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AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1443

Introduced by Assembly Member Huffman

February 27, 2009

~~An act to add Section 12012.87 to the Government Code, relating to gaming.~~ *An act to amend Sections 23217, 23540, 23546, 23550, 23550.5, 23560, and 23566 of, and to add Section 23595 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1443, as amended, Huffman. ~~Gaming compacts: local support.~~ *Vehicles: driving under the influence: repeat offenders.*

Existing law requires, if a person is convicted of a specified driving under the influence (DUI) offense and the offense occurred within 10 years of 2, or 3 or more prior specified DUI offenses that resulted in a conviction, that the person be punished by enhanced penalties, and that the person's privilege to operate a motor vehicle be revoked by the department for a period of 2, 3, 4, or 5 years, as applicable.

This bill would delete the 10-year limitation.

Existing law authorizes the court to impose specified additional orders on a person when the person is convicted of a DUI offense, depending on the circumstances.

This bill would authorize the court to order the permanent revocation of the driver's license of a person who was previously convicted of 3 or more specified DUI offenses if the court considers 5 factors, including, but not limited to, the period of time that has elapsed since his or her previous DUI convictions. The bill would require the court to permanently revoke the driver's license of a person who was previously convicted of 5 or more specified DUI offenses.

The bill would require that a person whose driver's license is permanently revoked by a court under these provisions forfeit his or her vehicle to the state or forfeit any interest in the vehicle, if specified provisions apply and would prohibit that person from registering or owning a vehicle in this state. The bill would prohibit a person in this state from selling, leasing, or lending a vehicle to that person. The bill would also require the Department of Motor Vehicles to establish a database of persons whose driver's license has been permanently revoked by a court under these provisions.

The bill would also authorize a person whose driver's license was permanently revoked by a court because of 3 or 4 separate DUI offenses to apply to the Department of Motor Vehicles for the reinstatement of his or her privilege to drive after a period of 3 years from the date of his or her last conviction if the person successfully completes a written test and driving test for the license classification and a specified alcohol treatment program.

~~The federal Indian Gaming Regulatory Act provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature.~~

~~This bill would require the Governor to consider the presence or absence of local support when negotiating a tribal-state gaming compact to allow class III gaming on Indian lands, as specified. The bill would include a related statement of legislative findings and declarations.~~

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

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

1 SECTION 1. Section 23217 of the Vehicle Code is amended to
2 read:

1 23217. The Legislature finds and declares that some repeat
2 offenders of the prohibition against driving under the influence of
3 alcohol or drugs, when they are addicted or when they have too
4 much alcohol in their systems, may be escaping the intent of the
5 Legislature to punish the offender with progressively greater
6 severity if the offense is repeated one or more times ~~within a~~
7 ~~10-year period~~. This situation may occur when a conviction for a
8 subsequent offense occurs before a conviction is obtained on an
9 earlier offense.

10 The Legislature further finds and declares that the timing of
11 court proceedings should not permit a person to avoid aggravated
12 mandatory minimum penalties for multiple separate offenses
13 ~~occurring within a 10-year period~~. It is the intent of the Legislature
14 to provide that a person be subject to enhanced mandatory
15 minimum penalties for multiple offenses ~~within a period of 10~~
16 ~~years, regardless of whether~~ *when* the convictions ~~are obtained in~~
17 ~~the same sequence as the~~ *for those* offenses ~~had been committed~~
18 *were obtained*.

19 Nothing in this section requires consideration of judgment of
20 conviction in a separate proceeding that is entered after the
21 judgment in the present proceeding, except as it relates to violation
22 of probation.

23 Nothing in this section or the amendments to Section 23540,
24 23546, 23550, 23560, 23566, 23622, or 23640 made by Chapter
25 1205 of the Statutes of 1984 affects the penalty for a violation of
26 Section 23152 or 23153 occurring prior to January 1, 1985.

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

28 23540. (a) If a person is convicted of a violation of Section
29 23152 and the ~~offense occurred within 10 years~~ *person was*
30 *previously convicted* of a separate violation of Section 23103, as
31 specified in Section 23103.5, 23152, or 23153, that resulted in a
32 conviction, that person shall be punished by imprisonment in the
33 county jail for not less than 90 days nor more than one year and
34 by a fine of not less than three hundred ninety dollars (\$390) nor
35 more than one thousand dollars (\$1,000). The person's privilege
36 to operate a motor vehicle shall be suspended by the department
37 pursuant to paragraph (3) of subdivision (a) of Section 13352. The
38 court shall require the person to surrender the driver's license to
39 the court in accordance with Section 13550.

