1-1-1996

Transportation and Motor Vehicles

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Recommended Citation

University of the Pacific; McGeorge School of Law, Transportation and Motor Vehicles, 27 Pac. L. J. 1027 (1996).
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Transportation and Motor Vehicles

Transportation and Motor Vehicles; alleys—restriction of vehicular and pedestrian access

AB 356 (W. Murray & Kuykendall); 1995 STAT. Ch. 215

Under existing law, local authorities may, under certain circumstances, adopt ordinances or resolutions that prohibit or restrict the use of streets, roads, and highways under their jurisdiction.

1. See CAL. VEH. CODE § 385 (West 1987) (defining “local authorities” as the legislative bodies of every county or municipality having authority to adopt local police regulations).

2. See id. § 590 (West 1987) (defining “street” as a way or place publicly maintained and open to the use of the public for purposes of vehicular travel; street includes highway).

3. See id. § 527 (West 1987) (defining “road” as any existing vehicle route established before January 1, 1979, with significant evidence of prior regular travel by vehicles subject to registration pursuant to California Vehicle Code §§ 4000-4021; provided that road does not mean any route traversed exclusively by bicycles as defined in California Vehicle Code § 39001, motorcycles as defined in California Vehicle Code § 400, motor-driven cycles as defined in California Vehicle Code § 405, or off-highway motor vehicles as defined in California Vehicle Code § 38012); see also id. § 400 (West Supp. 1995) (defining “motorcycle” as a motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1500 pounds); id. § 405 (West Supp. 1995) (defining “motor-driven cycle” as any motorcycle with a motor which displaces less than 150 cubic centimeters, and every bicycle with a motor attached); id. § 38012 (West 1985) (defining “off-highway motor vehicle” as including the following: (1) any motorcycle or motor-driven cycle, except for any motorcycle which is eligible for a special transportation identification device; (2) any snowmobile or other vehicle designed to travel over snow or ice; (3) any motor vehicle commonly referred to as a sand buggy, dune buggy, or all-terrain vehicle; and (4) any motor vehicle commonly referred to as a jeep); id. § 39001 (West Supp. 1995) (setting forth the licensing and registration of bicycles). See generally id. §§ 4000-5500 (West 1987 & Supp. 1995) (discussing registration of vehicles and certificates of title).

4. See id. § 360 (West 1987) (defining “highway” as a way or place of any nature—including a street publicly maintained and open to the public for vehicular travel).

5. Id. §§ 21101, 21101.4, 21102 (West Supp. 1995); see id. § 21101 (West Supp. 1995) (authorizing local authorities, for those highways under their jurisdiction, to adopt rules and regulations on the following matters: (1) closing any highway to vehicular traffic when, in the opinion of the legislative body having jurisdiction, the highway is no longer needed for vehicular traffic; (2) prohibiting the use of particular highways by certain vehicles; (3) closing particular streets during regular school hours for the purpose of conducting automobile driver training programs in secondary schools and colleges; and (4) temporarily closing a portion of any street for celebrations, parades, local special events, and other purposes when the closing is necessary for the protection and safety of those who will use that portion of the street during the temporary closing); id. § 21101.4 (West Supp. 1995) (allowing a local authority to, by ordinance or resolution, adopt rules and regulations for temporarily closing to through traffic a highway under its jurisdiction when all of the following conditions are found to exist after a public hearing: (1) the local authority determines that there is serious and continual criminal activity in the portion of the highway recommended for temporary closure; this finding and determination must be based upon the recommendation of the police department or, in the case of a highway in an unincorporated area, on the joint recommendation of the sheriff’s department and the Department of the California Highway Patrol; (2) the highway has not been designated as a through highway or arterial street; (3) vehicular or pedestrian traffic on the highway contributes to the criminal activity; (4) the closure will not substantially adversely affect the operation of emergency vehicles, the performance of
Chapter 215 authorizes local authorities, by ordinance or resolution, to restrict vehicular or pedestrian traffic through an alley, by means of gates, barriers, or other control devices, when necessary for the protection or preservation of the public peace, safety, health, or welfare. However, Chapter 215 is subject to certain conditions. For one, the ordinance or resolution cannot be enforced until appropriate signs giving notice of the restriction are posted at every entrance to the alley. Furthermore, within the coastal zone, where the alley provides direct municipal or public utility services, or the delivery of freight by commercial vehicles in the area of the highway proposed to be temporarily closed; and (5) a highway may be temporarily closed pursuant to California Vehicle Code § 21101.4(a) for not more than 18 months, except that period may, pursuant to § 21101.4(a), be extended for one additional period of not more than 18 months; id. § 21102 (West Supp. 1995) (declaring that local authorities may adopt rules and regulations by ordinance or resolution closing to vehicular traffic that portion of any street or highway crossing or dividing any school ground or grounds when such closing is necessary for the protection of those attending such areas).

6. See id. § 670 (West 1987) (defining "vehicle" as a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks).

7. See id. § 467 (West Supp. 1995) (defining a "pedestrian" as any person who is afoot or who is using a means of conveyance propelled by human power other than a bicycle); id. (noting that pedestrian includes any person who is operating a self-propelled wheelchair, invalid tricycle, or motorized tricycle and, by reason of physical disability, is otherwise unable to move about as a pedestrian, as specified in California Vehicle Code § 467(a)).

8. See id. § 620 (West 1987) (including within the definition of "traffic" pedestrians, ridden animals, vehicles, street cars, and other conveyances, either singly or together, while using any highway for purposes of travel).

9. See id. § 110 (West 1987) (defining "alley" as any highway having a roadway not exceeding 25 feet in width which is primarily used for access to the rear or side entrances of abutting property; however, the City and County of San Francisco may designate as an alley, by ordinance or resolution, any highway having a roadway not exceeding 25 feet in width); see also 1965 Cal. Stat. ch. 833, sec. 2, at 2432 (amending CAL. VEH. CODE § 110 (declarating that the Legislature finds that due to circumstances peculiar to the City and County of San Francisco, it is necessary that such city and county be authorized to designate highways with roadways not exceeding 25 feet in width as alleys).

10. CAL. VEH. CODE § 21102.1 (enacted by Chapter 215); see id. (permitting local authorities to adopt rules and regulations restricting vehicular or pedestrian traffic through any alley by means of gates, barriers, or other control devices, when the restriction is necessary for the protection or preservation of the public peace, safety, health, or welfare, subject to certain conditions); see also Simpson v. City of Los Angeles, 4 Cal. 2d 60, 67, 47 P.2d 474, 477 (1935) (holding that a street closing to vehicular traffic by the City Council of Los Angeles for the purpose of protecting the lives, health, safety and general welfare of the people of the city, was within its police power because the closing was warranted and within constitutional limits; furthermore, the closing of the street did not deprive the plaintiff's property of all vehicular access and the damage to the property was incidental to the exercise by the city of its lawful powers).

11. CAL. VEH. CODE § 21102.1 (enacted by Chapter 215).

12. Id. § 21102.1(a) (enacted by Chapter 215); see id. § 21103 (West Supp. 1995) (providing that no ordinance or resolution enacted under California Vehicle Code § 21101 will be effective until signs giving notice of the local traffic laws are posted at all entrances to the highway or part thereof affected).

13. See CAL. PUB. RES. CODE § 30103(a) (West Supp. Pamphlet 1995) (defining "coastal zone" as that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea); id. (providing that the coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel.
access to any public beach\textsuperscript{14} or state waters, the local authority must comply with the California Coastal Act.\textsuperscript{15} Within the area administered by the San Francisco Bay Conservation and Development Commission,\textsuperscript{16} the local authority must first obtain concurrence by, or on behalf of, the commission to restrict an alley that provides direct access to any public beach, state waters, or wetlands.\textsuperscript{17}

Chapter 215 further requires access to be provided to utility vehicles, and does not prohibit the delivery of freight by commercial vehicles.\textsuperscript{18} Moreover, Chapter 215 prohibits any ordinance or resolution from being implemented in a manner that adversely affects the operation of emergency vehicles or the performance of municipal services.\textsuperscript{19} Lastly, Chapter 215 provides that no ordinance or resolution can be adopted that restricts the access of certain members of the

\textsuperscript{14} See \textsc{Cal. Gov't Code} § 54090 (West 1983) (defining “public beach” as any beach area used for recreational purposes which is owned, operated or controlled by the State, any state agency or any local agency).

\textsuperscript{15} See \textsc{Cal. Gov't Code} § 54090 (West 1983) (defining “public beach” as any beach area used for recreational purposes which is owned, operated or controlled by the State, any state agency or any local agency).

\textsuperscript{16} See \textsc{Cal. Gov't Code} §§ 30000-30900 (West 1986 & Supp. Pamphlet 1995) (setting forth the California Coastal Act of 1976); id. § 30001.5 (West 1986) (declaring that a goal of the state for the coastal zone is to maximize public access to and along the coast and maximize public recreational opportunities consistent with sound conservation principles and constitutionally protected rights of private property owners); see also \textsc{Black's Law Dictionary} 1232 (6th ed. 1990) (defining the “public trust doctrine” as providing that submerged and submersible lands are preserved for public use in navigation, fishing and recreation, and the state, as trustee for the people, bears responsibility for preserving and protecting the right of the public to use the waters for those purposes); Susan D. Baer, Comment, \textit{The Public Trust Doctrine—A Tool to Make Federal Administrative Agencies Increase Protection of Public Land and Its Resources}, 15 B.C. Envtl. Aff. L. Rev. 385, 400 (1988) (defining the public trust doctrine has developed to the point where there is at least an implicit legal right vested in the public); Timothy P. Brady, Comment, \textit{But Most of it Belongs to Those Yet to Be Born:} \textit{The Public Trust Doctrine, NEPA, and the Stewardship Ethic}, 17 B.C. Env'tl. Aff. L. Rev. 621, 624-29 (1990) (discussing the emergence of the Public Trust Doctrine); Alice G. Carmichael, Comment, \textit{Sunbathers Versus Property Owners: Public Access to North Carolina Beaches}, 64 N.C. L. Rev. 159, 160 (1985) (commenting that the trend in most jurisdictions is toward recognition of a legal right of the public to access and use of the beaches, although the nature of these rights varies from state to state). See generally 4 B.E. Witkin, \textsc{Summary of California Law}, \textit{Real Property} § 90 (9th ed. 1987) (discussing the California Coastal Act of 1976).


