

AMENDED IN SENATE APRIL 21, 2016

AMENDED IN SENATE MARCH 30, 2016

**SENATE BILL**

**No. 1462**

---

---

**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 amended, 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.

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. 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  
32 privilege to operate a motor vehicle has been suspended or revoked  
33 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that  
34 occurred on a separate occasion, or (iii) the revocation of the  
35 person's privilege to operate a motor vehicle for a period of three

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

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

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

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

36 (3) If the person is lawfully arrested for an offense allegedly  
37 committed in violation of Section 23140, 23152, or 23153, and,  
38 because of the need for medical treatment, the person is first  
39 transported to a medical facility where it is not feasible to  
40 administer a particular test of, or to obtain a particular sample of,

1 the person's blood or breath, the person has the choice of those  
2 tests, including a urine test, that are available at the facility to  
3 which that person has been transported. In that case, the officer  
4 shall advise the person of those tests that are available at the  
5 medical facility and that the person's choice is limited to those  
6 tests that are available.

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

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

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

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

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

36 (2) If a blood or breath test is not available under subparagraph  
37 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)  
38 of paragraph (2) of subdivision (a), or under paragraph (1) of this  
39 subdivision, the person shall submit to the remaining test in order  
40 to determine the percent, by weight, of alcohol in the person's

1 blood. If both the blood and breath tests are unavailable, the person  
2 shall be deemed to have given his or her consent to chemical testing  
3 of his or her urine and shall submit to a urine test.

4 (e) If the person, who has been arrested for a violation of Section  
5 23140, 23152, or 23153, refuses or fails to complete a chemical  
6 test or tests, or requests that a blood or urine test be taken, the  
7 peace officer, acting on behalf of the department, shall serve the  
8 notice of the order of suspension or revocation of the person's  
9 privilege to operate a motor vehicle personally on the arrested  
10 person. The notice shall be on a form provided by the department.

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

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

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

1 described in this subparagraph shall bear a certification by the  
2 employee of the department who retrieved the document certifying  
3 that the information was received or retrieved directly from the  
4 computerized database system of a governmental forensic  
5 laboratory and that the document accurately reflects the data  
6 received or retrieved.

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

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

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

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