

House Bill 2726

Sponsored by Representatives GARRARD, GREENLICK; Representatives ACKERMAN, BROWN, GILMAN, KRIEGER, MARCH, RICHARDSON, ROSENBAUM, SCHAUFLEER, P SMITH

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**.

Requires Department of Transportation to give notice at least 10 days prior to suspending, revoking or canceling driving privileges or commercial driver license. Provides for exceptions. Requires notice be accomplished by certified mail, restricted delivery, return receipt requested.

A BILL FOR AN ACT

1 Relating to notice; creating new provisions; and amending ORS 809.290, 809.430, 809.440 and 809.610.

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

3 **SECTION 1.** ORS 809.430 is amended to read:

4 809.430. (1) When the Department of Transportation, as authorized or required, suspends, re-
5 vokes or cancels driving privileges, a commercial driver license or the right to apply for driving
6 privileges or a commercial driver license, it shall give notice under this section of such action to
7 the person whose driving privileges, commercial driver license or right to apply is affected.

8 (2) Notice under this section shall state the nature and reason for the action and, in the case
9 of a suspension, whether it was ordered by a court.

10 (3) **Notice under this section shall be given at least 10 days prior to the department tak-**
11 **ing the action or as required by the statute authorizing the action, whichever is longer. This**
12 **subsection does not apply when:**

13 (a) **The court takes immediate possession of a license or permit under ORS 809.250.**

14 (b) **A police officer takes immediate custody of a driver license or permit under ORS**
15 **813.100.**

16 (c) **Driving privileges are suspended under ORS 813.410.**

17 (d) **The suspension of driving privileges is reinstated under ORS 813.440.**

18 [(3)] (4) *[If violation of a suspension or revocation would constitute the offense described in ORS*
19 *811.182,] Service of notice [of the suspension or revocation] under this section is accomplished by:*

20 (a) Mailing the notice by certified mail, restricted delivery, return receipt requested, to the
21 person's address as shown by driver licensing records of the department; or

22 (b) Personal service in the same manner as a summons is served in an action at law.

23 [(4) *Service of notice under this section for all other actions is accomplished by:]*

24 [(a) *Mailing the notice by first class mail to the person's address as shown by driver licensing re-*
25 *ords of the department; or]*

26 [(b) *Personal service in the same manner as a summons is served in an action at law.]*

27 **SECTION 2.** ORS 809.440 is amended to read:

28 809.440. This section establishes hearing and administrative review procedures to be followed
29 when the Department of Transportation is required to provide a hearing or an administrative review
30

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 of an action.

2 (1) When other procedures described under this section are not applicable to a suspension or
3 revocation under ORS 809.409 to 809.423, the procedures described in this subsection shall be ap-
4 plicable. All of the following apply to this subsection:

5 (a) The hearing shall be given before the department imposes the suspension or revocation of
6 driving privileges or continues, modifies or extends a suspension or revocation.

7 (b) Before the hearing, the department shall notify the person in the manner described in ORS
8 809.430.

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

11 (d) Upon such hearing, the department, good cause appearing therefor, may impose, continue,
12 modify or extend the suspension or revocation of the driving privileges.

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

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

17 **(a) The department shall provide notice in the manner described in ORS 809.430 before**
18 **the suspension or revocation may take effect.**

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

21 [(b)] **(c)** It shall be a defense to the department's action if a petitioner can establish that:

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

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

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

28 [(c)] **(d)** A person requesting administrative review has the burden of showing by a preponder-
29 ance of the evidence that the person is not subject to the action.

30 [(d)] **(e)** Actions subject to administrative review shall be exempt from the provisions of ORS
31 chapter 183 applicable to contested cases, and from the provisions of subsection (4) of this section
32 applicable to post-imposition hearings. A suspension, revocation or cancellation shall not be stayed
33 during the administrative review process or by the filing of a petition for judicial review. A court
34 having jurisdiction may order the suspension, revocation or cancellation stayed pending judicial re-
35 view.