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

8 ~~(e) This section shall become operative on September 20, 2005.~~

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

10 23546. (a) If a person is convicted of a violation of Section
11 23152 and ~~the offense occurred within 10 years~~ *person was*
12 *previously convicted* of two separate violations of Section 23103,
13 as specified in Section 23103.5, 23152, or 23153, or any
14 combination thereof, that resulted in convictions, that person shall
15 be punished by imprisonment in the county jail for not less than
16 120 days nor more than one year and by a fine of not less than
17 three hundred ninety dollars (\$390) nor more than one thousand
18 dollars (\$1,000). The person's privilege to operate a motor vehicle
19 shall be revoked by the Department of Motor Vehicles as required
20 in paragraph (5) of subdivision (a) of Section 13352. The court
21 shall require the person to surrender his or her driver's license to
22 the court in accordance with Section 13550.

23 (b) A person convicted of a violation of Section 23152
24 punishable under this section shall be designated as a habitual
25 traffic offender for a period of three years, subsequent to the
26 conviction. The person shall be advised of this designation pursuant
27 to subdivision (b) of Section 13350.

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

29 23550. (a) If a person is convicted of a violation of Section
30 23152 and ~~the offense occurred within 10 years~~ *person was*
31 *previously convicted* of three or more separate violations of Section
32 23103, as specified in Section 23103.5, or Section 23152 or 23153,
33 or any combination thereof, that resulted in convictions, that person
34 shall be punished by imprisonment in the state prison, or in a
35 county jail for not less than 180 days nor more than one year, and
36 by a fine of not less than three hundred ninety dollars (\$390) nor
37 more than one thousand dollars (\$1,000). The person's privilege
38 to operate a motor vehicle shall be revoked by the Department of
39 Motor Vehicles pursuant to paragraph (9) of subdivision (a) of

1 Section 13352. The court shall require the person to surrender the
2 driver's license to the court in accordance with Section 13550.

3 (b) A person convicted of a violation of Section 23152
4 punishable under this section shall be designated as a habitual
5 traffic offender for a period of three years, subsequent to the
6 conviction. The person shall be advised of this designation pursuant
7 to subdivision (b) of Section 13350.

8 *SEC. 5. Section 23550.5 of the Vehicle Code is amended to*
9 *read:*

10 23550.5. (a) A person is guilty of a public offense, punishable
11 by imprisonment in the state prison or confinement in a county
12 jail for not more than one year and by a fine of not less than three
13 hundred ninety dollars (\$390) nor more than one thousand dollars
14 (\$1,000) if that person is convicted of a violation of Section 23152
15 or 23153, and ~~the offense occurred within 10 years~~ *person was*
16 *previously convicted* of any of the following:

17 (1) A prior violation of Section 23152 that was punished as a
18 felony under Section 23550 or this section, or both, or under former
19 Section 23175 or former Section 23175.5, or both.

20 (2) A prior violation of Section 23153 that was punished as a
21 felony.

22 (3) A prior violation of paragraph (1) of subdivision (c) of
23 Section 192 of the Penal Code that was punished as a felony.

24 (b) Each person who, having previously been convicted of a
25 violation of subdivision (a) of Section 191.5 of the Penal Code, a
26 felony violation of subdivision (b) of Section 191.5, or a violation
27 of subdivision (a) of Section 192.5 of the Penal Code, is
28 subsequently convicted of a violation of Section 23152 or 23153
29 is guilty of a public offense punishable by imprisonment in the
30 state prison or confinement in a county jail for not more than one
31 year and by a fine of not less than three hundred ninety dollars
32 (\$390) nor more than one thousand dollars (\$1,000).

33 (c) The privilege to operate a motor vehicle of a person
34 convicted of a violation that is punishable under subdivision (a)
35 or (b) shall be revoked by the department under paragraph (9) of
36 subdivision (a) of Section 13352, unless paragraph (8) of
37 subdivision (a) of Section 13352 is also applicable, in which case
38 the privilege shall be revoked under that provision. The court shall
39 require the person to surrender the driver's license to the court in
40 accordance with Section 13550.

1 (d) A person convicted of a violation of Section 23152 or 23153
2 that is punishable under this section shall be designated as a
3 habitual traffic offender for a period of three years, subsequent to
4 the conviction. The person shall be advised of this designation
5 under subdivision (b) of Section 13350.

