

CHAPTER 253

AN ACT

HB 3140

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

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

SECTION 1. ORS 801.272 is amended to read:

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

SECTION 2. ORS 807.060 is amended to read:

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

- (1) A person under 16 years of age.
- (2)(a) A person under 18 years of age who is not an emancipated minor, unless the application of the person is signed by the person's mother, father or legal guardian. A person who signs an application under this paragraph may have the driving privileges canceled as provided under ORS 809.320.
- (b) A person under 18 years of age who does not meet the requirements of ORS 807.065.
- (3) Notwithstanding subsection (2) of this section, a person under 18 years of age is not eligible for a commercial driver license.
- (4) A person the department determines has a problem condition involving alcohol, cannabis, **psilocybin**, controlled substances or inhalants as described under ORS 813.040.
- (5) A person the department reasonably believes has a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highways.
- (6) A person the department reasonably believes is unable to understand highway signs that warn, regulate or direct traffic.
- (7) A person who is required to make future responsibility filings but has not made filings as required.
- (8) A person who cannot be issued a license under the Driver License Compact under ORS 802.540.
- (9) A person who is not subject to the Driver License Compact under ORS 802.540 but whose driving privileges are currently under suspension or revocation in any other state upon grounds which, if committed in this state, would be grounds for the

suspension or revocation of the driving privileges of the person.

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

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

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

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

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

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

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

SECTION 3. ORS 809.235 is amended to read:

809.235. (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 and the court finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in the first or second degree resulting from the operation of a motor vehicle, criminally negligent homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from the operation of a motor vehicle.

(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 in violation of ORS 813.010 or if the person is convicted for a third or subsequent time of any of the following offenses in any combination:

- (A) Driving while under the influence of intoxicants in violation of:
 - (i) ORS 813.010; or
 - (ii) The statutory counterpart to ORS 813.010 in another jurisdiction.

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, cannabis, **psilocybin**, a con-

trolled substance, an inhalant or any combination thereof.

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

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

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

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

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

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

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

(c) The district attorney of the county in which the person's driving privileges were revoked 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) The court shall order a petitioner's driving privileges restored if, after a hearing described in

subsection (3) of this section, the court finds by clear and convincing evidence that the petitioner:

(a) Is rehabilitated;

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

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

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

SECTION 4. ORS 809.260 is amended to read:

809.260. (1) Whenever a person who is 17 years of age or younger, but not younger than 13 years of age, at the time of committing any offense described in subsection (2) of this section, is determined by a juvenile court to have committed one of the offenses described in subsection (2) of this section, the court may order suspension of the person's driving privileges upon:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 809.730 is amended to read:

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

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

(A) ORS 813.010; or

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

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

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

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

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

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

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

SECTION 6. ORS 813.010 is amended to read:

813.010. (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, cannabis, **psilocybin**, a controlled substance or an inhalant; or

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

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

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

(i) This section; or

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

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

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

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

(6) In addition to any other sentence that may be imposed, the court shall impose one or more of the following fines 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.

(d) For a person who drives a vehicle while the person has 0.15 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, a minimum of \$2,000.

(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.

SECTION 7. ORS 813.040 is amended to read:

813.040. This section establishes, for purposes of ORS 471.432 and 807.060, when a person has a problem condition involving alcohol, cannabis, **psilocybin**, controlled substances or inhalants. For purposes of ORS 471.432 and 807.060, a person has a problem condition involving alcohol, cannabis, **psilocybin**, controlled substances or inhalants 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:

(a) Alcoholic beverages; [or]

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

(c) **Psilocybin**; 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 controlled substance, an inhalant or a drug to avoid characteristic withdrawal symptoms; or

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

SECTION 8. ORS 813.131 is amended to read:

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

(2) 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 cannabis, **psilocybin**, 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.

(3) A police officer may not request a urine test unless the officer is certified by the Department of 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 cannabis, **psilocybin**, a controlled substance, an inhalant or any combination of cannabis, **psilocybin**, a controlled substance, an inhalant and intoxicating liquor.

(4) 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.

(5)(a) 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, a valid chemical analysis of a person's urine is admissible as evidence and may be used with other evidence, if any, to determine whether the person was driving while under the influence of intoxicants.

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

SECTION 9. ORS 813.140 is amended to read:

813.140. Nothing in ORS 813.100, 813.131 or 813.132 is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the breath or 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 cannabis, **psilocybin**, 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 of-

fense 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.

SECTION 10. ORS 813.150 is amended to read:

813.150. 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 cannabis, **psilocybin**, 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.

SECTION 11. ORS 813.215 is amended to read:

813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following conditions:

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

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

(i) ORS 813.010; or

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

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

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

(b) The defendant has not been convicted of an offense described in paragraph (a) of this subsection within the period beginning 15 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.