\textsuperscript{18} \textsc{Cal. Veh. Code} § 21102.1(e) (enacted by Chapter 215); see id. (noting that the concurrence or objection must be based on the permits issued by the San Francisco Bay Conservation and Development Commission); see also \textsc{Cal. Pub. Res. Code} § 30121 (West 1986) (defining “wetland” as lands within the coastal zone which may be covered periodically or permanently with shallow water and lands that are saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens).

\textsuperscript{19} \textsc{Cal. Veh. Code} § 21102.1(d) (enacted by Chapter 215); id. § 21102.1(e) (enacted by Chapter 215); see id. § 21102.1(d) (enacted by Chapter 215) (noting that the local authority must provide access to utility vehicular or pedestrian traffic in order that the utility may maintain, operate, replace, remove, or renew existing and functioning utility facilities); see also id. § 260 (West Supp. 1995) (defining a “commercial vehicle” as a vehicle of a type required to be registered under the Vehicle Code which is used for the transportation of persons for profit, or used primarily for the transportation of property); id. § 22512 (West Supp. 1995) (listing other provisions that do not apply to the driver or owner of any service vehicle owned or operated by or for, or operated under contract with, a utility or public utility).

\textsuperscript{19} \textsc{Id.} § 21102.1(f) (enacted by Chapter 215).

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public to the alleys, while permitting others unrestricted access to the alleys.\textsuperscript{20}

COMMENT

The League of California Cities and the City of Long Beach sponsored Chapter 215 because alleys have become convenient locations for crime and other nuisances.\textsuperscript{21} Under current law, local authorities can temporarily close alleys or highways under their jurisdiction if, among other requirements, the appropriate local law enforcement agency recommends that the facility be closed due to serious and continuing criminal activity on the roadway.\textsuperscript{22} Chapter 215 expands the reasons for restricting access to an alley to include any purpose determined to be necessary for the protection or preservation of public peace, health, safety, or welfare.\textsuperscript{23}

Michelle M. Sheidenberger

\footnotesize

20. \textit{Id.} § 21102.1(g) (enacted by Chapter 215).

21. \textit{Assembly Floor, Committee Analysis of AB 356, at 2 (May 18, 1995); see Michael Krikorian, Los Angeles City Hall Journal: A Summary of Selected City Hall Actions This Week Affecting Central Los Angeles, L.A. Times, Jan. 8, 1995, at 2 (noting that the Los Angeles city council approved a Public Works Committee report that establishes guidelines for temporarily closing streets, alleys or walkways because of criminal activity; however, certain conditions must be met before a closure, which would be for 18 months, can be imposed); id. (listing the conditions for temporarily closing streets, alleys or walkways because of criminal activity as the following: (1) the existence of serious and continual criminal activity at the site; (2) vehicular or pedestrian traffic that contributes to the criminal activity; (3) agreement to the closure by surrounding property owners; and (4) evidence that the closure will not adversely affect public utility services or emergency vehicle operations); Lucille Renwick, The Great Blight Way: Alleys Have Become a Magnet for Illegal Dumping and Crime. A City Pilot Project Hopes to Change That, L.A. Times, Oct. 30, 1994, at 14 (citing that alleys have become lairs where prostitutes conduct business, thieves escape from police, and crack addicts score drugs; Los Angeles spends about $6 million a year to clean up the alleys, most of which are in South Los Angeles); id. (stating that in an effort to clean up nuisance alleys plagued by crime and illegal dumping, at least six alleys in South-Central Los Angeles were closed; furthermore, Los Angeles will turn the city-owned land over to the adjacent land property owners for community gardens and other recreational uses); Hannelore Sudermann, Residents Hope Gated Alleys Put a Lock on Crime, SACRAMENTO Bee, Apr. 6, 1995, at N1 (describing the City of Sacramento's plan to gate alleys to curb the crime and dumping); Walt Yost, City Council May Attempt to Close Gates on Alley Crime, SACRAMENTO Bee, Aug. 4, 1994, at N3 (quoting Councilwoman Deborah Ortiz as saying that the city of Sacramento spends $200,000 a year cleaning up illegal dumping in alleys, plus countless hours of police and fire department time are spent on alley problems; the savings to gate and close 50 city alleys will far exceed the costs); id. (noting that an Elmhurst resident told the Sacramento City Council that there has been an increase in vehicular and foot traffic using the alleys in her neighborhood, which has resulted in increased vandalism, illegal dumping, prostitution, and drug use).


23. \textit{Id.} § 21102.1 (enacted by Chapter 215); \textit{Assembly Floor, Committee Analysis of AB 356, at 2 (May 18, 1995).}
Transportation and Motor Vehicles; dealers—unlawful acts

Business and Professions Code § 17537.7 (new); Vehicle Code § 11713.11 (new); § 11713.1 (amended).
AB 192 (Cannella); 1995 STAT. Ch. 585

Existing law authorizes the Department of Motor Vehicles to issue licenses to vehicle dealers and prohibits the holder of any vehicle dealer’s license from doing any one or more of various proscribed acts. Existing law specifies require-

1. See CAL. VEH. CODE § 11700 (West Supp. 1995) (indicating that no person shall act as a dealer without a license as required in California Vehicle Code § 11701); see also id. § 11701 (West 1987) (providing that a dealer in vehicles subject to registration must apply to the Department of Motor Vehicles for a license containing a general distinguishing number); S.C. CODE ANN. § 56-15-310(1) (Law. Co-op. 1991) (listing similar, but more specific requirements, to those of California).

2. See CAL. VEH. CODE § 670 (West 1987) (defining a “vehicle” as a device moved by some source other than human power or upon stationary tracks or rails which is propelled or moved upon the highway).

3. See id. § 285(a) (West 1987) (defining a “vehicle dealer” as one who does not fall within the exceptions of California Vehicle Code § 286, but who negotiates or attempts to negotiate, a sale or exchange of an interest in a vehicle subject to registration); id. § 285(b) (West 1987) (providing one who is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for resale is a vehicle dealer); id. § 286 (West Supp. 1995) (listing exceptions to the definition of “dealer,” such as insurance companies, banks, and salespersons employed by vehicle dealers); cf. KAN. STAT. ANN. § 8-2401(a) (1991) (defining “vehicle dealer” as any person who buys sells or negotiates a sale of an interest in a vehicle for money, or is involved in the auction of the vehicles for money).

4. CAL. VEH. CODE § 11713.1 (amended by Chapter 585); see id. (providing a list of violations of this code for the holder of a dealer license, such as misrepresenting fees, using bait and switch techniques, and failing to disclose information in a conspicuous manner); see also id. § 1651 (West 1987) (providing that the director of the Department of Motor Vehicles may adopt and enforce rules and regulations as necessary to carry out the provisions of this code relating to the department); id. § 11614(a)-(v) (West Supp. 1995) (limiting what a lessor-retailer licensed under this chapter can do, for example, limiting methods of advertising, requiring certain price disclosures, or misrepresenting fees); cf. LA. REV. STAT. ANN. § 1251 (West 1989) (setting forth Louisiana’s policy reasons for requiring licensing as the effect on the general economy, public interest, and the public welfare, making it necessary to regulate). See generally Auchard v. Ford Motor Credit Corp., 715 P.2d 1298 (Kan. Ct. App. 1986) (assessing the notice provision for the state of Kansas with respect to auctioning of seized vehicles, the code reading, in part, that reasonable notification of the time and place of any public sale shall be sent by the secured creditor to the debtor).
ments that dealers must satisfy for advertising vehicles. It is a misdemeanor to violate those provisions.7

Chapter 585 makes it unlawful to advertise for sale or purchase any new vehicle of a line-make for which the dealer does not hold a franchise.8 Chapter 585, however, does not apply to specified categories of vehicles.9 Chapter 585 prohibits a dealer from auctioning to the public any vehicle without disclosing, among other things, the date of the public auction, the location, whether a fee will be charged, and the name and dealer number of the auctioning dealer.10 Additionally, in the event any of the cars to be auctioned were acquired as a result of a seizure by a federal, state or local agency, then additional information must be clearly and conspicuously disclosed in the advertisement.11 A dealer must also

5. See Cal. Code Regs. tit. 13, § 255.00(a) (1993) (defining "advertising" as any statement, representation, act or announcement intentionally communicated to any member of the public by any means whatsoever, either oral, in writing or otherwise); id. § 260.00 (1993) (indicating that advertisements for the sale of vehicles shall be clearly set forth and are subject to Title 13 regulations and the California Vehicle Code); see also Cal. Bus. & Prof. Code § 12024.6 (West 1987) (banning advertising intended to entice customers into a transaction other than that which was originally intended); id. § 17500 (West 1987) (prohibiting the dissemination of false or misleading advertisements and defining "advertising" as inducing the public, in any statement, to enter into any obligation, through the making or disseminating or causing to be made or disseminated before the public in any state, in any newspaper or other publication, or any advertising device); Cal. Veh. Code § 11614(o) (West Supp. 1995) (noting that it is unlawful to advertise when there is no intent to supply the reasonable expected demand, absent a disclosure of a quantity limitation).

6. Cal. Veh. Code § 11713.1(d)-(f) (amended by Chapter 585); see id. (indicating what must be included in the advertised price, method of identifying the vehicle, what constitutes an advertisement, and various other specifications); see also id. § 11713(a) (West Supp. 1995) (specifying advertising practices which are unlawful, including refusal to sell a vehicle at the advertised price).

7. Id. § 40000.11(a) (West 1985); see id. (discussing violations which are misdemeanors, such as those relating to occupational licensing and business regulations); see also id. § 42002 (West 1935) (indicating that absent an express provision in this code, anyone found guilty of a misdemeanor under any provision of this code shall be punished by a fine of not more than $1000 or imprisonment not exceeding six months, or both a fine and imprisonment).


