

Senate Bill 352

Sponsored by Senator FREDERICK (Pre-session filed.)

SUMMARY

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

Requires police officer to inform person stopped for traffic violation or upon suspicion of criminal activity that person has right to refuse request to search. Provides that failure to inform is prima facie evidence of involuntariness of consent.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to consent to search; creating new provisions; amending ORS 131.615 and 810.410; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 131.615 is amended to read:

6 131.615. (1) A peace officer who reasonably suspects that a person has committed or is about to
7 commit a crime may stop the person and, after informing the person that the peace officer is a peace
8 officer, make a reasonable inquiry.

9 (2) The detention and inquiry shall be conducted in the vicinity of the stop and for no longer
10 than a reasonable time.

11 (3) The inquiry shall be considered reasonable if it is limited to:

12 (a) The immediate circumstances that aroused the officer's suspicion;

13 (b) Other circumstances arising during the course of the detention and inquiry that give rise to
14 a reasonable suspicion of criminal activity; and

15 (c) Ensuring the safety of the officer, the person stopped or other persons present, including an
16 inquiry regarding the presence of weapons.

17 (4)(a) The inquiry may include a request for consent to search in relation to the circumstances
18 specified in subsection (3) of this section or to search for items of evidence otherwise subject to
19 search or seizure under ORS 133.535[.] **only if the officer informs the person that:**

20 **(A) The person has the right to refuse the request to search; and**

21 **(B) Refusing consent to search, by itself, will not result in the person's arrest.**

22 **(b) An officer may not obtain consent to search by threatening an action that the officer**
23 **knows is unlawful.**

24 **(c) An officer's failure to inform a stopped person as required under this subsection**
25 **constitutes prima facie evidence of involuntariness of the consent to search.**

26 (5) A peace officer making a stop may use the degree of force reasonably necessary to make the
27 stop and ensure the safety of the peace officer, the person stopped or other persons who are present.

28 **SECTION 2.** ORS 810.410 is amended to read:

29 810.410. (1) A police officer may arrest or issue a citation to a person for a traffic crime at any
30 place within or outside the jurisdictional authority of the governmental unit by which the police

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 officer is authorized to act as provided by ORS 133.235 and 133.310.

2 (2) A police officer may issue a citation to a person for a traffic violation at any place within
 3 or outside the jurisdictional authority of the governmental unit by which the police officer is au-
 4 thorized to act:

5 (a) When the traffic violation is committed in the police officer’s presence; or

6 (b) When the police officer has probable cause to believe an offense has occurred based on a
 7 description of the vehicle or other information received from a police officer who observed the
 8 traffic violation.

9 (3) A police officer:

10 (a) Shall not arrest a person for a traffic violation.

11 (b) May stop and detain a person for a traffic violation for the purposes of investigation rea-
 12 sonably related to the traffic violation, identification and issuance of citation.

13 (c) May make an inquiry into circumstances arising during the course of a detention and in-
 14 vestigation under paragraph (b) of this subsection that give rise to a reasonable suspicion of crimi-
 15 nal activity.

16 (d) May make an inquiry to ensure the safety of the officer, the person stopped or other persons
 17 present, including an inquiry regarding the presence of weapons.

18 (e) May request consent to search in relation to the circumstances referred to in paragraph (c)
 19 of this subsection or to search for items of evidence otherwise subject to search or seizure under
 20 ORS 133.535[.] **only if the officer informs the person that:**

21 **(A) The person has the right to refuse the request to search; and**

22 **(B) Refusing consent to search, by itself, will not result in the person’s arrest.**

23 **(f) May not obtain consent to search by threatening an action that the officer knows is**
 24 **unlawful.**

25 [(f)] (g) May use the degree of force reasonably necessary to make the stop and ensure the
 26 safety of the police officer, the person stopped or other persons present.

27 [(g)] (h) May make an arrest of a person as authorized by ORS 133.310 (2) if the person is
 28 stopped and detained pursuant to the authority of this section.

29 (4) When a police officer at the scene of a traffic accident has reasonable grounds, based upon
 30 the police officer’s personal investigation, to believe that a person involved in the accident has
 31 committed a traffic offense in connection with the accident, the police officer may issue to the per-
 32 son a citation for that offense. The authority under this subsection is in addition to any other au-
 33 thority to issue a citation for a traffic offense.

34 **(5) An officer’s failure to inform a stopped person as required under subsection (3)(e) of**
 35 **this section constitutes prima facie evidence of involuntariness of the consent to search.**

36 **SECTION 3. The amendments to ORS 131.615 and 810.410 by sections 1 and 2 of this 2017**
 37 **Act apply to searches conducted on or after the effective date of this 2017 Act.**

38 **SECTION 4. This 2017 Act being necessary for the immediate preservation of the public**
 39 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
 40 **on its passage.**