

D R A F T

SUMMARY

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;
3 creating new provisions; and amending ORS 811.182, 813.010, 813.130,
4 813.131, 813.210, 813.300, 813.410, 813.602 and 830.510.

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

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

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

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

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

14 (c) Is under the influence of any combination of intoxicating liquor,
15 cannabis, a controlled substance and an inhalant.

16 (2) A person may not be convicted of driving while under the influence
17 of intoxicants on the basis of being under the influence of a controlled sub-
18 stance or an inhalant unless the fact that the person was under the influence
19 of a controlled substance or an inhalant is pleaded in the accusatory in-
20 strument and is either proved at trial or is admitted by the person through

1 a guilty plea.

2 (3) A person convicted of the offense described in this section is subject
3 to ORS 813.020 in addition to this section.

4 (4) Except as provided in subsection (5) of this section, the offense de-
5 scribed in this section, driving while under the influence of intoxicants, is
6 a Class A misdemeanor and is applicable upon any premises open to the
7 public.

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

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

15 (i) This section; or

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

17 (B) A driving under the influence of intoxicants offense in another juris-
18 diction that involved the impaired driving or operation of a vehicle, an air-
19 craft or a boat due to the use of intoxicating liquor, cannabis, a controlled
20 substance, an inhalant or any combination thereof.

21 (C) A driving offense in another jurisdiction that involved operating a
22 vehicle, an aircraft or a boat while having a blood alcohol content above
23 that jurisdiction's permissible blood alcohol content.

24 (b) For the purposes of paragraph (a) of this subsection, a conviction or
25 adjudication for a driving offense in another jurisdiction based solely on a
26 person under 21 years of age having a blood alcohol content that is lower
27 than the permissible blood alcohol content in that jurisdiction for a person
28 21 years of age or older does not constitute a prior conviction or adjudi-
29 cation.

30 (6) In addition to any other sentence that may be imposed, the court shall
31 impose one or more of the following fines on a person convicted of driving

1 while under the influence of intoxicants as follows:

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

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

4 (c) For a person's third or subsequent conviction, a minimum of \$2,000 if
5 the person is not sentenced to a term of imprisonment.

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

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

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

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

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

19 811.182. (1) A person commits the offense of criminal driving while sus-
20 pended or revoked if the person violates ORS 811.175 and the suspension or
21 revocation is one described in this section, or if the hardship permit violated
22 is based upon a suspension or revocation described in subsection (3) or (4)
23 of this section.

24 (2) Affirmative defenses to the offense described in this section are es-
25 tablished under ORS 811.180.

26 (3) The offense described in this section, criminal driving while suspended
27 or revoked, is a Class B felony if the suspension or revocation resulted from
28 any degree of murder, manslaughter, criminally negligent homicide or assault
29 resulting from the operation of a motor vehicle, if the suspension or revo-
30 cation resulted from aggravated vehicular homicide or aggravated driving
31 while suspended or revoked or if the revocation resulted from a conviction

1 for felony driving while under the influence of intoxicants.

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

5 (a) A suspension under ORS 809.411 (2) resulting from commission by the
6 driver of any degree of recklessly endangering another person, menacing or
7 criminal mischief, resulting from the operation of a motor vehicle.

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

11 (A) ~~[0.08]~~ **0.05** percent or more by weight if the person was not driving a
12 commercial motor vehicle;

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

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

16 (c) A suspension of commercial driving privileges under ORS 809.510 re-
17 sulting from failure to perform the duties of a driver under ORS 811.700.

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

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

24 (f) A revocation resulting from habitual offender status under ORS
25 809.640.

26 (g) A suspension resulting from any crime punishable as a felony with
27 proof of a material element involving the operation of a motor vehicle, other
28 than a crime described in subsection (3) of this section.

29 (h) A suspension for failure to perform the duties of a driver under ORS
30 811.705.

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

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

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

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

7 (5) In addition to any other sentence that may be imposed, if a person is
8 convicted of the offense described in this section and the underlying sus-
9 pension resulted from driving while under the influence of intoxicants, the
10 court shall impose a minimum fine of at least \$1,000 if it is the person's first
11 conviction for criminal driving while suspended or revoked and a minimum
12 fine of at least \$2,000 if it is the person's second or subsequent conviction.

13 (6)(a) The Oregon Criminal Justice Commission shall classify a violation
14 of this section that is a felony as crime category 4 of the rules of the com-
15 mission.

