

Assembly Bill No. 1165

CHAPTER 749

An act to amend Sections 13353.1, 13353.2, 22651, 42009, and 42010 of, and to add Sections 13389 and 23154 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1165, Maze. Driving under the influence: repeat offense.

(1) Existing law makes it unlawful to operate a motor vehicle while under the influence of alcohol or drugs, or both, or when the driver has a specified percent, by weight, of alcohol in his or her blood, or if the driver is addicted to the use of any drug. A separate provision makes it unlawful to engage in this conduct and to drive in a certain unlawful manner if that conduct causes bodily injury to a person other than the driver.

This bill would additionally make it unlawful for a person who is on probation for a violation of either of the above driving-under-the-influence offenses to operate a motor vehicle at any time with a blood-alcohol concentration of 0.01% or greater, as measured by a preliminary alcohol screening test or other chemical test. The bill would impose additional sanctions on persons found to violate this prohibition.

Because the bill would create a new crime, the bill would impose a state-mandated local program.

(2) Existing law authorizes the Department of Motor Vehicles to revoke a person's driving privilege if he or she refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test if the refusal occurs within 10 years of a conviction of vehicular manslaughter committed in the operation of a vehicle while intoxicated.

This bill would delete obsolete references.

(3) This bill would become operative on January 1, 2009.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill also would incorporate additional changes in Section 13353.1 of the Vehicle Code proposed by AB 678, to be operative if AB 678 and this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.

(6) This bill also would incorporate additional changes in Section 22651 of the Vehicle Code proposed by AB 1589, to be operative if AB 1589 and

this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.

(7) This bill also would incorporate additional changes in Sections 42009 and 42010 of the Vehicle Code proposed by AB 430, to be operative if AB 430 and this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 13353.1 of the Vehicle Code is amended to read:

13353.1. (a) If a person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388 or 13389, upon the receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136 or 23154, and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within 10 years of either of the following:

(A) A separate violation of subdivision (a) of Section 23136, that resulted in a finding of a violation, or a separate violation, that resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within 10 years of any of the following:

(A) Two or more separate violations of subdivision (a) of Section 23136, that resulted in findings of violations, or two or more separate violations, that resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraph (A) or (B).

(b) For the purposes of this section, a conviction of an offense in any state, territory, or possession of the United States, the District of Columbia,

the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 13388, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(d) Upon the receipt of the officer's sworn statement, the department shall review the record. For the purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer.

(e) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

SEC. 1.5. Section 13353.1 of the Vehicle Code is amended to read:

13353.1. (a) If a person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388 or 13389, upon the receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136 or 23154, and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within 10 years of either of the following:

(A) A separate violation of subdivision (a) of Section 23136, that resulted in a finding of a violation, or a separate violation, that resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within 10 years of any of the following:

(A) Two or more separate violations of subdivision (a) of Section 23136, that resulted in findings of violations, or two or more separate violations, that resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraph (A) or (B).

(b) For the purposes of this section, a conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 13388, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(d) Upon the receipt of the officer's sworn statement, the department shall review the record. For the purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer.

(e) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

SEC. 2. Section 13353.2 of the Vehicle Code is amended to read:

13353.2. (a) The department shall immediately suspend the privilege of a person to operate a motor vehicle for any one of the following reasons:

(1) The person was driving a motor vehicle when the person had 0.08 percent or more, by weight, of alcohol in his or her blood.

(2) The person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test, or other chemical test.

(3) The person was driving a vehicle that requires a commercial driver's license when the person had a 0.04 percent or more, by weight, of alcohol in his or her blood.

(4) The person was driving a motor vehicle when both of the following apply:

(A) The person was on probation for a violation of Section 23152 or 23153.

(B) The person had a 0.01 percent or more, by weight, of alcohol in his or her blood, as measured by a preliminary alcohol screening test or other chemical test.

(b) The notice of the order of suspension under this section shall be served on the person by a peace officer pursuant to Section 13388 or 13382. The notice of the order of suspension shall be on a form provided by the department. If the notice of the order of suspension has not been served upon the person by the peace officer pursuant to Section 13388 or 13382, upon the receipt of the report of a peace officer submitted pursuant to Section 13380, the department shall mail written notice of the order of the suspension to the person at the last known address shown on the department's records and, if the address of the person provided by the peace officer's report differs from the address of record, to that address.

(c) The notice of the order of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request an administrative hearing, the procedure for requesting an administrative hearing, and the date by which a request for an administrative hearing shall be made in order to receive a determination prior to the effective date of the suspension.

(d) The department shall make a determination of the facts in subdivision (a) on the basis of the report of a peace officer submitted pursuant to Section 13380. The determination of the facts, after administrative review pursuant to Section 13557, by the department is final, unless an administrative hearing is held pursuant to Section 13558 and any judicial review of the administrative determination after the hearing pursuant to Section 13559 is final.

