

AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1388**

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**Introduced by Senators Torlakson, Correa, and Maldonado**

February 21, 2008

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An act to amend ~~Section 14601.2~~ *Sections 14601.2, 14601.4, and 14601.5* of, and to add Sections 23575.1 and 23575.2 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1388, as amended, Torlakson. Vehicles: DUI: ignition interlock.

(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.

~~A person is prohibited from driving a vehicle when his or her driving privileges have been suspended or revoked for a conviction of driving under the influence. A conviction under this section can result in various penalties depending on the circumstances, and the court is required to order a person convicted of this violation to install a certified ignition interlock device on a vehicle the person owns or operates.~~

~~This bill would additionally require that a person immediately install an ignition interlock device on all vehicles he or she owns or operates for one to 3 years under the following circumstances: (a) the person has been convicted of driving a motor vehicle when his or her license has been suspended or revoked for a conviction of driving under the influence, within a 10-year period of previous convictions~~

~~of specified driving under the influence related offenses, including pleading guilty or no contest to reckless driving instead of driving under the influence, and (b) the person has been convicted of driving a motor vehicle when his or her license has been suspended or revoked for a conviction of driving under the influence, within a 10-year period of prior convictions for the same offense. The number of years the interlock device would be required to be installed would be based upon the number of prior convictions as prescribed.~~

*A person is prohibited from driving a vehicle when his or her driver's license has been suspended or revoked for violating specified provisions relating to DUI. Existing law requires a court to require a person convicted of specified offenses to install a certified ignition interlock device on a vehicle that person owns or operates. The Department of Motor Vehicles is prohibited from reinstating the privilege to operate a vehicle until the department receives specified proof that the ignition interlock device has been installed as ordered.*

*This bill would additionally require that a person immediately install a certified ignition interlock device on all vehicles he or she owns or operates for a period of one to 3 years when he or she has been convicted of violating specified provisions relating to DUI and driving a motor vehicle when his or her license has been suspended or revoked as a result of a DUI-related conviction. The number of years the ignition interlock device would be required to be installed would be based upon the number of prior convictions and the length of time between convictions as prescribed.*

The bill would also set up a statutory scheme under which the ~~Department of Motor Vehicles~~ *department* would, with regard to the installation of ~~an~~ *a certified* ignition interlock device described above, notify the person of the ignition interlock device installation requirements established under the bill, accept notification from the *ignition* interlock device installer of attempts to remove, bypass, or tamper with the device or if the person fails 3 or more times to comply with the maintenance requirements, monitor the installation and maintenance of the ignition interlock device, and keep specified records. The department would also be required to advise the court of the failure of a person, required to install an ignition interlock device pursuant to this section, to show proof of installation within 30 days of notification. The bill would provide that a person required to install an ignition interlock device under this provision, who willfully fails to install an ignition interlock device within 30 days of the notification is guilty of

a misdemeanor and shall be punished by not more than 6 months imprisonment in the county jail or by a fine of not more than \$5,000, or both.

*A person who does not own or does not have access to a vehicle and who complies with the prescribed requirements, would be exempt from the ignition interlock device installation requirements. A violation of the terms of the exemption would be a misdemeanor punishable by not more than 6 months imprisonment in the county jail or by a fine of not more than \$5,000, or both.*

These requirements would be in addition to existing law.

(2) Because it is a crime to operate a vehicle that is not equipped with a functioning, certified ignition interlock device by a person whose driving privilege is so restricted and because failure to install the ignition interlock device within 30 days after notification by the department would be a misdemeanor, the bill would impose a state-mandated local program, by expanding the scope of an existing crime and creating a new crime.

(3) 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 14601.2 of the Vehicle Code is amended
- 2 to read:
- 3 14601.2. (a) A person shall not drive a motor vehicle at any
- 4 time when that person’s driving privilege is suspended or revoked
- 5 for a conviction of a violation of Section 23152 or 23153 if the
- 6 person so driving has knowledge of the suspension or revocation.
- 7 (b) Except in full compliance with the restriction, a person shall
- 8 not drive a motor vehicle at any time when that person’s driving
- 9 privilege is restricted if the person so driving has knowledge of
- 10 the restriction.
- 11 (c) Knowledge of the suspension or revocation of the driving
- 12 privilege shall be conclusively presumed if mailed notice has been
- 13 given by the department to the person pursuant to Section 13106.

