

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2144

Introduced by Assembly Member Gilmore

February 18, 2010

An act to amend Sections 1803.5, 1808.7, ~~13353.2~~, 15200, 15300, 15302, 15311, 15311.1, 15312, 22526, and 41501 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2144, as amended, Gilmore. Commercial motor vehicles: driver compliance.

(1) Existing law authorizes a court to order a person issued a notice to appear for a traffic violation to attend a traffic violator school licensed under certain provisions of the Vehicle Code, in lieu of adjudicating the traffic offense, and with the consent of the defendant, or after conviction of a traffic offense. A court may order a continuance against a person who receives a notice to appear in court for a violation of a statute relating to the safe operation of a vehicle, in consideration for attendance at a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction. After that attendance, the court may dismiss the complaint and the record of the Department of Motor Vehicles relating to this proceeding and dismissal of the complaint is confidential.

This bill would delete all references to “complaint” and instead substitute a “traffic violator school conviction” for dismissal of the complaint and would provide that the department’s record of a traffic violator school conviction is not confidential if either of 2 conditions applies.

(2) Existing law declares the intent of the Legislature to adopt those standards required of drivers by the Federal Highway Administration of the Department of Transportation, as set forth in the Commercial Motor Vehicle Safety Act of 1986 and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting drivers to hold only one license, disqualifying drivers for certain criminal offenses and serious traffic violations, and strengthening licensing and testing standards.

Existing law prohibits a driver of a commercial motor vehicle from operating a commercial motor vehicle for a period of one year if the driver is convicted of a first violation of, or for the rest of his or her life if convicted of more than one violation of, specified offenses.

This bill would update references to federal law and make technical, nonsubstantive changes to these provisions.

(3) Existing law prohibits a driver from operating a commercial motor vehicle for a period of 90 days, 180 days, one year, or 3 years if the person is convicted of a specified violation of an out-of-service order issued by an authorized employee of the Department of the California Highway Patrol or by a uniformed peace officer. A violation of these provisions is a crime.

This bill would increase the disqualification period of 90 days to 180 days, the 180-day period to 2 years, and the ~~one year~~ *one-year* period to 2 years. The bill would also expand this prohibition to include out-of-service orders issued by the Secretary of the United States Department of Transportation or a peace officer or commercial vehicle inspector of any state, any province of Canada, the federal government of the United States, or Mexico. By expanding the scope of an existing crime, the bill would create a state-mandated local program.

(4) Existing law provides that a driver who is convicted of violating an out-of-service order is subject to a civil penalty of not less than \$1,100 nor more than \$2,750. Existing law also provides that an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order is, upon conviction, subject to a civil penalty of not less than \$2,750 nor more than \$11,000.

This bill would increase the penalty for the driver to not less than \$2,500 for a first conviction and to \$5,000 for a second or subsequent conviction. The bill would increase the upper limit of the penalty for an employer to not more than \$25,000.

~~(5) Existing law requires the Department of Motor Vehicles to immediately suspend the privilege of a person to operate a motor vehicle for any one of specified reasons, including, among other things, that the person was driving a vehicle that requires a commercial driver's license when the person had 0.04% or more, by weight, of alcohol in his or her blood.~~

~~Under existing law, if a person is acquitted of criminal charges relating to a determination of facts under the above provisions, or if the person's driver's license was suspended pursuant to a failure to complete or take a chemical test and the Department of Motor Vehicles found no basis for a suspension, the department is required to immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to the above provisions, and to return or reissue for the remaining term any driver's license that has been taken from the person pursuant to those provisions.~~

~~This bill would prohibit the reinstatement of the person's privilege to operate a motor vehicle if the driver was operating a commercial vehicle, as defined, at the time of the stop or the person held a commercial driver's license at the time of the stop, regardless of whether the vehicle operated at the time of the stop was a commercial vehicle.~~

~~(6)~~

~~(5) Existing law prohibits a driver of a vehicle from entering a railroad or rail transit crossing, notwithstanding any official traffic control device or signal indication to proceed, unless there is sufficient space on the other side of the railroad or rail transit crossing to accommodate the vehicle driven or there is sufficient undercarriage clearance to cross the intersection without obstructing the through passage of a railway vehicle, including, but not limited to, a train, trolley, or city transit vehicle.~~

~~This bill would make technical, substantive changes in the organization of these provisions and make a conforming change to a related provision.~~

