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# Transportation and Motor Vehicles

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# Transportation and Motor Vehicles

## Transportation and Motor Vehicles; access to records

Vehicle Code § 1810.5 (new).

AB 2751 (Bates); 1986 STAT. Ch. 1056

Sponsor: Contra Costa Public Defenders Office

Support: District Attorneys Association

Under existing law specified records<sup>1</sup> of the California Department of Motor Vehicles are open for public inspection.<sup>2</sup> Existing law further provides that all abstracts of accident reports<sup>3</sup> must be available to law enforcement agencies and courts of competent jurisdiction.<sup>4</sup> Chapter 1056 clarifies existing law by providing that the Attorney General, district attorneys, law enforcement agencies, public defenders, and public defender investigators must have equal access<sup>5</sup> to public records of the California Department of Motor Vehicles.<sup>6</sup>

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1. The following records are available for public inspection: Records relating to the registration of vehicles; information contained in an application for a driver's license; abstracts of convictions; and abstracts of accidents, except for those abstracts in which the reporting officer has determined that another individual was at fault. CAL. VEH. CODE § 1808.

2. *Id.* Confidential records regarding the home addresses of certain officials, the physical or mental condition of any person, any offense involving controlled substances, the most recent conviction of a person whose driving record shows a point count of three or more points pursuant to Vehicle Code § 12810 (regarding allocation of traffic violation points), or the participation by a person in a licensed school for traffic violators are not available for public inspection. *Id.* §§ 1808.2, 1808.4-7.

3. See CAL. VEH. CODE § 1806 (maintenance of accident reports).

4. *Id.* § 1808.

5. Chapter 1056 specifies that access includes, but is not limited to, telephone access. *Id.* § 1810.5.

6. *Id.*

**Transportation and Motor Vehicles; conditional sales contract—reinstatement**

Civil Code § 2983.3 (amended); Vehicle Code § 22651 (amended).  
SB 1992 (Robbins); 1986 STAT. Ch. 1236  
Sponsor: Motor Car Dealers Association

Under existing law, the buyer<sup>1</sup> of a motor vehicle<sup>2</sup> who defaults on a motor vehicle conditional sales contract<sup>3</sup> has the right to reinstate the contract if default results in the seller<sup>4</sup> repossessing or voluntarily accepting the vehicle.<sup>5</sup> Reinstatement of the contract may be refused, however, if the seller reasonably and in good faith believes that one of the following four circumstances exist: (1) the buyer or any other person on the contract has provided<sup>6</sup> false or misleading information on the credit application;<sup>7</sup> (2) the buyer or any other person liable on the contract has removed the vehicle from the state, or concealed the vehicle in an attempt to avoid repossession of the vehicle;<sup>8</sup> (3) the buyer or any other person liable on the contract has committed or threatens to commit acts of destruction to the vehicle;<sup>9</sup> or (4) the buyer or any other person liable on the contract maintains the vehicle in a manner that will or may substantially impair the value of the vehicle.<sup>10</sup>

Chapter 1236 expands the circumstances in which the seller may refuse the reinstatement of a conditional sales contract to include (1) certain acts<sup>11</sup> which are committed by any nonoccasional permissive user in possession of the motor vehicle;<sup>12</sup> (2) a buyer<sup>13</sup> who has committed or threatens to commit acts of criminal violence or bodily

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1. CAL. CIV. CODE § 2981(c) (definition of buyer).  
2. *Id.* § 2981(k) (definition of motor vehicle).  
3. *Id.* § 2981(a) (definition of conditional sales contract). *See also* Ayer, *Clearing the Smog Around Consumer Auto Leasing*, 6 PAC. L.J. 447 (1975) (discussion on California automobile installment purchase law, and differences between sales and leases).  
4. CAL. CIV. CODE § 2981(b) (definition of seller).  
5. *Id.* § 2983.3(b).  
6. *Id.* § 2983.3(b)(1) (intentionally provided by omission or commission).  
7. *Id.*  
8. *Id.* § 2983.3(b)(2).  
9. *Id.* § 2983.3(b)(3).  
10. *Id.*  
11. *Id.* §§ 2983.3(b)(2) (removal from the state or concealment of the vehicle to avoid repossession by a permissive user in possession of the vehicle), 2983.3(b)(3) (acts of destruction or threatened acts of destruction against the vehicle by any permissive user of the vehicle, or the failure of a nonoccasional permissive user to maintain the vehicle in a reasonable manner).  
12. *Id.* § 2983.3(b)(2), (3).  
13. *Id.* § 2983.3(b)(4) (including any other person liable on the contract).

