

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2073

Introduced by Assembly Member Benoit

February 19, 2008

An act to amend Section 668 of the Harbors and Navigation Code, ~~to amend Section 191.5 of the Penal Code, and to amend Sections 23540, 23546, 23550, 23560, 23566, and 23612 of, and to add Section 23550.7 to, and 23566 of the Vehicle Code,~~ relating to driving under the influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2073, as amended, Benoit. Drug and alcohol-related offenses: motor vehicles and vessels.

(1) Existing law prohibits a person from operating a vessel or manipulating water skis, an aquaplane, or a similar device, while under the influence of an alcoholic beverage, a drug, or the combined influence of an alcoholic beverage and a drug. Existing law expressly prohibits this conduct under various specific circumstances.

Under existing law, a person who has a previous conviction of an offense under these provisions or a previous separate conviction for specified other offenses, including offenses related to operating a vessel or motor vehicle while under the influence of an alcoholic beverage, a drug, or the combined influence of an alcoholic beverage or drug, within 7 years of the commission of a current offense under these provisions is subject to increased sanctions.

This bill would ~~substitute a 10-year condition for the 7-year condition as a condition to imposing~~ *instead impose* the increased sanctions on ~~repeat offenders a repeat offender under these provisions, if the current~~

offense occurs within 10 years of the previous conviction, rather than 7 years.

(2) Existing law prohibits a court from absolving from certain penalties and fines a person who is convicted of a specified offense involving the operation of a vessel while under the influence of an alcoholic beverage, drug, or both, within 7 years of a conviction for a similar offense or an offense when the separate conviction resulted from the operation of a motor vehicle.

This bill would instead prohibit the court from absolving a person if the conviction occurs within 10 years of the specified convictions, rather than 7 years.

~~(3) Existing law provides that vehicular manslaughter while intoxicated is punishable by imprisonment in a county jail for not more than one year or by imprisonment in the state prison for 16 months or 2 or 4 years.~~

This bill would increase the term of imprisonment in the state prison to 2, 4, or 6 years.

~~(4)~~

(3) Under existing law, it is unlawful to drive a motor vehicle while under the influence of an alcoholic beverage, a drug, or both, or with 0.08% or more, by weight, of alcohol in one's blood, or while addicted to the use of a drug. There is another crime of driving under the influence of alcohol, a drug, or both, or with 0.08% or more, by weight, alcohol in one's blood, and causing injury to another person. Under existing law, for violations of each of these offenses, commonly known as driving under the influence and driving under the influence causing injury, respectively, (DUI), a court may impose sanctions, as specified. Existing law imposes increased sanctions on persons who have previously been convicted of a DUI offense within 10 years of the commission of a current specified similar offense.

This bill would similarly impose increased sanctions on a person who has been charged with a DUI offense and has previously been convicted of operating a vessel or manipulating water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, drug, or the combined influence of an alcoholic beverage and drug, or a similar offense.

~~The bill would also require a person convicted of specified vehicle offenses while under the influence to receive a full, separate, and consecutive 3-year prison term for each prior felony conviction of the same or similar offense without regard to whether the prior felony~~

conviction resulted in a term of imprisonment. The bill would also make that person ineligible for probation and would prohibit the court from striking any allegation or finding made under these provisions.

~~(5) Existing law provides that a person who is lawfully arrested for driving under the influence of a drug or the combined influence of an alcoholic beverage and drug has a choice of whether a chemical test to determine his or her drug or drug and alcohol level shall be a blood, breath, or urine test. If the person chooses to submit to a breath test, he or she may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence.~~

~~This bill would revise these provisions to delete the person’s option to choose the type of test and instead require that the person take a blood test if the arresting officer has a clear indication that a blood test will reveal that the person is under the influence of a drug or the combined influence of an alcoholic beverage and drug. The bill would require that if a blood test is unavailable, then a urine test may be given.~~

~~(6)~~

~~(4) By creating new penalty enhancements for existing crimes, the bill would impose a state-mandated local program.~~

~~(7)~~

~~(5) 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.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 668 of the Harbors and Navigation Code
- 2 is amended to read:
- 3 668. (a) A person who violates subdivision (c) of Section 652,
- 4 Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754,
- 5 or any regulations adopted pursuant thereto, or any regulation
- 6 adopted pursuant to Section 655.3 relating to vessel equipment

1 requirements, is guilty of an infraction, punishable by a fine of not
2 more than two hundred fifty dollars (\$250).

