 830.505 and 830.520, upon the request of a peace officer, a person shall be permitted upon request,
 37 at the person's own expense, reasonable opportunity to have any licensed physician, licensed pro-
 38 fessional nurse or qualified technician, chemist or other qualified person of the person's own
 39 choosing administer a chemical test or tests of the person's breath or blood for the purpose of de-
 40 termining the alcoholic content of the person's blood or a chemical test or tests of the person's blood
 41 or urine, or both, for the purpose of determining the presence of cannabis, **psilocybin**, an inhalant
 42 or a controlled substance in the person. The failure or inability to obtain such a test or tests by a
 43 person shall not preclude the admission of evidence relating to a test or tests taken upon the re-
 44 quest of a peace officer.

45 **SECTION 22.** ORS 830.815 is amended to read:

1 830.815. (1) The State Marine Board may refuse to issue a certificate of title or a certificate of
 2 number or registration if the board determines at any time that an applicant for the certificate has:

3 (a) Given a false statement or false information in applying for the certificate;

4 (b) Otherwise failed to comply with the applicable provisions under ORS 830.060 to 830.140 and
 5 830.700 to 830.870 pertaining to application for certificates; or

6 (c) Been convicted of operating a boat while under the influence of an intoxicating liquor,
 7 cannabis, **psilocybin**, an inhalant or a controlled substance within one year of the date of applica-
 8 tion or within three years of the date of application if the record of conviction shows that the per-
 9 son willfully refused the request of a peace officer to physically submit to chemical testing of the
 10 breath or urine or a nontestimonial field sobriety test pursuant to ORS 830.505 and 830.550.

11 (2) After a hearing upon 10 days' notice, the board may cancel a certificate of title or certificate
 12 of number or registration if the board determines at any time that an owner, boat manufacturer or
 13 dealer named in the certificate:

14 (a) Gave a false statement or false information in applying for the certificate; or

15 (b) Otherwise failed to comply with the applicable provisions under ORS 830.060 to 830.140,
 16 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830 to
 17 830.870 pertaining to applications for certificates.

18 (3) The board shall automatically suspend the certificate of number for any boat if the board
 19 receives notification of a conviction for violation of ORS 830.260 under ORS 830.270. The suspension
 20 under this subsection is not subject to hearing. The board shall reinstate a certificate of number
 21 suspended under this subsection when the boat owner submits proof satisfactory to the board that
 22 the boat has been approved by a person designated by the board as meeting the standards for sound
 23 levels established by the board.

24 (4) If the board receives notification from any court in this state that any person who is charged
 25 with a boating offense and who is the registered owner of the boat has failed to appear as required
 26 by law or has failed to comply with the judgment of the sentencing court, the board shall take the
 27 following actions:

28 (a) Notify, by certified mail, the registered owner of the boat involved in the offense of the
 29 owner's failure to appear or comply with the judgment of the court. The notification shall include
 30 a copy of the citation issued to the owner and will inform the owner that the board will suspend the
 31 certificate of number for the boat 45 days from the date of the mailing of the notice by the board.
 32 The notice shall include a statement that a hearing may be requested in writing within 10 days of
 33 the notice. Any hearing requested under this subsection shall be limited to the issue of whether the
 34 person is the person who failed to appear or comply with the judgment of the sentencing court.

35 (b) The board shall suspend the certificate of number for the boat involved 45 days after mailing
 36 notice of intent to suspend to the owner of the boat unless a hearing has been requested or, within
 37 the 45-day notice period, the board receives notice from the court that the owner has appeared in
 38 court and is in compliance with any court order entered in the proceeding. Notice from the court
 39 may consist of a copy of any receipt or other document issued by the court indicating that the
 40 person has appeared and is in compliance with any court order.

41 (c) Upon suspending any certificate of number under this subsection, the board may charge the
 42 owner a reinstatement fee sufficient to cover the actual expenses of the board in processing the
 43 transactions described in this section. The board shall reinstate any certificate of number suspended
 44 under this subsection upon receiving payment of any reinstatement fee and notice from the court
 45 that the owner has appeared and fully satisfied the judgment of the court.

1 (5) Conviction of operating a boat while under the influence of an intoxicating liquor, cannabis,
2 **psilocybin**, an inhalant or a controlled substance under ORS 830.325 constitutes grounds for sus-
3 pension of a person's certificate of number or registration for all boats owned by the person. The
4 following provisions apply to such suspension:

5 (a) Upon receipt of a record of conviction for a violation of ORS 830.325, the board shall notify
6 the convicted person that all certificates of number or registration issued in the person's name are
7 suspended. The notice shall include a statement that a hearing may be requested in writing within
8 10 days of the notice. Any hearing requested under this subsection shall be limited to the issue of
9 whether the person is the person convicted.

10 (b) The suspension shall be for three years from the date of conviction if the record of con-
11 viction shows that the person willfully refused the request of a peace officer to physically submit
12 to chemical testing of the breath or urine or a nontestimonial field sobriety test under ORS 830.505
13 and 830.550. Otherwise the period of suspension shall be for one year from the date of conviction.

14 **SECTION 23. The amendments to ORS 801.272, 807.060, 809.235, 809.260, 809.730, 813.010,**
15 **813.040, 813.131, 813.140, 813.150, 813.215, 813.220, 813.430, 813.602, 821.250, 830.325, 830.365,**
16 **830.505, 830.515, 830.520, 830.525 and 830.815 by sections 1 to 22 of this 2021 Act apply to con-**
17 **duct occurring on and after the effective date of this 2021 Act.**

18 **SECTION 24. This 2021 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
20 **on its passage.**

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