

AMENDED IN ASSEMBLY APRIL 29, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1356

Introduced by Assembly ~~Member~~ Members Lackey and Gatto

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as amended, 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. *Existing law authorizes an officer to use a preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample as a further investigatory tool in order to establish reasonable cause to believe the person was driving a vehicle in violation of certain prohibitions against driving under the influence of alcohol or drugs.*

~~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.

This bill would authorize an officer to use a preliminary oral fluid screening test that indicates the presence or concentration of a drug or controlled substance based on a sample as a further investigatory tool in order to establish reasonable cause to believe the person was driving a vehicle in violation of certain prohibitions against driving under the influence of drugs. The bill would authorize a local law enforcement agency to provide oral fluids testing for these purposes, and would specify that this provision does not require a local law enforcement agency to provide or make an oral fluids test available for these purposes or for purposes of any other law. The bill would prohibit a state law enforcement agency from providing or making an oral fluids test available for these purposes or for purposes of any other law.

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~~, *blood*, 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.

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

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

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

38 (B) If the person is lawfully arrested for driving under the
39 influence of any drug or the combined influence of an alcoholic
40 beverage and any drug, the person has the choice of whether the

1 test shall be of his or her ~~blood, oral fluids,~~ *blood* or breath, and
2 the officer shall advise the person that he or she has that choice.

3 (C) A person who chooses to submit to a breath test may also
4 be requested to submit to a ~~blood test or oral fluids test~~ if the officer
5 has reasonable cause to believe that the person was driving under
6 the influence of a drug or the combined influence of an alcoholic
7 beverage and a drug and if the officer has a clear indication that a
8 ~~blood test or oral fluids test~~ will reveal evidence of the person
9 being under the influence. The officer shall state in his or her report
10 the facts upon which that belief and that clear indication are based.
11 The officer shall advise the person that he or she is required to
12 submit to an additional test. The person shall submit to and
13 complete a ~~blood test or oral fluids test~~. If the person arrested is
14 incapable of completing the ~~blood test or oral fluids test~~, the person
15 shall submit to and complete a urine test.

16 (3) If the person is lawfully arrested for an offense allegedly
17 committed in violation of Section 23140, 23152, or 23153, and,
18 because of the need for medical treatment, the person is first
19 transported to a medical facility where it is not feasible to
20 administer a particular test of, or to obtain a particular sample of,
21 the person's ~~blood, oral fluids,~~ *blood* or breath, the person has the
22 choice of those tests, including a urine test, that are available at
23 the facility to which that person has been transported. In that case,
24 the officer shall advise the person of those tests that are available
25 at the medical facility and that the person's choice is limited to
26 those tests that are available.

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

33 (5) A person who is unconscious or otherwise in a condition
34 rendering him or her incapable of refusal is deemed not to have
35 withdrawn his or her consent and a test or tests may be
36 administered whether or not the person is told that his or her failure
37 to submit to, or the noncompletion of, the test or tests will result
38 in the suspension or revocation of his or her privilege to operate
39 a motor vehicle. A person who is dead is deemed not to have

1 withdrawn his or her consent and a test or tests may be
2 administered at the direction of a peace officer.

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

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

10 (d) (1) A person lawfully arrested for an offense allegedly
11 committed while the person was driving a motor vehicle in
12 violation of Section 23140, 23152, or 23153 may request the
13 arresting officer to have a chemical test made of the arrested
14 person's blood or breath for the purpose of determining the
15 alcoholic content of that person's blood, and, if so requested, the
16 arresting officer shall have the test performed.

17 (2) If a blood or breath test is not available under subparagraph
18 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)
19 of paragraph (2) of subdivision (a), or under paragraph (1) of this
20 subdivision, the person shall submit to the remaining test in order
21 to determine the percent, by weight, of alcohol in the person's
22 blood. If both the blood and breath tests are unavailable, the person
23 shall be deemed to have given his or her consent to chemical testing
24 of his or her urine and shall submit to a urine test.

25 (e) If the person, who has been arrested for a violation of Section
26 23140, 23152, or 23153, refuses or fails to complete a chemical
27 test or tests, or requests that a blood or urine test be taken, the
28 peace officer, acting on behalf of the department, shall serve the
29 notice of the order of suspension or revocation of the person's
30 privilege to operate a motor vehicle personally on the arrested
31 person. The notice shall be on a form provided by the department.

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

39 (g) (1) The peace officer shall immediately forward a copy of
40 the completed notice of suspension or revocation form and any

1 driver's license taken into possession under subdivision (f), with
2 the report required by Section 13380, to the department. If the
3 person submitted to a ~~blood, oral fluids,~~ *blood* or urine test, the
4 peace officer shall forward the results immediately to the
5 appropriate forensic laboratory. The forensic laboratory shall
6 forward the results of the chemical tests to the department within
7 15 calendar days of the date of the arrest.

8 (2) (A) Notwithstanding any other law, a document containing
9 data prepared and maintained in the governmental forensic
10 laboratory computerized database system that is electronically
11 transmitted or retrieved through public or private computer
12 networks to or by the department is the best available evidence of
13 the chemical test results in all administrative proceedings conducted
14 by the department. In addition, any other official record that is
15 maintained in the governmental forensic laboratory, relates to a
16 chemical test analysis prepared and maintained in the governmental
17 forensic laboratory computerized database system, and is
18 electronically transmitted and retrieved through a public or private
19 computer network to or by the department is admissible as evidence
20 in the department's administrative proceedings. In order to be
21 admissible as evidence in administrative proceedings, a document
22 described in this subparagraph shall bear a certification by the
23 employee of the department who retrieved the document certifying
24 that the information was received or retrieved directly from the
25 computerized database system of a governmental forensic
26 laboratory and that the document accurately reflects the data
27 received or retrieved.

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

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

37 (i) *A preliminary oral fluid screening test that indicates the*
38 *presence or concentration of a drug or controlled substance based*
39 *on a sample in order to establish reasonable cause to believe the*
40 *person was driving a vehicle in violation of Section 23140, 23152,*

1 *or 23153 is a field sobriety test and may be used by an officer as*
2 *a further investigative tool.*

3 (i)

4 (j) If the officer decides to use a preliminary alcohol *or oral*
5 *fluid* screening test, the officer shall advise the person that he or
6 she is requesting that person to take a preliminary alcohol *or oral*
7 *fluid* screening test to assist the officer in determining if that person
8 is under the influence of alcohol or drugs, or a combination of
9 alcohol and drugs. The person's obligation to submit to a blood,
10 ~~oral fluids~~, breath, or urine test, as required by this section, for the
11 purpose of determining the alcohol or drug content of that person's
12 blood, is not satisfied by the person submitting to a preliminary
13 alcohol *or oral fluid* screening test. The officer shall advise the
14 person of that fact and of the person's right to refuse to take the
15 preliminary alcohol *or oral fluid* screening test.

16 (k) A local law enforcement agency may provide oral fluids
17 testing for purposes of this section. This section does not require
18 a local law enforcement agency to provide or make an oral fluids
19 test available for purposes of this or any other law. A state law
20 enforcement agency shall not provide or make an oral fluids test
21 available for purposes of this section or any other law.

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