

COMMITTEE ON JUDICIARY  
Room 14, State Capitol  
Salem, Oregon 97310

O R E G O N    V E H I C L E    C O D E

ADMINISTRATIVE ADJUDICATION

OF

CERTAIN TRAFFIC OFFENSES

Preliminary Draft

February 1974

INTRODUCTORY NOTE: This is a staff draft and is intended for discussion purposes only. It is adapted from the New York law, Chapter 1074, New York Laws of 1969. (See, "The New York Administrative Adjudication System," Judiciary Committee Reference Paper, November 1973.) Additional drafts to be submitted to the subcommittee will present other alternative methods for adjudication of traffic offenses. This draft is meant to provide a basis for examination of the issues involved in this one particular adjudication system and does not necessarily reflect the views of the Committee on Judiciary or any member thereof.

Reporter: Donald L. Paillette

Subcommittee on Adjudication

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Section 1. (Definitions.) As used in this Act, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Motor Vehicles Division.

(2) "Division" means the Motor Vehicles Division of the Department of Transportation.

Section 2. (Traffic infractions; jurisdiction.) (1) Every offense classified in the Oregon Vehicle Code as a traffic infraction, except for parking, standing, stopping or pedestrian offenses, which occurs within the state shall be heard and determined under regulations of the administrator, as provided in this Act.

(2) Whenever a crime and a traffic infraction arise out of the same transaction, a complaint alleging both offenses may be filed in the court having jurisdiction over the crime.

(3) Nothing in this Act shall be construed to prevent a court having jurisdiction over a criminal charge relating to traffic or a traffic infraction from lawfully entering a judgment of conviction for any offense classified as a traffic infraction.

Section 3. (Adjudication of offenses; hearing officers.) (1)

Whenever the administrator determines that a charge alleges an offense other than a traffic infraction, he shall notify the court of appropriate jurisdiction and request removal of the case to the court. If a charge cannot be disposed of because of the non-appearance of the motorist, the administrator may notify the court of appropriate jurisdiction and request removal of the case to the court. Prior notice of any request to the court need not be given to the motorist involved. Upon receipt of a request from the administrator for removal of a case, the court may order the case to be transferred, provided that the date on which the charge must be answered before the court shall not be earlier than the return date on the complaint alleging the offense.

(2) Notice of a transfer of a case to the court shall be mailed to the motorist at the address appearing on the complaint not less than 10 days before the date of appearance shown on his summons and not less than 15 days before his scheduled appearance in court. The mailing of the notice shall constitute due notice of the transfer of the case. Thereafter, the case shall be treated in the same manner as if the complaint had initially been filed with the court.

(3) The administrator shall appoint such hearing officers as shall be necessary to hear and determine cases as provided by this Act and shall promulgate necessary regulations to effect the purposes of this Act. The regulations may provide for a schedule of fines to be used where an answer is made, other than before a hearing officer, admitting a charge, provided that no such penalty shall exceed the maximum fine provided by law for the traffic infraction involved.

Administrative Adjudication of Certain Traffic Offenses

Section 4. (Summons.) The administrator is authorized to prescribe by regulation the form for the summons and complaint to be used for all traffic infractions defined in the Oregon Vehicle Code and to establish procedures for proper administrative control over their disposition. The summons and complaint may be the same as the uniform traffic citation provided for in ORS 484.150. The chief executive officer of each law enforcement agency which is required to use the summons and complaint provided for in this section shall be responsible for preparing such records and reports as may be prescribed by the administrator.

Section 5. (Answer generally.) Any person who receives a summons for a traffic infraction shall answer the summons by personally appearing on the return date at the time and place specified therein, or he may answer as provided in section 6 or 7 of this Act and the regulations of the administrator.

## Administrative Adjudication of Certain Traffic Offenses

Section 6. (Answer by mail; admitting charge.) If a person charged with a traffic infraction admits to the charge as set forth in the summons, he may complete an appropriate form prescribed by the administrator and forward the form and summons to the office of the division specified on the summons. If a schedule of fines appears on the answer form, a check or money order in the amount of the fine for the traffic infraction charged, if included in the schedule, must also be submitted with the answer. A plea by mail admitting the charge shall not be allowed for any offense for which suspension or revocation of a driver's license is permitted or required by law, or for any other offense if the conviction thereof would result in a hearing under any driver improvement program of the division.

Section 7. (Answer by mail; denial of charges.) If a person charged with a traffic infraction denies part or all of the charge as set forth in the summons, he may complete an appropriate form prescribed by the administrator for that purpose and forward the form and summons, together with security in the amount of \$\_\_\_\_\_, to the office of the division specified on the summons. Upon receipt of the answer, the division shall set a hearing date for the case. The division shall notify the person by return mail of the date set for the hearing. The security posted under this section or section 8 of this Act shall be returned upon appearance by the defendant at the scheduled hearing which results in a final disposition of the charge, and otherwise shall be forfeited and paid into the Motor Vehicle Division Account. The administrator may, by regulation, suspend in whole or in part the provisions of this section relating to the posting of security.