3 (b) (1) A person who violates Section 655.2, or any regulation
4 adopted pursuant thereto, or, except as provided in subdivision
5 (a), any regulation adopted pursuant to Section 655.3, is guilty of
6 a misdemeanor and shall be punished by a fine of not more than
7 one hundred dollars (\$100) or imprisonment in the county jail for
8 not more than five days, or by both that fine and imprisonment,
9 for each violation.

10 (2) A person who violates subdivision (a) or (b) of Section 658
11 is guilty of a misdemeanor and shall be punished by a fine of not
12 more than two hundred dollars (\$200) for each violation.

13 (3) A person who violates subdivision (d) of Section 652,
14 Section 652.5, subdivision (a) of Section 655, Section 655.05, 656,
15 or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or
16 665, or any rules and regulations adopted pursuant to subdivision
17 (b) or (c) of Section 660, is guilty of a misdemeanor and shall be
18 punished by a fine of not more than one thousand dollars (\$1,000)
19 or imprisonment in the county jail for not more than six months,
20 or by both that fine and imprisonment, for each violation.

21 (c) (1) A person convicted of a violation of Section 656.2 or
22 656.3 shall be punished by a fine of not less than one thousand
23 dollars (\$1,000) or more than ten thousand dollars (\$10,000), or
24 by imprisonment in the state prison or in the county jail for not
25 more than one year, or by both that fine and imprisonment.

26 (2) In imposing the minimum fine required by this subdivision,
27 the court shall take into consideration the defendant's ability to
28 pay the fine and, in the interest of justice for reasons stated in the
29 record, may reduce the amount of that minimum fine to less than
30 the amount otherwise required by this subdivision.

31 (d) A person convicted of a violation of Section 658.5 shall be
32 punished by a fine of not more than one hundred dollars (\$100).

33 (e) A person convicted of a first violation of subdivision (b),
34 (c), (d), or (e) of Section 655, or of a violation of Section 655.4,
35 shall be punished by a fine of not more than one thousand dollars
36 (\$1,000) or imprisonment in the county jail for not more than six
37 months, or by both that fine and imprisonment. If probation is
38 granted, the court, as a condition of probation, may require the
39 person to participate in, and successfully complete, an alcohol or
40 drug education, training, or treatment program, in addition to

1 imposing any penalties required by this code. In order to enable
2 all persons to participate in licensed programs, ~~every~~ *each* person
3 referred to a program licensed pursuant to Section 11836 of the
4 Health and Safety Code shall pay that program's costs
5 commensurate with that person's ability to pay as determined by
6 Section 11837.4 of the Health and Safety Code.

7 (f) A person convicted of a second or subsequent violation of
8 subdivision (b), (c), (d), or (e) of Section 655 within 10 years of
9 the first conviction of any of those subdivisions or subdivision (f)
10 of Section 655, or any person convicted of a violation of
11 subdivision (b), (c), (d), or (e) of Section 655 within 10 years of
12 a separate conviction of Section 191.5 or subdivision (a) or (b) of
13 Section 192.5 of the Penal Code, or a separate conviction of Section
14 23152 or 23153 of the Vehicle Code, when the separate conviction
15 resulted from the operation of a motor vehicle, shall be punished
16 by a fine of not more than one thousand dollars (\$1,000) or
17 imprisonment in the county jail for not more than one year, or by
18 both that fine and imprisonment. If probation is granted, the court,
19 as a condition of probation, may require the person to do either of
20 the following, if available in the county of the person's residence
21 or employment:

22 (1) Participate, for at least 18 months subsequent to the
23 underlying conviction and in a manner satisfactory to the court,
24 in a program licensed pursuant to Chapter 9 (commencing with
25 Section 11836) of Part 2 of Division 10.5 of the Health and Safety
26 Code, as designated by the court. In order to enable all required
27 persons to participate, each person shall pay the program costs
28 commensurate with the person's ability to pay as determined
29 pursuant to Section 11837.4 of the Health and Safety Code.

30 (2) Participate, for at least 30 months subsequent to the
31 underlying conviction and in a manner satisfactory to the court,
32 in a program licensed pursuant to Chapter 9 (commencing with
33 Section 11836) of Part 2 of Division 10.5 of the Health and Safety
34 Code. A person ordered to treatment pursuant to this paragraph
35 shall apply to the court or to a board of review, as designated by
36 the court, at the conclusion of the program to obtain the court's
37 order of satisfaction. Only upon the granting of that order of
38 satisfaction by the court may the program issue its certificate of
39 successful completion. A failure to obtain an order of satisfaction
40 at the conclusion of the program is a violation of probation. In

1 order to enable all required persons to participate, each person
2 shall pay the program costs commensurate with the person’s ability
3 to pay as determined pursuant to Section 11837.4 of the Health
4 and Safety Code. No condition of probation required pursuant to
5 this paragraph is a basis for reducing any other probation
6 requirement.