1 Knowledge of the restriction of the driving privilege shall be  
2 presumed if notice has been given by the court to the person. The  
3 presumption established by this subdivision is a presumption  
4 affecting the burden of proof.

5 (d) A person convicted of a violation of this section shall be  
6 punished as follows:

7 (1) Upon a first conviction, by imprisonment in the county jail  
8 for not less than 10 days or more than six months and by a fine of  
9 not less than three hundred dollars (\$300) or more than one  
10 thousand dollars (\$1,000), unless the person has been designated  
11 a habitual traffic offender under subdivision (b) of Section 23546,  
12 subdivision (b) of Section 23550, or subdivision (d) of Section  
13 23550.5, in which case the person, in addition, shall be sentenced  
14 as provided in paragraph (3) of subdivision (e) of Section 14601.3.

15 (2) If the offense occurred within five years of a prior offense  
16 that resulted in a conviction of a violation of this section or Section  
17 14601, 14601.1, or 14601.5, by imprisonment in the county jail  
18 for not less than 30 days or more than one year and by a fine of  
19 not less than five hundred dollars (\$500) or more than two thousand  
20 dollars (\$2,000), unless the person has been designated a habitual  
21 traffic offender under subdivision (b) of Section 23546, subdivision  
22 (b) of Section 23550, or subdivision (d) of Section 23550.5, in  
23 which case the person, in addition, shall be sentenced as provided  
24 in paragraph (3) of subdivision (e) of Section 14601.3.

25 (e) If a person is convicted of a first offense under this section  
26 and is granted probation, the court shall impose as a condition of  
27 probation that the person be confined in the county jail for at least  
28 10 days.

29 (f) If the offense occurred within five years of a prior offense  
30 that resulted in a conviction of a violation of this section or Section  
31 14601, 14601.1, or 14601.5 and is granted probation, the court  
32 shall impose as a condition of probation that the person be confined  
33 in the county jail for at least 30 days.

34 (g) If a person is convicted of a second or subsequent offense  
35 that results in a conviction of this section within seven years, but  
36 over five years, of a prior offense that resulted in a conviction of  
37 a violation of this section or Section 14601, 14601.1, or 14601.5  
38 and is granted probation, the court shall impose as a condition of  
39 probation that the person be confined in the county jail for at least  
40 10 days.

1 (h) Pursuant to Section 23575, the court shall require a person  
2 convicted of a violation of this section to install a certified ignition  
3 interlock device on a vehicle the person owns or operates. Upon  
4 receipt of the abstract of a conviction under this section, the  
5 department shall not reinstate the privilege to operate a motor  
6 vehicle until the department receives proof of either the  
7 “Verification of Installation” form as described in paragraph (2)  
8 of subdivision (g) of Section 13386 or the Judicial Council Form  
9 I.D. 100.

10 (i) Nothing in this section prohibits a person who is participating  
11 in, or has completed, an alcohol or drug rehabilitation program  
12 from driving a motor vehicle that is owned or utilized by the  
13 person’s employer, during the course of employment on private  
14 property that is owned or utilized by the employer, except an  
15 offstreet parking facility as defined in subdivision (c) of Section  
16 12500.

17 (j) This section also applies to the operation of an off-highway  
18 motor vehicle on those lands that the Chappie-Z’berg Off-Highway  
19 Motor Vehicle Law of 1971 (Division 16.5 (commencing with  
20 Section 38000)) applies as to off-highway motor vehicles, as  
21 described in Section 38001.