6 *SEC. 6. Section 23560 of the Vehicle Code is amended to read:*

7 23560. If a person is convicted of a violation of Section 23153
8 and the ~~offense occurred within 10 years~~ *person was previously*
9 *convicted* of a separate violation of Section 23103, as specified in
10 Section 23103.5, 23152, or 23153 that resulted in a conviction,
11 that person shall be punished by imprisonment in the state prison,
12 or in a county jail for not less than 120 days nor more than one
13 year, and by a fine of not less than three hundred ninety dollars
14 (\$390) nor more than five thousand dollars (\$5,000). The person's
15 privilege to operate a motor vehicle shall be revoked by the
16 Department of Motor Vehicles pursuant to paragraph (4) of
17 subdivision (a) of Section 13352. The court shall require the person
18 to surrender the driver's license to the court in accordance with
19 Section 13550.

20 *SEC. 7. Section 23566 of the Vehicle Code is amended to read:*

21 23566. (a) If a person is convicted of a violation of Section
22 23153 and the ~~offense occurred within 10 years~~ *person was*
23 *previously convicted* of two or more separate violations of Section
24 23103, as specified in Section 23103.5, or Section 23152 or 23153,
25 or any combination of these violations, that resulted in convictions,
26 that person shall be punished by imprisonment in the state prison
27 for a term of two, three, or four years and by a fine of not less than
28 one thousand fifteen dollars (\$1,015) nor more than five thousand
29 dollars (\$5,000). The person's privilege to operate a motor vehicle
30 shall be revoked by the Department of Motor Vehicles pursuant
31 to paragraph (8) of subdivision (a) of Section 13352. The court
32 shall require the person to surrender the driver's license to the
33 court in accordance with Section 13550.

34 (b) If a person is convicted of a violation of Section 23153, and
35 the act or neglect proximately causes great bodily injury, as defined
36 in Section 12022.7 of the Penal Code, to any person other than the
37 driver, and the ~~offense occurred within 10 years~~ *person was*
38 *previously convicted* of two or more separate violations of Section
39 23103, as specified in Section 23103.5, or Section 23152 or 23153,
40 or any combination of these violations, that resulted in convictions,

1 that person shall be punished by imprisonment in the state prison
2 for a term of two, three, or four years and by a fine of not less than
3 one thousand fifteen dollars (\$1,015) nor more than five thousand
4 dollars (\$5,000). The person's privilege to operate a motor vehicle
5 shall be revoked by the Department of Motor Vehicles pursuant
6 to paragraph (8) of subdivision (a) of Section 13352. The court
7 shall require the person to surrender the driver's license to the
8 court in accordance with Section 13550.

9 (c) If a person is convicted under subdivision (b), and the offense
10 ~~for which the person is convicted occurred within 10 years~~ *person*
11 *was previously convicted* of four or more separate violations of
12 Section 23103, as specified in Section 23103.5, or Section 23152
13 or 23153, or any combination of these violations, that resulted in
14 convictions, that person shall, in addition and consecutive to the
15 sentences imposed under subdivision (b), be punished by an
16 additional term of imprisonment in the state prison for three years.

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

19 (d) A person convicted of Section 23153 punishable under this
20 section shall be designated as a habitual traffic offender for a period
21 of three years, subsequent to the conviction. The person shall be
22 advised of this designation pursuant to subdivision (b) of Section
23 13350.

24 (e) A person confined in state prison under this section shall be
25 ordered by the court to participate in an alcohol or drug program,
26 or both, that is available at the prison during the person's
27 confinement. Completion of an alcohol or drug program under this
28 section does not meet the program completion requirement of
29 paragraph (8) of subdivision (a) of Section 13352, unless the drug
30 or alcohol program is licensed under Section 11836 of the Health
31 and Safety Code, or is a program specified in Section 8001 of the
32 Penal Code.

33 *SEC. 8. Section 23595 is added to the Vehicle Code, to read:*
34 *23595. (a) Notwithstanding Sections 13202.5, 13203, and*
35 *13352, a court may order the permanent revocation of the driver's*
36 *license of a person who was previously convicted of three or more*
37 *separate violations of Section 23152 or 23153. When making this*
38 *order, the court shall consider all of the following:*

39 *(1) The degree of bodily injury caused by the person's previous*
40 *violations that resulted in a conviction.*

1 (2) *The period of time that has elapsed since the person's*
2 *previous convictions.*

3 (3) *The person's blood-alcohol level at the time of each*
4 *violation.*

5 (4) *The person's past and future participation in an alcohol*
6 *treatment program in an effort to rehabilitate himself or herself.*