7 (g) A person convicted of a violation of subdivision (f) of
8 Section 655 shall be punished by imprisonment in the state prison,
9 or in the county jail for not less than 90 days or more than one
10 year, and by a fine of not less than two hundred fifty dollars (\$250)
11 or more than five thousand dollars (\$5,000). If probation is granted,
12 the court, as a condition of probation, may require the person to
13 participate in, and successfully complete, a program licensed
14 pursuant to Chapter 9 (commencing with Section 11836) of Part
15 2 of Division 10.5 of the Health and Safety Code, if available in
16 the person’s county of residence or employment, as designated by
17 the court. In order to enable all required persons to participate,
18 each person shall pay the program costs commensurate with the
19 person’s ability to pay as determined pursuant to Section 11837.4
20 of the Health and Safety Code.

21 (h) (1) If a person is convicted of a violation of subdivision (f)
22 of Section 655 within 10 years of a separate conviction of a
23 violation of subdivision (b), (c), (d), or (e) of Section 655 and is
24 granted probation, the court shall impose as a condition of
25 probation that the person be confined in the county jail for not less
26 than five days or more than one year and pay a fine of not less than
27 two hundred fifty dollars (\$250) or more than five thousand dollars
28 (\$5,000).

29 (2) If a person is convicted of a violation of subdivision (f) of
30 Section 655 within 10 years of a separate conviction of a violation
31 of subdivision (f) of Section 655, Section 191.5 or subdivision (a)
32 or (b) of Section 192.5 of the Penal Code, or Section 23152 or
33 23153 of the Vehicle Code, when the separate conviction resulted
34 from the operation of a motor vehicle, and is granted probation,
35 the court shall impose as a condition of probation that the person
36 be confined in the county jail for not less than 90 days or more
37 than one year, and pay a fine of not less than two hundred fifty
38 dollars (\$250) or more than five thousand dollars (\$5,000), and
39 the court, as a condition of probation, may order that the person
40 participate in a manner satisfactory to the court, in a program

1 licensed pursuant to Chapter 9 (commencing with Section 11836)
2 of Part 2 of Division 10.5 of the Health and Safety Code, if
3 available in the county of the person's residence or employment.
4 In order to enable all required persons to participate, each person
5 shall pay the program costs commensurate with the person's ability
6 to pay as determined pursuant to Section 11837.4 of the Health
7 and Safety Code.

8 (i) The court shall not absolve a person who is convicted of a
9 violation of subdivision (f) of Section 655 within ten years of a
10 separate conviction of a violation of subdivision (b), (c), (d), (e),
11 or (f) of Section 655, Section 191.5 or subdivision (a) or (b) of
12 Section 192.5 of the Penal Code, or Section 23152 or 23153 of the
13 Vehicle Code, when the separate conviction resulted from the
14 operation of a motor vehicle, from the minimum time in
15 confinement provided in this section and a fine of at least two
16 hundred fifty dollars (\$250), except as provided in subdivision (h).

17 (j) Except in unusual cases where the interests of justice demand
18 an exception, the court shall not strike a separate conviction of an
19 offense under subdivision (b), (c), (d), (e), or (f) of Section 655,
20 Section 191.5 or subdivision (a) or (b) of Section 192.5 of the
21 Penal Code, or Section 23152 or 23153 of the Vehicle Code, when
22 the separate conviction resulted from the operation of a motor
23 vehicle, for purposes of sentencing in order to avoid imposing, as
24 part of the sentence or as a term of probation, the minimum time
25 in confinement and the minimum fine, as provided in this section.
26 When a separate conviction is stricken by the court for purposes
27 of sentencing, the court shall specify the reason or reasons for the
28 striking order. On appeal by the people from an order striking a
29 separate conviction, it shall be conclusively presumed that the
30 order was made only for the reasons specified in the order, and
31 the order shall be reversed if there is no substantial basis in the
32 record for any of those reasons.

33 (k) A person who flees the scene of the crime after committing
34 a violation of Section 191.5 or paragraph (1) of subdivision (c) of
35 Section 192 of the Penal Code shall be subject to subdivision (c)
36 of Section 20001 of the Vehicle Code.

37 (l) A person who violates Section 654.3 is guilty of an infraction
38 punishable by a fine of not more than five hundred dollars (\$500)
39 for each separate violation.

