

Assembly Bill No. 91

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

Passed the Senate September 3, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 13386 and 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, Feuer. Vehicles: driving under the influence (DUI): ignition interlock device.

(1) Existing law requires all manufacturers of ignition interlock devices that meet specified requirements and are certified in a manner approved by the Department of Motor Vehicles, that intend to market the devices in this state, to first apply to the department on forms provided by the department and to pay an accompanying fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out those provisions.

This bill would require a manufacturer and a manufacturer's agent, certified by the department to provide ignition interlock devices, to provide each year to the department information on the number of false positives and the time to reset the device. The bill would also require the department to use this information in evaluating the continued certification of an ignition interlock device.

(2) 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, 2016, in the Counties of Alameda, Los Angeles, Sacramento, and Tulare 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 prohibit the implementation of the pilot program if the department fails to obtain, by January 31, 2010, nonstate funds for the programming costs of the pilot program.

The bill would 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, 2015, 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.

(3) This bill would require that it become operative only if SB 598 of the 2009–10 Regular Session becomes operative on or before January 1, 2010.

(4) 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.

(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.

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

SECTION 1. Section 13386 of the Vehicle Code is amended to read:

13386. (a) (1) The Department of Motor Vehicles shall certify or cause to be certified ignition interlock devices required by Article 5 (commencing with Section 23575) of Chapter 2 of Division 11.5 and publish a list of approved devices.

(2) (A) The Department of Motor Vehicles shall ensure that ignition interlock devices that have been certified according to the requirements of this section continue to meet certification requirements. The department may periodically require manufacturers to indicate in writing whether the devices continue to meet certification requirements.

(B) The department may use denial of certification, suspension or revocation of certification, or decertification of an ignition interlock device in another state as an indication that the certification requirements are not met, if either of the following apply:

(i) The denial of certification, suspension or revocation of certification, or decertification in another state constitutes a violation by the manufacturer of Article 2.55 (commencing with Section 125.00) of Chapter 1 of Division 1 of the Title 13 of the California Code of Regulations.

(ii) The denial of certification for an ignition interlock device in another state was due to a failure of an ignition interlock device to meet the standards adopted by the regulation set forth in clause (i), specifically Sections 1 and 2 of the model specification for breath alcohol ignition interlock devices, as published by notice in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, on pages 11774 to 11787, inclusive.

(C) Failure to continue to meet certification requirements shall result in suspension or revocation of certification of ignition interlock devices.

(b) (1) A manufacturer shall not furnish an installer, service center, technician, or consumer with technology or information that allows a device to be used in a manner that is contrary to the purpose for which it is certified.

(2) Upon a violation of paragraph (1), the department shall suspend or revoke the certification of the ignition interlock device that is the subject of that violation.

(c) An installer, service center, or technician shall not tamper with, change, or alter the functionality of the device from its certified criteria.

(d) The department shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of ignition interlock devices. If the certification of a device is suspended or revoked, the manufacturer of the device shall be responsible for, and shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(e) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(f) All manufacturers of ignition interlock devices that meet the requirements of subdivision (e) and are certified in a manner approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out this section.

(g) A manufacturer and a manufacturer's agent certified by the department to provide ignition interlock devices shall provide each year to the department information on the number of false positives and the time to reset the device. The department shall use this information in evaluating the continued certification of an ignition interlock device.

(h) The department shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An “Option to Install,” to be sent by the Department of Motor Vehicles to repeat offenders along with the mandatory order of suspension or revocation. This shall include the alternatives available for early license reinstatement with the installation of an ignition interlock device and shall be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section.

(2) A “Verification of Installation” to be returned to the department by the reinstating offender upon application for reinstatement. Copies shall be provided for the manufacturer or the manufacturer’s agent.

(3) A “Notice of Noncompliance” and procedures to ensure continued use of the ignition interlock device during the restriction period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

(i) Every manufacturer and manufacturer’s agent certified by the department to provide ignition interlock devices shall adopt fee schedules that provide for the payment of the costs of the device by applicants in amounts commensurate with the applicant’s ability to pay.

SEC. 2. Section 23576 of the Vehicle Code is amended to read:

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

(b) A motor vehicle owned by a business entity that is all or partly owned or controlled by a person otherwise subject to

Sections 23575 and 23700, is not a motor vehicle owned by the employer subject to the exemption in subdivision (a).

SEC. 3. Chapter 5 (commencing with Section 23700) is added to Division 11.5 of the Vehicle Code, to read:

CHAPTER 5. IGNITION INTERLOCK DEVICES

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

(1) The Department of Motor Vehicles, upon receipt of the court's abstract conviction for a violation listed in paragraph (7), shall inform the convicted person of the requirements of this section, including the term for which the person is required to have a certified ignition interlock device installed. The records of the department shall reflect the mandatory use of the device for the term required and the time when the device is required to be installed by this code.

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

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

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

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

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

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

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

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

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

(7) A person is required to install an ignition interlock device for the applicable term 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 or a suspension of a person's driver's license, as follows:

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

(i) Upon a first offense, the person shall install an ignition interlock device in all vehicles owned or operated by that person for a mandatory term of five months.

(ii) Upon a second offense, the person shall install an ignition interlock device in all vehicles owned or operated by that person for a mandatory term of 12 months.

(iii) Upon a third offense, the person shall install an ignition interlock device in all vehicles owned or operated by that person for a mandatory term of 24 months.

(iv) Upon a fourth offense or any subsequent violation, the person shall install an ignition interlock device in all vehicles owned or operated by that person for a mandatory term of 36 months.

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

(i) Upon a first offense, the person shall install an ignition interlock device in all vehicles owned or operated by that person for a mandatory term of 12 months.

(ii) Upon a second offense, the person shall install an ignition interlock device in all vehicles owned or operated by that person for a mandatory term of 24 months.

(iii) Upon a third offense, the person shall install an ignition interlock device in all vehicles owned or operated by that person for a mandatory term of 36 months.

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

(C) The terms prescribed in this paragraph shall begin once a person has provided to the department proof of installation pursuant to paragraph (2) of subdivision (h) of Section 13386 and upon restoration of the driving privilege pursuant to Section 13352.

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

(A) The person does not own a vehicle.

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

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

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

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

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

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

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

(b) (1) Every manufacturer and manufacturer's agent certified by the department to provide ignition interlock devices, under

Section 13386, shall adopt the following fee schedule that provides for the payment of the costs of the ignition interlock device by offenders subject to this chapter in amounts commensurate with that person's income relative to the federal poverty level, as defined in Section 127400 of the Health and Safety Code:

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

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

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

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

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

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

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

(d) The requirements of this section are in addition to any other requirements of law.

(e) For the purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. A person subject to an ignition interlock device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.

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

23700.5. The department shall not implement Section 23700 if, by January 31, 2010, the department fails to obtain nonstate

funds for the programming costs of the pilot program specified in Section 23700.

23701. On or before January 1, 2015, the Department of Motor Vehicles shall report to the Legislature regarding the effectiveness of the pilot program authorized under this chapter in reducing the number of first-time violations and repeat offenses of Sections 23152 and 23153 in the Counties of Alameda, Los Angeles, Sacramento, and Tulare.

23702. This chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 4. This bill shall become operative only if Senate Bill 598 of the 2009–10 Regular Session is enacted and becomes operative on or before January 1, 2010.

SEC. 5. 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.

Approved _____, 2009

Governor