9. Id. § 11713.1(f)(2) (amended by Chapter 585); see id. (listing nonapplicable vehicle sales, including that subdivision (f) does not apply to mobile-homes, recreational vehicles, commercial coaches, off-highway motor vehicles, manufactured homes, a vehicle that will be substantially altered by a converter prior to sale, a commercial vehicle with a gross vehicle weight in excess of 10,000 pounds, and a vehicle purchased for export and exported outside the United States without being registered by the department).

10. Id. § 11713.11(a)(1)-(4) (enacted by Chapter 585).

11. Cal. Veh. Code § 11713.11(b)(1), (2) (enacted by Chapter 585); see id. (requiring a good faith estimate of the number of vehicles to be auctioned at that date, and a good faith estimate of the number of vehicles seized by a federal, state or local public agency or authority to be auctioned at that date); see also Cal. Health & Safety Code § 11470(e) (West Supp. 1995) (listing a variety of controlled substances which, if a person's vehicle was used to facilitate the possession for sale or sale of these substances, would result in the forfeiture of the vehicle). See generally Darren M. Allen, Barnes to Alter Policies of Narcotics Task Force, Baltimore Sun, Dec. 18, 1994, at 1B (giving an example of a police department and district attorney's office who use civil forfeitures as a way of increasing the capabilities of local law enforcement by providing high tech computers, office buildings, new cars and personnel, even though their tactics have been called into question); David Heilbroner, The Law Goes on a Treasure Hunt, N.Y. Times, Dec. 11, 1994, at 70 (citing statistics which show that Federal agencies have netted $3.6 billion dollars in assets since 1984 through the execution of nearly 200,000 forfeitures).
identify each vehicle which was seized by a federal, state, or local agency.\footnote{1} Finally, Chapter 585 makes it illegal for an advertisement to contain the terms “invoice,” “dealer’s invoice,” “wholesale price” or other terms which refer to the dealer’s cost.\footnote{13}

\section*{Comment}

The purpose of Chapter 585 is to provide protection to potential purchasers of asset seizure vehicles.\footnote{14} The advertising requirements reduce confusion to potential buyers from misleading statements.\footnote{15} Quite often asset seizure vehicles are sold at auction and at times very few asset seizure vehicles are actually for sale at the auction in relation to vehicles obtained from other sources.\footnote{16}

\textit{Andrei F. B. Behdjet}

\section*{Transportation and Motor Vehicles; driver’s license examinations}

Vehicle Code § 14610.5 (amended).

SB 307 (Wright); 1995 STAT. Ch. 243

Under existing law, it is unlawful for any individual to commit specified acts of cheating on a driver’s license examination.\footnote{1} Prior law made a first conviction

\begin{itemize}
\item \footnote{12} CAL. VEH. CODE § 11713.11(c) (enacted by Chapter 585); \textit{see id.} (requiring the notification to be presented on a printed form or orally before the bidding on the vehicle begins).
\item \footnote{13} CAL. BUS. & PROF. CODE § 17537.7 (enacted by Chapter 585); \textit{see id.} (indicating that a dealer cannot advertise that the price of the vehicle is above, below, or at the manufacturer’s or distributor’s invoice or selling price or the dealer’s cost); \textit{see also} CAL. VEH. CODE § 11713.1(n) (amended by Chapter 585) (containing the same requirement as California Business and Professions Code § 17537.7 that advertisements not contain certain specified terms); \textit{id.} § 11713(n)(2)(A), (B) (amended by Chapter 585) (providing two exceptions to § 11713.1(n), which are: (1) allowing the use of the vehicle’s invoice price if the customer initiates the communication with the dealer; and (2) limiting the application of § 11713.1(n) if the communication between the dealer and prospective commercial purchaser is not disseminated to the general public).
\item \footnote{14} ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 192, at 2 (Apr. 3, 1995); \textit{see id.} (announcing that the purpose of the bill is to require the number of asset seizure vehicles and those purchased by the dealer for resale to be disclosed in any newspaper advertising).
\item \footnote{15} ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 192, at 2 (May 17, 1995); \textit{see id.} (stating the bill would address the potential confusion by requiring advertising to disclose the number of vehicles for auction which are asset seizure vehicles, on consignment or from regular dealer inventory); \textit{id.} (inferring that dealers sometimes auction off vehicles which are not asset seizure vehicles, leading to consumer confusion with respect to what is being bought).
\item \footnote{16} ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 192, at 1-2 (Apr. 3, 1995); \textit{see id.} (commenting that asset seizure vehicles are generally sold at auction by licensed dealers).
\end{itemize}

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of this prohibition punishable as an infraction,\(^2\) while making a second or subsequent conviction punishable as a misdemeanor.\(^3\) Chapter 243 allows a first time conviction to be punishable as either an infraction or a misdemeanor depending on the circumstances.\(^4\)

**COMMENT**

Chapter 243 is intended to reduce cheating incidents on the written portion of driver’s license examinations.\(^5\) Proponents of Chapter 243 argued that increasing the potential penalty for cheating violations would decrease the

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cheating by supplying examination answers to an applicant for the purpose of fraudulently qualifying the applicant for any class of driver’s license; \(^2\) See CAL. PENAL CODE § 19.8 (West Supp. 1995) (expressing that a conviction of any violation which is an infraction, unless a lesser maximum fine is expressly provided, is punishable by a fine not exceeding $250).

3. 1986 Cal. Stat. ch. 960, sec. 2, at 3337 (enacting CAL. VEH. CODE § 14610.5(b)); see CAL. PENAL CODE § 17(a) (West Supp. 1995) (stating that a felony is a crime which is punishable by death or imprisonment in state prison, and all other crimes are misdemeanors, except those classified as infractions); see also id. § 19 (West 1988) (providing that except where a different punishment is prescribed, every offense classified as a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding $1000, or both); id. § 19.2 (West Supp. 1995) (explaining that the maximum punishment for a misdemeanor, unless convicted of more than one offense when consecutive sentences have been imposed, is imprisonment not in excess of one year).

4. CAL. VEH. CODE § 14610.5(b) (amended by Chapter 243); see id. § 42001(a) (West Supp. 1995) (stating that any person convicted of an infraction for a violation of the California Vehicle Code is subject to (1) a $100 fine for the first offense, (2) a fine not to exceed $200 for a second infraction occurring within one year of a prior infraction, or (3) a $250 fine for a third or subsequent infraction occurring within one year of two or more prior infractions); see also Sawyer v. Barbour, 142 Cal. App. 2d 827, 837, 300 P.2d 187, 193 (1956) (holding that despite the fact that California Penal Code § 19 specifies that misdemeanors are generally punished by fines up to $500, the Legislature may provide a different scale of punishments for violations of the vehicle code—including a minimum fine that must be imposed).

5. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 307, at 1 (July 5, 1995); see id. (stating that individuals have paid others to complete the written portion of the driver’s license examination); see also SENATE COMMITTEE ON CRIMINAL PROCEDURE, COMMITTEE ANALYSIS OF SB 307, at 2 (Apr. 18, 1995) (describing a situation in Senator Cathie Wright’s district in which individuals were found to be paying others to take the driver’s license examination).
Transportation and Motor Vehicles

likelihood of the offenses occurring and/or increase the likelihood of the offense being prosecuted. On the other hand, opponents of Chapter 243 argue that already overcrowded jails should not be filled with first-time minor offenders.

Timothy J. Moroney

Transportation and Motor Vehicles; taxicab licensing and certificate of public convenience and necessity regulations—controlled substance and alcohol testing

Government Code § 53075.5 (amended); Public Utilities Code §§ 1032.1, 120269 (new); § 5374 (amended); Vehicle Code § 34520 (amended).
SB 46 (Ayala); 1995 STAT. Ch. 405

Under existing law, commercial motor carriers must submit to controlled substance and alcohol testing prior to employment or licensing, after accidents,
randomly, or when there is reasonable suspicion of job performance impairment.\(^3\) These test results cannot be used in a criminal proceeding concerning unlawful possession, sale or distribution of controlled substances.\(^4\)

Under Chapter 405, taxicab drivers are subject to this same testing.\(^5\) Chapter 405 outlines the city or county alcohol and controlled substance testing program.\(^6\) A similar program is also required prior to issuance of a certificate of public

3. CAL. VEH. CODE § 34520(a) (amended by Chapter 405); see id. (incorporating federal controlled substance and alcohol testing as required by Part 382 of Title 49 of the Code of Federal Regulations); see also 49 C.F.R. § 382.301(a) (1995) (imposing preemployment controlled substance and alcohol testing); id. § 382.303(a) (1995) (requiring post-accident controlled substance and alcohol testing); id. § 382.305 (1995) (mandating random controlled substance and alcohol testing); id. § 382.307(a), (b) (1995) (imposing testing when there is reasonable suspicion of impairment due to controlled drug and alcohol); cf. CONN. GEN. STAT. ANN. § 14-276a(d) (West Supp. 1995) (requiring controlled substance testing of school bus drivers); DEL. CODE ANN. tit. 21, § 2708(a)(3) (Supp. 1994) (mandating controlled substance testing of "potential" school bus drivers); FLA. STAT. ANN. § 234.091 (West Supp. 1995) (imposing controlled substance testing testing of school bus drivers); GA. CODE ANN. § 20-2-1121(a) (Michie Supp. 1994) (requiring "drug" testing of school bus drivers); ILL. ANN. STAT. ch. 625, para. 5/6 106.1(a)(6) (Smith-Hurd Supp. 1995) (mandating controlled substance testing of school bus drivers); N.D. CENT. CODE § 15-34.2-14 (1993) (permitting drug and alcohol testing of school bus drivers at the discretion of the school board); VA. CODE ANN. § 22.1-178(C) (Michie Supp. 1994) (authorizing controlled substance and alcohol testing of school bus drivers). See generally Atkins v. Board of Sch. Comm'rs., 830 F. Supp. 1169, 1176 (S.D. Ind. 1993) (upholding the constitutionality of controlled drug testing for school bus drivers); 1991 S.C. AG LEXIS 230, *2-3 (Nov. 7, 1991) (stating that random controlled substance testing of school bus drivers can be included in an annual fitness physical); id. at *8 (noting that random controlled substance testing of school bus drivers has been upheld in several states where the program is motivated by safety concerns).