7 (5) *The person's overall risk to traffic or public safety.*

8 (b) *Notwithstanding Sections 13202.5, 13203, and 13352, a*
9 *court shall order the permanent revocation of the driver's licence*
10 *of a person who was previously convicted of five or more separate*
11 *violations of Section 23152 or 23153.*

12 (c) *A person whose driver's license was permanently revoked*
13 *by a court because of three or four separate violations of Section*
14 *23152 or 23153, may apply to the department for the reinstatement*
15 *of his or her privilege to drive after a period of three years from*
16 *the date of his or her last conviction, if he or she completes all of*
17 *the following:*

18 (1) *Successfully passes the written test for the license*
19 *classification.*

20 (2) *Successfully passes the driving test for the license*
21 *classification.*

22 (3) *An 18-month driving-under-the-influence program licensed*
23 *pursuant to Section 11836 of the Health and Safety Code, as*
24 *described in subdivision (b) of Section 23568 or, if available in*
25 *the county of the person's residence or employment, a 30-month*
26 *driving-under-the-influence program licensed pursuant to Section*
27 *11836 of the health and Safety Code, or a program specified in*
28 *Section 8001 of the Penal Code.*

29 (d) *A person whose driver's license has been permanently*
30 *revoked under subdivision (b) of this section shall not be eligible*
31 *for a restricted driver's license under this code.*

32 (e) *A Person whose driver's license has been permanently*
33 *revoked by the court under this section shall forfeit his or her*
34 *vehicle to the state if he or she is the registered owner of the vehicle*
35 *and holds title to the vehicle.*

36 (1) *If the person is the coregistrant or cotitle owner of the*
37 *vehicle, he or she shall forfeit all interest in the vehicle, and the*
38 *vehicle shall be released to the coregistrant or the cotitle owner,*
39 *provided that the vehicle is reregistered in the other person's name.*

1 (2) *If there is no coregistrant or cotitle owner, then the vehicle*
2 *shall be released to the person or entity that holds legal title*
3 *pursuant to subdivision (b) of Section 23592.*

4 (f) *A person whose driver's license is permanently revoked by*
5 *the court under this section shall be prohibited from registering*
6 *or owning a vehicle in this state and no person in this state shall*
7 *sell, lease, or lend a vehicle to any person whose license has been*
8 *permanently revoked by the court under this section.*

9 (g) *The Department of Motor Vehicles shall establish a database*
10 *of persons whose driver's license has been permanently revoked*
11 *by a court under this section.*

12 (h) *Upon receipt of a duly certified abstract of the record of the*
13 *court showing that the court has ordered permanent revocation*
14 *of a driver's license pursuant to this section, the department shall*
15 *permanently revoke the person's driver's license.*

16 ~~SECTION 1. The Legislature finds and declares all of the~~
17 ~~following:~~

18 ~~(a) The federal Indian Gaming Regulatory Act of 1988 (IGRA)~~
19 ~~authorizes federally recognized Indian tribes to conduct class III~~
20 ~~gaming on Indian lands within the tribe's jurisdiction, to the extent~~
21 ~~those games are permitted by state law, and pursuant to a gaming~~
22 ~~compact negotiated between a tribe and the state.~~

23 ~~(b) IGRA requires the state to negotiate in good faith for the~~
24 ~~conclusion of tribal-state gaming compacts with Indian tribes that~~
25 ~~request negotiations when those tribes have eligible Indian lands~~
26 ~~located in the state.~~

27 ~~(c) In 1998, California voters approved Proposition 5, a statutory~~
28 ~~measure designed to allow for the operation of slot machine and~~
29 ~~house banked card gaming by California Indian tribes on Indian~~
30 ~~lands in accordance with federal law. In 1999, the California~~
31 ~~Supreme Court held that most of the provisions enacted by~~
32 ~~Proposition 5 were unconstitutional.~~

33 ~~(d) In 2000, California voters approved Proposition 1A,~~
34 ~~amending the California Constitution to authorize the Governor~~
35 ~~to negotiate and conclude compacts, subject to ratification by the~~
36 ~~Legislature, for the operation of slot machines, and for the conduct~~
37 ~~of lottery games and banked and percentage card games by~~
38 ~~federally recognized Indian tribes on Indian lands in California in~~
39 ~~accordance with federal law.~~