40 ~~SEC. 2.— Section 191.5 of the Penal Code is amended to read:~~

1 ~~191.5.— (a) Gross vehicular manslaughter while intoxicated is~~
2 ~~the unlawful killing of a human being without malice aforethought,~~
3 ~~in the driving of a vehicle, where the driving was in violation of~~
4 ~~Section 23140, 23152, or 23153 of the Vehicle Code, and the~~
5 ~~killing was either the proximate result of the commission of an~~
6 ~~unlawful act, not amounting to a felony, and with gross negligence,~~
7 ~~or the proximate result of the commission of a lawful act that might~~
8 ~~produce death, in an unlawful manner, and with gross negligence.~~

9 ~~(b) Vehicular manslaughter while intoxicated is the unlawful~~
10 ~~killing of a human being without malice aforethought, in the~~
11 ~~driving of a vehicle, where the driving was in violation of Section~~
12 ~~23140, 23152, or 23153 of the Vehicle Code, and the killing was~~
13 ~~either the proximate result of the commission of an unlawful act,~~
14 ~~not amounting to a felony, but without gross negligence, or the~~
15 ~~proximate result of the commission of a lawful act that might~~
16 ~~produce death, in an unlawful manner, but without gross~~
17 ~~negligence.~~

18 ~~(c) (1) Except as provided in subdivision (d), gross vehicular~~
19 ~~manslaughter while intoxicated in violation of subdivision (a) is~~
20 ~~punishable by imprisonment in the state prison for 4, 6, or 10 years.~~

21 ~~(2) Vehicular manslaughter while intoxicated in violation of~~
22 ~~subdivision (b) is punishable by imprisonment in a county jail for~~
23 ~~not more than one year or by imprisonment in the state prison for~~
24 ~~two, four, or six years.~~

25 ~~(d) A person convicted of violating subdivision (a) who has one~~
26 ~~or more prior convictions of this section or of paragraph (1) of~~
27 ~~subdivision (c) of Section 192, subdivision (a) or (b) of Section~~
28 ~~192.5 of this code, or of violating Section 23152 punishable under~~
29 ~~Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or~~
30 ~~convicted of Section 23153 of, the Vehicle Code, shall be punished~~
31 ~~by imprisonment in the state prison for a term of 15 years to life.~~
32 ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title~~
33 ~~1 of Part 3 shall apply to reduce the term imposed pursuant to this~~
34 ~~subdivision.~~

35 ~~(e) This section shall not be construed as prohibiting or~~
36 ~~precluding a charge of murder under Section 188 upon facts~~
37 ~~exhibiting wantonness and a conscious disregard for life to support~~
38 ~~a finding of implied malice, or upon facts showing malice~~
39 ~~consistent with the holding of the California Supreme Court in~~
40 ~~People v. Watson, 30 Cal. 3d 290.~~

1 ~~(f) This section shall not be construed as making any homicide~~
 2 ~~in the driving of a vehicle or the operation of a vessel punishable~~
 3 ~~which is not a proximate result of the commission of an unlawful~~
 4 ~~act, not amounting to felony, or of the commission of a lawful act~~
 5 ~~which might produce death, in an unlawful manner.~~

6 ~~(g) For the penalties in subdivision (d) to apply, the existence~~
 7 ~~of any fact required under subdivision (d) shall be alleged in the~~
 8 ~~information or indictment and either admitted by the defendant in~~
 9 ~~open court or found to be true by the trier of fact.~~

10 ~~SEC. 3.~~

11 *SEC. 2.* Section 23540 of the Vehicle Code is amended to read:

12 23540. (a) If a person is convicted of a violation of Section
 13 23152 and the offense occurred within 10 years of a separate
 14 violation of Section 23103, as specified in Section 23103.5, 23152,
 15 or 23153, of this code, or subdivision (b) or (c) of Section 655 of
 16 the Harbors and Navigation Code, that resulted in a conviction,
 17 that person shall be punished by imprisonment in the county jail
 18 for not less than 90 days nor more than one year and by a fine of
 19 not less than three hundred ninety dollars (\$390) nor more than
 20 one thousand dollars (\$1,000). The person's privilege to operate
 21 a motor vehicle shall be suspended by the department pursuant to
 22 paragraph (3) of subdivision (a) of Section 13352. The court shall
 23 require the person to surrender the driver's license to the court in
 24 accordance with Section 13550.

25 (b) Whenever, when considering the circumstances taken as a
 26 whole, the court determines that the person punished under this
 27 section would present a traffic safety or public safety risk if
 28 authorized to operate a motor vehicle during the period of
 29 suspension imposed under paragraph (3) of subdivision (a) of
 30 Section 13352, the court may disallow the issuance of a restricted
 31 driver's license required under Section 13352.5.

32 (c) This section shall become operative on September 20, 2005.

