

AMENDED IN ASSEMBLY FEBRUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1601

Introduced by Assembly Member Hill

(Principal coauthor: Assembly Member Nava)

(Principal coauthors: Senators Harman, *Liu*, and Maldonado)

(Coauthors: Assembly Members *Bill Berryhill, Blakeslee, Block, Blumenfield, Evans, Fong, Gilmore, Huber, and Huffman, Knight, Ma, Monning, Portantino, Smyth, Audra Strickland, Torlakson, and Tran*)

(Coauthor: Senator Cox)

January 4, 2010

An act to amend Sections 23217, 23540, 23546, 23550, 23550.5, 23560, and 23566 of, and to add Section 23597 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1601, as amended, Hill. Vehicles: driving under the influence: repeat offenders.

Existing

(1) 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

(2) 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 certain ~~specified~~ factors, including, but not limited to, the period of time that has elapsed since his or her previous DUI convictions.

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
2 to read:

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

11 The Legislature further finds and declares that the timing of
12 court proceedings should not permit a person to avoid aggravated
13 mandatory minimum penalties for multiple separate offenses. It
14 is the intent of the Legislature to provide that a person be subject
15 to enhanced mandatory minimum penalties for multiple offenses,
16 regardless of when the convictions for those offenses *are* obtained.

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

21 Nothing in this section or the amendments to Section 23540,
22 23546, 23550, 23560, 23566, 23622, or 23640 made by Chapter
23 1205 of the Statutes of 1984 affects the penalty for a violation of
24 Section 23152 or 23153 occurring prior to January 1, 1985.

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

26 23540. (a) If a person is convicted of a violation of Section
27 23152 and the person was previously convicted of a separate

1 violation of Section 23103, as specified in Section 23103.5, 23152,
2 or 23153, that resulted in a conviction, that person shall be
3 punished by imprisonment in the county jail for not less than 90
4 days nor more than one year and by a fine of not less than three
5 hundred ninety dollars (\$390) nor more than one thousand dollars
6 (\$1,000). The person's privilege to operate a motor vehicle shall
7 be suspended by the department pursuant to paragraph (3) of
8 subdivision (a) of Section 13352. The court shall require the person
9 to surrender the driver's license to the court in accordance with
10 Section 13550.

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

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

19 23546. (a) If a person is convicted of a violation of Section
20 23152 and the person was previously convicted of two separate
21 violations of Section 23103, as specified in Section 23103.5, 23152,
22 or 23153, or any combination thereof, that resulted in convictions,
23 that person shall be punished by imprisonment in the county jail
24 for not less than 120 days nor more than one year and by a fine of
25 not less than three hundred ninety dollars (\$390) nor more than
26 one thousand dollars (\$1,000). The person's privilege to operate
27 a motor vehicle shall be revoked by the Department of Motor
28 Vehicles as required in paragraph (5) of subdivision (a) of Section
29 13352. The court shall require the person to surrender his or her
30 driver's license to the court in accordance with Section 13550.

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

36 SEC. 4. Section 23550 of the Vehicle Code, *as amended by*
37 *Section 4 of Chapter 193 of the Statutes of 2009*, is amended to
38 read:

39 23550. (a) If a person is convicted of a violation of Section
40 23152 and the person was previously convicted of three or more

1 separate violations of Section 23103, as specified in Section
2 23103.5, or Section 23152 or 23153, or any combination thereof,
3 that resulted in convictions, that person shall be punished by
4 imprisonment in the state prison, or in a county jail for not less
5 than 180 days nor more than one year, and by a fine of not less
6 than three hundred ninety dollars (\$390) nor more than one
7 thousand dollars (\$1,000). The person's privilege to operate a
8 motor vehicle shall be revoked by the Department of Motor
9 Vehicles pursuant to paragraph (9) of subdivision (a) of Section
10 13352. The court shall require the person to surrender the driver's
11 license to the court in accordance with Section 13550.

