

**Assembly Bill No. 130**

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Passed the Assembly    September 13, 1997

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*Chief Clerk of the Assembly*

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Passed the Senate    September 5, 1997

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



CHAPTER \_\_\_\_\_

An act to amend Sections 13350, 13352, 14601.2, 14601.3, 23159, and 23206.5 of, and to add Section 23175.5 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 130, Battin. Vehicles: driving under the influence: penalties.

(1) Existing law requires that any person convicted of a violation of specified provisions prohibiting driving under the influence of alcohol or drugs, or both alcohol and drugs, driving with an excessive blood-alcohol concentration, or driving when addicted to any drug be punished by imprisonment in the state prison, or by a specified term in the county jail, and by specified fines.

This bill would provide that a person is guilty of a felony or misdemeanor if the described offense of driving-under-the-influence occurred within 10 years of specified prior offenses that were punished as felonies, as specified.

The bill would make conforming changes in related provisions of law.

Because the bill would make certain violations punishable exclusively as felonies and would require prosecutors to prove prior convictions, it would impose a state-mandated local program.

(2) 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 no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 13350 of the Vehicle Code is amended to read:



13350. (a) The department immediately shall revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(2) Any felony in the commission of which a motor vehicle is used, except as provided in Section 13351, 13352, or 13357.

(3) Reckless driving causing bodily injury.

(b) If a person is convicted of a violation of Section 23152 punishable under Section 23170, 23175, or 23175.5, or a violation of Section 23153 punishable under Section 23190, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as an habitual traffic offender. A copy of this affidavit shall be transmitted, with the license or temporary permit, to the department within the prescribed 10 days.

(c) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of one year after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility as defined in Section 16430.

SEC. 2. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of Section 23152



or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Section 15300. For purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months if the court orders the department to suspend the privilege, or if the court does not grant probation. If the person gives proof of ability to respond in damages as defined in Section 16430, the department shall issue the restricted license upon receipt of an abstract of record from the court pursuant to Section 1803 certifying that the court has granted probation to the person on conditions which include the condition specified in subdivision (b) of Section 23161. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23161.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23161.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for 18 months. The privilege shall not be reinstated until the person gives proof of ability to



respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23166.

(4) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages, and until the person gives proof satisfactory to the department of successful completion of a program described in Section 23166.

(5) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, either of the following:

(i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code.



(ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(C) The person provides proof of responsibility to respond in damages.

(D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23170 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(6) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs:



a 30-month program, if available in the county of the person's residence or employment or, if not available, an 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) (i) The person has satisfactorily completed, subject to the current underlying conviction, the 18-month program or the initial 18 months of a licensed 30-month program, as applicable, pursuant to Section 11836 of the Health and Safety Code.

(ii) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(iii) The person provides proof of responsibility to respond in damages.

(iv) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for a violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(B) Any individual convicted of a violation of Section 23153 punishable under Section 23190 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the



person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(7) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23175 or 23175.5, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, the initial 18 months of a licensed 30-month program pursuant to Section 11836 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted



license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(C) The person provides proof of responsibility to respond in damages.

(D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23175 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall



immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense which, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

(e) Whenever the driving privilege is restricted, suspended, or revoked pursuant to this section, the department shall not issue a restricted driver's license or reinstate the driving privilege unless the person gives proof of ability to respond in damages and maintains that proof for three years. If, at any time during that three-year period, a person who is required to maintain that proof fails to maintain that proof, the department shall suspend that person's driving privilege until the proof of ability to respond in damages is again given to the department.

SEC. 3. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153, if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person



pursuant to Section 13106. Knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170, subdivision (b) of Section 23175, or subdivision (b) of Section 23175.5, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170 or subdivision (b) of Section 23175, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense which results in a conviction of this



section within seven years, but over five years, of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

SEC. 4. Section 14601.3 of the Vehicle Code is amended to read:

14601.3. (a) It is unlawful for a person whose driving privilege has been suspended or revoked to accumulate a driving record history which results from driving during the period of suspension or revocation. A person who violates this subdivision is designated an habitual traffic offender.

For purposes of this section, a driving record history means any of the following, if the driving occurred during any period of suspension or revocation:

(1) Two or more convictions within a 12-month period of an offense given a violation point count of two pursuant to Section 12810.

(2) Three or more convictions within a 12-month period of an offense given a violation point count of one pursuant to Section 12810.

(3) Three or more accidents within a 12-month period that are subject to the reporting requirements of Section 16000.

(4) Any combination of convictions or accidents, as specified in paragraphs (1) to (3), inclusive, which results during any 12-month period in a violation point count of three or more pursuant to Section 12810.

(b) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed



notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(c) The department, within 30 days of receipt of a duly certified abstract of the record of any court or accident report which results in a person being designated an habitual traffic offender, may execute and transmit by mail a notice of that designation to the office of the district attorney having jurisdiction over the location of the person's last known address as contained in the department's records.

