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AMENDED IN ASSEMBLY MARCH 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 91

Introduced by Assembly Member Feuer
(Coauthors: Assembly Members Gilmore, Hill, Huffman, Jeffries,
Jones, Bonnie Lowenthal, Miller, Nava, Saldana, Solorio, and
Torlakson)

(Coauthors: Senators Cox and DeSaulnier)

January 6, 2009

An act to *amend Section 23576 of, and to add and repeal Chapter 5* (commencing with Section 23700) of Division 11.5 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 91, as amended, Feuer. Vehicles: driving under the influence (DUI): ignition interlock device.

(1) Existing law requires a person's privilege to operate a motor vehicle to be suspended or revoked for a specified period of time if the person has been convicted of violating specified provisions prohibiting driving a motor vehicle while under the influence of an alcoholic beverage or drug or the combined influence of an alcoholic beverage and drug, or with 0.08% or more, by weight, of alcohol in his or her blood or while addicted to the use of any drug, with or without bodily injury to another. Existing law also authorizes a person whose privilege

is suspended or revoked in that manner to receive a restricted driver's license if specified requirements are met, including, in some instances, the installation of an ignition interlock device on the person's vehicle.

This bill would require the department to establish a pilot program from July 1, 2010, to January 1, 2015, in the Counties of Alameda, Los Angeles, Orange, Sacramento, and San Diego that requires, as a condition of being issued a restricted driver's license, being reissued a driver's license, or having the privilege to operate a motor vehicle reinstated subsequent to a conviction for a violation of the above offenses, a person to install for a specified period of time an ignition interlock device on all vehicles he or she owns or operates, except as provided. The amount of time the ignition interlock device would be required to be installed would be based upon the number of convictions, as prescribed. The bill would also require a person convicted of violating the above offenses to participate in a county alcohol and drug assessment program.

The bill would ~~also~~ set up a statutory scheme under which the department would, with regard to the installation of an ignition interlock device described above, notify the person of the ignition interlock device installation requirements established under the bill, accept notification from the installer of the ignition interlock device of attempts to remove, bypass, or tamper with the ignition interlock 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 bill would also require that manufacturers and manufacturer's agents, certified by the department to provide ignition interlock devices, adopt a fee schedule for payment of the costs of the ignition interlock device based on the offender's ability to pay, and would require the court to adopt a similar fee schedule with regard to the fees for the county alcohol and drug problem assessment program.

On or before January 1, 2014, the department would be required to report to the Legislature regarding the effectiveness of the pilot program in reducing the number of first-time driving under the influence violations and repeat offenses in those counties.

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, the bill would impose a state-mandated local program by expanding the scope of that 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 23576 of the Vehicle Code is amended to
2 read:

3 23576. (a) Notwithstanding ~~Section 23575~~ Sections 23575
4 and 23700, if a person is required to operate a motor vehicle in
5 the course and scope of his or her employment and if the vehicle
6 is owned by the employer, the person may operate that vehicle
7 without installation of an approved ignition interlock device if the
8 employer has been notified by the person that the person's driving
9 privilege has been restricted pursuant to ~~Section 23575~~ Sections
10 23575 and 23700 and if the person has proof of that notification
11 in his or her possession, or if the notice, or a facsimile copy thereof,
12 is with the vehicle.

13 (b) A motor vehicle owned by a business entity that is all or
14 partly owned or controlled by a person otherwise subject to ~~Section~~
15 ~~23575~~ Sections 23575 and 23700, is not a motor vehicle owned
16 by the employer subject to the exemption in subdivision (a).

17 ~~SECTION 1.~~

18 SEC. 2. Chapter 5 (commencing with Section 23700) is added
19 to Division 11.5 of the Vehicle Code, to read:

20
21 CHAPTER 5. IGNITION INTERLOCK DEVICES

22
23 23700. (a) Notwithstanding any other provision of law, the
24 Department of Motor Vehicles shall establish a pilot program in
25 the Counties of Alameda, Los Angeles, Orange, Sacramento, and
26 San Diego to reduce the number of first-time violations and repeat
27 offenses of Sections 23152 and 23153, as follows:

28 (1) The Department of Motor Vehicles, upon receipt of the
29 court's abstract conviction for a violation listed in paragraph (7),
30 shall inform the convicted person of the requirements of this

1 section, including the term for which the person is required to have
2 a certified ignition interlock device installed. The records of the
3 department shall reflect the mandatory use of the device for the
4 term required and the time when the device is required to be
5 installed by this code.

