

State DUI Laws: Oregon

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

Oregon Revised Statutes

809.235. Permanent revocation of driving privileges upon conviction of certain crimes; restoration of privileges.

(1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving privileges be permanently revoked if the person is convicted of any degree of murder or of manslaughter in the first degree and the court finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the death of the victim.

(b) The court shall order that a person's driving privileges be permanently revoked if the person is convicted of felony driving while under the influence of intoxicants under ORS 813.010 or if the person is convicted of misdemeanor driving while under the influence of intoxicants under ORS 813.010 for a third time.

(2) No sooner than 10 years after a person whose privileges are revoked as described in subsection (1) of this section is released on parole or post-prison supervision, the person may file a petition in the circuit court of the county in which the person resides for an order restoring the person's driving privileges. The district attorney of the county shall be named and served as the respondent in the petition.

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

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

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

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

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

(e) Any other relevant factors.

(4) If, after a hearing described in subsection (3) of this section, the court is satisfied by clear and convincing evidence

that the petitioner is rehabilitated and that the petitioner does not pose a threat to the safety of the public, the court shall order the petitioner's driving privileges restored.

809.265. Suspension for inhalant or controlled substances conviction.

(1) Unless the court finds compelling circumstances not to order suspension of driving privileges, the court in which a person is convicted of an offense described in this subsection shall prepare and send to the Department of Transportation, within 24 hours of the conviction, an order of suspension of driving privileges of the person. This subsection applies when a person is convicted of:

- (a) Any offense involving manufacturing, possession or delivery of controlled substances.
- (b) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance if the person was under the influence of an inhalant or a controlled substance.

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

809.700. Court-ordered impoundment or immobilization upon conviction; grounds; duration; vehicles subject; return; security interest holder rights.

A court may order a motor vehicle impounded or immobilized upon conviction for the traffic offenses described in this section. The authority to impound or immobilize a vehicle under this section is subject to all of the following:

- (1) The court may order a vehicle impounded or immobilized under this section when a person is convicted:
 - (a) For driving a motor vehicle while the person's license is suspended or revoked in violation of ORS 811.175 or 811.182; or
 - (b) On a second or subsequent charge of driving while under the influence of intoxicants in violation of ORS 813.010.
- (2) A vehicle may be impounded or immobilized under this section for not more than one year from judgment.
- (3) The following vehicles may be impounded under this section:
 - (a) Any motor vehicle of which the convicted person is the owner.
 - (b) Any motor vehicle which the convicted person is operating at the time of arrest.
- (4) A vehicle may be immobilized under this section if the vehicle is registered in this state and is a vehicle that may be impounded under subsection (3) of this section.
- (5)(a) If a vehicle is ordered to be immobilized under this section and if the convicted person resides in the jurisdiction of the law enforcement agency that arrested the person for the offense described in subsection (1) of this section, the arresting law enforcement agency shall install a vehicle immobilization device on the vehicle. If the convicted person does not reside in the jurisdiction of the law enforcement agency that arrested the person, the sheriff of the county in which the person resides shall install the device.

(b) A vehicle ordered immobilized under this section shall be immobilized at the residence of the owner of the vehicle or at the location where the owner regularly parks the vehicle.

(c) A vehicle ordered immobilized under this section may be immobilized only in a location at which the vehicle may be legally stored for the period of the immobilization order. If no location is available at which the vehicle may be legally stored, the vehicle may be impounded for the period of the immobilization order.

(d) A vehicle owner who fails to allow installation of a vehicle immobilization device ordered under this section shall be subject to contempt of court proceedings under ORS 33.015 to 33.155.

(6)(a) If a vehicle is impounded under this section, the person convicted shall be liable for the expenses incurred in the removal and storage of the vehicle under this section, whether or not the vehicle is returned to the person convicted.

(b) If a vehicle is immobilized under this section, the person convicted shall be liable for the expenses incurred in installation and removal of the vehicle immobilization device and for rental of the device during the period the device is installed on the vehicle, whether or not the vehicle is released to the person convicted.

(7) A vehicle shall be released or returned to the person convicted or the owner only upon payment of the expenses incurred in the immobilization or removal and storage of the vehicle under this section.

(8) If a vehicle is not reclaimed within 30 days after the time set for the return of the vehicle in an impounding order or release of the vehicle in an immobilization order, the vehicle may be disposed of in accordance with procedures under ORS 819.180, 819.190, 819.210, 819.220 and 819.240 to 819.260.

(9) The court may order that a motor vehicle of which the convicted person is not the owner be impounded or immobilized under this section only if the court is satisfied by a preponderance of the evidence that the owner knew or had good reason to know that the convicted person:

(a) Did not have a valid license and knowingly consented to the operation of the vehicle by the convicted person; or

(b) Was operating the vehicle while under the influence of intoxicants.(10) The authority to impound or immobilize a vehicle under this section is subject to the rights of a security interest holder under a security agreement executed before an arrest for violation of an offense for which the vehicle may be impounded or immobilized under this section. A vehicle shall be released for the purpose of satisfying a security interest if:

(a) Request in writing is made to the court;

(b) If the vehicle has been impounded or immobilized, the security interest holder pays the expenses in removal and storage or in immobilization of the vehicle; and

(c) If the registration of the vehicle has been suspended under ORS 809.010, the security interest holder takes possession of the vehicle subject to the suspension of the registration remaining in effect against the registered owner.

(11) A security interest holder's obligation to pay and right to recover removal and storage or immobilization expenses under subsection (10) of this section are limited to the recovery of those removal and storage or immobilization expenses incurred during the initial 20-day period when the vehicle was in public storage or immobilized, unless the authority

taking the vehicle into custody or immobilizing the vehicle under this section has transmitted by certified mail a written notice to the holder concerning the accrual of storage or immobilization expenses. If the vehicle is in private storage, the lien claimant shall transmit the written notice.