16 (b) Notwithstanding paragraph (a) of this subsection, the commission
17 shall classify a violation of this section that is a felony as crime category
18 6 of the rules of the commission, if the suspension or revocation resulted
19 from:

20 (A) Any degree of murder, manslaughter or criminally negligent homicide
21 or an assault that causes serious physical injury, resulting from the opera-
22 tion of a motor vehicle; or

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

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

26 813.130. This section establishes the requirements for information about
27 rights and consequences for purposes of ORS 813.100 and 813.410. The fol-
28 lowing apply to the information about rights and consequences:

29 (1) The information about rights and consequences shall be substantially
30 in the form prepared by the Department of Transportation. The department
31 may establish any form it determines appropriate and convenient.

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

3 (a) Driving under the influence of intoxicants is a crime in Oregon, and
4 the person is subject to criminal penalties if a test under ORS 813.100 shows
5 that the person is under the influence of intoxicants. If the person refuses
6 a test or fails, evidence of the refusal or failure may also be offered against
7 the person.

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

12 (A) [0.08] **0.05** percent or more by weight if the person was not driving a
13 commercial motor vehicle;

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

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

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

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

25 (e) If the person refuses a test under ORS 813.100, the person is not eli-
26 gible for a hardship permit for at least 90 days, and possibly for three years,
27 depending on the following factors set forth in ORS 813.430:

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

31 (B) Whether within the five years preceding the date of arrest any of the

1 following occurred:

2 (i) A suspension of the person's driving privileges under ORS 813.410 or
3 482.540 (1981 Replacement Part) became effective;

4 (ii) The person was convicted of driving while under the influence of
5 intoxicants in violation of ORS 813.010 or the statutory counterpart to ORS
6 813.010 in another jurisdiction, as described in ORS 813.430;

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

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

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

17 (g) After taking a test under ORS 813.100, the person will have a reason-
18 able opportunity, upon request, for an additional chemical test for blood al-
19 cohool content to be performed at the person's own expense by a qualified
20 individual of the person's choosing.

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

27 (i) If the person is issued a temporary driving permit under ORS 813.100,
28 the information provided to the person shall include the number of hours
29 before the driving permit will be effective and the number of days the permit
30 will be effective.

31 (j) The information provided to the person shall include the number of

1 days within which a person must request a hearing under ORS 813.410.

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

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

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

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

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

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

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

26 (C) The person previously has been convicted of driving a commercial
27 motor vehicle while the person's commercial driving privileges or right to
28 apply for commercial driving privileges was suspended or revoked for of-
29 fenses committed while operating a commercial motor vehicle;

30 (D) The person previously has been convicted of any degree of murder,
31 manslaughter or criminally negligent homicide resulting from the operation

1 of a commercial motor vehicle or assault in the first degree resulting from
2 the operation of a commercial motor vehicle;

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

5 (F) The person's commercial driving privileges previously have been sus-
6 pended or revoked for refusal to submit to, or failure of, a breath or blood
7 test under ORS 813.100; or

8 (G) The person's right to apply for commercial driving privileges previ-
9 ously has been suspended or revoked for refusal to submit to, or failure of,
10 a breath or blood test under ORS 813.100 resulting from the operation of a
11 commercial motor vehicle.

12 (4) Nothing in this section prohibits the department from providing addi-
13 tional information concerning rights and consequences that the department
14 considers convenient or appropriate.

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

16 813.131. (1) Any person who operates a motor vehicle upon premises open
17 to the public or the highways of this state shall be deemed to have given
18 consent, subject to the Motorist Implied Consent Law, to a chemical test of
19 the person's urine for the purpose of determining the presence of cannabis,
20 a controlled substance or an inhalant in the person's body if the person is
21 arrested for driving while under the influence of intoxicants in violation of
22 ORS 813.010 or of a municipal ordinance and either:

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

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

29 (2) A police officer may not request a urine test unless the officer is
30 certified by the Department of Public Safety Standards and Training as
31 having completed at least eight hours of training in recognition of drug im-

1 paired driving and the officer has a reasonable suspicion that the person
2 arrested has been driving while under the influence of cannabis, a controlled
3 substance, an inhalant or any combination of cannabis, a controlled sub-
4 stance, an inhalant and intoxicating liquor.