harm against the seller in connection with the repossession of the motor vehicle;<sup>14</sup> (3) a buyer who has knowingly used<sup>15</sup> the vehicle in the commission of a criminal offense,<sup>16</sup> and as a result of which the vehicle has been seized by a federal, state, or local agency;<sup>17</sup> and (4) a vehicle that has been seized under specified federal statutes<sup>18</sup> or other federal, state or local laws<sup>19</sup> which prohibit returning the vehicle to the buyer.<sup>20</sup>

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14. *Id.*

15. *Id.* § 2983.3(b)(5) (including knowingly permitted the vehicle to be used).

16. *Id.* § 2983.3(b)(5) (other than an infraction).

17. *Id.*

18. The specified federal statutes are 8 U.S.C. § 1324 (West 1978 & 1986 Supp) or 8 C.F.R. §§ 274.1-21 (1986) (regarding seizure and forfeiture of vehicles, vessels, and aircraft in conjunction with transportation of illegal aliens), and 21 U.S.C. § 881 (West 1984 & 1986 Supp) or 28 C.F.R. §§ 9.1-7 (1986) (regarding seizure of vehicles in conjunction with violations of narcotic law). *Id.* 2983.3(b)(6).

19. *Id.* § 2983.3(b)(6) (includes regulations).

20. *Id.*

## Transportation and Motor Vehicles; driving under the influence—admissibility of evidence

Vehicle Code § 23157.5 (amended).

AB 364 (Condit); 1986 STAT. Ch. 1107

Sponsor: California District Attorneys Association

Opposition, American Civil Liberties Union; California Trial Lawyers Association; California Attorneys for Criminal Justice; California Public Defenders Association

Under existing law, an arresting officer must advise persons arrested for driving under the influence of alcohol, or the combined effect of alcohol and a drug,<sup>1</sup> that if they elect<sup>2</sup> to submit to a breath

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1. A person is under the influence of alcohol, or the combined effect of alcohol and drugs, if the ingestion of the substance or substances has so affected that person's nervous system, brain, or muscles, that their ability to operate a vehicle in an ordinarily prudent and cautious manner is impaired. *See* *Byrd v. Municipal Court*, 125 Cal. App. 3d 1054, 1058, 178 Cal. Rptr. 480, 482 (1981). In addition, existing law prohibits any person having a blood alcohol content of 0.1% or more from driving a vehicle. CAL. VEH. CODE § 23152(b). *See id.* §§ 23152(a), 23153(a) (any person under the influence of alcohol, or the combined effect of alcohol and drugs, is prohibited from driving a vehicle, and if driving, to do any act forbidden by law which injures another person).

2. Any person who drives a motor vehicle is deemed by law to have given consent to

test, a sample of the test is not preserved for subsequent analysis.<sup>3</sup> In addition, existing law requires an officer to advise such persons that they will have the opportunity to provide a blood or urine sample<sup>4</sup> which will be retained, at no cost to them, and will be available for future analysis.<sup>5</sup> Chapter 1107 provides that failure to advise any person that breath samples are not retained for later analysis, or that the person has an opportunity to provide a blood or urine sample, does not affect the admissibility of any evidence regarding that persons's blood alcohol content.<sup>6</sup>

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blood, breath, or urine tests for the purpose of determining blood alcohol content, if the individual is lawfully arrested for driving under the influence of alcohol or the combined effect of drugs and alcohol. CAL. VEH. CODE § 23157(a)(1). A person may choose, however, to submit to either a blood, breath, or urine test, and the officer must advise the person that this choice is available. *Id.* §§ 23157(a)(2)(A), (B).