809.720. Impoundment for specified offenses; grounds; notice; release.

(1) A police officer who has probable cause to believe that a person, at or just prior to the time the police officer stops the person, has committed an offense described in this subsection may, without prior notice, order the vehicle impounded until a person with right to possession of the vehicle complies with the conditions for release or the vehicle is ordered released by a hearing officer. This subsection applies to the following offenses:

(a) Driving while suspended or revoked in violation of ORS 811.175 or 811.182.

(b) Driving while under the influence of intoxicants in violation of ORS 813.010.

(c) Operating without driving privileges or in violation of license restrictions in violation of ORS 807.010. (d) Driving uninsured in violation of ORS 806.010.

(2) Notice that the vehicle has been impounded shall be given to the same parties, in the same manner and within the same time limits as provided in ORS 819.180 for notice after removal of a vehicle.

(3) A vehicle impounded under subsection (1) of this section shall be released to a person entitled to lawful possession upon compliance with the following:

(a) Submission of proof that a person with valid driving privileges will be operating the vehicle;

(b) Submission of proof of compliance with financial responsibility requirements for the vehicle; and

(c) Payment to the police agency of an administrative fee determined by the agency to be sufficient to recover its actual administrative costs for the impoundment.

(4) Notwithstanding subsection (3) of this section, a person who holds a security interest in the impounded vehicle may obtain release of the vehicle by paying the administrative fee.

(5) When a person entitled to possession of the impounded vehicle has complied with the requirements of subsection (3) or (4) of this section, the impounding police agency shall authorize the person storing the vehicle to release it upon payment of any towing and storage costs.

(6) Notwithstanding subsection (3) of this section, the holder of a towing business certificate issued under ORS 822.205 may foreclose a lien created by ORS 87.152 for the towing and storage charges incurred in the impoundment of the vehicle, without payment of the administrative fee under subsection (3)(c) of this section.

(7) Nothing in this section or ORS 809.716 limits either the authority of a city or county to adopt ordinances dealing with impounding of uninsured vehicles or the contents of such ordinances except that cities and counties shall comply with the notice requirements of subsection (2) of this section and ORS 809.725.

(8) A police agency may not collect its fee under subsection (3)(c) of this section from a holder of a towing business certificate issued under ORS 822.205 unless the holder has first collected payment of any towing and storage charges associated with the impoundment.

811.182. Criminal driving while suspended or revoked; penalties.

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

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

(3) The crime is a Class B felony if the suspension or revocation resulted from any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle or if the revocation resulted from a conviction for felony driving while under the influence of intoxicants.

(4) The crime is a Class A misdemeanor if the suspension or revocation is any of the following:

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

(b) A revocation under ORS 809.409 (4) resulting from perjury or the making of a false affidavit to the Department of Transportation.

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

(A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle; (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

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

(d) A suspension of a commercial driver license under ORS 809.413 (2) resulting from failure to perform the duties of a driver under ORS 811.700 while driving a commercial motor vehicle.

(e) A suspension of a commercial driver license under ORS 809.400 (3)(b) where the person's commercial driving privileges have been suspended or revoked by the other jurisdiction for failure of or refusal to take a chemical test to determine the alcoholic content of the person's blood under a statute that is substantially similar to ORS 813.100.

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

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

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

- (i) A suspension for reckless driving under ORS 811.140.
 - (j) A suspension for fleeing or attempting to elude a police officer under ORS 811.540.
 - (k) A suspension or revocation resulting from misdemeanor driving while under the influence of intoxicants under ORS 813.010.
 - (L) A suspension for use of a commercial motor vehicle in the commission of a crime punishable as a felony.
- (5) In addition to any other sentence that may be imposed, if a person is convicted of the offense described in this section and the underlying suspension resulted from driving while under the influence of intoxicants, the court shall impose a fine of at least \$ 1,000 if it is the person's first conviction for criminal driving while suspended or revoked and at least \$ 2,000 if it is the person's second or subsequent conviction.
- (6) The Oregon Criminal Justice Commission shall classify a violation of this section that is a felony as crime category 6 of the rules of the Oregon Criminal Justice Commission.

813.010. Driving under the influence of intoxicants; penalty.

- (1) A person commits the offense of driving while under the influence of intoxicants if the person drives a vehicle while the person:
- (a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;
 - (b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or
 - (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled substance.
- (2) A person may not be convicted of driving while under the influence of intoxicants on the basis of being under the influence of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instrument and is either proved at trial or is admitted by the person through a guilty plea.
- (3) A person convicted of the offense described in this section is subject to ORS 813.020 in addition to this section.
- (4) Except as provided in subsection (5) of this section, the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon any premises open to the public.
- (5) Driving while under the influence of intoxicants is a Class C felony if the defendant has been convicted of driving while under the influence of intoxicants in violation of this section or its statutory counterpart in another jurisdiction at least three times in the 10 years prior to the date of the current offense and the current offense was committed in a motor vehicle. For purposes of this subsection, a prior conviction for boating while under the influence of intoxicants in violation of ORS 830.325 or its statutory counterpart in another jurisdiction, or for prohibited operation of an aircraft in violation of ORS 837.080 (1)(a) or its statutory counterpart in another jurisdiction, shall be considered a prior conviction of driving while under the influence of intoxicants.

(6) In addition to any other sentence that may be imposed, the court shall impose a fine on a person convicted of driving while under the influence of intoxicants as follows:

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

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

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

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

(a) The current offense was committed in a motor vehicle; and (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least three years younger than the person driving the motor vehicle.