4. CAL. VEH. CODE § 34520(b)(3) (amended by Chapter 405).

5. CAL. GOV'T. CODE § 53075.5(b)(3) (amended by Chapter 405); CAL. PUB. UTIL. CODE § 5374(a),(2), (b)(1)(I) (amended by Chapter 405); see id. § 5374(a)(2) (amended by Chapter 405) (requiring controlled substance and alcohol testing for issuance or renewals of a taxi driver's permit); id. § 5374(b)(1)(I) (amended by Chapter 405) (requiring controlled substance and alcohol testing for issuance or renewal of a certificate of public convenience and necessity as provided for in section 1032.1(a)); cf. CONN. GEN. STAT. ANN. 14-44(b) (West Supp. 1994) (mandating that controlled substance and alcohol testing results be provided if they exist for licensing of taxicab drivers).

6. CAL. GOV'T. CODE § 53075.5(b)(3)(A) (amended by Chapter 405); see id. (describing the testing program as similar to the testing program required in Part 40 and Part 382 of Title 49 of the Code of Federal Regulations and including the following: (1) mandatory negative test results for each controlled substance listed in Part 40 of Title 49 of the Code of Federal Regulations and alcohol prior to employment or self-employment, upon permit renewal, or other designated times; (2) presentation of a California driver's license upon testing; (3) the allowance of tests available in one jurisdiction for use in any jurisdiction; (4) the satisfaction of the periodic testing requirement based on a negative test result during the past year if a subsequent positive test result has not occurred except in the case of a pre-employment testing requirement; (5) direct reporting of test results of a self-employed driver to the city or county which will then notify the leasing company of record if the results are positive; (6) reporting of other test results to the employer who may be required to report the results to the city or county; and (7) providing upon request a list of testing consortia near the jurisdiction to permit applicants); id. § 53075.5(b)(3)(A)(i) (amended by Chapter 405) (defining a "negative alcohol test result" as a breath alcohol concentration of less than 0.02%); id. § 53075.5(e) (amended by Chapter 405) (providing that this section applies to independent drivers). See generally People v. Randolph, 213 Cal. App. 3d Supp. 1, 5 n.1, 262 Cal. Rptr. 378, 380 n.1 (1989) (defining "blood-alcohol concentration level" as the percent, by weight, of alcohol in the bloodstream as determined through a blood, breath, or urine test).

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convenience and necessity. Any transportation service licensed or regulated by a transit development board must also be tested through a similar program. However, positive test results may not be used as evidence in a criminal prosecution.

While various government agencies are responsible for administering this program, the costs will be recovered from the employer or self-employed individual who will be responsible for the costs of the testing program and other fees imposed to operate the program.

Existing law mandates that each city and county develop policies related to entering the taxi transportation business. Chapter 405 lists specific policies which must be included.

Under existing law, peace officers were not exempt from the controlled

7. CAL. PUB. UTIL. CODE § 1032.1(a), (b), (d)-(f) (enacted by Chapter 405); see id. § 1032.1(b) (amended by Chapter 405) (describing the testing program as similar to the testing program required in Part 40 and Part 382 of Title 49 of the Code of Federal Regulations and includes the following: (1) mandatory negative test results for each controlled substance listed in Part 40 of Title 49 of the Code of Federal Regulations and alcohol prior to employment or self-employment, upon permit renewal, or other designated times; (2) presentation of a California driver’s license upon testing; (3) the satisfaction of the periodic testing requirement based on a negative test result during the past year if a subsequent positive test result has not occurred except in the case of a pre-employment testing requirement; (4) report test results of a self-employed driver directly to the commission; (5) report other test results to the employer; (6) random and for-cause inspections of an applicant’s documents indicating compliance; (7) confidentiality of test results; and (8) providing upon request a list of testing consortia near the jurisdiction to certificate applicants; id. § 1032.1(b)(1) (enacted by Chapter 405) (defining a “negative alcohol test result” as a breath alcohol concentration of less than 0.02%); see also id. § 1031 (West 1994) (requiring passenger stage corporations to obtain a certificate indicating public convenience and necessity from the Public Utility Commission prior to operation).


9. Id. § 120269(a), (b) (enacted by Chapter 405).

10. CAL. GOV’T CODE § 53075.5(b)(3)(B) (amended by Chapter 405); CAL. PUB. UTIL. CODE §§ 1032.1(c), 120269(c) (enacted by Chapter 405).

11. CAL. GOV’T CODE § 53075.5(b)(3)(A)(v), (e) (amended by Chapter 405); CAL. PUB. UTIL. CODE § 1032.1(b)(6) (enacted by Chapter 405); id. § 5374(a)(2), (b)(1)(l) (amended by Chapter 405).

12. CAL. GOV’T CODE § 53075.5(b)(1) (amended by Chapter 405).

13. Id.; see id. (requiring the enactment by each city and county of policies related to entering the taxi transportation business, including the following: (1) employment or an offer of employment prior to issuing a taxi driver’s permit, (2) termination of the permit upon termination of the employment, (3) return of the permit upon termination of the employment, (4) notification to the city or county by the taxi driver’s employer upon termination of employment, and (5) a permit stating the employer’s name).

14. See CAL. PENAL CODE § 830.1 (West Supp. 1995) (defining “peace officers” to include the following: (1) county sheriffs, undersheriffs, or deputy sheriffs; (2) city chief of police; (3) district chiefs of police or police officers authorized to maintain a police department; (4) municipal court marshals or deputy marshals; (5) judicial district constables or deputy constables; (6) port wardens or special officers of the Harbor Department of the City of Los Angeles; (7) district attorney inspectors or investigators; (8) Department of Justice special agents; (9) Attorney General investigators; or (10) assistant chiefs, deputy chiefs, chiefs, deputy directors or division directors designated by the Attorney General as peace officers); id. § 830.2 (West Supp. 1995) (defining “peace officers” to include the following: (1) California Highway Patrol officers, (2) California State Police Division officers, (3) University of California Police Department or California State University Police Departments employees whose primary duty is law enforcement within an area, (4)
substances and alcohol use and testing requirements. Under Chapter 405, peace officers who are participating in a substance abuse detection program are exempt from those requirements.

**COMMENT**

Chapter 405 will promote safety among smaller commercial carriers. The federal government mandates testing for commercial drivers who transport hazardous wastes, sixteen or more people, or whose vehicles exceed 26,001 pounds. However, controlled substance testing by employers has been questioned as a violation of the Fourth Amendment.

Department of Correction Law Enforcement Liaison Unit officers, (5) Department of Fish and Game officers; (6) Department of Parks and Recreation officers, (7) the Director of Forestry and Fire Protection and his officers; (8) employees of the Department of Alcoholic Beverage Control who enforce laws concerning alcoholic beverages, or (9) California Exposition and State Fair marshals and police; see also People v. Corey, 21 Cal. 3d 738, 747, 581 P.2d 644, 649, 147 Cal. Rptr. 639, 644 (1978) (holding that a uniformed city police officer performing private security work for compensation is not a peace officer).

15. CAL. VEH. CODE § 34520(a)-(e) (amended by Chapter 405); see id. (outlining controlled substance and alcohol use and testing requirements and the penalties for violation).

16. Id. § 34520(f) (amended by Chapter 405).

17. SENATE COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 46, at 2 (May 11, 1995); see Joel Broadway, 300 City Workers to Be Tested for Drugs and Alcohol, WIS. STATE J., Feb. 7, 1995, at 1B (reporting that all commercial drivers, including taxicab drivers, will be subject to random, preemployment, post-accident and suspicion of impairment drug testing in Madison, Wisconsin); Mark Somerson, 'Aggressive Policy' Is in Work to Clean up City's Tax Industry, COLUMBUS DISPATCH, Dec. 22, 1993, at 1A (indicating how the city is considering implementing planned alcohol and drug testing for cab drivers); Mark Somerson, Airport Sets Criteria for Cabs, Drivers, COLUMBUS DISPATCH, June 15, 1994, at SC (citing the Columbus airport's criteria in a request for bid for taxicab management contract as including random drug and alcohol testing in an endeavor to improve cab service).

18. 49 C.F.R. § 382.103(a) (1994); see id. (mandating controlled substance testing be performed by commercial motor carriers involved in interstate or intrastate commerce and performing safety-sensitive activities. See generally 49 C.F.R. §§ 40.01-111 (1994) (describing testing and re-testing procedures, as well as laboratory guidelines); id. §§ 382.101-507 (1994) (outlining purpose of regulations, procedures for testing results, timing of testing and penalties for violation); id. § 382.107 (1994) (defining "commercial motor carriers" as vehicles over 26,001 pounds, carrying more than 16 people or transporting hazardous material; also defining "safety-sensitive activities" as those on-duty activities listed in Title 49 of the Code of Federal Regulations § 395.2, paragraphs (1) through (7)); id. § 395.2 (1994) (describing on-duty activities for commercial carriers as the following: (1) waiting to be dispatched; (2) inspecting and servicing the commercial vehicle; (3) driving, including time spent within the vehicle except during a resting period within a sleeper berth; (4) loading and unloading the vehicle, and supervision thereof; (5) repairing, obtaining assistance and remaining with a disabled vehicle; and (6) testing for controlled substances, including the travel time to and from the testing site).

19. See U.S. CONST. amend. IV (protecting citizens from unreasonable searches and seizures); National Treasury Employees Union v. Von Raab, 489 U.S. 656, 678-79 (1989) (holding that controlled substance testing for promotion to a position which required the carrying of a firearm does not violate the Fourth Amendment, based on weighing the privacy expectations of customs agents against the governmental interest in public safety and secure borders); Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 619-21 (1989) (finding that controlled substance testing of railway employees does not violate the Fourth Amendment based on weighing the privacy expectations of a heavily regulated industry's employees and the governmental interest in public safety); American Fed'n of Gov't Employees, Local 2391 v. Martin, 969 F.2d 788, 793 (9th Cir.
The Supreme Court has differentiated between administrative searches and searches pursuant to a criminal investigation. The constitutionality of administrative searches is determined by balancing the government interests against the reasonable expectations of the individual's privacy. Administrative searches have been noted to include searches conducted for the purpose of regulating public safety. The courts have found that, after balancing the government interests against the individual's expectation of privacy, controlled substance testing is not an unreasonable search and seizure as proscribed by the Fourth Amendment when any of the following conditions are met: (1) testing is done on applicants, (2) there is a reasonable suspicion of job performance impairment, or (3) the employment position concerns sensitive information or safety-sensitive activities.