3. *Id.* § 23157.5(a). Breath-testing equipment does not retain any sample of the breath which subsequently can be analyzed. *Id.* See *id.* § 23157.5 (arrestee may be advised before or after the test).

4. Any person lawfully arrested for driving under the influence may request to have a blood, breath, or urine test conducted for the purpose of determining blood alcohol content, and if requested, the arresting officer must perform the test. See *id.* § 23157(d).

5. *Id.* § 23157.5(b). The person arrested must be advised that the blood or urine sample may be tested by either party in any criminal prosecution. *Id.* § 23157(c). The failure of either party to perform this test will place no duty upon the opposing party to perform the test, nor affect the admissibility of evidence of the person's blood alcohol content. *Id.*

6. *Id.* § 23157(d). Due process requirements do not require law enforcement agencies to preserve breath test samples in order to introduce analyses of these tests into evidence at trial. See *California v. Trombetta*, 467 U.S. 479, 491 (1984). To admit the results of a breath test into evidence, a police officer is not required by the United States Constitution to advise an arrestee who chooses to submit to a breath test that a sample will not be retained. *People v. Mills*, 164 Cal. App. 3d 652, 657-58, 210 Cal. Rptr. 669, 672 (1985).

## Transportation and Motor Vehicles; juveniles—driving under the influence

Vehicle Code §§ 23140, 23141, 23142, 23143 (new).

AB 2831 (Killea); 1986 STAT. Ch. 1105

Sponsor: Author

Support: Peace Office Research Association of California

Existing law prohibits any person from driving a vehicle while under the influence of alcohol or with a blood-alcohol level of 0.10%

or more, by weight.<sup>1</sup> Chapter 1105 expands existing law by prohibiting a minor<sup>2</sup> from driving a vehicle with a blood alcohol level of 0.05% or more, by weight.<sup>3</sup> Any person violating this provision is required to attend an alcohol education program, unless the court makes specified findings.<sup>4</sup>

Generally, under existing law, a parent is not liable for payment of an alcohol care or counseling program for a minor.<sup>5</sup> Chapter 1105, however, creates an exception to general existing law by specifying that a court may order a parent to pay the fees for such a program.<sup>6</sup>

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1. CAL. VEH. CODE § 23152(a), (b). Such an offense is punishable by specified fines, imprisonment, and sanctions on driving privileges. *Id.* § 23160(a), (c). *See generally Review of Selected 1981 California Legislation*, 13 PAC. L.J. 787 (1982) (driving under the influence); *Review of Selected 1982 California Legislation*, 14 PAC. L.J. 749 (1983) (driving under the influence).

2. CAL. CIV. CODE § 25 (definition of minor).

3. CAL. VEH. CODE § 23140(a). Chapter 1105 also states that a chemical test is not necessary to determine blood alcohol level if the minor was under the influence of, or affected by, an alcoholic beverage. *Id.* § 23140(b).

4. *Id.* § 23141. Specified findings include the following: (1) the minor or minor's parent is unable to pay the fees for the program; (2) no appropriate program is located in the county; or (3) other circumstances that justify a failure to impose this requirement. *Id.* Chapter 1105 further states that the alcohol education program required by a violation of this provision is additional to any punishment for a violation of Vehicle Code §§ 23152 (driving under the influence) or 23153 (causing bodily injury while driving under the influence). *Id.* § 23142.

5. CAL. CIV. CODE § 34.10(b). The minor must be at least 12 years old and the parent must not have participated in the program. *Id.* § 34.10(b), (c).

6. CAL. VEH. CODE § 23143.

## Transportation and Motor Vehicles; pedestrian and vehicle safety

Vehicle Code §§ 21452, 25251 (amended).