813.020. Fee to be paid on conviction; screening and treatment; mandatory imprisonment or community service; attendance at victim impact treatment session; session fee.

When a person is convicted of driving while under the influence of intoxicants in violation of ORS 813.010, a court shall comply with the following in addition to any fine or other penalty imposed upon the person under ORS 813.010:

(1) The court shall require the person to:

(a) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 813.010; and

(b) Complete a screening interview and a treatment program as provided in ORS 813.021.

(2) The court must impose and not suspend execution of a sentence requiring the person either to serve at least 48 hours' imprisonment, which shall be served consecutively unless justice requires otherwise, or to perform community service for times specified by the court under ORS 137.129. For purposes of this subsection:

(a) A court may provide for the imprisonment to be served in jail, minimum security facilities or inpatient rehabilitation or treatment centers.

(b) Whenever the judge provides for the mandatory imprisonment to be served other than consecutively, the judgment must specifically so provide and the judge must state the reasons in writing. (3) In a county that has a victim impact program a court may require the person to attend a victim impact treatment session. If the court requires attendance under this section, the court may require the defendant to pay a reasonable fee to the victim impact program to offset the cost of the defendant's participation. The fee shall be established for each county by the victim impact panel coordinator and steering committee of that county and shall be not less than \$ 5 or more than \$ 50.

813.021. Requirements for screening interview and treatment program.

(1) When a court, in accordance with ORS 813.020, requires a person to complete a screening interview and a

treatment program, the court shall require the person to do all of the following:

- (a) Complete a screening interview for the purpose of determining appropriate placement of the person in a program for treatment for alcoholism, drug dependency or dependency on inhalants.
- (b) Pay directly to the agency or organization conducting the screening interview a fee of \$ 90.
- (c) Complete the treatment program to which the person is referred.
- (d) Pay for the treatment program to which the person is referred.

(2) The screening interview required by this section shall be conducted by an agency or organization designated by the court. The designated agency or organization must meet the standards set by the Director of Human Services to conduct the screening interviews. Wherever possible a court shall designate agencies or organizations to perform the screening interview that are separate from those that may be designated to carry out a treatment program.

(3) An agency or organization doing a screening interview under this section may not refer a person to a treatment program that has not been approved by the Director of Human Services.

(4) The agency or organization conducting a screening interview under this section shall monitor the progress of the person referred to the agency or organization. The agency or organization shall make a report to the referring court stating the person's successful completion or failure to complete all or any part of the screening interview or of the treatment program to which the person was referred by the agency or organization. The report shall be in a form determined by agreement between the court and the agency or organization.

813.040. Standards for determination of problem condition involving alcohol, inhalants or controlled substances.

This section establishes, for purposes of ORS 471.432, 807.060 and 813.500, when a person has a problem condition involving alcohol, inhalants or controlled substances. For purposes of ORS 471.432, 807.060 and 813.500, a person has a problem condition involving alcohol, inhalants or controlled substances if it is determined that the person has a problem condition in which the person's health or that of others is substantially impaired or endangered or the person's social or economic function is substantially disrupted because of the person's:

- (1) Habitual or periodic use of alcoholic beverages; or
- (2) Use of or loss of the ability to control the use of controlled substances, inhalants or other substances with abuse potential including a condition that may have developed:
 - (a) A physical dependence in which the body requires a continuing supply of a drug, inhalant or controlled substance to avoid characteristic withdrawal symptoms; or
 - (b) A psychological dependence characterized by an overwhelming mental desire for continued use of a drug, inhalant or controlled substance.

813.095. Offense of refusal to take a breath test; penalty.

- (1) A person commits the offense of refusal to take a breath test if the person refuses to take a breath test when

requested to do so in accordance with the provisions of ORS 813.100.

(2) The offense described in this section, refusal to take a breath test, is a traffic offense punishable by a fine of at least \$ 500 and not more than \$ 1,000. The fine described in this section is in addition to any other consequence prescribed by law for refusal to take a breath test.

813.100. Implied consent to breath or blood test; confiscation of license upon refusal or failure of test.

(1) Any person who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent, subject to the implied consent law, to a chemical test of the person's breath, or of the person's blood if the person is receiving medical care in a health care facility immediately after a motor vehicle accident, for the purpose of determining the alcoholic content of the person's blood if the person is arrested for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance. A test shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance. Before the test is administered the person requested to take the test shall be informed of consequences and rights as described under ORS 813.130.

(2) No chemical test of the person's breath or blood shall be given, under subsection (1) of this section, to a person under arrest for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, if the person refuses the request of a police officer to submit to the chemical test after the person has been informed of consequences and rights as described under ORS 813.130.(3) If a person refuses to take a test under this section or if a breath test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300, the person's driving privileges are subject to suspension under ORS 813.410 and the police officer shall do all of the following:

(a) Immediately take custody of any driver license or permit issued by this state to the person to grant driving privileges.

(b) Provide the person with a written notice of intent to suspend, on forms prepared and provided by the Department of Transportation. The written notice shall inform the person of consequences and rights as described under ORS 813.130.

(c) If the person qualifies under ORS 813.110, issue to the person, on behalf of the department, a temporary driving permit described under ORS 813.110.

(d) Within a period of time required by the department by rule, report action taken under this section to the department and prepare and cause to be delivered to the department a report as described in ORS 813.120, along with the confiscated license or permit and a copy of the notice of intent to suspend.

(4) If a blood test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300, the person's driving privileges are subject to suspension under ORS 813.410 and the police officer shall report to the department within 45 days of the date of arrest that the person failed the blood test.

