

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1829**

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**Introduced by Assembly Member Members Levine and Achadjian**

February 9, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1829, as amended, ~~Achadjian~~ *Levine*. Vessels: ~~operating while operation under the influence~~; *influence of alcohol or drugs*; *chemical testing*.

Existing law makes it unlawful for any person to operate a vessel or water-related device while under the influence of an alcoholic ~~beverage~~, *beverage* or 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~~; *when the individual is arrested for these actions*. Existing law requires the arrested individual to be informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in court and that the court, upon convicting the arrested individual, may impose increased penalties for his or her refusal or failure.

*This bill would instead require the arrested individual to be advised that a criminal complaint may be filed against him or her for operating a vessel or water-related device while under the influence of an alcoholic beverage or any drug, or both; that he or she has a right to refuse chemical testing; and that the officer has the authority to seek a search warrant compelling him or her to submit a blood sample. By*

*imposing new duties on local peace officers, this bill 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

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

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 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) (1) A peace officer, having reasonable cause to believe that
- 7 any person was operating a mechanically propelled vessel or
- 8 manipulating any water skis, aquaplane, or similar device under
- 9 the influence of an alcoholic beverage or any drug, or under the
- 10 combined influence of an alcoholic beverage and any drug, who
- 11 lawfully arrests the person for any violation of subdivision (b),
- 12 (c), (d), (e), or (f) of Section 655, may request that person to submit
- 13 to chemical testing of his or her blood, breath, or urine for the
- 14 purpose of determining the drug or alcoholic content of the blood.
- 15 ~~The arrested person shall be informed that a refusal to submit to,~~
- 16 ~~or failure to complete, the required chemical testing may be used~~
- 17 ~~against the person in a court of law and that the court may impose~~
- 18 ~~increased penalties for that refusal or failure, upon conviction.~~
- 19 (2) *The arrested person shall be advised of all of the following:*
- 20 (A) *A criminal complaint may be filed against him or her for*
- 21 *operating a mechanically propelled vessel or manipulating any*
- 22 *water skis, aquaplane, or similar device under the influence of an*
- 23 *alcoholic beverage or any drug, or under the combined influence*
- 24 *of an alcoholic beverage and any drug.*

1 (B) *He or she has a right to refuse chemical testing.*

2 (C) *An officer has the authority to seek a search warrant*  
3 *compelling the arrested person to submit a blood sample as*  
4 *described in paragraph (16) of subdivision (a) of Section 1524 of*  
5 *the Penal Code.*

6 (D) *He or she does not have the right to have an attorney present*  
7 *before stating whether he or she will submit to the chemical testing,*  
8 *before deciding which chemical test or tests to take, or during the*  
9 *administration of the chemical test or tests chosen.*

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

20 ~~(2)~~

21 (d) 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.~~ *advised of the information specified in*  
11 *paragraph (2) of subdivision (b).*

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

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

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

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

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

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

1     *SEC. 2. If the Commission on State Mandates determines that*  
2     *this act contains costs mandated by the state, reimbursement to*  
3     *local agencies and school districts for those costs shall be made*  
4     *pursuant to Part 7 (commencing with Section 17500) of Division*  
5     *4 of Title 2 of the Government Code.*

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