Section 8. (Failure to answer or appear.) (1) If a person charged with a traffic infraction fails to answer the summons as required, the administrator may suspend his license or driving privilege until the person answers as required by sections 5 to 7 of this Act.

(2) If a person fails to appear at a hearing as required, the security posted to secure his appearance shall be forfeited and the administrator may suspend the person's license pending appearance at a later hearing or other disposition of the charge.

(3) Any suspension permitted by this section, if already in effect, may be terminated, or if not yet in effect, may be withdrawn or withheld, before the disposition of the charge if the person charged appears and posts security in the amount of \$\_\_\_\_\_ to guarantee his appearance at any required hearing. If a license has been suspended under this section and the case is later transferred under section 1 of this Act, the suspension shall remain in effect until the motorist answers the charge in the court to which the case was transferred.

Section 9. (Hearings; findings.) (1) Any hearing for the adjudication of a traffic infraction as provided by this Act shall be held before a hearing officer appointed by the administrator. The burden of proof shall be upon the state to prove the charge by clear and convincing evidence. The administrator shall prescribe, by rule or regulation, the procedures for the conduct of the hearings.

(2) All testimony at any hearing held under this section shall be recorded but need not be transcribed unless a petition for judicial review from the decision of the hearing officer is filed in the manner and within the time prescribed by this Act.

(3) After due consideration of the evidence and arguments in a contested case, the hearing officer shall determine whether the charge has been proven. If the charge is not proved, the hearing officer shall enter an order dismissing the charge. If the hearing officer finds that the charge has been proven, either in a contested case or in an uncontested case where there is an appearance before a hearing officer, or if an answer admitting the charge otherwise has been received, the hearing officer or the division shall enter an appropriate order in the division's records.

(4) An order entered after the receipt of an answer admitting the charge, or if a finding is made that the charge has been proven, shall be civil in nature but shall be treated as a conviction for the purpose of this Act. The administrator may include in the order the imposition of any penalty authorized by statute for a traffic infraction. No penalty imposed, however, shall include imprisonment. The administrator may suspend a person's driver's license or privilege pending the payment of any fine imposed.



(5) Unless the hearing officer determines that a substantial traffic safety hazard would result therefrom, he shall, under regulations of the administrator, delay for 30 days the effective date of any suspension or revocation of a driver's license or vehicle registration imposed after a hearing as provided in this Act. No delay shall be permitted, however, in the case of a suspension for failure to pay a fine. The administrator's regulations may provide for the immediate surrender of any item to be suspended or revoked and the issuance of temporary documentation to be used during the 30 day period.

Section 10. (Administrative review; appeals board.) The administrator shall appoint three or more appeals officers to serve at his pleasure and shall select a chairman for each appeals board from the members of the board. The administrator shall assign at least three appeals officers to serve on each appeals board established. Any appeals officer who is not a full time employe of the division shall receive a per diem at a rate fixed by the administrator for each day the appeals officer serves on an appeals board, in addition to all necessary expenses. The administrator may also designate such other members of the division as may be necessary to assist an appeals board in carrying out its duties.

Section 11. (Right of appeal.) (1) Any defendant who is aggrieved by a determination of a hearing officer may appeal as provided in this Act.

(2) Except as otherwise provided in subsection (3) of this section, a transcript of the hearing resulting in the determination appealed from must be submitted on any appeal.

(3) If the only issue raised on appeal is the appropriateness of the penalty imposed, the appellant, at his option, may submit the appeal without a transcript of the hearing. In that event, the decision of the appeals board may be based solely on the appeal papers and records of the division, and the decision shall not be subject to judicial review.

(4) When a transcript of a hearing is submitted at the time an appeal is filed, the decision of the appeals board will be subject to judicial review as provided in section 18 of this Act.

Section 12. (Review of appeals.) Each appeal filed under section 11 of this Act shall be reviewed by an appeals board which shall make a determination of the appeal and shall cause an appropriate order to be entered in the records of the division.

Section 13. (Time limit for appeal.) No appeal shall be reviewed if it is filed more than 30 days after notice was given of the decision appealed from.

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Section 14. (Appeal procedures.) Any defendant wanting to file an appeal from an adverse determination of a contested case shall do so in a form and manner provided by the division. The transcript of any hearing which formed the basis for the determination will be reviewed only if it is submitted by the appellant. An appeal shall not be considered to be finally submitted until the appellant has submitted all forms or documents required to be submitted by the administrator or this Act.

Section 15. (Transcript of hearings.) Transcripts of the record of any hearing may be obtained at the cost to the department.

Section 16. (Fees.) The fee for filing an appeal shall be \$ \_\_\_\_\_. No appeal shall be accepted unless the required fee is paid.

Section 17. (Stays pending appeal.) Whenever a decision has not been made within 30 days after an appeal has been finally submitted, a stay of execution of the order will be deemed granted by operation of law, and the license, permit or privilege affected will be automatically restored pending final determination.

Section 18. (Judicial review.) Judicial review of decisions or orders under this Act shall be as provided for review of orders in contested cases in ORS 183.310 to 183.500, except that the petition shall be filed within 20 days after the order.

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