813.110. Temporary permit upon confiscation of license.

(1) Except as otherwise provided by this section, police officers, on behalf of the Department of Transportation, shall

issue temporary driving permits described under this section to persons when required under ORS 813.100.

(2) The department shall provide police departments and agencies with permits for issuance as required by this section. The department shall establish the form and content of permits described in this section as the department determines appropriate, but in a manner consistent with this section.

(3) A permit described in this section is subject to all the following:

(a) Except as provided in paragraph (b) of this subsection, the permit is valid until the 30th day after the date of arrest.

(b) During the 12-hour period following issuance of the permit, the person is subject to ORS 807.570, and the permit is not a defense to a charge under ORS 807.570.

(c) The permit shall be issued without payment of any fee.

(d) The permit grants the same driving privileges as those granted by the person's license taken into possession under ORS 813.100.(4) A police officer shall not issue a permit under this section if:

(a) Driving privileges of the person were suspended, revoked or canceled at the time the person was arrested;

(b) The person whose license was taken into custody was operating on an invalid license;

(c) The person was not entitled to driving privileges at the time of the arrest for any other reason; or

(d) The person holds a license or permit granting driving privileges that was issued by another state or jurisdiction and that is not taken into custody under ORS 813.100.

813.130. Rights of and consequences for person asked to take test.

This section establishes the requirements for information about rights and consequences for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and consequences:(1) The information about rights and consequences shall be substantially in the form prepared by the Department of Transportation. The department may establish any form it determines appropriate and convenient.

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

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

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

(A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

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

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

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

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

(e) If the person refuses a test under ORS 813.100, the person will not be eligible for a hardship permit for at least 90 days, and possibly for one year, depending on the person's driving record. The person may possibly qualify for a hardship permit in 30 days if the person fails a test, depending on the person's driving record.

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

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

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

(i) The following times: (A) If the person is issued a temporary driving permit under ORS 813.100, the number of hours before the driving permit will be effective and the number of days the permit will be effective.

(B) The number of days within which a person must request a hearing under ORS 813.410.

(C) The number of days within which a hearing under ORS 813.410 will be held.

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

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

(b) The suspension of the person's commercial driver license or right to apply for a commercial driver license will be for the person's lifetime if:

(A) The person refuses a test under ORS 813.100 or submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or more by weight; and

(B) The person's commercial driver license or right to apply for a commercial driver license has previously been suspended because the person was convicted of a crime punishable as a felony, of failure to perform the duties of a driver or of driving while under the influence of intoxicants or because the person refused a previous test or submitted to a breath or blood test and the level of alcohol in the person's blood was 0.04 percent or more by weight.

(4) Nothing in this section prohibits the department from providing additional information concerning rights and consequences that the department considers convenient or appropriate.

813.131. Implied consent to urine test; privacy; laboratories for analysis.

(1) Any person who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent, subject to the Motorist Implied Consent Law, to a chemical test of the person's urine for the purpose of determining the presence of a controlled substance or an inhalant in the person's body if the person is arrested for driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance and either: (a) The person takes the breath test described in ORS 813.100 and the test discloses a blood alcohol content of less than 0.08 percent; or

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

(2) A police officer may not request a urine test unless the officer is certified by the Board on Public Safety Standards and Training as having completed at least eight hours of training in recognition of drug impaired driving and the officer has a reasonable suspicion that the person arrested has been driving while under the influence of a controlled substance, an inhalant or any combination of an inhalant, a controlled substance and intoxicating liquor.

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

(4) A chemical analysis of a person's urine under this section shall be performed in an accredited or licensed toxicology laboratory.

813.132. Consequences of refusing to take urine test; exception.

(1) Except as otherwise provided in this section, a refusal to take a urine test requested under ORS 813.131 shall be treated for all purposes as a refusal to take a breath test. A suspension imposed for refusal to take a urine test shall be consecutive to any other suspension imposed under the Motorist Implied Consent Law. If a person is subject to consecutive suspensions, the length of time that must elapse before the Department of Transportation may reinstate driving privileges or issue a hardship permit under ORS 813.520 shall be doubled.

(2) Before any test of urine may be administered under ORS 813.131, in addition to information described in ORS 813.130, the person asked to take the test shall be informed that if the person refuses the test, the person's driving privileges will be suspended for the same time period and with the same consequences as if the person had refused the

breath test and that a suspension for refusal of the urine test will be consecutive to any other suspension under the Motorist Implied Consent Law.

(3) Notwithstanding subsection (1) of this section, no suspension of driving privileges shall be imposed for refusal to provide a urine sample if the person provides documentation from a physician licensed by this state showing that the person has a medical condition that makes it impossible for the person to provide a sample.

813.135. Implied consent to field sobriety tests.

Any person who operates a vehicle upon premises open to the public or the highways of the state shall be deemed to have given consent to submit to field sobriety tests upon the request of a police officer for the purpose of determining if the person is under the influence of intoxicants if the police officer reasonably suspects that the person has committed the offense of driving while under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance. Before the tests are administered, the person requested to take the tests shall be informed of the consequences of refusing to take or failing to submit to the tests under ORS 813.136.

813.136. Consequence of refusal to submit to or failure of field sobriety tests.

If a person refuses or fails to submit to field sobriety tests as required by ORS 813.135, evidence of the person's refusal or failure to submit is admissible in any criminal or civil action or proceeding arising out of allegations that the person was driving while under the influence of intoxicants.

