

Introduced by Senator Hertzberg

January 15, 2016

An act to amend Sections 1214.1 and 1463.007 of the Penal Code, and to amend Sections 40508, 40509, and 40509.5 of, to add Section 13365.7 to, to repeal Sections 13365 and 13365.5 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 881, as introduced, Hertzberg. Vehicles: violations.

Existing law authorizes in addition to any other penalty in infraction, misdemeanor, or felony cases, the court to impose a civil assessment of up to \$300 against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail, as specified.

This bill would provide that the ability to pay the civil assessment shall not be a prerequisite trial, arraignment, or other court proceedings.

Existing law authorizes any county or court to implement a "comprehensive collection program" as a separate revenue collection activity, and requires the program to meet certain criteria, one of which is that the program engage in specified activities in collecting fines or penalties. One of those activities is initiating suspensions or holds for driver's licenses, as specified.

This bill would delete initiating suspensions or holds for driver's licenses from the list of activities the program may engage in.

Existing law authorizes the court to notify the Department of Motor Vehicles when a person has failed to appear, failed to pay a fine or bail, or failed to comply with a court order, with respect to various violations relating to vehicles. Existing law requires the department to suspend a

person's driver's license upon receipt of one of those notices, as specified.

This bill would delete certain provisions requiring the department to suspend a person's driver's license upon receipt of one of those notices, with respect to designated violations. The bill would require the department to restore driving privileges that had been suspended pursuant to the deleted provisions, upon the request of the suspended driver. This bill would declare that its provisions do not alter existing law related to suspension of the privilege to operate a motor vehicle in connection with violations relating to reckless driving or driving under the influence of alcohol or drugs, as specified.

Existing law provides that if a person convicted of an infraction fails to pay bail in installments as agreed to or a fine or an installment of a fine within the time authorized by the court, the court may impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Existing law also provides that if a defendant with a class C or M driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available.

This bill would delete the class C and M license restrictions for that exemption, thereby permitting the holder of any driver's license to utilize that exemption.

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

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

- 1 SECTION 1. The Legislature finds and declares that this act
- 2 shall not be interpreted to alter existing law regarding suspension
- 3 of the privilege to operate a motor vehicle in connection with any
- 4 of the following violations:
- 5 (a) Reckless driving, pursuant to Section 23103 of the Vehicle
- 6 Code.
- 7 (b) Reckless driving proximately causing bodily injury to a
- 8 person, pursuant to Sections 23104 and 23105 of the Vehicle Code.

1 (c) Driving under the influence of alcohol, drugs, or both,
2 pursuant to Section 23152 of the Vehicle Code.

3 (d) Driving under the influence of alcohol, drugs, or both, and
4 causing bodily injury to another person, pursuant to Section 23153
5 of the Vehicle Code.

6 SEC. 2. Section 1214.1 of the Penal Code is amended to read:

7 1214.1. (a) In addition to any other penalty in infraction,
8 misdemeanor, or felony cases, the court may impose a civil
9 assessment of up to three hundred dollars (\$300) against a
10 defendant who fails, after notice and without good cause, to appear
11 in court for a proceeding authorized by law or who fails to pay all
12 or any portion of a fine ordered by the court or to pay an installment
13 of bail as agreed to under Section 40510.5 of the Vehicle Code.
14 This assessment shall be deposited in the Trial Court Trust Fund,
15 as provided in Section 68085.1 of the Government Code.

16 (b) (1) The assessment imposed pursuant to subdivision (a)
17 shall not become effective until at least 20 calendar days after the
18 court mails a warning notice to the defendant by first-class mail
19 to the address shown on the notice to appear or to the defendant's
20 last known address. If the defendant appears within the time
21 specified in the notice and shows good cause for the failure to
22 appear or for the failure to pay a fine or installment of bail, the
23 court shall vacate the assessment.

24 (2) Payment of bail, fines, penalties, fees, or a civil assessment
25 shall not be required in order for the court to vacate the assessment
26 at the time of appearance pursuant to paragraph (1). Payment of a
27 civil assessment shall not be required to schedule a court hearing
28 on a pending underlying charge.