~~The~~

~~(6) 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:

SECTION 1. Section 1803.5 of the Vehicle Code is amended to read:

1803.5. In accordance with Section 41501 or 42005, when a person who receives a notice to appear at a court or board proceeding for a violation of any statute relating to the safe operation of vehicles is granted a continuance of the proceeding in consideration for attendance at a school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, which results in a traffic violator school conviction in consideration for that attendance, the clerk of a court or hearing officer shall prepare an abstract of the record of the court or board proceeding, certify the abstract to be true and correct, and cause the abstract to be forwarded to the department at its office at Sacramento within 10 days after the traffic violator school conviction is issued.

SEC. 2. Section 1808.7 of the Vehicle Code is amended to read:

1808.7. (a) The record of the department relating to the first proceeding and traffic violator school conviction under Section 1803.5 in any 18-month period for participation by a person in a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, is confidential, shall not be disclosed to any person, except a court, and shall be used only for statistical purposes by the department.

(b) The record under subdivision (a) is not confidential if either of the following applies:

(1) The person holds a Class A, Class B, or commercial Class C driver's license.

(2) The person is operating a commercial motor vehicle as defined in subdivision (b) of Section 15210.

~~SEC. 3. Section 13353.2 of the Vehicle Code is amended to read:~~

~~13353.2. (a) The department shall immediately suspend the privilege of a person to operate a motor vehicle for any one of the following reasons:~~

~~(1) The person was driving a motor vehicle when the person had 0.08 percent or more, by weight, of alcohol in his or her blood.~~

1 ~~(2) The person was under 21 years of age and had a~~
2 ~~blood-alcohol concentration of 0.01 percent or greater, as measured~~
3 ~~by a preliminary alcohol screening test, or other chemical test.~~

4 ~~(3) The person was driving a vehicle that requires a commercial~~
5 ~~driver's license when the person had 0.04 percent or more, by~~
6 ~~weight, of alcohol in his or her blood.~~

7 ~~(4) The person was driving a motor vehicle when both of the~~
8 ~~following applied:~~

9 ~~(A) The person was on probation for a violation of Section~~
10 ~~23152 or 23153.~~

11 ~~(B) The person had 0.01 percent or more, by weight, of alcohol~~
12 ~~in his or her blood, as measured by a preliminary alcohol screening~~
13 ~~test or other chemical test.~~

14 ~~(b) The notice of the order of suspension under this section shall~~
15 ~~be served on the person by a peace officer pursuant to Section~~
16 ~~13382 or 13388. The notice of the order of suspension shall be on~~
17 ~~a form provided by the department. If the notice of the order of~~
18 ~~suspension has not been served upon the person by the peace officer~~
19 ~~pursuant to Section 13382 or 13388, upon the receipt of the report~~
20 ~~of a peace officer submitted pursuant to Section 13380, the~~
21 ~~department shall mail written notice of the order of the suspension~~
22 ~~to the person at the last known address shown on the department's~~
23 ~~records and, if the address of the person provided by the peace~~
24 ~~officer's report differs from the address of record, to that address.~~

25 ~~(c) The notice of the order of suspension shall specify clearly~~
26 ~~the reason and statutory grounds for the suspension, the effective~~
27 ~~date of the suspension, the right of the person to request an~~
28 ~~administrative hearing, the procedure for requesting an~~
29 ~~administrative hearing, and the date by which a request for an~~
30 ~~administrative hearing shall be made in order to receive a~~
31 ~~determination prior to the effective date of the suspension.~~

32 ~~(d) The department shall make a determination of the facts in~~
33 ~~subdivision (a) on the basis of the report of a peace officer~~
34 ~~submitted pursuant to Section 13380. The determination of the~~
35 ~~facts, after administrative review pursuant to Section 13557, by~~
36 ~~the department is final, unless an administrative hearing is held~~
37 ~~pursuant to Section 13558 and any judicial review of the~~
38 ~~administrative determination after the hearing pursuant to Section~~
39 ~~13559 is final.~~