6 (2) The department shall advise the person that installation of
7 an ignition interlock device on a vehicle does not allow the person
8 to drive without a valid driver's license.

9 (3) Before a driver's license may be issued, reissued, or returned
10 to a person after a suspension or revocation of that person's driving
11 privilege that requires the installation of an ignition interlock
12 device, a person who is notified by the department pursuant to
13 paragraph (1) shall complete all of the following:

14 (A) Arrange for each vehicle owned or operated by the person
15 to be fitted with an ignition interlock device by a certified ignition
16 interlock device provider under Section 13386.

17 (B) Notify the department and provide to the department proof
18 of installation by submitting the "Verification of Installation" form
19 described in paragraph (2) of subdivision (g) of Section 13386.

20 (C) Pay the fee, determined by the department, that is sufficient
21 to cover the costs of administration of this section.

22 (4) The department shall place a restriction on the driver's
23 license record of the convicted person that states the driver is
24 restricted to driving only vehicles equipped with a certified ignition
25 interlock device.

26 (5) (A) A person who is notified by the department pursuant
27 to paragraph (1) shall arrange for each vehicle with an ignition
28 interlock device to be serviced by the installer at least once every
29 60 days in order for the installer to recalibrate and monitor the
30 operation of the device.

31 (B) The installer shall notify the department if the device is
32 removed or indicates that the person has attempted to remove,
33 bypass, or tamper with the device, or if the person fails three or
34 more times to comply with any requirement for the maintenance
35 or calibration of the ignition interlock device.

36 (6) The department shall monitor the installation and
37 maintenance of the ignition interlock device installed pursuant to
38 paragraph (1).

39 (7) A person is required to install an ignition interlock device
40 for the applicable term as a condition of being issued a restricted

1 driver's license, being reissued a driver's license, or having the
2 privilege to operate a motor vehicle reinstated subsequent to a
3 conviction for a violation or a suspension of a person's driver's
4 license, as follows:

5 (A) A person convicted of a violation of Section 23152 shall
6 be required to install an ignition interlock device, as follows:

7 (i) Upon a first offense, the person shall install an ignition
8 interlock device in all vehicles owned or operated by that person
9 for a mandatory term of five months that begins once that person
10 has provided proof of installation.

11 (ii) Upon a second offense, the person shall install an ignition
12 interlock device in all vehicles owned or operated by that person
13 for a mandatory term of 12 months that begins once that person
14 has provided proof of installation.

15 (iii) Upon a third offense, the person shall install an ignition
16 interlock device in all vehicles owned or operated by that person
17 for a mandatory term of 24 months that begins once that person
18 has provided proof of installation.

19 (iv) Upon a fourth offense or any subsequent violation, the
20 person shall install an ignition interlock device in all vehicles
21 owned or operated by that person for a mandatory term of 36
22 months that begins once that person has provided proof of
23 installation.

24 (B) A person convicted of a violation of Section 23153 shall
25 install an ignition interlock device, as follows:

26 (i) Upon a first offense, the person shall install an ignition
27 interlock device in all vehicles owned or operated by that person
28 for a mandatory term of 12 months that begins once that person
29 has provided proof of installation.

30 (ii) Upon a second offense, the person shall install an ignition
31 interlock device in all vehicles owned or operated by that person
32 for a mandatory term of 24 months that begins once that person
33 has provided proof of installation.

34 (iii) Upon a third offense, the person shall install an ignition
35 interlock device in all vehicles owned or operated by that person
36 for a mandatory term of 36 months that begins once that person
37 has provided proof of installation.

38 (iv) Upon a fourth offense or any subsequent violation, the
39 person shall install an ignition interlock device in all vehicles
40 owned or operated by that person for a mandatory term of 48

1 months that begins once that person has provided proof of
2 installation.

3 (8) A person who is notified by the department, pursuant to this
4 subdivision, is exempt from the requirements of this subdivision
5 if within 30 days of the notification, the person certifies to the
6 department all of the following:

7 (A) The person does not own a vehicle.

8 (B) The person does not have access to a vehicle at his or her
9 residence.

10 (C) The person no longer has access to the vehicle being driven
11 by the person at the time he or she was arrested for a violation that
12 subsequently resulted in a conviction for a violation listed in this
13 subdivision.