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

(d) 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 in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or any similar alcohol or drug rehabilitation program as a result of the charge for the present offense or a charge for violation of ORS 471.430.

(e) The defendant did not participate in a diversion or rehabilitation program described in paragraph (d) of this subsection within the period beginning 15 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. A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or rehabilitation program described in paragraph (d) of this subsection as a result of the charge for the present offense or a charge for violation of ORS 471.430.

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

(g) The defendant has not been convicted of an offense described in paragraph (f) of this subsection within the period beginning 15 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.

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

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

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

(A) Death of any person; or

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

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

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

or subsequent driving while under the influence of intoxicants diversion agreement.

SECTION 12. ORS 813.220 is amended to read:

813.220. 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, after the date the defendant filed the petition, the defendant was charged with or convicted of:

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

(A) ORS 813.010; or

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

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

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

(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 another 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 aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed the petition.

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

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

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

SECTION 13. ORS 813.430 is amended to read:

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

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

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

(a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replacement Part) became effective.

(b) The person was convicted of:

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

(i) ORS 813.010;

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

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

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

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

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

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

SECTION 14. ORS 813.602 is amended to read:

813.602. (1) Subject to subsection (2) of this section, 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 the person have installed and be using an approved ignition interlock device 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 a first conviction, for one year 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.

(c) For a second or subsequent conviction, for two years 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) When a person is convicted of a crime or multiple crimes as described in this subsection, the department, in addition to any other requirement, shall require that the person have installed and be using an approved ignition interlock device in any vehicle operated by the person for five years after the ending date of the longest running suspension or revocation caused by any of the convictions. Violation of the condition imposed under this subsection is a Class A traffic violation. A person is subject to this subsection when the person is convicted of:

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

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

(b) Aggravated vehicular homicide.

(c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance and the person's driving privileges are re-

voked under ORS 809.235 (1)(b) and later ordered restored under ORS 809.235 (4).

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

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

(i) A chemical test of the person's breath or blood disclosed a blood alcohol content of 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;

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

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

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

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

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

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

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

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

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

(c) The Oregon State Police.

SECTION 15. ORS 821.250 is amended to read:

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

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

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

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

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

SECTION 16. ORS 830.325 is amended to read:

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

(2) An owner of a boat or person in charge or in control of a boat may not authorize or knowingly permit the boat to be propelled or operated on any waters of this state by any person who is under the influence of an intoxicating liquor, cannabis, **psilocybin**, an inhalant or a controlled substance.

SECTION 17. ORS 830.365 is amended to read:

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

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

(3) No person shall operate or manipulate any boat, tow rope or other device by which the direction or location of a person on water skis, surfboard or similar device may be affected or controlled in a reckless or negligent manner so as to cause the person on water skis, surfboard or similar device to collide with or strike against any person or object.

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

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

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

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

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

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

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

SECTION 18. ORS 830.505 is amended to read:

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

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

shall be informed of rights and consequences as described in ORS 830.545.

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

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

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

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

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

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

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

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

SECTION 19. ORS 830.515 is amended to read:

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

SECTION 20. ORS 830.520 is amended to read:

830.520. Nothing in ORS 830.505 is intended to preclude the administration of chemical tests described in this section. A peace 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 a test of the person's blood or urine, or both, to determine the presence of cannabis, **psilocybin**, an inhalant or a controlled substance in the person as provided in the following:

(1) If, when requested by a peace 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 peace officer has probable cause to believe that the person was operating a boat while under the influence of an intoxicating liquor, cannabis, **psilocybin**, an inhalant or a controlled substance 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.

SECTION 21. ORS 830.525 is amended to read:

830.525. In addition to chemical tests of the breath, blood or urine administered under ORS 830.505 and 830.520, upon the request of a peace officer, a person shall be permitted upon request, at the person's own expense, reasonable opportunity to have any licensed physician, 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 cannabis, **psilocybin**, an inhalant or a controlled substance 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 peace officer.

SECTION 22. ORS 830.815 is amended to read:

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

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

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

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

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

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

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

(3) The board shall automatically suspend the certificate of number for any boat if the board receives notification of a conviction for violation of ORS 830.260 under ORS 830.270. The suspension under this subsection is not subject to hearing. The board shall reinstate a certificate of number sus-

pending under this subsection when the boat owner submits proof satisfactory to the board that the boat has been approved by a person designated by the board as meeting the standards for sound levels established by the board.

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

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

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

(c) Upon suspending any certificate of number under this subsection, the board may charge the owner a reinstatement fee sufficient to cover the actual expenses of the board in processing the transactions described in this section. The board shall reinstate any certificate of number suspended under this subsection upon receiving payment of any

reinstatement fee and notice from the court that the owner has appeared and fully satisfied the judgment of the court.

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

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

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

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

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

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