

ASSEMBLY BILL

No. 1829

Introduced by Assembly Member Achadjian

February 9, 2016

An act to amend Section 655.1 of the Harbors and Navigation Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

AB 1829, as introduced, Achadjian. Vessels: operating while under the influence.

Existing law makes it unlawful for any person to operate a vessel or water-related device while under the influence of an alcoholic beverage, any drug, or both. Existing law directs the administration of a chemical test that is used to analyze an individual's breath, blood, or urine for evidence of drug or alcohol use under these specified circumstances.

This bill would make a nonsubstantive change to the latter provision.

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 655.1 of the Harbors and Navigation
- 2 Code is amended to read:
- 3 655.1. (a) As used in this section, "mechanically propelled
- 4 vessel" means any vessel actively propelled by machinery, whether
- 5 or not the machinery is the principal source of propulsion.
- 6 (b) A peace officer, having reasonable cause to believe that any
- 7 person was operating a mechanically propelled vessel or
- 8 manipulating any water skis, aquaplane, or similar device under

1 the influence of an alcoholic beverage or any drug, or under the
2 combined influence of an alcoholic beverage and any drug, who
3 lawfully arrests the person for any violation of subdivision (b),
4 (c), (d), (e), or (f) of Section 655, may request that person to submit
5 to chemical testing of his or her blood, breath, or urine for the
6 purpose of determining the drug or alcoholic content of the blood.
7 The arrested person shall be informed that a refusal to submit to,
8 or failure to complete, the required chemical testing may be used
9 against the person in a court of law and that the court may impose
10 increased penalties for that refusal or failure, upon conviction.

11 (c) (1) If the person is lawfully arrested for operating a
12 mechanically propelled vessel or manipulating any water skis,
13 aquaplane, or similar device under the influence of an alcoholic
14 beverage and submits to the chemical testing, the person has the
15 choice of whether the chemical test shall be of his or her blood or
16 breath and the person shall be advised by the arresting officer that
17 he or she has that choice. If the person arrested either is incapable,
18 or states that he or she is incapable, of completing the chosen test,
19 the person shall submit to the remaining test. If a blood or breath
20 test, or both, are unavailable, then subdivision (n) applies.

21 (2) If the person is lawfully arrested for operating a mechanically
22 propelled vessel or manipulating any water skis, aquaplane, or
23 similar device under the influence of any drug or the combined
24 influence of an alcoholic beverage and any drug and submits to
25 the chemical testing, the person has the choice of whether the
26 chemical test shall be of his or her blood, breath, or urine, and the
27 officer shall advise the person that he or she has that choice.

28 (d) The arresting officer shall advise a person submitting to
29 chemical testing under this section that he or she does not have
30 the right to have an attorney present before stating whether he or
31 she will submit to the chemical testing, before deciding which
32 chemical test or tests to take, or during the administration of the
33 chemical test or tests chosen.

34 (e) A person who chooses to submit to a breath test may also
35 be requested to submit to a blood or urine test if the arresting
36 officer has reasonable cause to believe that the person was
37 operating a mechanically propelled vessel or manipulating any
38 water skis, aquaplane, or similar device under the influence of any
39 drug, or the combined influence of an alcoholic beverage and any
40 drug, and if the arresting officer has a clear indication that a blood

1 or urine test will reveal evidence of the person being under the
2 influence. The arresting officer shall state in his or her report the
3 facts upon which that belief and that clear indication are based.
4 The person shall have the choice of submitting to and completing
5 a blood or urine test, and shall be advised by the arresting officer
6 that he or she is requested to submit to an additional test, and that
7 he or she may choose a test of either blood or urine. If the person
8 arrested is either incapable, or states that he or she is incapable,
9 of completing either chosen chemical test, the person shall submit
10 to and complete the other remaining chemical test.

11 (f) (1) A person who chooses to submit to a breath test shall be
12 advised before or after the breath test that the breath-testing
13 equipment does not retain any sample of the breath, and that no
14 breath sample will be available after the breath test which could
15 be analyzed later by the person or any other person.

16 (2) The person shall also be advised that, because no breath
17 sample is retained, the person will be given an opportunity to
18 provide a blood or urine sample that will be retained at no cost to
19 the person so that there will be something retained that may be
20 subsequently analyzed for the alcoholic content of the persons's
21 blood. If the person completes a breath test and wishes to provide
22 a blood or urine sample to be retained, the sample shall be collected
23 and retained in the same manner as if the person had chosen a
24 blood or urine test initially.

25 (3) The person shall also be advised that the blood or urine
26 sample may be tested by either party in any criminal prosecution.
27 The failure of either party to perform this chemical test shall place
28 no duty upon the opposing party to perform the chemical test nor
29 affect the admissibility of any other evidence of the drug or
30 alcoholic content of the blood of the person arrested.

31 (g) If the person is lawfully arrested for any offense allegedly
32 committed in violation of subdivision (b), (c), (d), (e), or (f) of
33 Section 655, and because of the need for medical treatment, the
34 person is first transported to a medical facility where it is not
35 feasible to administer a particular chemical test of, or to obtain a
36 particular sample of, the person's blood, breath, or urine, the person
37 has the choice of submitting to those chemical tests which are
38 available at the facility to which that person has been transported.
39 In this event, the arresting officer shall advise the person of those
40 chemical tests which are available at the medical facility, and that

1 the person’s choice is limited to those chemical tests which are
 2 available.

3 (h) Any person who is unconscious or otherwise in a condition
 4 rendering him or her incapable of refusal may be subjected to
 5 chemical testing of his or her blood, breath, or urine for the purpose
 6 of determining the drug or alcoholic content of the blood, whether
 7 or not the person is informed that a refusal to submit to, or failure
 8 to complete, the required chemical testing may be used against the
 9 person in a court of law, and that the court may impose increased
 10 penalties upon conviction.

11 (i) Any person who is afflicted with hemophilia is exempt from
 12 the blood test provided for in this section.

13 (j) Any person who is afflicted with a heart condition and is
 14 using an anticoagulant under the direction of a licensed physician
 15 and surgeon is exempt from the blood test provided for in this
 16 section.

17 (k) A person lawfully arrested for any offense allegedly
 18 committed while the person was operating a mechanically propelled
 19 vessel or manipulating any water skis, aquaplane, or similar device
 20 in violation of subdivision (b), (c), (d), (e), or (f) of Section 655
 21 may request the arresting officer to have a chemical test made of
 22 his or her blood or breath for the purpose of determining the drug
 23 or alcoholic content of the blood and, if so requested, the arresting
 24 officer shall have the chemical test performed. However, if a blood
 25 or breath test, or both, are unavailable, then subdivision (n) applies.

26 (l) Any chemical test of blood, breath, or urine to determine the
 27 percentage, by weight, of alcohol in the blood shall be performed
 28 in accordance with Section 23158 of the Vehicle Code.

29 (m) Nothing in this section limits the authority of a peace officer
 30 to gather evidence from a person lawfully arrested for a violation
 31 of subdivision (b), (c), (d), (e), or (f) of Section 655.

32 (n) If a blood or breath test is not available under paragraph (1)
 33 of subdivision (c) or under subdivision (k), the person shall submit
 34 to the remaining test in order to determine the ~~percent~~ *percentage*,
 35 by weight, of alcohol in the person’s blood. If both the blood and
 36 breath tests are unavailable, the person shall be deemed to have
 37 given his or her consent to chemical testing of his or her urine and
 38 shall submit to a urine test.

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