22 ~~(k) This section does not prohibit the Department of Motor  
23 Vehicles from requiring the installation of an ignition interlock  
24 device pursuant to Section 23575.1.~~

25 *(k) If Section 23575.2 is applicable, then subdivision (h) is not  
26 applicable, and Section 23575.1 shall apply.*

27 *SEC. 2. Section 14601.4 of the Vehicle Code is amended to  
28 read:*

29 14601.4. (a) It is unlawful for a person, while driving a vehicle  
30 with a license suspended or revoked pursuant to Section 14601.2  
31 to do an act forbidden by law or neglect a duty imposed by law in  
32 the driving of the vehicle, which act or neglect proximately causes  
33 bodily injury to a person other than the driver. In proving the  
34 person neglected a duty imposed by law in the driving of the  
35 vehicle, it is not necessary to prove that a specific section of this  
36 code was violated.

37 (b) A person convicted under this section shall be imprisoned  
38 in the county jail and shall not be released upon work release,  
39 community service, or other release program before the minimum  
40 period of imprisonment, prescribed in Section 14601.2, is served.

1 If a person is convicted of that offense and is granted probation,  
2 the court shall require that the person convicted serve at least the  
3 minimum time of imprisonment, as specified in those sections, as  
4 a term or condition of probation.

5 (c) When the prosecution agrees to a plea of guilty or nolo  
6 contendere to a charge of a violation of this section in satisfaction  
7 of, or as a substitute for, an original charge of a violation of Section  
8 14601.2, and the court accepts that plea, except, in the interest of  
9 justice, when the court finds it should be inappropriate, the court  
10 shall, pursuant to Section 23575, require the person convicted, in  
11 addition to other requirements, to install a certified ignition  
12 interlock device on a vehicle that the person owns or operates for  
13 a period not to exceed three years.

14 (d) This section also applies to the operation of an off-highway  
15 motor vehicle on those lands that the Chappie-Z'berg Off-Highway  
16 Motor Vehicle Law of 1971 (Division 16.5 (commencing with  
17 Section 38000)) applies as to off-highway motor vehicles, as  
18 described in Section 38001.

19 (e) Upon receipt of the abstract of a conviction under this  
20 section, the department shall not reinstate the privilege to operate  
21 a motor vehicle until the department receives proof of either the  
22 "Verification of Installation" form as described in paragraph (2)  
23 of subdivision (g) of Section 13386 or the Judicial Council Form  
24 I.D. 100.

25 (f) *If Section 23752.2 is applicable, then subdivisions (c) and*  
26 *(e) are not applicable, and Section 23757.1 shall apply.*

27 *SEC. 3. Section 14601.5 of the Vehicle Code is amended to*  
28 *read:*

29 14601.5. (a) A person ~~may~~ *shall* not drive a motor vehicle at  
30 any time when that person's driving privilege is suspended or  
31 revoked pursuant to Section 13353, 13353.1, or 13353.2 and that  
32 person has knowledge of the suspension or revocation.

33 (b) Except in full compliance with the restriction, a person ~~may~~  
34 *shall* not drive a motor vehicle at any time when that person's  
35 driving privilege is restricted pursuant to Section 13353.7 or  
36 13353.8 and that person has knowledge of the restriction.

37 (c) Knowledge of suspension, revocation, or restriction of the  
38 driving privilege shall be conclusively presumed if notice has been  
39 given by the department to the person pursuant to Section 13106.

1 The presumption established by this subdivision is a presumption  
2 affecting the burden of proof.

3 (d) A person convicted of a violation of this section is  
4 punishable, as follows:

5 (1) Upon a first conviction, by imprisonment in the county jail  
6 for not more than six months or by a fine of not less than three  
7 hundred dollars (\$300) or more than one thousand dollars (\$1,000),  
8 or by both that fine and imprisonment.

9 (2) If the offense occurred within five years of a prior offense  
10 that resulted in a conviction for a violation of this section or Section  
11 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the  
12 county jail for not less than 10 days or more than one year, and by  
13 a fine of not less than five hundred dollars (\$500) or more than  
14 two thousand dollars (\$2,000).

15 (e) In imposing the minimum fine required by subdivision (d),  
16 the court shall take into consideration the defendant's ability to  
17 pay the fine and may, in the interest of justice, and for reasons  
18 stated in the record, reduce the amount of that minimum fine to  
19 less than the amount otherwise imposed.