(e) The determination of the facts in subdivision (a) is a civil matter that is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding. If a person is acquitted of criminal charges relating to a determination of facts under subdivision (a), or if the person's driver's

license was suspended pursuant to Section 13388 and the department finds no basis for a suspension pursuant to that section, the department shall immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to subdivision (a), and the department shall return or reissue for the remaining term any driver's license that has been taken from the person pursuant to Section 13382 or otherwise. Notwithstanding subdivision (b) of Section 13558, if criminal charges under Section 23140, 23152, or 23153 are not filed by the district attorney because of a lack of evidence, or if those charges are filed but are subsequently dismissed by the court because of an insufficiency of evidence, the person has a renewed right to request an administrative hearing before the department. The request for a hearing shall be made within one year from the date of arrest.

(f) The department shall furnish a form that requires a detailed explanation specifying which evidence was defective or lacking and detailing why that evidence was defective or lacking. The form shall be made available to the person to provide to the district attorney. The department shall hold an administrative hearing, and the hearing officer shall consider the reasons for the failure to prosecute given by the district attorney on the form provided by the department. If applicable, the hearing officer shall consider the reasons stated on the record by a judge who dismisses the charges. A fee shall not be imposed pursuant to Section 14905 for the return or reissuing of a driver's license pursuant to this subdivision. The disposition of a suspension action under this section does not affect an action to suspend or revoke the person's privilege to operate a motor vehicle under another provision of this code, including, but not limited to, Section 13352 or 13353, or Chapter 3 (commencing with Section 13800).

SEC. 3. Section 13389 is added to the Vehicle Code, to read:

13389. (a) If a peace officer lawfully detains a person previously convicted of Section 23152 or 23153 who is driving a motor vehicle, while the person is on probation for a violation of Section 23152 or 23153, and the officer has reasonable cause to believe that the person is in violation of Section 23154, the officer shall request that the person take a preliminary alcohol screening test to determine the presence of alcohol in the person, if a preliminary alcohol screening test device is immediately available. If a preliminary alcohol screening test device is not immediately available, the officer may request the person to submit to chemical testing of his or her blood, breath, or urine, conducted pursuant to Section 23612.

(b) If the person refuses to take, or fails to complete, the preliminary alcohol screening test or refuses to take or fails to complete a chemical test if a preliminary alcohol device is not immediately available, or if the person takes the preliminary alcohol screening test and that test reveals a blood-alcohol concentration of 0.01 percent or greater, the officer shall proceed as follows:

(1) The officer, acting on behalf of the department, shall serve the person with a notice of an order of suspension of the person's driving privilege.

(2) (A) The officer shall take possession of any driver's license issued by this state that is held by the person. When the officer takes possession of a valid driver's license, the officer shall issue, on behalf of the department, a temporary driver's license.

(B) The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of issuance, or until receipt of the order of suspension from the department, whichever occurs first.

(3) (A) The officer shall immediately forward a copy of the completed notice of order of suspension form, and any driver's license taken into possession under paragraph (2), with the report required by Section 13380, to the department.

(B) For the purposes of subparagraph (A), "immediately" means on or before the end of the fifth ordinary business day after the notice of order of suspension was served.

(c) For the purposes of this section, a preliminary alcohol screening test device is an instrument designed and used to measure the presence of alcohol in a person based on a breath sample.

SEC. 4. Section 22651 of the Vehicle Code is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle is embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except a highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

- (A) Pays the cost of towing and storing the vehicle.
- (B) Submits evidence of payment of fees as provided in Section 9561.
- (C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility with a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility. However, whenever the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and privately owned facilities for offstreet parking where a fee is not charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 4.5. Section 22651 of the Vehicle Code is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle is embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except a highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the

court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant

to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.

(B) Displaying in, or upon, the vehicle, a registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit that was not issued for that vehicle, or is not otherwise lawfully used on that vehicle under this code.

(C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit.

(2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle.

(3) For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(4) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and privately owned facilities for offstreet parking where a fee is not charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 5. Section 23154 is added to the Vehicle Code, to read:

23154. (a) It is unlawful for a person who is on probation for a violation of Section 23152 or 23153 to operate a motor vehicle at any time with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test.

(b) A person may be found to be in violation of subdivision (a) if the person was, at the time of driving, on probation for a violation of Section 23152 or 23153, and the trier of fact finds that the person had consumed an alcoholic beverage and was driving a vehicle with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test.

(c) (1) A person who is on probation for a violation of Section 23152 or 23153 who drives a motor vehicle is deemed to have given his or her consent to a preliminary alcohol screening test or other chemical test for the purpose of determining the presence of alcohol in the person, if lawfully detained for an alleged violation of subdivision (a).

(2) The testing shall be incidental to a lawful detention and administered at the direction of a peace officer having reasonable cause to believe the person is driving a motor vehicle in violation of subdivision (a).

(3) The person shall be told that his or her failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the person's privilege to operate a motor vehicle for a period of one year to three years, as provided in Section 13353.1.

