

**ASSEMBLY BILL**

**No. 1356**

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**Introduced by Assembly Member Lackey**

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as introduced, Lackey. Vehicles: driving under the influence: drug testing.

Existing law provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested for driving under the influence of alcohol or drugs. Existing law provides that if a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

This bill would provide that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or oral fluids for the purpose of determining the drug content of his or her blood or oral fluids, if lawfully arrested for driving under the influence of drugs. If a blood test or oral fluid test is unavailable, the person would be deemed to have given his or her consent to chemical testing of his or her urine and would be required to submit to a urine test.

By requiring local law enforcement to provide for oral fluids testing in connection for purposes of determining if a driver is driving under the influence of drugs, this bill would impose a state-mandated local program.

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

*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 *or*  
12 *oral fluids* for the purpose of determining the drug content of his  
13 or her blood *or oral fluids*, if lawfully arrested for an offense  
14 allegedly committed in violation of Section 23140, 23152, or  
15 23153. If a blood test is unavailable, the person shall be deemed  
16 to have given his or her consent to chemical testing of his or her  
17 urine and shall submit to a urine test.  
18 (C) The testing shall be incidental to a lawful arrest and  
19 administered at the direction of a peace officer having reasonable  
20 cause to believe the person was driving a motor vehicle in violation  
21 of Section 23140, 23152, or 23153.  
22 (D) The person shall be told that his or her failure to submit to,  
23 or the failure to complete, the required chemical testing will result  
24 in a fine, mandatory imprisonment if the person is convicted of a  
25 violation of Section 23152 or 23153, and (i) the suspension of the  
26 person’s privilege to operate a motor vehicle for a period of one  
27 year, (ii) the revocation of the person’s privilege to operate a motor  
28 vehicle for a period of two years if the refusal occurs within 10  
29 years of a separate violation of Section 23103 as specified in  
30 Section 23103.5, or of Section 23140, 23152, or 23153 of this  
31 code, or of Section 191.5 or subdivision (a) of Section 192.5 of  
32 the Penal Code that resulted in a conviction, or if the person’s  
33 privilege to operate a motor vehicle has been suspended or revoked  
34 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that  
35 occurred on a separate occasion, or (iii) the revocation of the

1 person's privilege to operate a motor vehicle for a period of three  
2 years if the refusal occurs within 10 years of two or more separate  
3 violations of Section 23103 as specified in Section 23103.5, or of  
4 Section 23140, 23152, or 23153 of this code, or of Section 191.5  
5 or subdivision (a) of Section 192.5 of the Penal Code, or any  
6 combination thereof, that resulted in convictions, or if the person's  
7 privilege to operate a motor vehicle has been suspended or revoked  
8 two or more times pursuant to Section 13353, 13353.1, or 13353.2  
9 for offenses that occurred on separate occasions, or if there is any  
10 combination of those convictions, administrative suspensions, or  
11 revocations.

12 (2) (A) If the person is lawfully arrested for driving under the  
13 influence of an alcoholic beverage, the person has the choice of  
14 whether the test shall be of his or her blood or breath and the officer  
15 shall advise the person that he or she has that choice. If the person  
16 arrested either is incapable, or states that he or she is incapable,  
17 of completing the chosen test, the person shall submit to the  
18 remaining test. If a blood or breath test, or both, are unavailable,  
19 then paragraph (2) of subdivision (d) applies.

20 (B) If the person is lawfully arrested for driving under the  
21 influence of any drug or the combined influence of an alcoholic  
22 beverage and any drug, the person has the choice of whether the  
23 test shall be of his or her blood, *oral fluids*, or breath, and the  
24 officer shall advise the person that he or she has that choice.

25 (C) A person who chooses to submit to a breath test may also  
26 be requested to submit to a blood test *or oral fluids test* if the  
27 officer has reasonable cause to believe that the person was driving  
28 under the influence of a drug or the combined influence of an  
29 alcoholic beverage and a drug and if the officer has a clear  
30 indication that a blood test *or oral fluids test* will reveal evidence  
31 of the person being under the influence. The officer shall state in  
32 his or her report the facts upon which that belief and that clear  
33 indication are based. The officer shall advise the person that he or  
34 she is required to submit to an additional test. The person shall  
35 submit to and complete a blood test *or oral fluids test*. If the person  
36 arrested is incapable of completing the blood test *or oral fluids*  
37 *test*, the person shall submit to and complete a urine test.