20 (f) This section does not prohibit a person who is participating  
21 in, or has completed, an alcohol or drug rehabilitation program  
22 from driving a motor vehicle, that is owned or utilized by the  
23 person's employer, during the course of employment on private  
24 property that is owned or utilized by the employer, except an  
25 offstreet parking facility as defined in subdivision ~~(d)~~ (c) of Section  
26 12500.

27 (g) When the prosecution agrees to a plea of guilty or nolo  
28 contendere to a charge of a violation of this section in satisfaction  
29 of, or as a substitute for, an original charge of a violation of Section  
30 14601.2, and the court accepts that plea, except, in the interest of  
31 justice, when the court finds it would be inappropriate, the court  
32 shall, pursuant to Section 23575, require the person convicted, in  
33 addition to other requirements, to install a certified ignition  
34 interlock device on a vehicle that the person owns or operates for  
35 a period not to exceed three years.

36 (h) This section also applies to the operation of an off-highway  
37 motor vehicle on those lands that the Chappie-Z'berg Off-Highway  
38 Motor Vehicle Law of 1971 (Division 16.5 (commencing with  
39 Section 38000)) applies as to off-highway motor vehicles, as  
40 described in Section 38001.

1 (i) Upon receipt of the abstract of a conviction under this section,  
2 the department shall not reinstate the privilege to operate a motor  
3 vehicle until the department receives proof of either the  
4 “Verification of Installation” form as described in paragraph (2)  
5 of subdivision (g) of Section 13386 or the Judicial Council Form  
6 I.D. 100.

7 (j) *If Section 23752.2 is applicable, then subdivisions (g) and*  
8 *(i) are not applicable, and Section 23757.1 shall apply.*

9 ~~SEC. 2.~~

10 SEC. 4. Section 23575.1 is added to the Vehicle Code, to read:

11 23575.1. (a) The Department of Motor Vehicles, upon receipt  
12 of the court’s abstract of conviction for a violation listed in Section  
13 23575.2, shall inform the convicted person of the requirements of  
14 this section and the term for which the person is required to have  
15 a certified ignition interlock device installed. The records of the  
16 department shall reflect the mandatory use of the device for the  
17 term required and the time when the device is required to be  
18 installed by this code.

19 (b) The department shall advise the person that installation of  
20 an ignition interlock device on a vehicle does not allow the person  
21 to drive without a valid driver’s license.

22 (c) A person who is notified by the department pursuant to  
23 subdivision (a) shall, within 30 days of notification, complete the  
24 following:

25 (1) Arrange for each vehicle owned or operated by the person  
26 to be fitted with an ignition interlock device by a certified ignition  
27 interlock device provider under Section 13386.

28 (2) Notify the department and provide to the department proof  
29 of installation by submitting the “Verification of Installation” form  
30 described in paragraph (2) of subdivision (g) of Section 13386.

31 (d) The department shall place a restriction on the driver’s  
32 license record of the convicted person that states the driver is  
33 restricted to driving only vehicles equipped with a certified ignition  
34 interlock device.

35 (e) (1) A person who is notified by the department pursuant to  
36 subdivision (a) shall arrange for each vehicle with an ignition  
37 interlock device to be serviced by the installer at least once every  
38 60 days in order for the installer to recalibrate and monitor the  
39 operation of the device.

1 (2) The installer shall notify the department if the device is  
2 removed or indicates that the person has attempted to remove,  
3 bypass, or tamper with the device, or if the person fails three or  
4 more times to comply with any requirement for the maintenance  
5 or calibration of the ignition interlock device.

6 (f) The department shall monitor the installation and  
7 maintenance of the ignition interlock device installed pursuant to  
8 subdivision (a).