813.140. Chemical test with consent; unconscious person.

Nothing in ORS 813.100 is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the blood to determine the amount of alcohol in any person's blood or a test of the person's blood or urine, or both, to determine the presence of a controlled substance or an inhalant in the person as provided in the following:

- (1) If, when requested by a police officer, the person expressly consents to such a test.
- (2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:
 - (a) The police officer has probable cause to believe that the person was driving while under the influence of intoxicants and that evidence of the offense will be found in the person's blood or urine; and
 - (b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested.

813.150. Chemical test at request of arrested person.

In addition to a chemical test of the breath, blood or urine administered under ORS 813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon request, at the person's own expense, reasonable opportunity to have any licensed physician and surgeon, licensed professional nurse or qualified technician, chemist or other qualified person of the person's own choosing administer a chemical test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or urine, or both, for the purpose of determining the presence of a controlled substance or an inhalant in the person. The

failure or inability to obtain such a test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a police officer.

813.160. Methods of conducting chemical analyses; duties of Department of State Police; reports; costs.

(1) A chemical analysis is valid under ORS 813.300 if:

(a) It is an analysis of a person's blood for alcohol content and is performed in:

(A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology testing;

(B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

(C) A forensic laboratory established by the Department of State Police under ORS 181.080 that is accredited by a national forensic accrediting organization.

(b) It is an analysis of a person's breath and is performed by an individual possessing a valid permit to perform chemical analyses issued by the Department of State Police and is performed according to methods approved by the Department of State Police. For purposes of this paragraph, the Department of State Police shall do all of the following:

(A) Approve methods of performing chemical analyses of a person's breath.

(B) Prepare manuals and conduct courses throughout the state for the training of police officers in chemical analyses of a person's breath, which courses shall include, but are not limited to, approved methods of chemical analyses, use of approved equipment and interpretation of test results together with a written examination on these subjects.

(C) Test and certify the accuracy of equipment to be used by police officers for chemical analyses of a person's breath before regular use of the equipment and periodically thereafter at intervals of not more than 90 days. Tests and certification required by this subparagraph must be conducted by trained technicians. Certification under this subparagraph does not require a signed document.

(D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in accordance with one or more methods approved by the department.

(E) Issue permits to individuals according to their qualifications. Permits may be issued to police officers only upon satisfactory completion of the prescribed training course and written examination. A permit must state the methods and equipment that the police officer is qualified to use. Permits are subject to termination or revocation at the discretion of the Department of State Police.

(2) In conducting a chemical test of the blood, only a duly licensed physician or a person acting under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under the direction or control of a duly licensed physician, is not civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

(3) An individual who performs a chemical analysis of breath or blood under ORS 813.100 or 813.140 shall prepare and sign a written report of the findings of the test that must include the identification of the police officer upon whose

request the test was administered.

(4) Any individual having custody of the report mentioned in subsection (3) of this section shall, upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

(5) The expense of conducting a chemical test as provided by ORS 813.100 or 813.140 must be paid by the governmental unit on whose equipment the test is conducted or by the governmental unit upon whose request the test was administered if no governmental unit's equipment is used to conduct the test.

813.170. Plea agreement prohibited.

(1) Notwithstanding ORS 135.405 to 135.445, a person charged with the offense of driving under the influence of intoxicants shall not be allowed to plead "guilty" or "no contest" to any other offense in exchange for a dismissal of the offense charged. No district attorney or city attorney shall make any motion and no judge shall enter any order in derogation of this section. This section does not prohibit diversion as provided under ORS 813.200.

(2) Notwithstanding ORS 135.881 to 135.901, a person charged with the offense of driving under the influence of intoxicants shall not be allowed to enter into any program of supervised performance or diversion except as provided under ORS 813.200.

813.200. Notice of availability of diversion; petition; form; contents.

(1) The court shall inform at arraignment a defendant charged with the offense of driving while under the influence of intoxicants as defined in ORS 813.010 or a city ordinance conforming thereto that a diversion agreement may be available if the defendant meets the criteria set out in ORS 813.215 and files with the court a petition for a driving while under the influence of intoxicants diversion agreement.

(2) The petition forms for a driving while under the influence of intoxicants diversion agreement shall be available to a defendant at the court.

(3) The form of the petition for a driving while under the influence of intoxicants diversion agreement and the information and blanks contained therein shall be determined by the Supreme Court under ORS 1.525. The petition forms made available to a defendant by any city or state court shall conform to the requirements adopted by the Supreme Court.

(4) In addition to any other information required by the Supreme Court to be contained in a petition for a driving while under the influence of intoxicants diversion agreement, the petition shall include:

(a) A plea of guilty or no contest to the charge of driving while under the influence of intoxicants signed by the defendant;

(b) An agreement by the defendant to complete at an agency or organization designated by the city or state court a diagnostic assessment to determine the possible existence and degree of an alcohol or drug abuse problem;

(c) An agreement by the defendant to complete, at defendant's own expense based on defendant's ability to pay, the program of treatment indicated as necessary by the diagnostic assessment;

- (d) An agreement by the defendant to not use intoxicants in conjunction with the defendant's operation of a motor vehicle and to comply fully with the laws of this state designed to discourage the use of intoxicants in conjunction with motor vehicle operation;
- (e) A notice to the defendant that the diversion agreement will be considered to be violated if the court receives notice that the defendant at any time during the diversion period committed the offense of driving while under the influence of intoxicants or committed a violation of ORS 811.170;
- (f) An agreement by the defendant to keep the court advised of the defendant's current mailing address at all times during the diversion period;
- (g) A waiver by the defendant of any former jeopardy rights under the federal and state constitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other offenses based upon the same criminal episode;
- (h) A sworn statement, as defined in ORS 162.055, by the defendant certifying that the defendant meets the criteria set out in ORS 813.215 to be eligible to enter into the driving while under the influence of intoxicants diversion agreement; and
- (i) An agreement by the defendant to pay court-appointed attorney fees as determined by the court.