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

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

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

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

16 813.210. (1) After an accusatory instrument has been filed charging the
17 defendant with the offense of driving while under the influence of
18 intoxicants, a defendant may file with the court a petition for a driving while
19 under the influence of intoxicants diversion agreement described in ORS
20 813.200. The petition:

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

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

30 (c) Notwithstanding paragraph (a) of this subsection, may be filed up to
31 14 days after the date the prosecuting attorney sends the laboratory test re-

1 sults of the defendant's urine or blood sample analysis to the defendant's
2 attorney or, if the defendant is unrepresented, the defendant, if:

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

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

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

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

20 (3) The defendant shall pay to the agency or organization providing the
21 screening interview, at the time the petition is allowed, the fee required by
22 ORS 813.240 (3).

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

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

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

1 (6) The defendant shall cause a copy of the petition for a driving while
2 under the influence of intoxicants diversion agreement to be served upon the
3 district attorney or city attorney. The district attorney or city attorney may
4 file with the court, within 15 days after the date of service, a written ob-
5 jection to the petition and a request for a hearing.

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

7 813.300. (1) At the trial of any civil or criminal action, suit or proceeding
8 arising out of the acts committed by a person driving a motor vehicle while
9 under the influence of intoxicants, if the amount of alcohol in the person's
10 blood at the time alleged is less than [0.08] **0.05** percent by weight of alcohol
11 as shown by chemical analysis of the person's breath or blood, it is indirect
12 evidence that may be used with other evidence, if any, to determine whether
13 or not the person was then under the influence of intoxicants.

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

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

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

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

24 813.410. (1) If the Department of Transportation receives from a police
25 officer a report that is in substantial compliance with ORS 813.120, the de-
26 partment shall suspend the driving privileges of the person in this state on
27 the 30th day after the date of arrest or, if the report indicates that the per-
28 son failed a blood test, on the 60th day after receipt of the report, unless,
29 at a hearing described under this section, the department determines that the
30 suspension would not be valid as described in this section. A suspension of
31 driving privileges imposed under this subsection shall be for a period of time

1 established under ORS 813.420.

2 (2) If the department receives from a police officer a report pursuant to
3 ORS 813.120 and the person holds commercial driving privileges and the
4 person was driving a motor vehicle or commercial motor vehicle and refused
5 to submit to a test under ORS 813.100 or the person was driving a commer-
6 cial motor vehicle and submitted to a breath or blood test and the person's
7 blood, as shown by the test, had 0.04 percent or more by weight of alcohol,
8 the department shall suspend the person's commercial driving privileges on
9 the 30th day after the date of arrest or, if the report indicates that the per-
10 son failed a blood test, on the 60th day after receipt of the report, unless,
11 at a hearing described under this section, the department determines that the
12 suspension would not be valid as described in this section. A commercial
13 driving privileges suspension imposed under this subsection shall be for a
14 period of time established under ORS 809.510 or 809.520.

15 (3) If within 10 days from the date of arrest, or, if the person fails a blood
16 test, within 10 days from the date the department sends notice of suspension,
17 the department receives a written request for a hearing from a person whose
18 driving privileges or commercial driving privileges the department proposes
19 to suspend under this section, the department shall provide a hearing in ac-
20 cordance with this section. Except as otherwise provided under this section,
21 a hearing held by the department under this section shall be subject to the
22 provisions for contested cases, other than appeal provisions, under ORS
23 chapter 183. The applicable appeal provisions are as provided under ORS
24 813.450 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS
25 809.430, the department is not required to give any notice of intent to sus-
26 pend or suspension in addition to that provided under ORS 813.100.

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

29 (a) The hearing shall be conducted by an administrative law judge as-
30 signed from the Office of Administrative Hearings established under ORS
31 183.605.

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

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

5 (d) A person who requests a hearing under this section and who fails,
6 without just cause, to appear personally or through an attorney waives the
7 right to a hearing. If a person waives a right to a hearing under this para-
8 graph, the department is not required to make any showing at hearing.

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

13 (f) In connection with the hearing, the department or its authorized rep-
14 resentative may administer oaths and shall issue subpoenas for the appear-
15 ance of witnesses by telephone or other two-way electronic communication
16 device at the hearing requested by the person or the department and the
17 production of relevant documents.

18 (g) The hearing shall be recorded by whatever means may be determined
19 by the department and shall include testimony and exhibits, if any. The re-
20 cord of the proceedings may not be transcribed unless requested by a party
21 to the proceeding.

22 (5)(a) A person or a police officer may request that a hearing required by
23 this section be conducted in person.

24 (b) The department, by rule, shall establish the manner and time limita-
25 tion requirements by which a person or a police officer may request that a
26 hearing be conducted in person.

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

1 (d) In connection with the hearing, the department or its authorized rep-
2 resentative may administer oaths and shall issue subpoenas for the attend-
3 ance of witnesses at the hearing requested under this subsection by the
4 person and the production of relevant documents.

