

## Senate Bill No. 1176

### CHAPTER 487

An act to amend Section 11836 of the Health and Safety Code, and to amend Section 23103.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1176, Johnson. Vehicles: driving under the influence: reckless driving: alcohol and drug education programs.

(1) Existing law requires that, when the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of a specified provision prohibiting reckless driving, and the plea is in satisfaction of, or as a substitute for, an original charge of a violation of a specified provision prohibiting driving under the influence of alcohol, drugs, or both alcohol and drugs, the prosecution state, for the record, a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. If the court accepts the defendant's plea of guilty or nolo contendere, as specified, the resulting conviction is required to be treated as a prior offense for the purposes of specified provisions relating to punishment for violating the driving-under-the-influence provision.

This bill would require the court, for each of the convictions specified above, to order the defendant to enroll in an alcohol and drug education program licensed under specified provisions of existing law and complete, at a minimum, the educational component of that program, if the court has placed the defendant on probation for that conviction. The bill would allow the court to exclude the educational component from the order if compelling circumstances exist that mitigate against including that component and the court states those circumstances and makes an affirmative finding to that effect, both of which would be required to be stated on the record. The bill would thereby impose a state-mandated local program by creating new duties for the courts. The bill would require the Department of Motor Vehicles to include an evaluation of the effectiveness of treating persons convicted of the described offense in the department's annual report to the Legislature required under existing provisions of law. The bill would make conforming changes.

(2) This bill would incorporate changes in Section 11836 of the Health and Safety Code and Section 23103.5 of the Vehicle Code



proposed by this bill and SB 1186 to become operative if both bills are enacted and this bill is enacted last.

(3) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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.

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

SECTION 1. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter “program” means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors and that is subsequently licensed by the department to provide alcohol or drug recovery services to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23161, 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.



SEC. 2. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter “program” means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors and that is subsequently licensed by the department to provide alcohol or drug recovery services to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local governmental entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

SEC. 3. Section 23103.5 of the Vehicle Code is amended to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).



(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of any alcoholic beverage or the ingestion or administration of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200.

(e) If the court places the defendant on probation for a conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200, the court shall order the defendant to enroll in an alcohol and drug education program licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code and complete, at a minimum, the educational component of that program, as a condition of probation. If compelling circumstances exist that mitigate against including the education component in the order, the court may make an affirmative finding to that effect. The court shall state the compelling circumstances and the affirmative finding on the record, and may, in these cases, exclude the educational component from the order.

(f) The Department of Motor Vehicles shall include in its annual report to the Legislature under Section 1821 an evaluation of the effectiveness of the program described in subdivision (e) as to treating persons convicted of violating Section 23103.

SEC. 4. Section 23103.5 of the Vehicle Code is amended to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the



prosecutor's statement under subdivision (a) states that there was consumption of any alcoholic beverage or the ingestion or administration of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622.

(e) If the court places the defendant on probation for a conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, the court shall order the defendant to enroll in an alcohol and drug education program licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code and complete, at a minimum, the educational component of that program, as a condition of probation. If compelling circumstances exist that mitigate against including the education component in the order, the court may make an affirmative finding to that effect. The court shall state the compelling circumstances and the affirmative finding on the record, and may, in these cases, exclude the educational component from the order.

(f) The Department of Motor Vehicles shall include in its annual report to the Legislature under Section 1821 an evaluation of the effectiveness of the program described in subdivision (e) as to treating persons convicted of violating Section 23103.

SEC. 5. Section 2 of this bill incorporates amendments to Section 11836 of the Health and Safety Code proposed by both this bill and SB 1186. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 11836 of the Health and Safety Code, and (3) this bill is enacted after SB 1186, in which case Section 11836 of the Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 1186, at which time Section 2 of this bill shall become operative.

SEC. 6. Section 4 of this bill incorporates amendments to Section 23103.5 of the Vehicle Code proposed by both this bill and SB 1186. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 23103.5 of the Vehicle Code, and (3) this bill is enacted after SB 1186, in which case Section 23103.5 of the Vehicle Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 1186, at which time Section 4 of this bill shall become operative.



SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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.