~~(e) (1) The determination of the facts in subdivision (a) is a civil matter that is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding. If a person is acquitted of criminal charges relating to a determination of facts under subdivision (a), or if the person's driver's license was suspended pursuant to Section 13388 and the department finds no basis for a suspension pursuant to that section, the department shall immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to subdivision (a), and the department shall return or reissue for the remaining term any driver's license that has been taken from the person pursuant to Section 13382 or otherwise, unless the person (A) was operating a commercial vehicle, as defined in Section 15210, at the time of the stop or (B) held a commercial driver's license at the time of the stop, regardless of whether the vehicle operated at the time of the stop was a commercial vehicle, as defined in Section 15210.~~

~~(2) Notwithstanding subdivision (b) of Section 13558, if criminal charges under Section 23140, 23152, or 23153 are not filed by the district attorney because of a lack of evidence, or if those charges are filed but are subsequently dismissed by the court because of an insufficiency of evidence, the person has a renewed right to request an administrative hearing before the department. The request for a hearing shall be made within one year from the date of arrest.~~

~~(f) The department shall furnish a form that requires a detailed explanation specifying which evidence was defective or lacking and detailing why that evidence was defective or lacking. The form shall be made available to the person to provide to the district attorney. The department shall hold an administrative hearing, and the hearing officer shall consider the reasons for the failure to prosecute given by the district attorney on the form provided by the department. If applicable, the hearing officer shall consider the reasons stated on the record by a judge who dismisses the charges. A fee shall not be imposed pursuant to Section 14905 for the return or reissuing of a driver's license pursuant to this subdivision. The disposition of a suspension action under this section does not affect an action to suspend or revoke the person's~~

1 ~~privilege to operate a motor vehicle under another provision of~~
2 ~~this code, including, but not limited to, Section 13352 or 13353,~~
3 ~~or Chapter 3 (commencing with Section 13800).~~

4 ~~SEC. 4.~~

5 *SEC. 3.* Section 15200 of the Vehicle Code is amended to read:

6 15200. It is the intent of the Legislature, in enacting this
7 chapter, to adopt those standards required of drivers by the Federal
8 Motor Carrier Safety Administration of the United States
9 Department of Transportation, as set forth in the federal Motor
10 Carrier Safety Improvement Act of 1999 (Public Law 106-159)
11 and to reduce or prevent commercial motor vehicle accidents,
12 fatalities, and injuries by permitting drivers to hold only one
13 license, disqualifying drivers for certain criminal offenses and
14 serious traffic violations, and strengthening licensing and testing
15 standards. This act is a remedial law and shall be liberally construed
16 to promote the public health, safety and welfare. To the extent that
17 this chapter conflicts with general driver licensing provisions, this
18 chapter shall prevail. Where this chapter is silent, the general driver
19 licensing provisions shall apply. It is the further intent of the
20 Legislature that this program be fee supported, and that the
21 department fully recoup its costs within four years of the program's
22 enactment.

23 ~~SEC. 5.~~

24 *SEC. 4.* Section 15300 of the Vehicle Code is amended to read:

25 15300. (a) A driver shall not operate a commercial motor
26 vehicle for a period of one year if the driver is convicted of a first
27 violation of any of the following:

28 (1) Subdivision (a), (b), or (c) of Section 23152 while operating
29 a motor vehicle.

30 (2) Subdivision (d) of Section 23152.

31 (3) Subdivision (a) or (b) of Section 23153 while operating a
32 motor vehicle.

33 (4) Subdivision (d) of Section 23153.

34 (5) Leaving the scene of an accident involving a motor vehicle
35 operated by the driver.

36 (6) Using a motor vehicle to commit a felony, other than a felony
37 described in Section 15304.

38 (7) Driving a commercial motor vehicle when the driver's
39 commercial driver's license is revoked, suspended, or canceled
40 based on the driver's operation of a commercial motor vehicle or

1 when the driver is disqualified from operating a commercial motor
2 vehicle based on the driver's operation of a commercial motor
3 vehicle.

4 (8) Causing a fatality involving conduct defined pursuant to
5 Section 191.5 of the Penal Code or subdivision (c) of Section 192
6 of the Penal Code.

7 (9) While operating a motor vehicle, refuses to submit to, or
8 fails to complete, a chemical test or tests in violation of Section
9 23612.

10 (10) A violation of Section 2800.1, 2800.2, or 2800.3 that
11 involves a commercial motor vehicle.

12 (b) If a violation listed in subdivision (a), or a violation listed
13 in paragraph (2) of subdivision (a) of Section 13350 or Section
14 13352 or 13357, occurred while transporting a hazardous material,
15 the period specified in subdivision (a) shall be three years.