33 ~~SEC. 4.~~

34 *SEC. 3.* Section 23546 of the Vehicle Code is amended to read:

35 23546. (a) If a person is convicted of a violation of Section
 36 23152 and the offense occurred within 10 years of two separate
 37 violations of Section 23103, as specified in Section 23103.5, 23152,
 38 or 23153, ~~or~~ of this code, *or* subdivision (b) or (c) of Section 655
 39 of the Harbors and Navigation Code, or any combination thereof,
 40 that resulted in convictions, that person shall be punished by

1 imprisonment in the county jail for not less than 120 days nor more
 2 than one year and by a fine of not less than three hundred ninety
 3 dollars (\$390) nor more than one thousand dollars (\$1,000). The
 4 person’s privilege to operate a motor vehicle shall be revoked by
 5 the Department of Motor Vehicles as required in paragraph (5) of
 6 subdivision (a) of Section 13352. The court shall require the person
 7 to surrender his or her driver’s license to the court in accordance
 8 with Section 13550.

9 (b) A person convicted of a violation of Section 23152
 10 punishable under this section shall be designated as a habitual
 11 traffic offender for a period of three years, subsequent to the
 12 conviction. The person shall be advised of this designation pursuant
 13 to subdivision (b) of Section 13350.

14 ~~SEC. 5.~~

15 *SEC. 4.* Section 23550 of the Vehicle Code is amended to read:

16 23550. (a) If a person is convicted of a violation of Section
 17 23152 and the offense occurred within 10 years of three or more
 18 separate violations of Section 23103, as specified in Section
 19 23103.5, 23152 or, 23153, ~~or~~ of this code, *or* subdivision (b) or
 20 (c) of Section 655 of the Harbors and Navigation Code, or any
 21 combination thereof, that resulted in convictions, that person shall
 22 be punished by imprisonment in the state prison, or in a county
 23 jail for not less than 180 days nor more than one year, and by a
 24 fine of not less than three hundred ninety dollars (\$390) nor more
 25 than one thousand dollars (\$1,000). The person’s privilege to
 26 operate a motor vehicle shall be revoked by the Department of
 27 Motor Vehicles pursuant to paragraph (7) of subdivision (a) of
 28 Section 13352. The court shall require the person to surrender the
 29 driver’s license to the court in accordance with Section 13550.

30 (b) A person convicted of a violation of Section 23152
 31 punishable under this section shall be designated as a habitual
 32 traffic offender for a period of three years, subsequent to the
 33 conviction. The person shall be advised of this designation pursuant
 34 to subdivision (b) of Section 13350.

35 ~~SEC. 6.~~ ~~Section 23550.7 is added to the Vehicle Code, to read:~~

36 ~~23550.7. (a) A person convicted of a violation of Section~~
 37 ~~23153, 23550, or 23550.5 shall receive, in addition to any other~~
 38 ~~punishment authorized by law, including Section 667.5 of the~~
 39 ~~Penal Code, a full, separate, and consecutive three-year prison~~
 40 ~~term for each prior felony conviction of Section 23153, 23550, or~~

1 ~~23550.5, whether or not the prior conviction resulted in a term of~~
2 ~~imprisonment.~~

3 ~~(b) Notwithstanding any other provision of law, probation shall~~
4 ~~not be granted to, nor shall the execution or imposition of sentence~~
5 ~~be suspended for, a person found to come within the provisions~~
6 ~~of this section.~~

7 ~~(c) Notwithstanding Section 1385 of the Penal Code, or any~~
8 ~~other provision of law, the court shall not strike an allegation under~~
9 ~~this section or a finding bringing a person within the provisions~~
10 ~~of this section.~~

11 ~~(d) The existence of any fact required under subdivision (a)~~
12 ~~shall be alleged in the accusatory pleading and either admitted by~~
13 ~~the defendant in open court or found to be true by the trier of fact.~~

14 ~~SEC. 7.~~

15 *SEC. 5.* Section 23560 of the Vehicle Code is amended to read:

16 23560. If a person is convicted of a violation of Section 23153
17 and the offense occurred within 10 years of a separate violation
18 of Section 23103, as specified in Section 23103.5, 23152, or 23153;
19 of this code, or subdivision (b) or (c) of Section 655 of the Harbors
20 and Navigation Code, that resulted in a conviction, that person
21 shall be punished by imprisonment in the state prison, or in a
22 county jail for not less than 120 days nor more than one year, and
23 by a fine of not less than three hundred ninety dollars (\$390) nor
24 more than five thousand dollars (\$5,000). The person's privilege
25 to operate a motor vehicle shall be revoked by the Department of
26 Motor Vehicles pursuant to paragraph (4) of subdivision (a) of
27 Section 13352. The court shall require the person to surrender the
28 driver's license to the court in accordance with Section 13550.