(d) (1) The district attorney, within 30 days of receiving the notice required in subdivision (c), shall inform the department of whether or not the person will be prosecuted for being an habitual traffic offender.

(2) Notwithstanding any other provision of this section, any habitual traffic offender designated under subdivision (b) of Section 23170, subdivision (b) of Section 23175, or subdivision (b) of Section 23175.5, who is convicted of violating Section 14601.2 shall be sentenced as provided in paragraph (3) of subdivision (e).

(e) Any person convicted under this section of being an habitual traffic offender shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for 30 days and by a fine of one thousand dollars (\$1,000).

(2) Upon a second or any subsequent offense within seven years of a prior conviction under this section, by imprisonment in the county jail for 180 days and by a fine of two thousand dollars (\$2,000).

(3) Any habitual traffic offender designated under Section 193.7 of the Penal Code or under subdivision (b) of Section 23170, subdivision (b) of Section 23175, subdivision (b) of Section 23175.5, or subdivision (d) of Section 23190 who is convicted of a violation of Section 14601.2 shall be punished by imprisonment in the county jail for 180 days and by a fine of two thousand dollars (\$2,000). The penalty in this paragraph shall be



consecutive to that imposed for the violation of any other law.

SEC. 5. Section 23159 of the Vehicle Code is amended to read:

23159. (a) If any person is convicted of a violation of Section 23152 or 23153, and at the time of the arrest leading to that conviction that person willfully refused a peace officer's request to submit to, or willfully failed to complete, the chemical test or tests pursuant to Section 23157, the court shall impose the following penalties:

(1) If the person is convicted of a first violation of Section 23152, notwithstanding any other provision of subdivision (a) of Section 23161, the terms and conditions of probation shall include the conditions in paragraph (1) of subdivision (a) of Section 23161.

(2) If the person is convicted of a first violation of Section 23153, the punishment prescribed in this article shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted and no part of which may be stayed, unless the person is sentenced to, and incarcerated in, the state prison and the execution of that sentence is not stayed.

(3) If the person is convicted of a second violation of Section 23152, punishable under Section 23165, or a second violation of Section 23153, punishable under Section 23185, the punishment prescribed in this article shall be enhanced by an imprisonment of 96 hours in the county jail, whether or not probation is granted and no part of which may be stayed, unless the person is sentenced to, and incarcerated in, the state prison and execution of that sentence is not stayed.

(4) If the person is convicted of a third violation of Section 23152, punishable under Section 23170, the punishment prescribed in this article shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted and no part of which may be stayed.

(5) If the person is convicted of a fourth or subsequent violation of Section 23152, punishable under Section 23175 or 23175.5, the punishment prescribed in this article



shall be enhanced by imprisonment of 18 days in the county jail, whether or not probation is granted and no part of which may be stayed.

(b) The willful refusal or failure to complete the chemical test required pursuant to Section 23157 shall be pled and proven.

SEC. 6. Section 23175.5 is added to the Vehicle Code, to read:

23175.5. (a) A person is guilty of a public offense punishable by imprisonment in the state prison or by imprisonment for not more than one year in the county jail and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000) if that person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:

(1) A prior violation of Section 23152 that was punished as a felony under Section 23175 or this section, or both.

(2) A prior violation of Section 23153 that was punished as a felony.

(3) A prior violation that was punished as a felony under Section 191.5 of the Penal Code or paragraph (1) or (3) of subdivision (c) of Section 192 of the Penal Code. The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles under paragraph (7) of subdivision (a) of Section 13352.

(b) Any person convicted of a violation of Section 23152 that is punishable under this section shall be designated an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under subdivision (b) of Section 13350.

SEC. 7. Section 23206.5 of the Vehicle Code is amended to read:

23206.5. (a) If any person is convicted of a violation of Section 23152 or 23153 and the offense was a second or subsequent offense punishable under Section 23165, 23170, 23175, 23175.5, 23185, or 23190, the court shall require that any term of imprisonment that is imposed include at least one period of not less than 48 consecutive



hours of imprisonment or, in the alternative and notwithstanding Section 4024.2 of the Penal Code, that the person serve not less than 10 days of community service.

(b) Notwithstanding any other provision of law, except Section 2900.5 of the Penal Code, unless the court expressly finds in the circumstances that the punishment inflicted would be cruel or unusual punishment prohibited by Section 17 of Article I of the California Constitution, no court or person to whom a person is remanded for execution of sentence shall release, or permit the release of, a person from the requirements of subdivision (a), including, but not limited to, any work-release program, weekend service of sentence program, diversion or treatment program, or otherwise.

(c) For purposes of this section, “imprisonment” means confinement in a jail, in a minimum security facility, or in an inpatient rehabilitation facility, as provided in Part 1309 (commencing with Section 1309.1) of Title 23 of the Code of Federal Regulations.

(d) This section shall become operative only if, and upon the date of the certification by, the Department of Motor Vehicles to the Secretary of State that California has submitted a completed application for federal Title 408 grant programs funds pursuant to that Part 1309.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved \_\_\_\_\_, 1997

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*Governor*