16 ~~SEC. 6.~~

17 *SEC. 5.* Section 15302 of the Vehicle Code is amended to read:

18 15302. A driver shall not operate a commercial motor vehicle
19 for the rest of his or her life if convicted of more than one violation
20 of any of the following:

21 (a) Subdivision (a), (b), or (c) of Section 23152 while operating
22 a motor vehicle.

23 (b) Subdivision (d) of Section 23152.

24 (c) Subdivision (a) or (b) of Section 23153 while operating a
25 motor vehicle.

26 (d) Subdivision (d) of Section 23153.

27 (e) Leaving the scene of an accident involving a motor vehicle
28 operated by the driver.

29 (f) Using a motor vehicle to commit a felony, other than a felony
30 described in Section 15304.

31 (g) Driving a commercial motor vehicle when the driver's
32 commercial driver's license is revoked, suspended, or canceled
33 based on the driver's operation of a commercial motor vehicle or
34 when the driver is disqualified from operating a commercial motor
35 vehicle based on the driver's operation of a commercial motor
36 vehicle.

37 (h) Causing a fatality involving conduct defined pursuant to
38 Section 191.5 of the Penal Code or in subdivision (c) of Section
39 192 of the Penal Code.

1 (i) While operating a motor vehicle, refuses to submit to, or
2 fails to complete, a chemical test or tests in violation of Section
3 23612.

4 (j) A violation of Section 2800.1, 2800.2, or 2800.3 that involves
5 a commercial motor vehicle.

6 (k) Any combination of the above violations or a violation listed
7 in paragraph (2) of subdivision (a) of Section 13350 or Section
8 13352 or 13357 that occurred while transporting a hazardous
9 material.

10 ~~SEC. 7.~~

11 *SEC. 6.* Section 15311 of the Vehicle Code is amended to read:

12 15311. (a) A driver shall not operate a commercial motor
13 vehicle for a period of 180 days if the person is convicted of a first
14 violation of an out-of-service order under subdivision (b), (c), or
15 (d) of Section 2800.

16 (b) A driver shall not operate a commercial motor vehicle for
17 a period of two years if the person is convicted of violating an
18 out-of-service order under subdivision (b), (c), or (d) of Section
19 2800 while transporting hazardous materials required to be
20 placarded or while operating a vehicle designed to transport 16 or
21 more passengers, including the driver.

22 (c) A driver shall not operate a commercial motor vehicle for a
23 period of two years if the person is convicted of a second violation
24 of an out-of-service order under subdivision (b), (c), or (d) of
25 Section 2800 during any 10-year period, arising from separate
26 incidents.

27 (d) A driver shall not operate a commercial motor vehicle for
28 a period of three years if the person is convicted of a second
29 violation of an out-of-service order under subdivision (b), (c), or
30 (d) of Section 2800 while transporting hazardous materials that
31 are required to be placarded or while operating a vehicle designed
32 to transport 16 or more passengers, including the driver.

33 (e) In addition to the disqualification period required in
34 subdivision (a), (b), (c), or (d), a driver who is convicted of
35 violating an out-of-service order under subdivision (b) of Section
36 2800 is subject to a civil penalty of not less than two thousand five
37 hundred dollars (\$2,500) for a first conviction, and a civil penalty
38 of five thousand dollars (\$5,000) for a second or subsequent
39 conviction.

(f) A driver shall not operate a commercial motor vehicle for a period of three years if the person is convicted of a third or subsequent violation of an out-of-service order under subdivision (b), (c), or (d) of Section 2800 during any 10-year period, arising from separate incidents.

~~SEC. 8.~~

SEC. 7. Section 15311.1 of the Vehicle Code is amended to read:

15311.1. An employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order is, upon conviction, subject to a civil penalty of not less than two thousand seven hundred fifty dollars (\$2,750) nor more than twenty-five thousand dollars (\$25,000).

~~SEC. 9.~~

SEC. 8. Section 15312 of the Vehicle Code is amended to read:

15312. A driver may not operate a commercial motor vehicle for the following periods:

(a) Not less than 60 days if that person is convicted of a violation of subdivision (a) of Section 2800, or Section 21462, 22451, or 22452, or subdivision (c) or (d) of Section 22526, involving a commercial motor vehicle and the violation occurred at a railroad-highway crossing.