813.210. Petition; filing fee; diagnostic assessment fee; service on prosecutor; objection.

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

- (a) Must be filed within 30 days after the date of the defendant's first appearance on the summons, unless a later filing date is allowed by the court upon a showing of good cause. For purposes of this paragraph, the filing of a demurrer, a motion to suppress or a motion for an omnibus hearing does not constitute good cause.
- (b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea or a no contest plea or after commencement of any trial on the charge whether or not a new trial or retrial is ordered for any reason.

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

(3) The defendant shall pay to the agency or organization providing the diagnostic assessment, at the time the petition is allowed, the fee required by ORS 813.240 (2).

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

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

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

813.215. Eligibility for diversion.

A defendant is eligible for diversion if:

(1) The defendant had no charge of an offense of driving while under the influence of intoxicants or its statutory counterpart in any jurisdiction, other than the charge for the present offense, pending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(2) The defendant has not been convicted of an offense described in subsection (1) of this section within the period beginning 10 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(3) The defendant was not participating in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than a program entered into as a result of the charge for the present offense, in this state or in any other jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(4) The defendant did not participate in a diversion or rehabilitation program described in subsection (3) of this section, other than a program entered into as a result of the charge for the present offense, within the period beginning 10 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(5) The defendant had no charge of an offense of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle pending in this state or in any other jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(6) The defendant has not been convicted of an offense described in subsection (5) of this section within the period beginning 10 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement; and

(7) The present driving while under the influence of intoxicants offense did not involve an accident resulting in:

(a) Death of any person other than the defendant; or

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

813.220. Matters to be considered by court in determining to allow diversion agreement; reasons for denial.

After the time for requesting a hearing under ORS 813.210 has expired with no request for a hearing, or after a hearing

requested under ORS 813.210, the court shall determine whether to allow or deny a petition for a driving while under the influence of intoxicants diversion agreement. In making a determination under this section, the court:

- (1) Shall consider whether the diversion will be of benefit to the defendant and the community.
- (2) May take into consideration whether there was an early recognition by the defendant during the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug dependency would be beneficial.
- (3) May take into consideration whether there is a probability that the defendant will cooperate with the diagnostic assessment and treatment agencies.
- (4) May take into consideration whether the defendant will observe the restrictions contained in the diversion agreement.
- (5) May take into consideration whether the offense was committed in a motor vehicle and whether there was a passenger in the motor vehicle who was under 18 years of age and at least three years younger than the defendant.
- (6) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant failed to appear at an arraignment on the present offense without good cause.
- (7) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant was charged with or convicted of an offense of driving while under the influence of intoxicants or its statutory counterpart in any jurisdiction after the date the defendant filed the petition.
- (8) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant participated in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than a program entered into as a result of the charge for the present offense, in this state or in any other jurisdiction after the date the defendant filed the petition.
- (9) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant was charged with or convicted of an offense of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in any other jurisdiction after the date the defendant filed the petition.

813.235. Attendance at victim impact treatment session as condition of diversion; fee.

In a county that has a victim impact program a court may require as a condition of a driving while under the influence of intoxicants diversion agreement that the defendant attend a victim impact treatment session. If the court requires attendance under this section, the court may require the defendant, as part of the diversion agreement, to pay a reasonable fee to the victim impact program to offset the cost of the defendant's participation. The fee shall be established for each county by the victim impact panel coordinator and steering committee of that county and shall be not less than \$ 5 or more than \$ 50.

813.300. Use of blood alcohol percentage as evidence; percentage required for being under the influence.

(1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicants, if the amount of alcohol in the person's blood at the time alleged is

less than 0.08 percent by weight of alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that may be used with other evidence, if any, to determine whether or not the person was then under the influence of intoxicants.

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

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

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

813.310. Refusal to take chemical test admissible as evidence.

If a person refuses to submit to a chemical test under ORS 813.100 or refuses to consent to chemical tests under ORS 813.140, evidence of the person's refusal is admissible in any civil or criminal action, suit or proceeding arising out of acts alleged to have been committed while the person was driving a motor vehicle on premises open to the public or the highways while under the influence of intoxicants.

813.320. Effect of implied consent law on evidence.

(1) The provisions of the implied consent law, except ORS 813.300, shall not be construed by any court to limit the introduction of otherwise competent, relevant evidence in any civil action, suit or proceedings or in any criminal action other than a violation of ORS 813.010 or a similar municipal ordinance in proceedings under ORS 813.410.

(2) The provisions of the implied consent law shall not be construed by any court to limit the introduction of otherwise competent, relevant evidence of the amount of alcohol in the blood of a defendant in a prosecution for driving while under the influence of intoxicants if:

(a) The evidence results from a test of blood taken from the defendant while the defendant was hospitalized or otherwise receiving medical care, whether or not the defendant consented to the drawing of blood or to the test; or

(b) The evidence is obtained pursuant to a search warrant.

813.400. Suspension or revocation upon conviction; duration; review.

(1) Except as provided in subsection (2) of this section, upon receipt of a record of conviction for misdemeanor driving while under the influence of intoxicants, the Department of Transportation shall suspend the driving privileges of the person convicted. The suspension shall be for a period described under Schedule II of ORS 809.428, except the department shall not reinstate any driving privileges to the person until the person complies with future responsibility filings. A person is entitled to administrative review under ORS 809.440 of a suspension imposed under this subsection.