Chapter 405 regulates transportation of the public, clearly a safety-sensitive

1992) (stating that controlled substance testing of Department of Labor employees involved in public health and safety and safety-sensitive positions does not violate the Constitution); International Bhd. of Teamsters v. Dept. of Transp., 932 F.2d 1292, 1309 (9th Cir. 1991) (holding that all types of Department of Transportation controlled substance testing are constitutional based on the substantial public interests in transportation safety and the slight expectations of employees in a heavily regulated industry who are already subject to a physical exam); Willner v. Thornburgh, 928 F.2d 1185, 1193-94 (D.C. Cir. 1991) (finding that mandatory preemployment controlled substance testing by the Department of Justice was not a violation of the Fourth Amendment because the applicant had notice of the test, the applicant had lower expectations of privacy since the hiring process involved extensive background checks, and the applicant could choose to withdraw his application), cert. denied, Willner v. Barr, 502 U.S. 1020 (1991); American Fed'n of Gov't Employees v. Derwinski, 777 F. Supp. 1493, 1500 (N.D. Cal. 1991) (stating that controlled substance testing of health care workers and motor vehicle operators which carry passengers does not violate the Constitution).

20. O'Connor v. Ortega, 480 U.S. 709, 713-25 (1987); Camara v. Municipal Ct., 387 U.S. 523, 528-39 (1967); see O'Connor, 480 U.S. at 713-25 (differentiating searches pursuant to a criminal investigation and administrative searches); Camara, 387 U.S. at 528-39 (discussing the reduced standards for an administrative search, in contrast to a search pursuant to a criminal investigation); Ingersoll v. Palmer, 43 Cal. 3d 1321, 1347, 743 P.2d 1299, 1317, 241 Cal. Rptr. 42, 60 (1987) (upholding the constitutionality of sobriety checkpoints because the government's public safety interest in maintaining safe roadways outweighs the intrusiveness of the search).


22. Camara, 387 U.S. at 533.

23. See National Treasury Employees Union, 489 U.S. at 678-79 (holding that controlled substance testing for promotion to a position which required the carrying of a firearm did not violate the Fourth Amendment due to safety-sensitive concerns); Skinner, 489 U.S. at 619-21 (finding that controlled substance testing of railway employees does not violate the Fourth Amendment due to public safety concerns); Martin, 969 F.2d at 793 (stating that controlled substance testing of certain Department of Labor employees does not violate the Constitution due to the employee's safety-sensitive position); International Bhd. of Teamsters, 932 F.2d at 1309 (holding that all types of Department of Transportation controlled substance testing are constitutional based on the safety-sensitive nature of commercial transportation); Willner, 928 F.2d at 1193-94 (finding that mandatory preemployment controlled substance testing by the Department of Justice was not a violation of the Fourth Amendment since the testing was required of applicants); Derwinski, 777 F. Supp. at 1500 (stating that controlled substance testing of health care workers and motor vehicle operators which carry passengers does not violate the constitution due to public safety issues).
While the federal government does not mandate testing for taxicab drivers, the smaller number of people transported by taxicab or limousine drivers does not lessen the possibility of injury or the government's interest in public safety. Also, Chapter 405 prohibits the results from being used in a criminal investigation. Thus, Chapter 405 should withstand constitutional scrutiny based on its relation to safety-sensitive activities and its foundation as an administrative search, rather than a search pursuant to a criminal investigation.

June D. Coleman

Transportation and Motor Vehicles; toll evasion

Streets and Highways Code §§ 30842, 30846 (repealed); §§ 27174.1, 30843 (amended); Vehicle Code §§ 4770, 4771, 4772, 4773, 4773.5, 4774, 4775, 23302.5, 40250, 40251, 40252, 40253, 40254, 40255, 40256, 40257, 40258, 40259, 40260, 40261, 40262, 40262.5, 40263, 40264, 40265, 40266, 40267, 40268, 40269, 40270, 40271, 40272, 40273 (new); § 23302 (amended).
AB 1223 (Pringle); 1995 STAT. Ch. 739

Prior law treated both toll evasion and fraudulent or forcible avoidance of tolls.
tolls as misdemeanors. Chapter 739 changes toll evasion from a criminal offense to a civil offense and establishes procedures for enforcing civil penalties against violators.

Chapter 739 separates the responsibilities associated with the administration of toll facilities into two distinct components: (1) collection of tolls and (2) collection of penalties. Issuing agencies are charged with the duty of collecting tolls. Processing agencies, on the other hand, are assigned the task of processing notices of penalties from toll evasion violations. Chapter 739 authorizes issuing agencies to contract with processing agencies for the collection of penalties or to assume that duty themselves.

Chapter 739 provides for unpaid toll evasion penalties to be collected from violators at the time they pay their vehicle registration fees to the Department of Motor Vehicles. Chapter 739 instructs the Department to refuse the renewal of vehicle registration from any owner who has an outstanding toll evasion violation penalty. Upon receipt of payment for a penalty, the Department is to return the amount collected, less an administrative fee which it is permitted to retain, to the appropriate agency. Chapter 739 also allows processing agencies to obtain penalty payments by securing a civil judgment from a court or by contracting

1. 1947 Cal. Stat. ch. 176, sec. 1, at 733 (enacting CAL. STS. & HIGH. CODE § 30842); see id. (punishing any person who evades a toll payment through force or fraud with a $10 penalty); id. sec. 1, at 733-34 (enacting CAL. STS. & HIGH. CODE § 30846) (assessing a penalty upon any person who passes through a toll with the intent not to make the required payment and does not make such payment).

2. CAL. VEH. CODE § 23302.5(b) (enacted by Chapter 739); see id. (declaring the evasion of tolls a civil violation); id. (establishing that California Vehicle Code §§ 40250 through 40273, enacted by Chapter 739, are to govern the enforcement of toll evasion penalties); cf. FLA. STAT. ANN. § 316.1001(1) (West Supp. 1995) (classifying toll evasion as a noncriminal traffic offense which is to be treated as a moving violation); N.Y. PUB. AUTH. LAW § 2985(1) (McKinney 1995) (creating civil liability in the owner of a vehicle which has been found to have violated a toll collection regulation).

3. CAL. VEH. CODE § 40252(a) (enacted by Chapter 739); see id. (permitting the agency charged with collecting tolls to contract with other entities to process notices of toll evasion violations and delinquent toll evasion violations).

4. See id. § 40250(e) (enacted by Chapter 739) (defining “issuing agency” as any public or private entity which is empowered to collect tolls).

5. Id.

6. See id. § 40253 (enacted by Chapter 739) (defining “processing agency” as the party assigned the responsibility of processing notices of toll evasion penalties and delinquent toll evasion penalties).

7. Id.

8. Id. § 40252(a) (enacted by Chapter 739).

9. See id. § 40252(b) (enacted by Chapter 739) (defining “toll evasion penalty” to include any penalties for late payment, administrative fees, fines, assessments, and costs of collection).

10. Id. § 40267(a) (enacted by Chapter 739); see id. (allowing processing agencies to file the names of violators with the Department of Motor Vehicles which shall collect penalties, administrative fees, and service fees in accordance with California Vehicle Code § 4770); id. § 4770(a) (enacted by Chapter 739) (authorizing the Department to collect unpaid toll evasion penalties at the time of application for renewal of registration).

11. Id. § 4770(a) (enacted by Chapter 739); cf. FLA. STAT. ANN. § 316.1001(5) (West Supp. 1995) (directing the Department of Motor Vehicles not to provide a license plate or revalidation sticker to any motor vehicle with three or more unpaid toll evasion penalties).

12. CAL. VEH. CODE § 4772 (enacted by Chapter 739).

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with a collection agency.\textsuperscript{13}

Chapter 739 holds all registered owners,\textsuperscript{14} drivers,\textsuperscript{15} rentees, and lessees\textsuperscript{16} of any vehicle found to have evaded a toll jointly and severally liable for the accompanying penalty.\textsuperscript{17} Chapter 739 allows a registered owner, upon receiving a notice of a toll evasion penalty, to file an affidavit of nonliability if the car had been leased, rented, or sold to another person at the time of the offense.\textsuperscript{18} A party may contest a notice of toll evasion violation in which case the processing agency must either examine its records or instruct the issuing agency to conduct an investigation into the circumstances behind the alleged violation.\textsuperscript{19} If the party is not satisfied with the agency's findings, he or she may request an administrative review.\textsuperscript{20} A party may appeal the decision of an administrative review to a municipal court, which will conduct a de novo review of the case.\textsuperscript{21}

Chapter 739 states that a toll evasion offense is not to be considered a conviction or made a part of the driving record of any registered owner, driver, rentee, or lessee of a motor vehicle and is not to be used by insurance providers when determining coverage.\textsuperscript{22} Chapter 739 provides for each private issuing agency and local authority which uses the services of the Department of Motor Vehicles to reimburse the Department for the initial cost which it incurs in the

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\textsuperscript{13} Id. § 40267(b)-(d) (enacted by Chapter 739).

\textsuperscript{14} See id. § 460 (West 1987) (defining "owner" as a person who has all of the components of ownership, including legal title, regardless of whether or not that person lends, rents, or establishes a security interest in another party).

\textsuperscript{15} See id. § 305 (West 1987) (defining "driver" as the person who drives or is in actual physical control of a vehicle).

\textsuperscript{16} See id. § 371 (West 1987) (defining a "lessee" as a person, including a bailee, who leases, offers to lease, or is offered the lease of a motor vehicle for a term of more than four months).

\textsuperscript{17} Id. § 40250(b) (enacted by Chapter 739); see id. § 40258(a) (enacted by Chapter 739) (setting a maximum penalty for the first offense at $100, the second offense within a year at $250, and each additional offense within a year at $500); see also id. § 40262.5 (enacted by Chapter 739) (stating that if the registered owner does not either pay or contest the toll evasion penalty, he or she will be held liable for the penalty by operation of law); cf. Fla. Stat. Ann. § 316.1001(2)(c) (West Supp. 1995) (holding the owner of a motor vehicle found to have evaded a toll liable for any resulting penalty).