9 (g) *(1) A person who is notified by the department, pursuant  
10 to subdivision (a), is exempt from the requirements of subdivision  
11 (c) under the following circumstances:*

12 (A) *Within 30 days of the notification, the person certifies to  
13 the department all of the following:*

14 (i) *The person does not own a vehicle.*

15 (ii) *The person does not have access to a vehicle at his or her  
16 residence.*

17 (iii) *The person no longer has access to the vehicle being driven  
18 by the person, when he or she was arrested for a violation that  
19 subsequently resulted in a conviction for a violation listed in  
20 Section 23575.2.*

21 (iv) *The person acknowledges that he or she is only allowed to  
22 drive a vehicle that is fitted with an operating ignition interlock  
23 device and that he or she is required to have a valid driver's license  
24 before he or she can drive.*

25 (v) *The person is subject to the requirements of this section  
26 when he or she purchases or has access to a vehicle.*

27 (B) *The person's driver's license record has been restricted  
28 pursuant to subdivision (d).*

29 (C) *The person complies with Section 23575.2 immediately upon  
30 commencing ownership or operation of a vehicle subject to the  
31 required installation of a ignition interlock device.*

32 (2) *A person who has been granted an exemption pursuant to  
33 this subdivision and who subsequently drives a vehicle in violation  
34 of the exemption is subject to the penalties of subdivision (j) in  
35 addition to any other applicable penalties in law.*

36 ~~(g)~~

37 (h) This section does not permit a person to drive without a  
38 valid driver's license.

39 ~~(h)~~

1 (i) Before a driver’s license may be issued, reissued, or returned  
 2 to a person after a suspension or revocation of that person’s driving  
 3 privilege that requires the installation of an *ignition* interlock device  
 4 pursuant to this section, the person shall, in addition to any other  
 5 fees required by this code, pay to the department a fee sufficient  
 6 to cover the costs of administration of this section as determined  
 7 by the department.

8 (i)  
 9 (j) A person who is required under subdivision (c) to install an  
 10 ignition interlock device who willfully fails to install the ignition  
 11 interlock device within the time period required under subdivision  
 12 (c) is guilty of a misdemeanor and shall be punished by  
 13 imprisonment in the county jail for not more than six months or  
 14 by a fine of not more than five thousand dollars (\$5,000), or by  
 15 both that fine and imprisonment.

16 (j)  
 17 (k) Subdivisions (j), (k), (m), (n), and (o) of Section 23575 apply  
 18 to this section.

19 (k)  
 20 (l) The requirements of this section and Section 23575.2 are in  
 21 addition to any other requirements of law.

22 ~~SEC. 3.~~  
 23 SEC. 5. Section 23575.2 is added to the Vehicle Code, to read:  
 24 23575.2. (a) In addition to all other requirements of this code,  
 25 a person convicted of any of the following violations shall be  
 26 punished as follows:

27 (1) Upon a conviction of a violation of Section ~~14601.2~~ 14601.2,  
 28 14601.4, or 14601.5 subsequent to one prior conviction of a  
 29 violation of Section 23152, 23153, or 23103.5, within a 10-year  
 30 period, the person shall immediately install ~~an~~ a *certified* ignition  
 31 interlock device, pursuant to Section 23575.1, in all vehicles owned  
 32 or operated by that person for a term of one year.

33 (2) Upon a conviction of a violation of Section ~~14601.2~~ 14601.2,  
 34 14601.4, or 14601.5 subsequent to two prior convictions of a  
 35 violation of Section 23152, 23153, or 23103.5, within a 10-year  
 36 period, or one prior conviction of Section 14601.2, 14601.4, or  
 37 14601.5, within a 10-year period, the person shall immediately  
 38 install ~~an~~ a *certified* ignition interlock device, pursuant to Section  
 39 23575.1, in all vehicles owned or operated by that person for a  
 40 term of two years.

1 (3) Upon a conviction of a violation of Section ~~14601.2~~ 14601.2,  
2 14601.4, or 14601.5 subsequent to three or more prior convictions  
3 of a violation of Section 23152, 23153, or 23103.5, within a  
4 10-year period, or two or more prior convictions of Section  
5 14601.2, 14601.4, or 14601.5, within a 10-year period, the person  
6 shall immediately install ~~an~~ a certified ignition interlock device,  
7 pursuant to Section 23575.1, in all vehicles owned or operated by  
8 that person for a term of three years.

9 (b) The department shall advise the court if a person subject to  
10 this section has failed to show proof of installation, as required by  
11 Section 23575.1, within 30 days of the department notifying the  
12 person he or she is required to install ~~an~~ a certified ignition  
13 interlock device.

14 ~~SEC. 4.~~

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