

Introduced by Senator Huff

(Principal coauthors: Assembly Members Gatto and Lackey)

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1462, as introduced, Huff. 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 authorize an officer to use a preliminary oral fluid screening test that indicates the presence or concentration of a drug or controlled substance 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 for
12 the purpose of determining the drug content of his or her blood, if
13 lawfully arrested for an offense allegedly committed in violation
14 of Section 23140, 23152, or 23153. If a blood test is unavailable,
15 the person shall be deemed to have given his or her consent to
16 chemical testing of his or her urine and shall submit to a urine test.

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

21 (D) The person shall be told that his or her failure to submit to,
22 or the failure to complete, the required chemical testing will result
23 in a fine, mandatory imprisonment if the person is convicted of a
24 violation of Section 23152 or 23153, and (i) the suspension of the
25 person’s privilege to operate a motor vehicle for a period of one
26 year, (ii) the revocation of the person’s privilege to operate a motor
27 vehicle for a period of two years if the refusal occurs within 10
28 years of a separate violation of Section 23103 as specified in
29 Section 23103.5, or of Section 23140, 23152, or 23153 of this
30 code, or of Section 191.5 or subdivision (a) of Section 192.5 of
31 the Penal Code that resulted in a conviction, or if the person’s

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

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

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

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

1 (3) If the person is lawfully arrested for an offense allegedly
2 committed in violation of Section 23140, 23152, or 23153, and,
3 because of the need for medical treatment, the person is first
4 transported to a medical facility where it is not feasible to
5 administer a particular test of, or to obtain a particular sample of,
6 the person's blood or breath, the person has the choice of those
7 tests, including a urine test, that are available at the facility to
8 which that person has been transported. In that case, the officer
9 shall advise the person of those tests that are available at the
10 medical facility and that the person's choice is limited to those
11 tests that are available.

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

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

27 (b) A person who is afflicted with hemophilia is exempt from
28 the blood test required by this section, but shall submit to, and
29 complete, a urine test.

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

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

1 (2) If a blood or breath test is not available under subparagraph
2 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)
3 of paragraph (2) of subdivision (a), or under paragraph (1) of this
4 subdivision, the person shall submit to the remaining test in order
5 to determine the percent, by weight, of alcohol in the person's
6 blood. If both the blood and breath tests are unavailable, the person
7 shall be deemed to have given his or her consent to chemical testing
8 of his or her urine and shall submit to a urine test.

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

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

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

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

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

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

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

21 (i) *A preliminary oral fluid screening test that indicates the*
22 *presence or concentration of a drug or controlled substance based*
23 *on a sample in order to establish reasonable cause to believe the*
24 *person was driving a vehicle in violation of Section 23140, 23152,*
25 *or 23153 is a field sobriety test and may be used by an officer as*
26 *a further investigative tool.*

27 (i)

28 (j) If the officer decides to use a preliminary alcohol *or oral*
29 *fluid* screening test, the officer shall advise the person that he or
30 she is requesting that person to take a preliminary alcohol *or oral*
31 *fluid* screening test to assist the officer in determining if that person
32 is under the influence of alcohol or drugs, or a combination of
33 alcohol and drugs. The person's obligation to submit to a blood,
34 breath, or urine test, as required by this section, for the purpose of
35 determining the alcohol or drug content of that person's blood, is
36 not satisfied by the person submitting to a preliminary alcohol *or*
37 *oral fluid* screening test. The officer shall advise the person of that
38 fact and of the person's right to refuse to take the preliminary
39 alcohol *or oral fluid* screening test.

1 *(k) A local law enforcement agency may provide oral fluids*
2 *testing for purposes of this section. This section does not require*
3 *a local law enforcement agency to provide or make an oral fluids*
4 *test available for purposes of this or any other law. A state law*
5 *enforcement agency shall not provide or make an oral fluids test*
6 *available for purposes of this section or any other law.*

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