14 (D) The person acknowledges that he or she is only allowed to
15 drive a vehicle that is fitted with a functioning ignition interlock
16 device.

17 (E) The person acknowledges that he or she is required to have
18 a valid driver's license before he or she can drive.

19 (F) The person is subject to the requirements of this section
20 when he or she purchases or has access to a vehicle.

21 (9) Subdivisions (j), (k), (m), (n), and (o) of Section 23575 apply
22 to this section.

23 (10) If a person fails to comply with any of the requirements
24 regarding ignition interlock devices, the mandatory term for which
25 the ignition interlock device is required to be installed shall be
26 reset by the department.

27 (b) (1) A person convicted of a violation of Section 23152 or
28 23153 shall be required to participate in a county alcohol and drug
29 problem assessment program described in Section 23646.

30 (2) The county alcohol and drug problem assessment program
31 shall include treatment and counseling recommendations.

32 (3) The court shall impose a fee of no more than one hundred
33 twenty dollars (\$120) to pay for the cost of the assessment.

34 (4) The court shall determine the person's ability to pay for all
35 or a portion of the fee for the assessment based on the person's
36 income relative to the federal poverty level, as defined in Section
37 127400 of the Health and Safety Code:

38 (A) A person with an income at 100 percent of the federal
39 poverty level and below is responsible for 10 percent of the fee
40 for the assessment.

1 (B) A person with an income at 101 to 200 percent of the federal
2 poverty level is responsible for 25 percent of the fee for the
3 assessment.

4 (C) A person with an income at 201 to 300 percent of the federal
5 poverty level is responsible for 50 percent of the fee for the
6 assessment.

7 (D) All other offenders are responsible for 100 percent of the
8 fee for the assessment.

9 (c) (1) Every manufacturer and manufacturer's agent certified
10 by the department to provide ignition interlock devices, under
11 Section 13386, shall adopt the following fee schedule that provides
12 for the payment of the costs of the ignition interlock device by
13 offenders subject to this chapter in amounts commensurate with
14 that person's income relative to the federal poverty level, as defined
15 in Section 127400 of the Health and Safety Code:

16 (A) A person with an income at 100 percent of the federal
17 poverty level and below is responsible for 10 percent of the cost
18 of the ignition interlock device. *The ignition interlock device*
19 *provider is responsible for absorbing the cost of the ignition*
20 *interlock device that is not paid by the person.*

21 (B) A person with an income at 101 to 200 percent of the federal
22 poverty level is responsible for 25 percent of the cost of the ignition
23 interlock device. *The ignition interlock device provider is*
24 *responsible for absorbing the cost of the ignition interlock device*
25 *that is not paid by the person.*

26 (C) A person with an income at 201 to 300 percent of the federal
27 poverty level is responsible for 50 percent of the cost of the ignition
28 interlock device. *The ignition interlock device provider is*
29 *responsible for absorbing the cost of the ignition interlock device*
30 *that is not paid by the person.*

31 (D) All other offenders are responsible for 100 percent of the
32 cost of the ignition interlock device.

33 (2) The cost of the ignition interlock device may only be raised
34 annually equal to the Consumer Price Index.

35 (3) The offender's income may be verified by presentation of
36 that person's current federal income tax return or three months of
37 monthly income statements.

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

1 (e) The requirements of this section are in addition to any other
2 requirements of law.

3 (f) *For the purposes of this section, “vehicle” does not include*
4 *a motorcycle until the state certifies an ignition interlock device*
5 *that can be installed on a motorcycle. A person subject to an*
6 *ignition interlock device restriction shall not operate a motorcycle*
7 *for the duration of the ignition interlock device restriction period.*

8 (f)

9 (g) This section shall become operative on July 1, 2010.

10 23701. On or before January 1, 2014, the Department of Motor
11 Vehicles shall report to the Legislature regarding the effectiveness
12 of the pilot program authorized under this chapter in reducing the
13 number of first-time violations and repeat offenses of Sections
14 23152 and 23153 in the Counties of Alameda, Los Angeles,
15 Orange, Sacramento, and San Diego.

16 23702. This chapter shall remain in effect only until January
17 1, 2015, and as of that date is repealed, unless a later enacted
18 statute, that is enacted before January 1, 2015, deletes or extends
19 that date.

20 ~~SEC. 2.~~

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.