\textsuperscript{18} Cal. Veh. Code §§ 40263-40265 (enacted by Chapter 739); cf. Fla. Stat. Ann. § 316.1001(2)(c) (West Supp. 1995) (excusing owners who can show that the vehicle was not in their care, control, or custody at the time of the offense).

\textsuperscript{19} Cal. Veh. Code § 40255(a)(1) (enacted by Chapter 739); see id. (enacted by Chapter 739) (allowing a party 21 days from the time the notice of toll evasion violation was issued or 15 days from the date the notice of delinquent toll evasion violation was mailed to contest the violation).

\textsuperscript{20} Id. § 40255(a)(2) (enacted by Chapter 739); see id. § 40255(b)(1)-(5) (enacted by Chapter 739) (establishing standards for the agency to follow regarding (1) the form of the review, (2) cases involving minors, (3) the qualifications of the reviewer, (4) the cooperation of the issuing agency, and (5) the promulgation of written procedures for conducting administrative reviews).

\textsuperscript{21} Id. § 40256(a) (enacted by Chapter 739).

\textsuperscript{22} Id. § 40272 (enacted by Chapter 739); cf. N.Y. Pub. Auth. Law § 2985(6) (McKinney 1995) (declaring that a violation of a toll collection regulation is not to be considered a conviction, nor will it become a part of the violator's record or be used by insurance companies).
implementation of Chapter 739 as well as fifty percent of the continuation costs.  

COMMENT

In 1988, California passed legislation authorizing the construction of four privately operated toll roads. By changing toll evasion from a criminal violation to a civil offense, Chapter 739 gives the private operators of highways a statutorily authorized right to collect penalties owed to them by toll evaders. Chapter 739 also offers the services of the California Department of Motor Vehicles to help private operators in the collection of toll evasion penalties.

The general policy in California has always been to discourage tolls so that highways could be available to all. The federal government had once been disinclined to provide federal financing for the construction of toll roads. However, as the condition of existing highways have deteriorated and traffic congestion has increased, one suggested solution to these problems, and to the lack of funds to deal with them, has been the construction of new toll roads.

In 1987 the United States enacted the Toll Road Pilot Program, which marked the first time the federal government allowed money from the federal highway trust fund to be used for construction of a new toll road. Orange County was among the recipients of federal assistance not only because it demonstrated a need for congestion relief, but because the toll road was approved by voter initiative.

23. CAL. STS. & HIG. CODE § 4773.5(a) (enacted by Chapter 739); see id. (defining the initial costs to be the one-time costs which the Department must pay in order to comply with the requirements of Chapter 739).

24. Id. § 143 (West Supp. 1995); see id. (permitting the State to contract for four new highways to be built by members of the private sector).

25. CAL. VEH. CODE § 23302.5(b) (amended by Chapter 739); see id. (declaring the evasion of tolls to be neither an infraction nor a public offense, but rather a civil violation).

26. Id. § 40267(a) (enacted by Chapter 739); see SENATE COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF AB 1223, at 3 (July 18, 1995) (declaring the intent of the Legislature to assist private toll road operators by directing the Department of Motor Vehicles to act as a collection agency for them).

27. See Jay Matthews, "Highway Robbery" in California?: Western Animosity to Toll Roads May Be Forced to Take Back Seat, WASH. POST, July 26, 1987, at A3 (quoting the reactions of various state lawmakers who stated that tolls are, "foreign to our [Californians'] way of life," "a form of highway robbery," and "absolutely wrong for California"); id. (reporting that California has only one private road and 10 toll bridges).

28. See Tom Lankard, From Freeways to Fee-Ways, AUTOWEEK, Sept. 3, 1990, at 19 (stating that of the 41,000 miles of interstate highways, only 2800 miles are toll roads).

29. Kant Rao, et al., Role of Toll Financing in the State Programming Process: Models and Results, TRANSP. J., June 22, 1992, at 17; see id. (crediting highway disrepair, and congested roads as well as increased interest in privatization, more efficient toll collection methods, and lack of traditional funding for the new willingness to accept toll roads); see also Matthews, supra note 27 (reporting that Caltrans considers a highway to be congested when, over a 2 to 3 hour period, traffic slows to under 35 m.p.h. and that Orange County congestion has increased, between 1970 and 1987, from 3 miles of highway to 148).

30. 101 Stat. 157 (1987); see id. (permitting funds to be used only for public, not private toll roads); see also Rao, et al., supra note 29, at 26 (stating that for the first time federal funds were being used to build toll roads in nine states, including California, Colorado, Delaware, Florida, Georgia, Pennsylvania, South Carolina, Texas, and West Virginia).
which showed a willingness by the voters to subject themselves to the tolls.\textsuperscript{31} With the federal government providing monetary assistance, and tolls exacted directly from drivers, the State is placed in a better financial position to fund more transportation projects.\textsuperscript{32} In 1991, the Intermodal Surface Transportation Efficiency Act was enacted, which added to the provisions of the Toll Road Pilot Program by allowing any State to apply for funds to be used for toll roads and increasing the maximum contribution to fifty percent.\textsuperscript{33} California passed legislation in 1987 to permit the State to enter into contracts for the construction and operation of four toll bridges by private parties.\textsuperscript{34} Under the legislation, the private entity is to independently finance and construct the agreed upon highway and then transfer ownership to the State which, in turn, would lease it back to the company.\textsuperscript{35} The company would then be allowed to charge a user fee on the highway in order to make a profit.\textsuperscript{36} After thirty-five years, the company would have to relinquish all rights to the highway to the State.\textsuperscript{37} Allowing the private sector to construct, maintain, and operate highways will result in faster construction of highways, more cost effective operation, and better maintenance.\textsuperscript{38}

\textit{Christopher P. Blake}

\begin{itemize}
\item \textsuperscript{31} 101 Stat. 100-117 (1987); see id. (limiting federal investment to 35\% of the project cost); see also Rao, et al., supra note 29, at 21 (detailing the factors which made Orange County an ideal candidate for federal funding).
\item \textsuperscript{32} Rao, et al., supra note 29, at 22; see id. (citing California's ability to contribute greater state funds to high cost projects which could not have been afforded without the extra income from tolls).
\item \textsuperscript{33} 105 Stat. 102-249 (1991).
\item \textsuperscript{34} \textit{CAL. STS. & HIGH. CODE} § 143 (West Supp. 1995); \textit{cf. ARIZ. REV. STAT. ANN.} §§ 28-3051 to 28-3075 (Supp. 1994) (detailing the establishment of privately-operated, publicly-owned transportation facility pilot projects in Arizona); \textit{VA. CODE ANN.} §§ 56-556 to 56-575 (Michie 1995); (outlining Virginia's recently enacted Public-Private Transportation Act, permitting private companies to construct and operate highways for a fee); \textit{WASH. REV. CODE ANN.} §§ 47.46.010 to 47.46.900 (West Supp. 1995) (approving six public-private demonstration projects in the state of Washington). \textit{See generally} James T. Drummond, \textit{A New Era in Road Policy}, \textit{NATION'S BUS.}, Sept. 1991, at 20 (mentioning California and Virginia's experiments with private company operation of roads).
\item \textsuperscript{35} \textit{CAL. STS. & HIGH. CODE} § 143(b) (West Supp. 1995).
\item \textsuperscript{36} \textit{Id.} § 143(d) (West Supp. 1995).
\item \textsuperscript{37} \textit{Id.} § 143(b) (West Supp. 1995); \textit{cf. VA. CODE ANN.} § 56-566(A)(9) (Michie 1995) (stating that the date for return of the highway to the state is to be a subject of negotiation prior to the private operator acquiring any rights).
\item \textsuperscript{38} \textit{VA. CODE ANN.} § 56-558(A)(3) (Michie 1995); \textit{see id.} (declaring the Virginia General Assembly's findings that allowing private parties to construct, improve, maintain, and operate highways will lead to the more timely and less costly construction of such roads); \textit{see also} Drummond, supra note 34 (claiming that private toll roads can be built faster and maintained better than public roads).
\end{itemize}
Transportation and Motor Vehicles; towing and impoundment

Civil Code § 3074 (repealed and new); § 3068.1 (amended); Vehicle Code § 22851.12 (repealed and new); §§ 14607.6, 22658, 22851, 25253 (amended).

SB 240 (Ayala); 1995 STAT. Ch. 404

Under prior law, if a request to release a vehicle from an impoundment storage facility was made within twenty-four hours from the time the vehicle was brought in, regardless of the calendar date, the storage charge could be for one day only. Chapter 404 makes that limitation on storage charges applicable only if the vehicle is released within twenty-four hours from the time the vehicle was brought in. Moreover, if a request to release a vehicle is made with the appropriate tender and fees within the initial twenty-four hours of storage, and the storage facility is unable to comply with the request or is not open for business during normal business hours, then only one day’s charge may be required until after the first business day. However, if the request is made more than twenty-four hours after the vehicle is placed in storage, charges may be imposed on a full calendar day basis for each day, or part thereof, that the vehicle is in storage.

Under existing law, when a vehicle is removed and taken to a garage for impoundment, the garage keeper may have a lien dependent upon possession for towing and storing the vehicle. Furthermore, the garage keeper’s possession of

1. See CAL. VEH. CODE § 670 (West 1987) (defining “vehicle” as a device which may be used to propel move, or draw upon a highway any person with the exception of a device moved exclusively by human power or used exclusively upon stationary rails or tracks).


4. CAL. CIV. CODE § 3068.1(a) (amended by Chapter 404); CAL. VEH. CODE § 22658(i)(3) (amended by Chapter 404); see CAL. CIV. CODE § 3068.1(a) (amended by Chapter 404) (defining a “business day” as any day in which the lienholder is open for business to the public for at least eight hours).