(2) A person convicted of felony driving while under the influence of intoxicants, or a person convicted of misdemeanor

driving while under the influence of intoxicants for the third time, is subject to revocation of driving privileges as provided in ORS 809.235.

813.410. Suspension upon receipt of police report on implied consent test; hearing; validity of suspension; appeal.

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

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

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

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

(a) The hearing shall be before an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. (b) Unless there is an agreement between the person and the department that the hearing be conducted elsewhere, the hearing shall be held either in the county where the alleged offense occurred or at any place within 100 miles of the place where the offense is alleged to have occurred, as established by the department by rule.

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

(d) A person who requests a hearing under this section and who fails, without just cause, to appear in person or through an attorney waives the right to a hearing notwithstanding the provisions of ORS 183.415. If a person waives a right to a hearing under this paragraph, the department is not required to make any showing at hearing.

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

the department received the report of the failure.

(f) In connection with the hearing, the department or its authorized representative may administer oaths and shall issue subpoenas for the attendance of witnesses at the hearing requested by the person or the department and the production of relevant documents.

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

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

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

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

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

(A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

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

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

(d) If the report under ORS 813.120 indicates that the person was driving a commercial motor vehicle, the vehicle was in fact a commercial motor vehicle as defined in ORS 801.208.Y(e) The person had been informed under ORS 813.100 of rights and consequences as described under ORS 813.130.

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

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

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

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

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

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

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

813.420. Duration of suspension for refusal or failure of test.

When the Department of Transportation imposes a suspension under ORS 813.410, the suspension shall be for a period of time determined according to the following:

(1) If the suspension is for refusal of a test under ORS 813.100 and the person is not subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of one year.

(2) If the suspension is for refusal of a test under ORS 813.100 and the person is subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of three years.

(3) If the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is not subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of 90 days.

(4) If the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of one year.

813.500. Restrictions on issuance.

(1) If a person's license is suspended for driving while under the influence of intoxicants under ORS 813.400 and the suspension period is determined by ORS 809.428 (2)(b) or (c), the Department of Transportation may only issue a hardship permit to the person under ORS 807.240 if the person, in addition to any requirement under ORS 807.240 and any applicable requirements under ORS 807.250 and 813.520:

(a) Is examined by the Director of Human Services or its designee to determine whether the person has a problem condition involving alcohol, inhalants or controlled substances as described in ORS 813.040; and

(b) Complies with the requirements of this section.

(2) If the Director of Human Services determines that the person has a problem condition involving alcohol, inhalants or controlled substances, as described in ORS 813.040, the department may issue the permit to the person only if both the following apply:

(a) The person enrolled in a program for rehabilitation for alcoholism or drug dependence approved by the Director of

Human Services.

(b) The Director of Human Services recommends, on the basis of the person's progress in the rehabilitation program, such reinstatement in writing to the department. If the Director of Human Services makes a recommendation under this paragraph, the Director of Human Services shall state specifically in the recommendation the times, places, routes and days of the week minimally necessary for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabilitation program or to obtain necessary medical treatment for the person or a member of the person's immediate family.

(3) If the Director of Human Services determines that the person does not have a problem condition involving alcohol, inhalants or controlled substances as described in ORS 813.040, the department may issue the permit to the person only if, in addition to any requirements under ORS 807.240, the person enters an alcohol or drug information program approved by the Director of Human Services and the department determines that issuance of a permit is appropriate. If the department issues a permit to a person described in this subsection, the department shall require, under ORS 807.240, that the person complete the program as a condition of retaining the permit.

813.510. Limitations on privileges granted by permit; conditions of permit.

This section establishes limitations that the Department of Transportation is required or permitted to place on hardship permits issued under ORS 807.240 to persons whose suspension is based upon a conviction for driving under the influence of intoxicants or upon ORS 813.100. Limitations placed on a hardship permit under this section are in addition to any limitations placed on the permit under ORS 807.240. A person's permit is subject to suspension or revocation as provided under ORS 807.240 if the department determines that the holder of the permit has violated any limitation placed upon the permit under this section. Violation of a limitation under this section is punishable as provided by ORS 811.175 or 811.182. The limitations are as described in the following:

(1) A hardship permit issued to the person shall limit the person's driving privileges:

(a) To the times, places, routes and days the department determines to be minimally necessary for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabilitation program or to obtain required medical treatment for the person or a member of the person's immediate family; and

(b) To times, places, routes and days that are specifically stated.

(2) The person's driving privileges under the permit are subject to suspension or revocation if the person does not maintain a good driving record, as defined by the administrative rules of the department, during the term of the permit.

(3) If the person is in a rehabilitation program under ORS 813.500, the person must complete the rehabilitation program.(4) The department may require the person to complete a driver improvement program under ORS 809.480 as a condition of the permit.

(5) If the person is involved in a diversion agreement under ORS 813.220 and 813.230, the department may require the person to successfully complete the diversion program as a condition of retaining the permit.

(6) The department shall condition the permit so that the permit will be revoked if the person is convicted of any of the following:

- (a) Reckless driving under ORS 811.140.
- (b) Driving under the influence of intoxicants under ORS 813.010.
- (c) Failure to perform the duties of a driver under ORS 811.700 or 811.705.
- (d) Fleeing or attempting to elude a police officer under ORS 811.540.
- (e) Driving while suspended or revoked under ORS 811.175 or 811.182.