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

17 SEC. 5. Section 23550.5 of the Vehicle Code, *as amended by*
18 *Section 5 of Chapter 193 of the Statutes of 2009*, is amended to
19 read:

20 23550.5. (a) A person is guilty of a public offense, punishable
21 by imprisonment in the state prison or confinement in a county
22 jail for not more than one year and by a fine of not less than three
23 hundred ninety dollars (\$390) nor more than one thousand dollars
24 (\$1,000) if that person is convicted of a violation of Section 23152
25 or 23153, and the person was previously convicted of any of the
26 following:

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

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

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

34 (b) Each person who, having previously been convicted of a
35 violation of subdivision (a) of Section 191.5 of the Penal Code, a
36 felony violation of subdivision (b) of Section 191.5, or a violation
37 of subdivision (a) of Section 192.5 of the Penal Code, is
38 subsequently convicted of a violation of Section 23152 or 23153
39 is guilty of a public offense punishable by imprisonment in the
40 state prison or confinement in a county jail for not more than one

1 year and by a fine of not less than three hundred ninety dollars
2 (\$390) nor more than one thousand dollars (\$1,000).

3 (c) The privilege to operate a motor vehicle of a person
4 convicted of a violation that is punishable under subdivision (a)
5 or (b) shall be revoked by the department under paragraph (9) of
6 subdivision (a) of Section 13352, unless paragraph (8) of
7 subdivision (a) of Section 13352 is also applicable, in which case
8 the privilege shall be revoked under that provision. The court shall
9 require the person to surrender the driver's license to the court in
10 accordance with Section 13550.

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

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

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

29 SEC. 7. Section 23566 of the Vehicle Code, *as amended by*
30 *Section 7 of Chapter 193 of the Statutes of 2009*, is amended to
31 read:

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

1 be revoked by the Department of Motor Vehicles pursuant to
2 paragraph (8) of subdivision (a) of Section 13352. The court shall
3 require the person to surrender the driver's license to the court in
4 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 person was previously convicted 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 (8) 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 person
21 was previously convicted of four or more separate violations of
22 Section 23103, as specified in Section 23103.5, or Section 23152
23 or 23153, or any combination of these violations, that resulted in
24 convictions, that person shall, in addition and consecutive to the
25 sentences imposed under subdivision (b), be punished by an
26 additional term of imprisonment in the state prison for three years.
27 The enhancement allegation provided in this subdivision shall
28 be pleaded and proved as provided by law.

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

34 (e) A person confined in state prison under this section shall be
35 ordered by the court to participate in an alcohol or drug program,
36 or both, that is available at the prison during the person's
37 confinement. Completion of an alcohol or drug program under this
38 section does not meet the program completion requirement of
39 paragraph (8) of subdivision (a) of Section 13352, unless the drug
40 or alcohol program is licensed under Section 11836 of the Health

1 and Safety Code, or is a program specified in Section 8001 of the
2 Penal Code.

3 SEC. 8. Section 23597 is added to the Vehicle Code, to read:

4 23597. (a) Notwithstanding ~~Section~~ *Sections 13202.5, 13203,*
5 *and 13352,* a court may order the permanent revocation of the
6 driver's license of a person who was previously convicted of three
7 or more separate violations of Section 23152 or 23153. When
8 making this order, the court shall consider all of the following:

- 9 (1) The person's level of remorse for the acts.
- 10 (2) The period of time that has elapsed since the person's
- 11 previous convictions.
- 12 (3) The person's blood-alcohol level at the time of the violation.
- 13 (4) The person's participation in an alcohol treatment program.
- 14 (5) The person's risk to traffic or public safety.
- 15 (6) The person's ability to install a certified ignition interlock
- 16 device in each motor vehicle that he or she owns or operates.

17 (b) Upon receipt of a ~~duty~~ *duly* certified abstract of the record
18 of the court showing the court has ordered permanent revocation
19 of a driver's license pursuant to this section, the department shall
20 permanently revoke the person's driver's license.

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CORRECTIONS:
Text—Pages 4 and 5.