36 [(e)] **(f)** Judicial review of a department order affirming a suspension or revocation after an ad-
37 ministrative review shall be available as for review of orders other than contested cases, and the
38 department may not be subject to default for failure to appear in such proceedings. The department
39 shall certify its record to the court within 20 days after service upon the department of the petition
40 for judicial review.

41 [(f)] **(g)** If the suspension or revocation is upheld on review by a court, the suspension or revo-
42 cation shall be imposed for the length of time appropriate under the appropriate statute except that
43 the time shall be reduced by any time prior to the determination by the court that the suspension
44 or revocation was in effect and was not stayed.

45 [(g)] **(h)** The department shall adopt any rules governing administrative review that are consid-

1 ered necessary or convenient by the department.

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

6 (4) When permitted under ORS 809.409 to 809.423, a hearing may be a post-imposition hearing
 7 under this subsection. A post-imposition hearing is a hearing that occurs after the department im-
 8 poses the suspension or revocation of driving privileges or continues, modifies or extends a suspen-
 9 sion or revocation. All of the following apply to this subsection:

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

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

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

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

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

25 **SECTION 3.** ORS 809.290 is amended to read:

26 809.290. This section establishes circumstances that will make a person subject to suspension
 27 under ORS 809.415 (4) and what a person is required to do to make the person no longer subject to
 28 suspension. The following apply as described:

29 (1) A person is subject to suspension under ORS 809.415 (4) if the Department of Transportation
 30 receives notice from a court to apply this section under ORS 809.220. A person who is subject under
 31 this subsection remains subject until the person presents the department with notice issued by the
 32 court showing that the person is no longer subject to this section or until five years have elapsed,
 33 whichever is earlier. This subsection shall not subject a person to ORS 809.415 (4) for any pedestrian
 34 offense, bicycling offense or parking offense. Upon receipt of notice from a court, the department
 35 shall send a letter by [*first class mail*] **certified mail, restricted delivery, return receipt re-**
 36 **quested**, advising the person that the suspension will commence 60 days from the date of the letter
 37 unless the person presents the department with the notice required by this subsection.

38 (2) A person is subject to suspension under ORS 809.415 (4) if the department receives notice
 39 from a court under ORS 809.210 that a person has failed to pay a fine or obey an order of the court.
 40 A person who is subject under this subsection remains subject until the person presents the de-
 41 partment with notice issued by the court showing that the person has paid the fine or obeyed the
 42 order of the court or until five years have elapsed, whichever is earlier. This subsection shall not
 43 subject a person to ORS 809.415 (4) for failure to pay a fine relating to any pedestrian offense, bi-
 44 cycling offense or parking offense. Upon receipt of notice from a court, the department shall send
 45 a letter by [*first class mail*] **certified mail, restricted delivery, return receipt requested**, advising

1 the person that the suspension will commence 60 days from the date of the letter unless the person
2 presents the department with the notice required by this subsection.

3 (3) A person is subject to suspension under ORS 809.415 (4) if the person pays the department
4 any fee or tax with a bank check and the check is returned to the department as uncollectible or
5 the person tenders payment with a credit or debit card and the issuer of the card does not pay the
6 department. A person who is subject under this subsection remains subject until the department
7 receives the money for the fee or tax and any fee charged by the department under ORS 802.170 or
8 until five years have elapsed, whichever is earlier.

9 **SECTION 4.** ORS 809.610 is amended to read:

10 809.610. (1) When the Department of Transportation receives an abstract of the conviction under
11 ORS 810.375, and the conviction is the second one of those described by ORS 809.600 (1) for the
12 person or the 19th of those described by ORS 809.600 (2) for the person, the department may restrict
13 the person's driving privileges and shall send the person notice of the restrictions by [*first class*
14 *mail*] **certified mail, restricted delivery, return receipt requested.**

15 (2) A person notified under subsection (1) of this section of restrictions placed on the person's
16 driving privileges may request a meeting with a representative of the department to determine
17 whether the restrictions may be lifted.

18 **SECTION 5. The amendments to ORS 809.290, 809.430, 809.440 and 809.610 by sections 1**
19 **to 4 of this 2005 Act apply only to notices given on or after the effective date of this 2005**
20 **Act.**