1 ~~(e) During the campaigns to approve Propositions 5 and 1A,~~
2 ~~proponents assured California voters that Indian lands were mainly~~
3 ~~in remote, rural areas of the state and that approval of these~~
4 ~~measures would not result in tribal casinos being located in urban~~
5 ~~areas.~~

6 ~~(f) In the general election of 2004, two initiative measures,~~
7 ~~Propositions 68 and 70, that would have expanded gaming activities~~
8 ~~in urban areas were placed before the California voters.~~

9 ~~(g) Proposition 68 was defeated with 83.8 percent of the~~
10 ~~electorate voting against it and Proposition 70 was defeated with~~
11 ~~76.3 percent of the electorate voting against it.~~

12 ~~(h) There is increasing public concern over the location,~~
13 ~~expansion, and impact of tribal gaming on nontribal lands in~~
14 ~~California.~~

15 ~~(i) There are over 100 federally recognized Indian tribes in~~
16 ~~California and many of those tribes have Indian lands within the~~
17 ~~tribe's jurisdiction that are eligible for class III gaming.~~

18 ~~(j) Subdivision (d) of Section 12012.25 of the Government Code~~
19 ~~designates the Governor as the state official with authority to~~
20 ~~negotiate and execute tribal gaming compacts on behalf of the~~
21 ~~state.~~

22 ~~(k) Subdivisions (c) and (e) of Section 12012.25 of the~~
23 ~~Government Code provide that tribal-state gaming compacts~~
24 ~~negotiated by the Governor are subject to ratification by the~~
25 ~~Legislature.~~

26 ~~(l) An increasing number of Indian tribes are seeking to take~~
27 ~~new land into trust for purposes of conducting class III gaming~~
28 ~~activities pursuant to the provisions of IGRA, often in urban areas.~~

29 ~~(m) In May 2005, Governor Arnold Schwarzenegger issued a~~
30 ~~proclamation that he would (1) oppose proposals for the federal~~
31 ~~acquisition of lands within any urbanized area where the lands~~
32 ~~sought to be acquired in trust are to be used to conduct or facilitate~~
33 ~~gaming activities; (2) decline to engage in negotiations for~~
34 ~~tribal-state gaming compacts where the Indian tribe does not have~~
35 ~~Indian lands eligible for class III gaming; (3) consider requests for~~
36 ~~gubernatorial concurrence to allow a tribe to conduct class III~~
37 ~~gaming on newly acquired land only when (A) the land that is~~
38 ~~sought for class III gaming is not within any urbanized area, (B)~~
39 ~~the local jurisdiction in which the tribe's proposed gaming project~~
40 ~~is located supports the project, (C) the tribe and the local~~

1 jurisdiction demonstrate that the affected local community supports
2 the project, such as by a local advisory vote, and (D) the project
3 substantially serves a clear, independent public policy, separate
4 and apart from any increased economic benefit or financial
5 contribution to the state, community, or the Indian tribe that may
6 arise from gaming.

7 (n) It is therefore the intent of the Legislature, with respect to
8 all Indian gaming proposals on nontribal lands, to encourage the
9 Governor to negotiate a tribal-state gaming compact only when
10 land has been taken into trust and when the local jurisdiction and
11 the local community in which the tribe's proposed gaming project
12 would be located actually support the project, and, in the absence
13 of that local support, it is the intent of the Legislature not to ratify
14 the compact.

15 SEC. 2. Section 12012.87 is added to the Government Code,
16 to read:

17 12012.87. When engaging in negotiations for a tribal-state
18 gaming compact to allow class III gaming on Indian lands within
19 the tribe's jurisdiction, the Governor shall consider the presence
20 or absence of local support demonstrated by both of the following:

21 (a) The results of an advisory vote in the county or counties in
22 which the tribe's Indian lands are located, either approving or
23 disapproving a proposed gaming facility.

24 (b) One or more intergovernmental agreements enforceable in
25 state court, that include provisions to mitigate the impacts of the
26 proposed gaming and related activities, executed by the Indian
27 tribe and each of the following entities:

28 (1) The incorporated city or city and county in which the Indian
29 lands are located, or, if the land is not located within an
30 incorporated city or city and county, the county or counties in
31 which the land is located.

32 (2) Each county that is contiguous to the county in which the
33 land is located and that is likely to be substantially impacted by
34 the proposed gaming and related activities, as reasonably
35 determined by the board of supervisors of the county and set forth
36 in a measure specifying the nature of anticipated impacts that are
37 no more than 75 miles from the proposed gaming facility, and the
38 estimated costs of mitigation.

O