29 (c) If a civil assessment is imposed pursuant to subdivision (a),
30 no bench warrant or warrant of arrest shall be issued with respect
31 to the failure to appear at the proceeding for which the assessment
32 is imposed or the failure to pay the fine or installment of bail. An
33 outstanding, unserved bench warrant or warrant of arrest for a
34 failure to appear or for a failure to pay a fine or installment of bail
35 shall be recalled prior to the subsequent imposition of a civil
36 assessment.

37 (d) The assessment imposed pursuant to subdivision (a) shall
38 be subject to the due process requirements governing defense and
39 collection of civil money judgments generally. *The ability to pay*

1 *the assessment shall not be a prerequisite to arraignment, trial,*
2 *or other court proceedings.*

3 (e) Each court and county shall maintain the collection program
4 that was in effect on July 1, 2005, unless otherwise agreed to by
5 the court and county. If a court and a county do not agree on a plan
6 for the collection of civil assessments imposed pursuant to this
7 section, or any other collections under Section 1463.010, after the
8 implementation of Sections 68085.6 and 68085.7 of the
9 Government Code, the court or the county may request arbitration
10 by a third party mutually agreed upon by the Administrative
11 Director of the Courts and the California State Association of
12 Counties.

13 SEC. 3. Section 1463.007 of the Penal Code is amended to
14 read:

15 1463.007. (a) Notwithstanding any other ~~provision of~~ law,
16 any county or court that operates a comprehensive collection
17 program may deduct the costs of operating that program, excluding
18 capital expenditures, from any revenues collected under that
19 program. The costs shall be deducted before any distribution of
20 revenues to other governmental entities required by any other
21 ~~provision of~~ law. Any county or court operating a comprehensive
22 collection program may establish a minimum base fee, fine,
23 forfeiture, penalty, or assessment amount for inclusion in the
24 program.

25 (b) Once debt becomes delinquent, it continues to be delinquent
26 and may be subject to collection by a comprehensive collection
27 program. Debt is delinquent and subject to collection by a
28 comprehensive collection program if any of the following
29 conditions is met:

30 (1) A defendant does not post bail or appear on or before the
31 date on which he or she promised to appear, or any lawful
32 continuance of that date, if that defendant was eligible to post and
33 forfeit bail.

34 (2) A defendant does not pay the amount imposed by the court
35 on or before the date ordered by the court, or any lawful
36 continuance of that date.

37 (3) A defendant has failed to make an installment payment on
38 the date specified by the court.

1 (c) For the purposes of this section, a “comprehensive collection
2 program” is a separate and distinct revenue collection activity that
3 meets each of the following criteria:

4 (1) The program identifies and collects amounts arising from
5 delinquent court-ordered debt, whether or not a warrant has been
6 issued against the alleged violator.

7 (2) The program complies with the requirements of subdivision
8 (b) of Section 1463.010.

9 (3) The program engages in each of the following activities:

10 (A) Attempts telephone contact with delinquent debtors for
11 whom the program has a phone number to inform them of their
12 delinquent status and payment options.

13 (B) Notifies delinquent debtors for whom the program has an
14 address in writing of their outstanding obligation within 95 days
15 of delinquency.

16 (C) Generates internal monthly reports to track collections data,
17 such as age of debt and delinquent amounts outstanding.

18 (D) Uses Department of Motor Vehicles information to locate
19 delinquent debtors.

20 (E) Accepts payment of delinquent debt by credit card.

21 (4) The program engages in at least five of the following
22 activities:

23 (A) Sends delinquent debt to the Franchise Tax Board’s
24 Court-Ordered Debt Collections Program.

25 (B) Sends delinquent debt to the Franchise Tax Board’s
26 Interagency Intercept Collections Program.

27 ~~(C) Initiates driver’s license suspension or hold actions when~~
28 ~~appropriate.~~

29 ~~(D)~~

30 (C) Contracts with one or more private debt collectors to collect
31 delinquent debt.

32 ~~(E)~~

33 (D) Sends monthly bills or account statements to all delinquent
34 debtors.

35 ~~(F)~~

36 (E) Contracts with local, regional, state, or national skip tracing
37 or locator resources or services to locate delinquent debtors.

38 ~~(G)~~

39 (F) Coordinates with the probation department to locate debtors
40 who may be on formal or informal probation.

1 ~~(H)~~

2 (G) Uses Employment Development Department employment
3 and wage information to collect delinquent debt.