5 (6) This subsection shall be narrowly construed so as to effect the legis-
6 lative purpose of limiting the scope of hearings under this section. The scope
7 of a hearing under this section shall be limited to whether the suspension
8 is valid as described in this subsection. A suspension under this section is
9 valid if all of the following requirements have been met:

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

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

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

19 (A) ~~[0.08]~~ **0.05** percent or more by weight if the person was not driving a
20 commercial motor vehicle;

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

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

24 (d) If the report under ORS 813.120 indicates that the person was driving
25 a commercial motor vehicle, the vehicle was in fact a commercial motor ve-
26 hicle as defined in ORS 801.208.

27 (e) The person had been informed under ORS 813.100 of rights and con-
28 sequences as described under ORS 813.130.

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

30 (g) If the person arrested submitted to a test under ORS 813.100, the per-
31 son administering the test was qualified to administer the test under ORS

1 813.160.

2 (h) If the person arrested submitted to a test under ORS 813.100, the
3 methods, procedures and equipment used in the test complied with require-
4 ments under ORS 813.160.

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

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

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

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

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

20 813.602. (1) Subject to subsection (2) of this section, when a person is
21 convicted of driving while under the influence of intoxicants in violation of
22 ORS 813.010 or of a municipal ordinance, the Department of Transportation,
23 in addition to any other requirement, shall require that the person have in-
24 stalled and be using an approved ignition interlock device in any vehicle
25 operated by the person:

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

28 (b) For a first conviction, for one year after the ending date of the sus-
29 pension or revocation caused by the conviction. Violation of the condition
30 imposed under this paragraph is a Class A traffic violation.

31 (c) For a second or subsequent conviction, for two years after the ending

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

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

11 (a) Driving while under the influence of intoxicants in violation of ORS
12 813.010 or of a municipal ordinance and any of the following crimes as part
13 of the same criminal episode:

14 (A) Any degree of murder.

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

16 (C) Criminally negligent homicide.

17 (D) Assault in the first degree.

18 (b) Aggravated vehicular homicide.

19 (c) Driving while under the influence of intoxicants in violation of ORS
20 813.010 or of a municipal ordinance and the person's driving privileges are
21 revoked under ORS 809.235 (1)(b) and later ordered restored under ORS
22 809.235 (4).

23 (3)(a) Except as provided in paragraph (c) of this subsection, as a condi-
24 tion of a driving while under the influence of intoxicants diversion agree-
25 ment:

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

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

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

3 (iii) The person submitted to a chemical test of the person's breath, blood
4 or urine as required under ORS 813.100 or 813.131 and the test disclosed a
5 blood alcohol content of more than 0.00 percent by weight but less than
6 [0.08] **0.05** percent by weight and disclosed the presence of cannabis, a con-
7 trolled substance or an inhalant.

8 (B) The court may require that an approved ignition interlock device be
9 installed and used in any vehicle operated by the person during the period
10 of the agreement when the person has driving privileges if the person sub-
11 mitted to a chemical test of the person's breath, blood or urine as required
12 under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content
13 below [0.08] **0.05** percent by weight.

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

16 (c) A court may exempt a person from the condition in a diversion
17 agreement to have installed and be using an ignition interlock device if the
18 court determines that the person meets the requirements for a medical ex-
19 emption in accordance with rules adopted by the department under this sec-
20 tion. A person granted a medical exemption under this paragraph shall carry
21 proof of the medical exemption with the person while operating any vehicle.

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

25 (5) When a person is required to install an ignition interlock device under
26 subsection (2) of this section, the service center providing the device shall
27 provide notice of any installation or removal of the device or any tampering
28 with the device to:

29 (a) The supervising court or to the court's designee, including but not
30 limited to an agency or organization certified by the Oregon Health Au-
31 thority under ORS 813.025; and

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

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

3 830.510. (1) At the trial of any civil or criminal action, suit or proceeding
4 arising out of the acts committed by a person operating a boat while under
5 the influence of any intoxicants, if the amount of alcohol in the person's
6 blood at the time alleged is less than [0.08] **0.05** percent by weight of alcohol
7 and shown by chemical analysis of the person's breath or blood, it is indirect
8 evidence that may be used with other evidence, if any, to determine whether
9 or not the person was then under the influence of intoxicants.

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

12 (3) Percent by weight of alcohol in the blood shall be based on grams of
13 alcohol per 100 milliliters of blood or based on grams of alcohol per 210 liters
14 of breath.

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

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

21 _____