(b) Not less than 120 days if that person is convicted of a violation of subdivision (a) of Section 2800, or Section 21462, 22451, or 22452, or subdivision (c) or (d) of Section 22526, involving a commercial motor vehicle, and that violation occurred at a railroad-highway crossing, during any three-year period of a separate, prior offense of a railroad-highway grade crossing violation, that resulted in a conviction.

(c) Not less than one year if that person is convicted of a violation of subdivision (a) of Section 2800, or Section 21462, 22451, or 22452, or subdivision (c) or (d) of Section 22526, involving a commercial motor vehicle, and that violation occurred at a railroad-highway crossing, at a railroad-highway grade crossing, during any three-year period of two or more prior offenses of a railroad-highway grade crossing violation, that resulted in convictions.

~~SEC. 10.~~

SEC. 9. Section 22526 of the Vehicle Code is amended to read:

1 22526. (a) Notwithstanding any official traffic control signal
2 indication to proceed, a driver of a vehicle shall not enter an
3 intersection or marked crosswalk unless there is sufficient space
4 on the other side of the intersection or marked crosswalk to
5 accommodate the vehicle driven without obstructing the through
6 passage of vehicles from either side.

7 (b) A driver of a vehicle which is making a turn at an
8 intersection who is facing a steady circular yellow or yellow arrow
9 signal shall not enter the intersection or marked crosswalk unless
10 there is sufficient space on the other side of the intersection or
11 marked crosswalk to accommodate the vehicle driven without
12 obstructing the through passage of vehicles from either side.

13 (c) A driver of a vehicle shall not enter a railroad or rail transit
14 crossing, notwithstanding any official traffic control device or
15 signal indication to proceed, unless there is sufficient undercarriage
16 clearance to cross the intersection without obstructing the through
17 passage of a railway vehicle, including, but not limited to, a train,
18 trolley, or city transit vehicle.

19 (d) A driver of a vehicle shall not enter a railroad or rail transit
20 crossing, notwithstanding any official traffic control device or
21 signal indication to proceed, unless there is sufficient space on the
22 other side of the railroad or rail transit crossing to accommodate
23 the vehicle driven and any railway vehicle, including, but not
24 limited to, a train, trolley, or city transit vehicle.

25 (e) A local authority may post appropriate signs at the entrance
26 to intersections indicating the prohibition in subdivisions (a), (b),
27 and (c).

28 (f) A violation of this section is not a violation of a law relating
29 to the safe operation of vehicles and is the following:

30 (1) A stopping violation when a notice to appear has been issued
31 by a peace officer described in Section 830.1, 830.2, or 830.33 of
32 the Penal Code.

33 (2) A parking violation when a notice of parking violation is
34 issued by a person, other than a peace officer described in
35 paragraph (1), who is authorized to enforce parking statutes and
36 regulations.

37 (g) This section shall be known and may be cited as the
38 Anti-Gridlock Act of 1987.

1 ~~SEC. 11.~~

2 *SEC. 10.* Section 41501 of the Vehicle Code is amended to
3 read:

4 41501. (a) The court may order a continuance of a proceeding
5 against a person, who receives a notice to appear in court for a
6 violation of a statute relating to the safe operation of a vehicle, in
7 consideration for attendance at a licensed school for traffic
8 violators, a licensed driving school, or any other court-approved
9 program of driving instruction, and, after that attendance and
10 pursuant to Section 1803.5 or 42005, the court may issue a traffic
11 violator school conviction under the following conditions:

12 (1) If the offense is alleged to have been committed within 12
13 months of another offense that was issued a traffic violator school
14 conviction under this section, the court may order the continuance
15 and, after the attendance, issue a traffic violator school conviction.
16 The court may order attendance at a licensed school for traffic
17 violators that offers a program of at least 12 hours of instruction.

18 (2) If the offense is not alleged to have occurred within 18
19 months of another offense that was issued a traffic violator school
20 conviction under this section, the court may order the continuance
21 and, after the attendance, issue a traffic violator school conviction
22 if the attendance is at any of the types of schools or programs that
23 the court directed pursuant to Section 42005 at the time of ordering
24 the continuance.

25 (b) Subdivision (a) does not apply to a person who receives a
26 notice to appear as to, or is otherwise charged with, a violation of
27 an offense described in subdivisions (a) to (e), inclusive, of Section
28 12810.

29 ~~SEC. 12.~~

30 *SEC. 11.* No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.