813.600. Ignition interlock program; establishment; rules.

(1) The Department of Transportation, in consultation with the Transportation Safety Committee, shall establish a program for the use of ignition interlock devices by persons convicted of driving under the influence of intoxicants and granted hardship permits under ORS 807.240.Y(2) The department shall adopt rules that specify requirements for ignition interlock devices that may be used and shall publish a list of devices that meet the requirements. The list may include devices that:

- (a) Do not impede the safe operation of the vehicle;
- (b) Have the fewest opportunities to be bypassed;
- (c) Correlate well with established measures of alcohol impairment;
- (d) Work accurately and reliably in an unsupervised environment;
- (e) Require a deep lung breath sample or other accurate measure of blood alcohol content equivalence;
- (f) Resist tampering and give evidence if tampering is attempted;
- (g) Are difficult to circumvent, and require premeditation to do so;
- (h) Minimize inconvenience to a sober user;
- (i) Operate reliably over the range of automobile environments or automobile manufacturing standards;
- (j) Are manufactured by a party who is adequately insured for product liability; and
- (k) Have a label affixed in a prominent location warning that any person tampering with, circumventing or otherwise misusing the device is subject to civil penalty.

813.602. Circumstances under which ignition interlock device required; costs; failure to install; exemptions; rules.

- (1) When a person is convicted of driving while under the influence of intoxicants in violation of ORS 813.010 or of a

municipal ordinance, the Department of Transportation, in addition to any other requirement, shall require that an approved ignition interlock device be installed and used in any vehicle operated by the person:

- (a) Before the person is eligible for a hardship permit. The requirement is a condition of the hardship permit for the duration of the hardship permit.
 - (b) For the first six months after the ending date of the suspension or revocation caused by the conviction. Violation of the condition imposed under this paragraph is a Class A traffic violation.
- (2) If the court determines that approved ignition interlock devices are reasonably available, the court may require as a condition of a driving while under the influence of intoxicants diversion agreement that an approved ignition interlock device be installed in any vehicle operated by the person. Courts may not exercise authority under this subsection during any period the courts have notice from the Office of Economic Analysis of the Oregon Department of Administrative Services that there are not sufficient moneys in the Intoxicated Driver Program Fund to pay the costs under subsection (4) of this section. The Office of Economic Analysis of the Oregon Department of Administrative Services may not issue any notice under this subsection if federal funds are available to pay the cost of the interlock devices for indigents and costs of analysis of the use of interlock devices.
- (3) Except as provided in subsection (4) of this section, if an ignition interlock system is ordered or required under subsection (1) or (2) of this section, the person so ordered or required shall pay to the provider the reasonable costs of leasing, installing and maintaining the device. A payment schedule may be established for the person by the department.
- (4) The department may waive, in whole or in part, or defer the defendant's responsibility to pay all or part of the costs under subsection (3) of this section if the defendant meets the criteria for indigence established for waiving or deferring such costs under subsection (5) of this section. If the defendant's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described in subsection (3) of this section must be paid from the Intoxicated Driver Program Fund.
- (5) The department, by rule, shall establish criteria and procedures it will use for qualification to waive or defer costs described under subsection (3) of this section for indigence. The criteria must be consistent with the standards for indigence adopted by the federal government for purposes of the food stamp program.
- (6) At the end of the suspension or revocation resulting from the conviction, the department shall suspend the driving privileges or right to apply for driving privileges of a person who has not submitted proof to the department that an ignition interlock device has been installed or who tampers with an ignition interlock device after it has been installed. If the suspension is for failing to submit proof of installation, the suspension continues until the department receives proof that the ignition interlock device has been installed or until six months after the ending date of the suspension resulting from the conviction, whichever comes first. If the suspension is for tampering with an ignition interlock device, the suspension continues until six months after the ending date of the suspension resulting from the conviction. A person whose driving privileges or right to apply for privileges is suspended under this subsection is entitled to administrative review, as described in ORS 809.440, of the action.
- (7) The department shall adopt rules permitting medical exemptions from the requirements of installation and use of an ignition interlock device under subsection (1) of this section.

813.606. Exception for employee otherwise required to have device.

Notwithstanding ORS 813.604, if a person is required, in the course and scope of the person's employment, to operate a motor vehicle owned by the person's employer, the person may operate that vehicle without installation of an ignition interlock device if:

- (1) The employer has been notified that the employee is operating with a hardship permit restricted as provided in ORS 813.604 or the employee is operating on a fully reinstated license within the first six months following suspension or revocation for driving while under the influence of intoxicants; and
- (2) The employee has proof of the notification or fully reinstated license in the possession of the employee while operating the employer's vehicle in the course of employment.

813.610. Soliciting another to blow into ignition interlock device; penalty.

(1) A person commits the offense of unlawfully soliciting another to blow into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device if the person has such a device as a result of an order or requirement under ORS 813.602 and the person requests or solicits another to blow into the device or start the motor vehicle so as to circumvent the device.

(2) The offense described in this section, unlawfully soliciting another to blow into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device, is a Class A traffic violation.

813.612. Unlawfully blowing into ignition interlock device; penalty.

(1) A person commits the offense of unlawfully blowing into an ignition interlock device or starting a motor vehicle equipped with an ignition interlock device if, for the purpose of providing an operable motor vehicle for someone required under ORS 813.602 to have such a device, the person blows into an ignition interlock device or starts an automobile equipped with the device.

(2) This section does not apply to a person who is required to have an ignition interlock device and who blows into or starts the person's own vehicle that is so equipped.

(3) The offense described in this section, unlawfully blowing into an ignition interlock device or starting a motor vehicle equipped with an ignition interlock device, is a Class A traffic violation.

813.614. Tampering with ignition interlock device; penalty.

(1) A person commits the offense of tampering with an ignition interlock device if the person does anything to a device that was ordered installed pursuant to ORS 813.602 that circumvents the operation of the device.

(2) The offense described in this section, tampering with an ignition interlock device, is a Class A traffic violation.