29 ~~SEC. 8.~~

30 *SEC. 6.* Section 23566 of the Vehicle Code is amended to read:

31 23566. (a) If a person is convicted of a violation of Section
32 23153 and the offense occurred within 10 years of two or more
33 separate violations of Section 23103, as specified in Section
34 23103.5, 23152 or, 23153; of this code, or subdivision (b) or (c)
35 of Section 655 of the Harbors and Navigation Code, or any
36 combination of these violations, that resulted in convictions, that
37 person shall be punished by imprisonment in the state prison for
38 a term of two, three, or four years and by a fine of not less than
39 one thousand fifteen dollars (\$1,015) nor more than five thousand
40 dollars (\$5,000). The person's privilege to operate a motor vehicle

1 shall be revoked by the Department of Motor Vehicles pursuant
2 to paragraph (6) of subdivision (a) of Section 13352. The court
3 shall require the person to surrender the driver's license to the
4 court in accordance with Section 13550.

5 (b) If a person is convicted of a violation of Section 23153, and
6 the act or neglect proximately causes great bodily injury, as defined
7 in Section 12022.7 of the Penal Code, to any person other than the
8 driver, and the offense occurred within 10 years of two or more
9 separate violations of Section 23103, as specified in Section
10 23103.5, or Section 23152 or 23153, or any combination of these
11 violations, that resulted in convictions, that person shall be
12 punished by imprisonment in the state prison for a term of two,
13 three, or four years and by a fine of not less than one thousand
14 fifteen dollars (\$1,015) nor more than five thousand dollars
15 (\$5,000). The person's privilege to operate a motor vehicle shall
16 be revoked by the Department of Motor Vehicles pursuant to
17 paragraph (6) of subdivision (a) of Section 13352. The court shall
18 require the person to surrender the driver's license to the court in
19 accordance with Section 13550.

20 (c) If a person is convicted under subdivision (b), and the offense
21 for which the person is convicted occurred within 10 years of four
22 or more separate violations of Section 23103, as specified in
23 Section 23103.5, or Section 23152 or 23153, or any combination
24 of these violations, that resulted in convictions, that person shall,
25 in addition and consecutive to the sentences imposed under
26 subdivision (b), be punished by an additional term of imprisonment
27 in the state prison for three years.

28 The enhancement allegation provided in this subdivision shall
29 be pleaded and proved as provided by law.

30 (d) A person convicted of Section 23153 punishable under this
31 section shall be designated as a habitual traffic offender for a period
32 of three years, subsequent to the conviction. The person shall be
33 advised of this designation pursuant to subdivision (b) of Section
34 13350.

35 (e) A person confined in state prison under this section shall be
36 ordered by the court to participate in an alcohol or drug program,
37 or both, that is available at the prison during the person's
38 confinement. Completion of an alcohol or drug program under this
39 section does not meet the program completion requirement of
40 paragraph (6) of subdivision (a) of Section 13352, unless the drug

1 or alcohol program is licensed under Section 11836 of the Health
2 and Safety Code, or is a program specified in Section 8001 of the
3 Penal Code.

4 ~~SEC. 9. Section 23612 of the Vehicle Code is amended to read:~~

5 ~~23612. (a) (1) (A) A person who drives a motor vehicle is~~
6 ~~deemed to have given his or her consent to chemical testing of his~~
7 ~~or her blood or breath for the purpose of determining the alcoholic~~
8 ~~content of his or her blood, if lawfully arrested for an offense~~
9 ~~allegedly committed in violation of Section 23140, 23152, or~~
10 ~~23153. If a blood or breath test, or both, are unavailable, then~~
11 ~~paragraph (2) of subdivision (d) applies.~~

12 ~~(B) A person who drives a motor vehicle is deemed to have~~
13 ~~given his or her consent to chemical testing of his or her blood or~~
14 ~~urine for the purpose of determining the drug content of his or her~~
15 ~~blood, if lawfully arrested for an offense allegedly committed in~~
16 ~~violation of Section 23140, 23152, or 23153.~~

17 ~~(C) The testing shall be incidental to a lawful arrest and~~
18 ~~administered at the direction of a peace officer having reasonable~~
19 ~~cause to believe the person was driving a motor vehicle in violation~~
20 ~~of Section 23140, 23152, or 23153.~~