SEC. 6. Section 42009 of the Vehicle Code is amended to read:

42009. (a) For an offense specified in subdivision (b), committed by the driver of a vehicle within a highway construction or maintenance area, during any time when traffic is regulated or restricted through or around that area pursuant to Section 21367, or when the highway construction or maintenance is actually being performed in the area by workers acting in their official capacity, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed. In an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

(1) Section 21367, relating to regulation of traffic at a construction site.

(2) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

(3) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(4) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(8) Section 23103, relating to reckless driving.

(9) Section 23104, relating to reckless driving which results in bodily injury to another.

- (10) Section 23109, relating to speed contests.
 - (11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.
 - (12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.
 - (13) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.
 - (14) Section 23220, relating to drinking while driving.
 - (15) Section 23221, relating to drinking in a motor vehicle while on the highway.
 - (16) Section 23222, relating to driving while possessing an open alcoholic beverage container.
 - (17) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.
 - (18) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.
 - (19) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.
 - (20) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.
- (c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic control devices, traffic controls or warning signs, or any combination of those, to notify motorists and pedestrians of construction or maintenance workers in the area.

SEC. 6.5. Section 42009 of the Vehicle Code is amended to read:

42009. (a) For an offense specified in subdivision (b), committed by the driver of a vehicle within a highway construction or maintenance area, during any time when traffic is regulated or restricted through or around that area pursuant to Section 21367, or when the highway construction or maintenance is actually being performed in the area by workers acting in their official capacity, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed. In an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

- (1) Section 21367, relating to regulation of traffic at a construction site.
- (2) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.
- (3) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.
- (4) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.
- (5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

- (6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.
- (7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.
- (8) Section 23103, relating to reckless driving.
- (9) Section 23104 or 23105, relating to reckless driving which results in bodily injury to another.
- (10) Section 23109 or 23109.1, relating to speed contests.
- (11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.
- (12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.
- (13) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.
- (14) Section 23220, relating to drinking while driving.
- (15) Section 23221, relating to drinking in a motor vehicle while on the highway.
- (16) Section 23222, relating to driving while possessing an open alcoholic beverage container.
- (17) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.
- (18) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.
- (19) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.
- (20) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic control devices, traffic controls or warning signs, or any combination of those, to notify motorists and pedestrians of construction or maintenance workers in the area.

SEC. 7. Section 42010 of the Vehicle Code is amended to read:

42010. (a) For an offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to Section 97 and following of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

- (1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.
- (2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

- (3) Section 23103, relating to reckless driving.
 - (4) Section 23104, relating to reckless driving that results in bodily injury to another.
 - (5) Section 23109, relating to speed contests.
 - (6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.
 - (7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.
 - (8) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.
 - (9) Section 23220, relating to drinking while driving.
 - (10) Section 23221, relating to drinking in a motor vehicle while on the highway.
 - (11) Section 23222, relating to driving while possessing an open alcoholic beverage container.
 - (12) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.
 - (13) Section 23224, relating to being a driver or passenger under 21 years of age possessing an open alcoholic beverage container.
 - (14) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.
 - (15) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.
- (c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 or 97.1 of the Streets and Highways Code.
- (d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.
- (2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.
- SEC. 7.5. Section 42010 of the Vehicle Code is amended to read:
42010. (a) For an offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to Section 97 and following of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.
- (b) A violation of the following is an offense that is subject to subdivision (a):
- (1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

- (2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.
- (3) Section 23103, relating to reckless driving.
- (4) Section 23104 or 23105, relating to reckless driving that results in bodily injury to another.
- (5) Section 23109 or 23109.1, relating to speed contests.
- (6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.
- (7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.
- (8) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.
- (9) Section 23220, relating to drinking while driving.
- (10) Section 23221, relating to drinking in a motor vehicle while on the highway.
- (11) Section 23222, relating to driving while possessing an open alcoholic beverage container.
- (12) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.
- (13) Section 23224, relating to being a driver or passenger under 21 years of age possessing an open alcoholic beverage container.
- (14) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.
- (15) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 or 97.1 of the Streets and Highways Code.

(d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9. This act shall become operative on January 1, 2009.

SEC. 10. Section 1.5 of this bill incorporates amendments to Section 13353.1 of the Vehicle Code proposed by this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 13353.1 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 13353.1 of the Vehicle Code, as amended by AB 678, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 11. Section 4.5 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by this bill and AB 1589. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 22651 of the Vehicle Code, and (3) this bill is enacted after AB 1589, in which case Section 22651 of the Vehicle Code, as amended by AB 1589, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 12. Section 6.5 of this bill incorporates amendments to Section 42009 of the Vehicle Code proposed by this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 42009 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 42009 of the Vehicle Code, as amended by AB 430, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

SEC. 13. Section 7.5 of this bill incorporates amendments to Section 42010 of the Vehicle Code proposed by this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 42010 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 42010 of the Vehicle Code, as amended by AB 430, shall remain operative only until the operative date of this bill, at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall not become operative.