5. CAL. CIV. CODE § 3068.1(a) (amended by Chapter 404); CAL. VEH. CODE § 22658(i)(3) (amended by Chapter 404).

6. CAL. CIV. CODE § 3068.1(a) (amended by Chapter 404); CAL. VEH. CODE § 22851(a)(1) (amended by Chapter 404); see id. (stating that whenever a vehicle has been removed to a garage and the garage keeper has received a notice, the keeper has a lien dependent upon possession for his or her compensation for towing, caring, and keeping the vehicle safe for a period of up to 60 days; on the other hand, if an application for an authorization to conduct a lien sale has been filed pursuant to § 3068.1 of the Civil Code within 30 days after the removal of the vehicle to the garage, for up to 120 days and, if the vehicle is not recovered by the owner within that time or the owner is unknown, the garage keeper may satisfy his or her lien); id. § 22851(b) (amended by Chapter 404) (noting that the lien does not attach to any personal property in or on the vehicle; therefore, any personal property in or on the vehicle will be given to the current registered owner or an authorized agent upon demand); id. (stating that the lienholder is not responsible for property after any vehicle has been disposed of pursuant to law); see also Soffer v. City of Costa Mesa, 607 F. Supp. 975, 983 (D.C. Cal. 1985) (holding that due process does not require a hearing before a city can tow a motorist’s automobile), aff’d.
the vehicle is deemed to arise when the vehicle is removed and is in transit. Chapter 404 adds that the garage keeper’s possession is deemed to arise when the vehicle is removed and is in transit, when a tow truck is connected to the vehicle, or when vehicle recovery operations or load salvage operations that have been requested by a law enforcement agency have begun at the scene. 

798 F.2d 361 (9th Cir. 1986); Goichman v. Rheuban Motors, Inc., 682 F.2d 1320, 1323-24 (9th Cir. 1982) (holding that a private towing company did not deprive plaintiff of property without due process of law by taking possession of plaintiff’s illegally parked vehicle and towing it to a storage garage at the direction of a law enforcement officer; furthermore, plaintiff was not deprived of property without due process when the storage garage refused to return the vehicle until the plaintiff paid the towing and storage charges, and when the statute authorizing public officials to remove and store vehicles provided for post-seizure hearing within 48 hours, and for release of vehicle without payment of towing and storage fees); Berry v. Hannigan, 7 Cal. App. 4th 587, 592, 9 Cal. Rptr. 2d 213, 216 (1992) (holding that an operator of a towing and storage facility was not deprived of property without due process of law by California Vehicle Code §§ 22651.1, and 22658(k) by requiring towing and storage facilities operators to accept credit cards as payment from the vehicle owners whose vehicles had been involuntarily towed; moreover, the operator’s property interest was a lien requiring possession of the vehicle, and possession was required to be surrendered upon presentation of a valid bank credit card). But see Stypmann v. City and County of San Francisco, 557 F.2d 1338, 1345 (1977) (holding that the provisions of the California Vehicle Code authorizing the removal of privately owned vehicles from streets and highways without prior notice or opportunity for hearing, and the provisions of § 22851 establishing a possessory lien for towing and storage fees without a hearing before or after the lien attaches, violate due process); cf. KY. REV. STAT. ANN. § 376.275(3) (Baldwin Supp. 1994) (granting any person engaged in the business of storing or towing motor vehicles a lien on the motor vehicle, for the reasonable or agreed towing or towing charges, as long as it remains in his possession); N.H. REV. STAT. ANN. § 262:33(I) (1993) (stating that all reasonable charges incurred as a result of a vehicle’s removal and storage will provide the basis for a lien against the vehicle which must be paid by the owner, custodian, or person claiming such vehicle, except as otherwise provided); WASH. REV. CODE ANN. § 46.55.140(1) (West Supp. 1995) (granting to a registered tow truck operator with a valid and signed impoundment authorization a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid); id. (noting further that the lien does not apply to personal property not permanently attached to or is not an integral part of the vehicle); WIS. STAT. ANN. § 343.44(4) (West 1991) (stating that the cost of keeping a vehicle constitutes a lien on the vehicle). 

7. CAL. CIV. CODE § 3068.1(a) (amended by Chapter 404); CAL. VEH. CODE § 22851(a)(1) (amended by Chapter 404); see People v. James, 122 Cal. App. 3d 25, 37-38, 177 Cal. Rptr. 110, 117-18 (1981) (holding that under California Vehicle Code § 22851, which provides for a keeper’s lien when a vehicle “has been removed to a garage,” the lien attaches when the vehicle has been placed within a storage facility; to construe § 22851 to provide for the attachment of a lien when a vehicle has been hoisted from the ground or removed from the private property where it was parked would be to distort the plain meaning of the statute). 

8. CAL. CIV. CODE § 3068.1(a) (amended by Chapter 404); CAL. VEH. CODE § 22851(a)(1) (amended by Chapter 404). See generally David D. Walter, Comment, The Unconstitutional Seizure of Vehicles: Iowa Towing Statutes Collide with the Federal Constitution, 73 IOWA L. REV. 495, 495 (1988) (stating that many federal courts have determined that statutes or ordinances that allowed the towing or seizure of abandoned or illegally parked vehicles, failed to provide for timely notice and therefore, were unconstitutional under the Fifth and Fourteenth Amendments of the United States Constitution); David B. Harrison, Annotation, Garageman’s Lien for Towing and Storage of Motor Vehicle Towed From Private Property on Which Vehicle Was Parked Without Permission, 85 A.L.R. 3d 240 (1978) (analyzing cases where a lien was placed upon a motor vehicle for towing and storage charges that arise from the unconsented removal of such vehicle from private property on which the vehicle was parked); David B. Harrison, Annotation, Lien For Towing or Storage, Ordered by Public Officer, of Motor Vehicle, 85 A.L.R. 3d 199 (1978) (discussing cases involving liens on motor vehicles: for charges claimed as compensation for storing or towing such vehicles in accordance with the directions of a public officer); T.T.F. Huang, Annotation, Lien for Storage of Motor Vehicle, 48 A.L.R. 2d 894 (1956) (discussing the rights of garage keepers to liens on motor vehicles for charges for storage); Andrea G. Nadel,

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Chapter 404 further allows a lienholder to charge a fee for lien-sale preparations, with certain limitations. In addition, Chapter 404 allows the owner of a vehicle to regain possession of the vehicle prior to its removal by a tow truck company as long as the owner pays the towing charges.

Existing law further requires impounding agencies, in instances where a driver is caught for the second time driving with a suspended or revoked driver’s license, or driving without a driver’s license, to notify within two days all registered and legal owners that their vehicle has been impounded and is subject to forfeiture. Chapter 404 provides that if an impounding agency does not send a notice of vehicle forfeiture to the legal owner within two working days of impoundment, the impounding agency cannot charge the legal owner for more than fifteen days of impoundment when the vehicle is redeemed. Moreover, Chapter 404 prohibits legal owners from being charged processing fees if the impounded vehicle is redeemed within fifteen days of impoundment.

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Lastly, existing law requires tow trucks being used to tow disabled vehicles to be equipped with flashing amber warning lights. Chapter 404 excludes tractor-trailer combinations from this requirement.

COMMENT

Chapter 404 was enacted to provide clarification and refinement of several towing and impoundment provisions. For example, the sponsors of Chapter 404 indicate that one purpose of Chapter 404 is to clarify that a mere request to release a vehicle from impoundment, absent compliance with other procedures and requirements, is not enough to stop the accrual of storage charges. Furthermore, the flashing amber warning light exemption for tractor-trailer combinations is intended to ensure that vehicle combinations transporting disabled vehicles are treated the same as other large vehicle combinations hauling freight, which are not required to display flashing amber warning lights.

Michelle M. Sheidenberger

Transportation and Motor Vehicles; violations—fines

Streets and Highways Code § 97 (new and repealed); Vehicle Code § 42010 (new and repealed).

SB 414 (Thompson); 1995 STAT. Ch. 841

Existing law outlines the powers and duties of the Department of Transportation. Chapter 841 requires that the Department of Transportation, in

written declaration of forfeiture of the vehicle to the state; written declaration of forfeiture signed by the district attorney is deemed to provide good and sufficient title to the forfeited vehicle).

15. Id. § 25253(a) (amended by Chapter 404); see id. § 25253(b) (amended by Chapter 404) (stating that tow trucks may display flashing amber warning lamps while providing service to a disabled vehicle; the flashing amber warning lamp may be displayed to the rear when the tow truck is towing a vehicle and moving at a speed slower than the normal flow of traffic).

16. Id. § 25253(a) (amended by Chapter 404).

17. SENATE COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 240, at 2 (May 2, 1995).

18. Id. at 2-3.

19. Id. at 2.

1. CAL. GOV'T CODE § 14030 (West 1992); see id. (stating that the duties of the Department of Transportation include the following: (1) cooperating with the transportation commission and other local organizations to formulate a comprehensive transportation policy governing the intrastate movement of people and goods; (2) coordinating and assisting various public and private transportation organizations in strengthening and developing certain transportation services in the advancement of statewide and regional goals; (3) efficiently utilizing all resources that are available to state and local agencies for meeting California's transportation needs; (4) planning, designing, constructing, operating, and maintaining certain transportation

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conjunction with the Department of the California Highway Patrol, develop three state highway pilot projects. Moreover, Chapter 841 mandates that such portions of the highways involved in the demonstration projects must be designated and identified as "Safety Enhancement-Double Fine Zones."

Chapter 841 doubles the prescribed fine for any misdemeanor driving offense committed within a Safety Enhancement-Double Fine Zone including, but not limited to, traffic violations relating to speed limits and those involving the use and/or possession of alcoholic beverages. In the case of infractions, Chapter 841 increases the penalty imposed by law, as specified, for any violation committed by the driver of a motor vehicle within the pilot project zones.

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systems, upon the order of the Legislature; (5) formulating and conducting research projects of statewide interest; (6) carrying out the functions and duties delegated to the Department by the Legislature; (7) investigating and reporting to the Secretary of the Business, Transportation, and Housing Agency the consistency between federal, state, and local housing plans and programs, and transportation plans and programs; id. § 14001 (West 1992) (creating the Department of Transportation).

2. CAL. STS. & HIGH. CODE § 97(a) (enacted by Chapter 841); see id. (stating that two projects will be conducted in Northern California and one project will be conducted in Southern California); id. § 97(a)(1) (enacted by Chapter 841) (designating Route 37, between the intersection with Route 121 and the intersection with Route 29, as one of the pilot project sites); id. § 97(a)(2) (enacted by Chapter 841) (naming Route 4, between the intersection with the Cummings Skyway and the intersection with Route 80, as another location for the pilot projects); id. § 97(a)(3) (enacted by Chapter 841) (designating Route 74, between the intersection with Route 5 and the intersection with the Riverside-Orange County line as the Southern California pilot project site).

