

House Bill 3601

Sponsored by Representative STIEGLER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs administrative law judge to conduct implied consent hearing by telephone or other two-way electronic communication device.

Establishes fee for requesting hearing. Directs Department of Transportation to waive or reduce fee for persons who are indigent.

Modifies qualifications for police officers authorized to present evidence and question witnesses at implied consent hearing.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants; creating new provisions; amending ORS
3 813.410, 813.412 and 813.460; and declaring an emergency.

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

5 **SECTION 1.** ORS 813.410 is amended to read:

6 813.410. (1) If the Department of Transportation receives from a police officer a report that is
7 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of
8 the person in this state on the 30th day after the date of arrest or, if the report indicates that the
9 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described
10 under this section, the department determines that the suspension would not be valid as described
11 in this section. A suspension of driving privileges imposed under this subsection shall be for a period
12 of time established under ORS 813.420.

13 (2) If the department receives from a police officer a report pursuant to ORS 813.120 that dis-
14 closes that the person holds a commercial driver license and that the person was driving a motor
15 vehicle or commercial motor vehicle and refused to submit to a test under ORS 813.100 or that the
16 person was driving a commercial motor vehicle and submitted to a breath or blood test and the
17 person's blood, as shown by the test, had 0.04 percent or more by weight of alcohol, the department
18 shall suspend the person's commercial driver license on the 30th day after the date of arrest or, if
19 the report indicates that the person failed a blood test, on the 60th day after receipt of the report,
20 unless, at a hearing described under this section, the department determines that the suspension
21 would not be valid as described in this section. A commercial driver license suspension imposed
22 under this subsection shall be for a period of time established under ORS 813.404.

23 (3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days
24 from the date the department sends notice of suspension, the department receives a written request
25 for a hearing from a person whose driving privileges or commercial driver license the department
26 proposes to suspend under this section, the department shall provide a hearing in accordance with
27 this section. Except as otherwise provided under this section, a hearing held by the department
28 under this section shall be subject to the provisions for contested cases, other than appeal pro-

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 visions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450
 2 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not
 3 required to give any notice of intent to suspend or suspension in addition to that provided under
 4 ORS 813.100.

5 (4) A hearing required by this section is subject to all of the following:

6 (a) The hearing shall be *[before]* **conducted by** an administrative law judge assigned from the
 7 Office of Administrative Hearings established under ORS 183.605.

8 *[(b) Unless there is an agreement between the person and the department that the hearing be con-*
 9 *ducted elsewhere, the hearing shall be held either in the county where the alleged offense occurred or*
 10 *at any place within 100 miles of the place where the offense is alleged to have occurred, as established*
 11 *by the department by rule.]*

12 **(b) The administrative law judge shall conduct the hearing by telephone or other two-way**
 13 **electronic communication device.**

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

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

19 **(e) Except as provided in paragraph (f) of this subsection, a person who requests a**
 20 **hearing under this section shall pay a fee of \$200 to the department. If the person does not**
 21 **pay the fee, the person waives the right to a hearing. If a person waives a right to a hearing**
 22 **under this paragraph, the department is not required to make any showing at hearing.**

23 **(f) The department shall waive, in whole or in part, the fee under paragraph (e) of this**
 24 **subsection if the person meets the criteria for indigence established under paragraph (g) of**
 25 **this subsection.**

26 **(g) The department, by rule, shall establish the criteria for indigence and the procedures**
 27 **the department shall use to determine whether a person qualifies for a waiver or reduction**
 28 **of the fee under paragraph (e) of this subsection. The criteria must be consistent with the**
 29 **standards for indigence adopted by the federal government for purposes of the Supplemental**
 30 **Nutrition Assistance Program.**

31 *[(e)]* **(h) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department**
 32 **shall hold the hearing and issue a final order within 30 days of the date of the arrest or, if the**
 33 **person fails a blood test, within 60 days from the date the department received the report of the**
 34 **failure.**

35 *[(f)]* **(i) In connection with the hearing, the department or its authorized representative may**
 36 **administer oaths and shall issue subpoenas for the *[attendance]* appearance of witnesses by tele-**
 37 **phone or other two-way electronic communication device at the hearing requested by the per-**
 38 **son or the department and the production of relevant documents.**

39 *[(g)]* **(j) The hearing shall be recorded by whatever means may be determined by the department**
 40 **and shall include testimony and exhibits, if any. The record of the proceedings shall not be tran-**
 41 **scribed unless requested by a party to the proceeding.**

42 (5) 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 percent or more by weight if the person was not driving a commercial motor vehicle;

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

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

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

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

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

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

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

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

24 (7) Unless a person fails, without just cause, to appear in person or through an attorney at a
 25 hearing requested under this section **or to pay the required fee**, a person shall have the right to
 26 appeal any final order by the department after a hearing under this section by filing a petition. The
 27 following apply to this subsection:

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

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

34 **SECTION 2.** ORS 813.412 is amended to read:

35 813.412. Notwithstanding ORS 9.160 and 9.320, in any hearing under ORS 813.410 in which a city
 36 attorney or district attorney does not appear, [*the peace officer who issued the citation for*] **a police**
 37 **officer involved in the investigation of** the offense may present evidence, examine and cross-
 38 examine witnesses and make arguments relating to:

39 (1) The application of statutes and rules to the facts in the case;

40 (2) The literal meaning of the statutes or rules at issue in the case;

41 (3) The admissibility of evidence; and

42 (4) Proper procedures to be used in the hearing.

43 **SECTION 3.** ORS 813.460 is amended to read:

44 813.460. If the Department of Transportation verifies to its satisfaction that it has suspended the
 45 driving privileges of the wrong person under ORS 813.410 because a person arrested for driving

1 under the influence of intoxicants gave false identification at the time of the arrest, all the following
2 apply:

3 (1) The department shall immediately rescind the suspension order under the false name and
4 shall issue a suspension order for the period set forth in ORS 813.420 to the person arrested.

5 (2) The department shall issue the order in the manner set forth in ORS 809.430.

6 (3) No further notice of suspension need be given.

7 (4) The time limitations in ORS 813.410 (1), (2), (3) and [(4)(e)] **(4)(h)** do not apply to a suspension
8 order issued under this section.

9 **SECTION 4. The amendments to ORS 813.410, 813.412 and 813.460 by sections 1 to 3 of this**
10 **2010 Act apply to hearings scheduled to begin on or after the effective date of this 2010 Act.**

11 **SECTION 5. This 2010 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
13 **on its passage.**

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