4 ~~(I)~~

5 (H) Establishes wage and bank account garnishments where
6 appropriate.

7 ~~(J)~~

8 (I) Places liens on real property owned by delinquent debtors
9 when appropriate.

10 ~~(K)~~

11 (J) Uses an automated dialer or automatic call distribution
12 system to manage telephone calls.

13 ~~(d) This section shall become operative on July 1, 2012.~~

14 SEC. 4. Section 13365 of the Vehicle Code is repealed.

15 ~~13365. (a) Upon receipt of notification of a violation of~~
16 ~~subdivision (a) or (b) of Section 40508, the department shall take~~
17 ~~the following action:~~

18 ~~(1) If the notice is given pursuant to subdivision (a) or (b) of~~
19 ~~Section 40509, if the driving record of the person who is the subject~~
20 ~~of the notice contains one or more prior notifications of a violation~~
21 ~~issued pursuant to Section 40509 or 40509.5, and if the person's~~
22 ~~driving privilege is not currently suspended under this section, the~~
23 ~~department shall suspend the driving privilege of the person.~~

24 ~~(2) If the notice is given pursuant to subdivision (a) or (b) of~~
25 ~~Section 40509.5, and if the driving privilege of the person who is~~
26 ~~the subject of the notice is not currently suspended under this~~
27 ~~section, the department shall suspend the driving privilege of the~~
28 ~~person.~~

29 ~~(b) A suspension under this section shall not be effective before~~
30 ~~a date 60 days after the date of receipt, by the department, of the~~
31 ~~notice given specified in subdivision (a), and the notice of~~
32 ~~suspension shall not be mailed by the department before a date 30~~
33 ~~days after receipt of the notice given specified in subdivision (a).~~

34 ~~The suspension shall continue until the suspended person's~~
35 ~~driving record does not contain any notification of a violation of~~
36 ~~subdivision (a) or (b) of Section 40508.~~

37 SEC. 5. Section 13365.5 of the Vehicle Code is repealed.

38 ~~13365.5. (a) Upon receipt of a notification issued pursuant to~~
39 ~~Section 40509.1, the department shall suspend the person's~~
40 ~~privilege to operate a motor vehicle until compliance with the court~~

1 order is shown or as prescribed in subdivision (e) of Section 12808.
2 ~~The suspension under this section shall not be effective until 45~~
3 ~~days after the giving of written notice by the department.~~

4 ~~(b) This section does not apply to a notification of failure to~~
5 ~~comply with a court order issued for a violation enumerated in~~
6 ~~paragraph (1), (2), (3), (6), or (7) of subdivision (b) of Section~~
7 ~~1803.~~

8 SEC. 6. Section 13365.7 is added to the Vehicle Code, to read:
9 13365.7. The department shall restore all driving privileges
10 suspended pursuant to former Section 13365 or 13365.5 upon the
11 request of the suspended driver.

12 SEC. 7. Section 40508 of the Vehicle Code is amended to read:
13 40508. (a) A person willfully violating his or her written
14 promise to appear or a lawfully granted continuance of his or her
15 promise to appear in court or before a person authorized to receive
16 a deposit of bail is guilty of a misdemeanor regardless of the
17 disposition of the charge upon which he or she was originally
18 arrested.

19 (b) A person willfully failing to pay bail in installments as
20 agreed to under Section 40510.5 or a lawfully imposed fine for a
21 violation of a provision of this code or a local ordinance adopted
22 pursuant to this code within the time authorized by the court and
23 without lawful excuse having been presented to the court on or
24 before the date the bail or fine is due is guilty of a misdemeanor
25 regardless of the full payment of the bail or fine after that time.

26 (c) A person willfully failing to comply with a condition of a
27 court order for a violation of this code, other than for failure to
28 appear or failure to pay a fine, is guilty of a misdemeanor,
29 regardless of his or her subsequent compliance with the order.

