

AMENDED IN ASSEMBLY APRIL 19, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2020

Introduced by Assembly Member Pan

February 23, 2012

An act to amend Section 23612 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2020, as amended, Pan. Vehicles: driving under the influence: chemical tests.

Existing law provides that a person who is lawfully arrested for driving under the influence of a drug or the combined influence of an alcoholic beverage and drug has a choice of whether a chemical test to determine his or her drug or drug and alcohol level shall be a blood, breath, or urine test. If the person chooses to submit to a breath test, he or she may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. *Existing law exempts a person who is afflicted with hemophilia, or a heart condition and is using anticoagulant, from the blood test.*

This bill would revise these provisions to delete the person's option to choose a chemical test of his or her urine for the purpose of determining the drug content of his or her blood. The bill would require that if a blood test is unavailable, then the person is deemed to have given his or her consent to a urine test. The bill would also require that if the person is lawfully arrested for driving under the influence of a

drug or the combined influence of an alcoholic beverage and any drug, the person only has the choice of either a blood or breath test. The bill would delete the option of a urine test, except as required as an additional test. *The bill would require those persons exempted from the blood test to submit to, and complete, a urine test.*

Because this bill would change the definition of an existing crime, it would impose a state-mandated local program.

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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 23612 of the Vehicle Code is amended
2 to read:

3 23612. (a) (1) (A) A person who drives a motor vehicle is
4 deemed to have given his or her consent to chemical testing of his
5 or her blood or breath for the purpose of determining the alcoholic
6 content of his or her blood, if lawfully arrested for an offense
7 allegedly committed in violation of Section 23140, 23152, or
8 23153. If a blood or breath test, or both, are unavailable, then
9 paragraph (2) of subdivision (d) applies.

10 (B) A person who drives a motor vehicle is deemed to have
11 given his or her consent to chemical testing of his or her blood for
12 the purpose of determining the drug content of his or her blood, if
13 lawfully arrested for an offense allegedly committed in violation
14 of Section 23140, 23152, or 23153. If a blood test is unavailable,
15 the person shall be deemed to have given his or her consent to
16 chemical testing of his or her urine and shall submit to a urine test.

17 (C) The testing shall be incidental to a lawful arrest and
18 administered at the direction of a peace officer having reasonable
19 cause to believe the person was driving a motor vehicle in violation
20 of Section 23140, 23152, or 23153.

21 (D) The person shall be told that his or her failure to submit to,
22 or the failure to complete, the required chemical testing will result

1 in a fine, mandatory imprisonment if the person is convicted of a
2 violation of Section 23152 or 23153, and (i) the suspension of the
3 person's privilege to operate a motor vehicle for a period of one
4 year, (ii) the revocation of the person's privilege to operate a motor
5 vehicle for a period of two years if the refusal occurs within 10
6 years of a separate violation of Section 23103 as specified in
7 Section 23103.5, or of Section 23140, 23152, or 23153 of this
8 code, or of Section 191.5 or subdivision (a) of Section 192.5 of
9 the Penal Code that resulted in a conviction, or if the person's
10 privilege to operate a motor vehicle has been suspended or revoked
11 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that
12 occurred on a separate occasion, or (iii) the revocation of the
13 person's privilege to operate a motor vehicle for a period of three
14 years if the refusal occurs within 10 years of two or more separate
15 violations of Section 23103 as specified in Section 23103.5, or of
16 Section 23140, 23152, or 23153 of this code, or of Section 191.5
17 or subdivision (a) of Section 192.5 of the Penal Code, or any
18 combination thereof, that resulted in convictions, or if the person's
19 privilege to operate a motor vehicle has been suspended or revoked
20 two or more times pursuant to Section 13353, 13353.1, or 13353.2
21 for offenses that occurred on separate occasions, or if there is any
22 combination of those convictions or administrative suspensions
23 or revocations.

24 (2) (A) If the person is lawfully arrested for driving under the
25 influence of an alcoholic beverage, the person has the choice of
26 whether the test shall be of his or her blood or breath and the officer
27 shall advise the person that he or she has that choice. If the person
28 arrested either is incapable, or states that he or she is incapable,
29 of completing the chosen test, the person shall submit to the
30 remaining test. If a blood or breath test, or both, are unavailable,
31 then paragraph (2) of subdivision (d) applies.

32 (B) If the person is lawfully arrested for driving under the
33 influence of any drug or the combined influence of an alcoholic
34 beverage and any drug, the person has the choice of whether the
35 test shall be of his or her blood or breath, and the officer shall
36 advise the person that he or she has that choice.

37 (C) A person who chooses to submit to a breath test may also
38 be requested to submit to a blood test if the officer has reasonable
39 cause to believe that the person was driving under the influence
40 of a drug or the combined influence of an alcoholic beverage and

1 a drug and if the officer has a clear indication that a blood test will
2 reveal evidence of the person being under the influence. The officer
3 shall state in his or her report the facts upon which that belief and
4 that clear indication are based. The officer shall advise the person
5 that he or she is required to submit to an additional test. The person
6 shall submit to and complete a blood test. If the person arrested is
7 incapable of completing the blood test, the person shall submit to
8 and complete a urine test.