21 ~~(D) The person shall be told that his or her failure to submit to,~~
22 ~~or the failure to complete, the required chemical testing will result~~
23 ~~in a fine, mandatory imprisonment if the person is convicted of a~~
24 ~~violation of Section 23152 or 23153, and (i) the suspension of the~~
25 ~~person's privilege to operate a motor vehicle for a period of one~~
26 ~~year, (ii) the revocation of the person's privilege to operate a motor~~
27 ~~vehicle for a period of two years if the refusal occurs within 10~~
28 ~~years of a separate violation of Section 23103 as specified in~~
29 ~~Section 23103.5, or of Section 23140, 23152, or 23153, of this~~
30 ~~code, or of Section 191.5 or subdivision (a) of Section 192.5 of~~
31 ~~the Penal Code that resulted in a conviction, or if the person's~~
32 ~~privilege to operate a motor vehicle has been suspended or revoked~~
33 ~~pursuant to Section 13353, 13353.1, or 13353.2 for an offense that~~
34 ~~occurred on a separate occasion, or (iii) the revocation of the~~
35 ~~person's privilege to operate a motor vehicle for a period of three~~
36 ~~years if the refusal occurs within 10 years of two or more separate~~
37 ~~violations of Section 23103 as specified in Section 23103.5, or of~~
38 ~~Section 23140, 23152, or 23153, of this code, or of Section 191.5~~
39 ~~or subdivision (a) of Section 192.5 of the Penal Code, or any~~
40 ~~combination thereof, that resulted in convictions, or if the person's~~

1 privilege to operate a motor vehicle has been suspended or revoked
2 two or more times pursuant to Section 13353, 13353.1, or 13353.2
3 for offenses that occurred on separate occasions, or if there is any
4 combination of those convictions or administrative suspensions
5 or revocations.

6 ~~(2) (A) If the person is lawfully arrested for driving under the~~
7 ~~influence of an alcoholic beverage, the person has the choice of~~
8 ~~whether the test shall be of his or her blood or breath and the officer~~
9 ~~shall advise the person that he or she has that choice. If the person~~
10 ~~arrested either is incapable, or states that he or she is incapable,~~
11 ~~of completing the chosen test, the person shall submit to the~~
12 ~~remaining test. If a blood or breath test, or both, are unavailable,~~
13 ~~then paragraph (2) of subdivision (d) applies.~~

14 ~~(B) A person lawfully arrested for driving under the influence~~
15 ~~of a drug or the combined influence of an alcoholic beverage and~~
16 ~~a drug shall be required to take a blood test if the arresting officer~~
17 ~~has a clear indication that a blood test will reveal that the person~~
18 ~~is under the influence of a drug or the combined influence of an~~
19 ~~alcoholic beverage and a drug. If a blood test is unavailable, then~~
20 ~~a urine test may be given.~~

21 ~~(3) If the person is lawfully arrested for an offense allegedly~~
22 ~~committed in violation of Section 23140, 23152, or 23153, and,~~
23 ~~because of the need for medical treatment, the person is first~~
24 ~~transported to a medical facility where it is not feasible to~~
25 ~~administer a particular test of, or to obtain a particular sample of,~~
26 ~~the person's blood, breath, or urine, the person has the choice of~~
27 ~~those tests that are available at the facility to which that person~~
28 ~~has been transported. In that case, the officer shall advise the person~~
29 ~~of those tests that are available at the medical facility and that the~~
30 ~~person's choice is limited to those tests that are available.~~

31 ~~(4) The officer shall also advise the person that he or she does~~
32 ~~not have the right to have an attorney present before stating whether~~
33 ~~he or she will submit to a test or tests, before deciding which test~~
34 ~~or tests to take, or during administration of the test or tests chosen,~~
35 ~~and that, in the event of refusal to submit to a test or tests, the~~
36 ~~refusal may be used against him or her in a court of law.~~

37 ~~(5) A person who is unconscious or otherwise in a condition~~
38 ~~rendering him or her incapable of refusal is deemed not to have~~
39 ~~withdrawn his or her consent and a test or tests may be~~
40 ~~administered whether or not the person is told that his or her failure~~

1 to submit to, or the noncompletion of, the test or tests will result
2 in the suspension or revocation of his or her privilege to operate
3 a motor vehicle. A person who is dead is deemed not to have
4 withdrawn his or her consent and a test or tests may be
5 administered at the direction of a peace officer.

6 (b) A person who is afflicted with hemophilia is exempt from
7 the blood test required by this section.

8 (c) A person who is afflicted with a heart condition and is using
9 an anticoagulant under the direction of a licensed physician and
10 surgeon is exempt from the blood test required by this section.