30 (d) If a person convicted of an infraction fails to pay bail in
31 installments as agreed to under Section 40510.5, or a fine or an
32 installment thereof, within the time authorized by the court, the
33 court may, except as otherwise provided in this subdivision,
34 impound the person's driver's license and order the person not to
35 drive for a period not to exceed 30 days. Before returning the
36 license to the person, the court shall endorse on the reverse side
37 of the license that the person was ordered not to drive, the period
38 for which that order was made, and the name of the court making
39 the order. ~~If a defendant with a class C or M driver's license~~
40 satisfies the court that impounding his or her driver's license and

1 ordering the defendant not to drive will affect his or her livelihood,
2 the court shall order that the person limit his or her driving for a
3 period not to exceed 30 days to driving that is essential in the
4 court's determination to the person's employment, including the
5 person's driving to and from his or her place of employment if
6 other means of transportation are not reasonably available. The
7 court shall provide for the endorsement of the limitation on the
8 person's license. The impounding of the license and ordering the
9 person not to drive or the order limiting the person's driving does
10 not constitute a suspension of the license, but a violation of the
11 order constitutes contempt of court.

12 SEC. 8. Section 40509 of the Vehicle Code is amended to read:

13 40509. (a) Except as required under subdivision (c) of Section
14 40509.5, if any person has violated a written promise to appear or
15 a lawfully granted continuance of his or her promise to appear in
16 court or before the person authorized to receive a deposit of bail,
17 or violated an order to appear in court, including, but not limited
18 to, a written notice to appear issued in accordance with Section
19 40518, the magistrate or clerk of the court may give notice of the
20 failure to appear to the department for any violation of this code,
21 or any violation that can be heard by a juvenile traffic hearing
22 referee pursuant to Section 256 of the Welfare and Institutions
23 Code, or any violation of any other statute relating to the safe
24 operation of a vehicle, except violations not required to be reported
25 pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b)
26 of Section 1803. If thereafter the case in which the promise was
27 given is adjudicated or the person who has violated the court order
28 appears in court or otherwise satisfies the order of the court, the
29 magistrate or clerk of the court hearing the case shall sign and file
30 with the department a certificate to that effect.

31 (b) If any person has willfully failed to pay a lawfully imposed
32 fine within the time authorized by the court or to pay a fine
33 pursuant to subdivision (a) of Section 42003, the magistrate or
34 clerk of the court may give notice of the fact to the department for
35 any violation, except violations not required to be reported pursuant
36 to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section
37 1803. If thereafter the fine is fully paid, the magistrate or clerk of
38 the court shall issue and file with the department a certificate
39 showing that the fine has been paid.

(c) (1) Notwithstanding subdivisions (a) and (b), the court may notify the department of the total amount of bail, fines, assessments, and fees authorized or required by this code, including Section 40508.5, which are unpaid by any person.

(2) Once a court has established the amount of bail, fines, assessments, and fees, and notified the department, the court shall not further enhance or modify that amount.

(3) This subdivision applies only to violations of this code that do not require a mandatory court appearance, are not contested by the defendant, and do not require proof of correction certified by the court.

(d) With respect to a violation of this code, this section is applicable to any court ~~which~~ *that* has not elected to be subject to the notice requirements of subdivision (b) of Section 40509.5.

(e) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

(f) *This section does not authorize the department to suspend a driver's license on the basis of information reported to the department pursuant to this section.*

SEC. 9. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), a person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for a violation of this code, a violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or a violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), a person has willfully failed to pay a lawfully imposed fine, or bail in installments as agreed to under Section 40510.5, within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for a violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine or bail is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine or bail has been paid.

(c) If a person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or subdivision (a) of Section 192.5 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine or bail pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.
(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

1 (4) The driver's record shows an unresolved charge that the
2 defendant is in violation of his or her written promise to appear
3 for one or more other alleged violations of the law.

4 (f) Except as required under subdivision (c), in addition to the
5 proceedings described in this section, the court may elect to notify
6 the department pursuant to subdivision (c) of Section 40509.

7 (g) This section is applicable to courts that have elected to
8 provide notice pursuant to subdivision (b). The method of
9 commencing or terminating an election to proceed under this
10 section shall be prescribed by the department.

11 (h) A violation subject to Section 40001, that is the
12 responsibility of the owner of the vehicle, shall not be reported
13 under this section.

14 (i) (1) *This section does not authorize the department to suspend*
15 *a driver's license on the basis of information reported to the*
16 *department pursuant to this section.*

17 (2) *This subdivision does not apply to a suspension pursuant to*
18 *Section 13365.2 as a result of information provided under*
19 *subdivision (c).*