9 (3) If the person is lawfully arrested for an offense allegedly
10 committed in violation of Section 23140, 23152, or 23153, and,
11 because of the need for medical treatment, the person is first
12 transported to a medical facility where it is not feasible to
13 administer a particular test of, or to obtain a particular sample of,
14 the person's blood or breath, the person has the choice of those
15 tests, including a urine test, that are available at the facility to
16 which that person has been transported. In that case, the officer
17 shall advise the person of those tests that are available at the
18 medical facility and that the person's choice is limited to those
19 tests that are available.

20 (4) The officer shall also advise the person that he or she does
21 not have the right to have an attorney present before stating whether
22 he or she will submit to a test or tests, before deciding which test
23 or tests to take, or during administration of the test or tests chosen,
24 and that, in the event of refusal to submit to a test or tests, the
25 refusal may be used against him or her in a court of law.

26 (5) A person who is unconscious or otherwise in a condition
27 rendering him or her incapable of refusal is deemed not to have
28 withdrawn his or her consent and a test or tests may be
29 administered whether or not the person is told that his or her failure
30 to submit to, or the noncompletion of, the test or tests will result
31 in the suspension or revocation of his or her privilege to operate
32 a motor vehicle. A person who is dead is deemed not to have
33 withdrawn his or her consent and a test or tests may be
34 administered at the direction of a peace officer.

35 (b) A person who is afflicted with hemophilia is exempt from
36 the blood test required by this section, *but shall submit to, and*
37 *complete, a urine test.*

38 (c) A person who is afflicted with a heart condition and is using
39 an anticoagulant under the direction of a licensed physician and

1 surgeon is exempt from the blood test required by this section, *but*
2 *shall submit to, and complete, a urine test.*

3 (d) (1) A person lawfully arrested for an offense allegedly
4 committed while the person was driving a motor vehicle in
5 violation of Section 23140, 23152, or 23153 may request the
6 arresting officer to have a chemical test made of the arrested
7 person's blood or breath for the purpose of determining the
8 alcoholic content of that person's blood, and, if so requested, the
9 arresting officer shall have the test performed.

10 (2) If a blood or breath test is not available under subparagraph
11 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)
12 of paragraph (2) of subdivision (a), or under paragraph (1) of this
13 subdivision, the person shall submit to the remaining test in order
14 to determine the percent, by weight, of alcohol in the person's
15 blood. If both the blood and breath tests are unavailable, the person
16 shall be deemed to have given his or her consent to chemical testing
17 of his or her urine and shall submit to a urine test.

18 (e) If the person, who has been arrested for a violation of Section
19 23140, 23152, or 23153, refuses or fails to complete a chemical
20 test or tests, or requests that a blood or urine test be taken, the
21 peace officer, acting on behalf of the department, shall serve the
22 notice of the order of suspension or revocation of the person's
23 privilege to operate a motor vehicle personally on the arrested
24 person. The notice shall be on a form provided by the department.

25 (f) If the peace officer serves the notice of the order of
26 suspension or revocation of the person's privilege to operate a
27 motor vehicle, the peace officer shall take possession of all driver's
28 licenses issued by this state that are held by the person. The
29 temporary driver's license shall be an endorsement on the notice
30 of the order of suspension and shall be valid for 30 days from the
31 date of arrest.

32 (g) (1) The peace officer shall immediately forward a copy of
33 the completed notice of suspension or revocation form and any
34 driver's license taken into possession under subdivision (f), with
35 the report required by Section 13380, to the department. If the
36 person submitted to a blood or urine test, the peace officer shall
37 forward the results immediately to the appropriate forensic
38 laboratory. The forensic laboratory shall forward the results of the
39 chemical tests to the department within 15 calendar days of the
40 date of the arrest.

(2) (A) Notwithstanding any other law, a document containing data prepared and maintained in the governmental forensic laboratory computerized database system that is electronically transmitted or retrieved through public or private computer networks to or by the department is the best available evidence of the chemical test results in all administrative proceedings conducted by the department. In addition, any other official record that is maintained in the governmental forensic laboratory, relates to a chemical test analysis prepared and maintained in the governmental forensic laboratory computerized database system, and is electronically transmitted and retrieved through a public or private computer network to or by the department is admissible as evidence in the department's administrative proceedings. In order to be admissible as evidence in administrative proceedings, a document described in this subparagraph shall bear a certification by the employee of the department who retrieved the document certifying that the information was received or retrieved directly from the computerized database system of a governmental forensic laboratory and that the document accurately reflects the data received or retrieved.

(B) Notwithstanding any other law, the failure of an employee of the department to certify under subparagraph (A) is not a public offense.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

1 *No reimbursement is required by this act pursuant to Section 6*
2 *of Article XIII B of the California Constitution because the only*
3 *costs that may be incurred by a local agency or school district will*
4 *be incurred because this act creates a new crime or infraction,*
5 *eliminates a crime or infraction, or changes the penalty for a crime*
6 *or infraction, within the meaning of Section 17556 of the*
7 *Government Code, or changes the definition of a crime within the*
8 *meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

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