38 (3) If the person is lawfully arrested for an offense allegedly  
39 committed in violation of Section 23140, 23152, or 23153, and,  
40 because of the need for medical treatment, the person is first

1 transported to a medical facility where it is not feasible to  
2 administer a particular test of, or to obtain a particular sample of,  
3 the person's blood, *oral fluids*, or breath, the person has the choice  
4 of those tests, including a urine test, that are available at the facility  
5 to which that person has been transported. In that case, the officer  
6 shall advise the person of those tests that are available at the  
7 medical facility and that the person's choice is limited to those  
8 tests that are available.

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

15 (5) A person who is unconscious or otherwise in a condition  
16 rendering him or her incapable of refusal is deemed not to have  
17 withdrawn his or her consent and a test or tests may be  
18 administered whether or not the person is told that his or her failure  
19 to submit to, or the noncompletion of, the test or tests will result  
20 in the suspension or revocation of his or her privilege to operate  
21 a motor vehicle. A person who is dead is deemed not to have  
22 withdrawn his or her consent and a test or tests may be  
23 administered at the direction of a peace officer.

24 (b) A person who is afflicted with hemophilia is exempt from  
25 the blood test required by this section, but shall submit to, and  
26 complete, *an oral fluids test or a urine test*.

27 (c) A person who is afflicted with a heart condition and is using  
28 an anticoagulant under the direction of a licensed physician and  
29 surgeon is exempt from the blood test required by this section, but  
30 shall submit to, and complete, *an oral fluids test or a urine test*.

31 (d) (1) A person lawfully arrested for an offense allegedly  
32 committed while the person was driving a motor vehicle in  
33 violation of Section 23140, 23152, or 23153 may request the  
34 arresting officer to have a chemical test made of the arrested  
35 person's blood or breath for the purpose of determining the  
36 alcoholic content of that person's blood, and, if so requested, the  
37 arresting officer shall have the test performed.

38 (2) If a blood or breath test is not available under subparagraph  
39 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)  
40 of paragraph (2) of subdivision (a), or under paragraph (1) of this

1 subdivision, the person shall submit to the remaining test in order  
2 to determine the percent, by weight, of alcohol in the person's  
3 blood. If both the blood and breath tests are unavailable, the person  
4 shall be deemed to have given his or her consent to chemical testing  
5 of his or her urine and shall submit to a urine test.

6 (e) If the person, who has been arrested for a violation of Section  
7 23140, 23152, or 23153, refuses or fails to complete a chemical  
8 test or tests, or requests that a blood or urine test be taken, the  
9 peace officer, acting on behalf of the department, shall serve the  
10 notice of the order of suspension or revocation of the person's  
11 privilege to operate a motor vehicle personally on the arrested  
12 person. The notice shall be on a form provided by the department.

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

20 (g) (1) The peace officer shall immediately forward a copy of  
21 the completed notice of suspension or revocation form and any  
22 driver's license taken into possession under subdivision (f), with  
23 the report required by Section 13380, to the department. If the  
24 person submitted to a blood, *oral fluids*, or urine test, the peace  
25 officer shall forward the results immediately to the appropriate  
26 forensic laboratory. The forensic laboratory shall forward the  
27 results of the chemical tests to the department within 15 calendar  
28 days of the date of the arrest.

29 (2) (A) Notwithstanding any other law, a document containing  
30 data prepared and maintained in the governmental forensic  
31 laboratory computerized database system that is electronically  
32 transmitted or retrieved through public or private computer  
33 networks to or by the department is the best available evidence of  
34 the chemical test results in all administrative proceedings conducted  
35 by the department. In addition, any other official record that is  
36 maintained in the governmental forensic laboratory, relates to a  
37 chemical test analysis prepared and maintained in the governmental  
38 forensic laboratory computerized database system, and is  
39 electronically transmitted and retrieved through a public or private  
40 computer network to or by the department is admissible as evidence

1 in the department’s administrative proceedings. In order to be  
2 admissible as evidence in administrative proceedings, a document  
3 described in this subparagraph shall bear a certification by the  
4 employee of the department who retrieved the document certifying  
5 that the information was received or retrieved directly from the  
6 computerized database system of a governmental forensic  
7 laboratory and that the document accurately reflects the data  
8 received or retrieved.

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

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

18 (i) If the officer decides to use a preliminary alcohol screening  
19 test, the officer shall advise the person that he or she is requesting  
20 that person to take a preliminary alcohol screening test to assist  
21 the officer in determining if that person is under the influence of  
22 alcohol or drugs, or a combination of alcohol and drugs. The  
23 person’s obligation to submit to a blood, *oral fluids*, breath, or  
24 urine test, as required by this section, for the purpose of  
25 determining the alcohol or drug content of that person’s blood, is  
26 not satisfied by the person submitting to a preliminary alcohol  
27 screening test. The officer shall advise the person of that fact and  
28 of the person’s right to refuse to take the preliminary alcohol  
29 screening test.