11 (d) (1) A person lawfully arrested for an offense allegedly
12 committed while the person was driving a motor vehicle in
13 violation of Section 23140, 23152, or 23153 may request the
14 arresting officer to have a chemical test made of the arrested
15 person's blood or breath for the purpose of determining the
16 alcoholic content of that person's blood, and, if so requested, the
17 arresting officer shall have the test performed.

18 (2) If a blood or breath test is not available under subparagraph
19 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)
20 of paragraph (2) of subdivision (a), or under paragraph (1) of this
21 subdivision, the person shall submit to the remaining test in order
22 to determine the percent, by weight, of alcohol in the person's
23 blood. If both the blood and breath tests are unavailable, the person
24 shall be deemed to have given his or her consent to chemical testing
25 of his or her urine and shall submit to a urine test.

26 (e) If the person, who has been arrested for a violation of Section
27 23140, 23152, or 23153, refuses or fails to complete a chemical
28 test or tests, or requests that a blood or urine test be taken, the
29 peace officer, acting on behalf of the department, shall serve the
30 notice of the order of suspension or revocation of the person's
31 privilege to operate a motor vehicle personally on the arrested
32 person. The notice shall be on a form provided by the department.

33 (f) If the peace officer serves the notice of the order of
34 suspension or revocation of the person's privilege to operate a
35 motor vehicle, the peace officer shall take possession of all driver's
36 licenses issued by this state that are held by the person. The
37 temporary driver's license shall be an endorsement on the notice
38 of the order of suspension and shall be valid for 30 days from the
39 date of arrest.

1 ~~(g) (1) The peace officer shall immediately forward a copy of~~
2 ~~the completed notice of suspension or revocation form and any~~
3 ~~driver's license taken into possession under subdivision (f), with~~
4 ~~the report required by Section 13380, to the department. If the~~
5 ~~person submitted to a blood or urine test, the peace officer shall~~
6 ~~forward the results immediately to the appropriate forensic~~
7 ~~laboratory. The forensic laboratory shall forward the results of the~~
8 ~~chemical tests to the department within 15 calendar days of the~~
9 ~~date of the arrest.~~

10 ~~(2) (A) Notwithstanding any other provision of law, a document~~
11 ~~containing data prepared and maintained in the governmental~~
12 ~~forensic laboratory computerized database system that is~~
13 ~~electronically transmitted or retrieved through public or private~~
14 ~~computer networks to or by the department is the best available~~
15 ~~evidence of the chemical test results in all administrative~~
16 ~~proceedings conducted by the department. In addition, any other~~
17 ~~official record that is maintained in the governmental forensic~~
18 ~~laboratory, relates to a chemical test analysis prepared and~~
19 ~~maintained in the governmental forensic laboratory computerized~~
20 ~~database system, and is electronically transmitted and retrieved~~
21 ~~through a public or private computer network to or by the~~
22 ~~department is admissible as evidence in the department's~~
23 ~~administrative proceedings. In order to be admissible as evidence~~
24 ~~in administrative proceedings, a document described in this~~
25 ~~subparagraph shall bear a certification by the employee of the~~
26 ~~department who retrieved the document certifying that the~~
27 ~~information was received or retrieved directly from the~~
28 ~~computerized database system of a governmental forensic~~
29 ~~laboratory and that the document accurately reflects the data~~
30 ~~received or retrieved.~~

31 ~~(B) Notwithstanding any other provision of law, the failure of~~
32 ~~an employee of the department to certify under subparagraph (A)~~
33 ~~is not a public offense.~~

34 ~~(h) A preliminary alcohol screening test that indicates the~~
35 ~~presence or concentration of alcohol based on a breath sample in~~
36 ~~order to establish reasonable cause to believe the person was~~
37 ~~driving a vehicle in violation of Section 23140, 23152, or 23153~~
38 ~~is a field sobriety test and may be used by an officer as a further~~
39 ~~investigative tool.~~

1 (i) ~~If the officer decides to use a preliminary alcohol screening~~
2 ~~test, the officer shall advise the person that he or she is requesting~~
3 ~~that person to take a preliminary alcohol screening test to assist~~
4 ~~the officer in determining if that person is under the influence of~~
5 ~~alcohol or drugs, or a combination of alcohol and drugs. The~~
6 ~~person's obligation to submit to a blood, breath, or urine test, as~~
7 ~~required by this section, for the purpose of determining the alcohol~~
8 ~~or drug content of that person's blood, is not satisfied by the person~~
9 ~~submitting to a preliminary alcohol screening test. The officer shall~~
10 ~~advise the person of that fact and of the person's right to refuse to~~
11 ~~take the preliminary alcohol screening test.~~

12 ~~SEC. 10.~~

13 *SEC. 7.* No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.