3. Id. § 97(a) (enacted by Chapter 841).

4. CAL. VEH. CODE § 42010(a) (enacted by Chapter 841); see id. § 42010(b) (enacted by Chapter 841) (providing that the following list of offenses are subject to increased penalties if committed within Safety Enhancement-Double Fine Zones: California Vehicle Code §§ 21650-21759, §§ 22348-22413, § 23103, § 23104, § 23109, § 23152, § 23153, § 23220, § 23221, § 23222, § 23223, § 23224, § 23225, § 23226; see also id. §§ 21650-21759 (West 1971 & Supp. 1995) (relating to driving, overtaking, and passing); id. §§ 22348-22413 (West 1971 & Supp. 1995) (concerning speed limits); id. § 23103 (West Supp. 1995) (defining "reckless driving" as the driving of a vehicle in willful or wanton disregard for the safety of persons or property); id. (stating that a person found guilty of reckless driving will be fined between $145 and $1000); id. § 23104 (West 1985) (prescribing penalties for reckless driving resulting in bodily injury); id. § 23109 (West 1985) (relating to speed contests and exhibitions of speed); id. § 23152 (West Supp. 1995) (prohibiting a person from operating a motor vehicle while under the influence of drugs and/or alcohol); id. (stating that it is unlawful for a person with a blood alcohol level exceeding .08% to drive a motor vehicle); id. § 23153 (West Supp. 1995) (relating to driving under the influence of drugs or alcohol that is the proximate cause of bodily injury to another); id. § 23220 (West 1985) (prohibiting the consumption of alcoholic beverages while driving); id. § 23221 (West 1985) (relating to drinking in a motor vehicle while on a highway); id. § 23222 (West 1985) (restricting the presence of open alcoholic beverages containers in a vehicle while driving); id. § 23223 (West 1985) (proscribing the possession of an open alcoholic beverage container while driving or riding in a vehicle upon a highway); id. § 23224 (West 1985) (prohibiting the possession of open alcoholic beverage containers in a vehicle); id. § 23225 (West Supp. 1995) (prohibiting a person under the age of 21 from possessing an open alcoholic beverage container in a vehicle); id. § 23226 (West 1985) (concerning the storage of open alcoholic beverage containers in a vehicle); id. § 23226 (West 1985) (disallowing the storage of an opened receptacle in a passenger compartment of a vehicle).

5. Id. § 42010(a) (enacted by Chapter 841); see id. (stating that in an infraction case the penalty imposed will be one category higher than the penalty otherwise prescribed under the uniform traffic penalty schedule); see also id. § 40310 (West Supp. 1995) (providing that the Judicial Council must annually adopt a uniform traffic penalty schedule); id. § 42001(a) (West Supp. 1995) (stating that the fine for one infraction shall not exceed $100; the fine for a second infraction in the same year shall not exceed $200; and that the fine

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Additionally, Chapter 841 requires that the Department of Transportation post warning signs notifying motorists that increased penalties apply for traffic violations that are committed within Safety Enhancement-Double Fine Zones.6

Chapter 841 also mandates that the civil liability of the state will not be increased with its enactment.7 Finally, Chapter 841 provides for the repeal of the pilot programs on January 1, 1998, and requires that the department provide the Legislature with a report detailing the impact of the pilot programs on highway safety at that time.8

COMMENT

Chapter 841 was enacted in response to an increasing number of fatalities occurring on certain highway segments in California.9 Such highways have come to be known as “blood alleys” because of the dangerous conditions that these

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6. CAL. STS. & HIGH. CODE § 97(b)(1) (enacted by Chapter 841); see id. (stating that the Department must adopt rules and regulations prescribing uniform standards for warning signs notifying drivers that increased fines will be imposed in these areas); id. (requiring that signs stating “Special Driving Zone Begins Here” and “Special Driving Zone Ends Here” must mark the beginning and end of Safety Enhancement-Double Fine Zones); id. § 97(b)(2) (enacted by Chapter 841) (declaring that the department or local authority must place or maintain warning signs that have been placed in their respective jurisdictions).

7. Id. § 97(c) (enacted by Chapter 841); see CAL. GOV’T CODE § 833 (West 1980) (stating that a public entity may be held liable for injury caused by a dangerous condition on its property if the following are established: (1) The property was in a dangerous condition at the time of the injury, (2) the injury was caused by the dangerous condition, (3) the injury was a foreseeable risk resulting from the dangerous condition, (4) the public entity was aware of the dangerous condition, and (5) the public entity failed to take measures to correct the dangerous condition even though there was sufficient time to do so before the injury); see also Ducey v. Argo Sales Co., 25 Cal. 3d 707, 720, 602 P.2d 755, 762, 159 Cal. Rptr. 835, 843 (1979) (holding the State of California liable for failing to erect a median barrier to prevent head-on collisions); Ray Sotero, “Killer Highway” Signs Sought for Route 37, MARIN INDEP. J., May 4, 1995, at A8 (noting the concern of the legal community that designating the highways as safety hazards may expose the state to liability because it could be interpreted as an admission that the road is dangerous). But see CAL. GOV’T CODE § 830(b) (West 1980) (defining “protect against” for purposes of assessing liability as including providing safeguards against a dangerous condition or warning of a dangerous condition); SENATE COMMITTEE ON CRIMINAL PROCEDURE, COMMITTEE ANALYSIS OF SB 414, at 3 (Apr. 25, 1995) (questioning whether an argument can be made that by increasing the fines issued on these highways, California is taking measures to protect against the dangerous conditions).

8. CAL. STS. & HIGH. CODE § 97(b)(3) (enacted and by Chapter 841); id § 97(e) (enacted and repealed by Chapter 841); see id. § 97(b)(3) (enacted and repealed by Chapter 841) (stating that the Department must assess the success of the pilot programs and include in its report certain statistics, including, but not limited to, the number of accidents, traffic injuries, and fatalities in the project zones); id. (declaring that the success of the pilot projects must be indicated by a statistically significant decrease in the number of accidents, traffic injuries, and fatalities that occur in the designated areas); id. § 97(e) (enacted and repealed by Chapter 841) (providing for the repeal of the pilot projects unless a statute that is enacted on or before January 1, 1988, deletes or extends that date).

9. See SENATE COMMITTEE ON CRIMINAL PROCEDURE, COMMITTEE ANALYSIS OF SB 414, at 2 (Apr. 25, 1995) (stating that Highway 37 has been the site of at least 10 traffic deaths over the last five years); see also Safety Proposal for Deadly Highway, S.F. CHRON., June 17, 1995, at A22 (reporting that since 1990 there have been 28 fatalities on the narrow strip of highway between Vallejo and Sears Point).
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highways present to drivers that fail to comply with existing laws. By increasing the fines imposed for speeding and other traffic violations on these routes, the Legislature hopes to curb the number of fatal accidents.

Opponents argue, however, that increased enforcement of traffic laws in these hazardous driving areas, rather than increased penalties, is the most effective way to deter dangerous driving behavior.

Laura K. O'Connor

10. See Assembly Committee on Transportation, Committee Analysis of SB 414, at 2 (June 19, 1995) (stating that, although measures, such as radar enforcement and engineering design, have been taken to increase safety on the targeted highway segments, these segments continue to experience accidents that often result in death or injury); see also Senate Committee on Criminal Procedure, Committee Analysis of SB 414, at 2 (Apr. 25, 1995) (stating that although the number of accidents occurring on Highway 37 is not high, when compared to other highways, the crashes that do occur tend to be fatal). But see Meg McConahey, Outrage After Double-Fatal Hwy. 37 Crash, Press Democrat (Sonoma, CA), May 10, 1995, at A1 (noting the contention of Caltrans officials that Highway 37 does not generate a disproportionate number of crashes in that, on the Sonoma County side of the highway, the accident rate is 1.13 per million vehicle miles, only slightly higher than the expected rate of 1.12 per million vehicle miles).

11. See Greg Lucas, A Vote to Raise Hwy. 37 Speed Fines State Senate Hopes to Cut Accidents, S.F. Chron., May 24, 1995, at A18 (stating that, according to Senator Thompson, author of Ch. 841, every accident on the 17-mile stretch of Highway 37 has occurred because of speed and that the best way to deter speeding is to "get drivers in the pocketbook"); see also letter from Paul Yoder, Legislative Advocate, County of Solano, to Assemblymember Richard Katz (June 13, 1995) (copy on file with the Pacific Law Journal) (asserting that re-engineering the nine miles of Highway 37 that run from the Napa Bridge near Mare Island to Highway 121 is not possible, due to the presence of protected wetlands).

12. See Letter from Joel D. Anderson, Executive Vice President, California Trucking Association, to Assemblymember Paula Boland (July 5, 1995) (copy on file with the Pacific Law Journal) (stating that there are more effective ways of increasing highway safety than merely doubling the penalties); Letter from Kimberly A. Bennion, Manager, Governmental Affairs, California State Automobile Association, and William P. Halloran, Legislative Representative, Automobile Club of Southern California (June 15, 1995) (copy on file with the Pacific Law Journal) (asserting that studies have revealed that when Highway 37 was subjected to increased enforcement, driving behavior improved); id. (noting that despite a law enacted in 1993 that doubled the fines for violations committed in construction zones, accidents in these zones continued to rise); see also George C. Thomas III & David Edelman, Article: An Evaluation of Conservation Crime Control Theology, 63 Notre Dame L. Rev. 123, 137 n. 96 (1988) (revealing the results of studies showing that an increased risk of apprehension, rather than merely increased penalties, have explained marginal deterrent effects detected from a change in the law). See generally Gordon Bradford Tweedy, Nader's Failures?, 80 Cal. L. Rev. 289 (1992) (reviewing Jerry L. Mashaw & David L. Harfst, The Struggle for Auto Safety (1990), and explaining that highway and vehicle design changes may increase driver safety more effectively than methods aimed at trying to change the behavior of ordinary people).

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