AB 2743 (Lancaster); 1986 STAT. Ch. 256

Sponsor: California State Automobile Association

Support: Office of Traffic Safety; California Highway Patrol;  
Department of Finance

Under existing law, pedestrians<sup>1</sup> are prohibited from entering a

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1. CAL. VEH. CODE § 467 (definition of pedestrian).

roadway<sup>2</sup> if the traffic control signal<sup>3</sup> is displaying either a "Don't Walk" or a "Wait" sign.<sup>4</sup> In addition, a pedestrian facing a steady yellow traffic light or arrow is warned by the signal that there is insufficient time to cross the roadway.<sup>5</sup> Under Chapter 256, any pedestrian who enters the roadway when facing a steady yellow light or arrow is guilty of an infraction.<sup>6</sup>

Existing law authorizes turn signal lamps<sup>7</sup> on a vehicle<sup>8</sup> to be flashed simultaneously as an emergency warning device under specific circumstances.<sup>9</sup> Chapter 256 requires signal lamps to be flashed as warning lights if the vehicle is disabled on the roadway and is equipped with a device to automatically activate the front and rear signal lamps to flash simultaneously.<sup>10</sup>

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2. *Id.* § 530 (definition of roadway).
  3. *Id.* § 445 (definition of traffic control signal).
  4. *Id.* § 21456 (any pedestrian who has partially completed crossing a roadway must proceed to a sidewalk or safety zone).
  5. *Id.* § 21452(b).
  6. *Id.*
  7. *See id.* § 25106 (fender and side marker lamp requirements).
  8. *Id.* § 670 (definition of vehicle).
  9. *Id.* § 25251. Specific circumstances include the following: (1) when disabled or parked within 10 feet of the roadway, (2) when warning other motorists of accidents or hazards on the roadway, (3) for use on authorized emergency vehicles, and (4) when warning other motorists of a funeral procession. *Id.* § 25251(a)(2)-(5).
  10. *Id.* § 25251(b) (unless the device and turn signal lamps are rendered inoperative by the event that caused the vehicle to become disabled).

## **Transportation and Motor Vehicles; sale of motor vehicles**

Vehicle Code §§ 12120, 12121, 12122 (new).

AB 2762 (McAlister); 1986 STAT. Ch. 668

Sponsor: Independent Automobile Dealers Association of California

Existing law regulates the sale or transfer of any interest in a motor vehicle.<sup>1</sup> After a transfer of interest in a motor vehicle, existing

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1. *See CAL. VEH. CODE* §§ 5600 (general transfer requirements); 5603 (transfer by legal owner); 5751 (transfer by registered owner); 4456, 5901 (transfer requirements for dealers). *See also id.* §§ 285, 286 (definition of dealer); 11700 (dealer licensing procedures); 415 (definition of motor vehicle).

law requires the owner to notify the Department of Motor Vehicles of the sale or transfer.<sup>2</sup> Chapter 668 limits the right to sell a motor vehicle to registered owners and licensed dealers, with specified exceptions.<sup>3</sup> In addition, Chapter 668 states that any party to a sale of a vehicle who reports to the Department of Motor Vehicles a sales price less than the actual sales price is guilty of a misdemeanor.<sup>4</sup>

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2. *Id.* §§ 5900(a), 5901(a).

3. *Id.* § 12121. Exceptions include: (1) anyone related by blood, adoption, or marriage to the registered owner; (2) a receiver, administrator, executor, or guardian; (3) the trustee of a trust in which the vehicle is registered as an asset; (4) any public officer in performance of the officer's official duty; (5) an attorney on behalf of a client who is the registered owner; (6) the owner of a business in whose name the vehicle is registered; (7) the legal owner; (8) a person who has prior written authorization from the registered owner, if that person does not receive or expect to receive any compensation for selling the motor vehicle; and (9) an insurer selling the salvage of an insured's vehicle. *Id.* An exception is also included for any person described in Vehicle Code § 286, which includes insurance companies, banks, finance-companies in possession of the vehicle, car sales persons, and auctioneers. *Id.* § 12120.

4. *Id.* § 12122. The penalty includes all sales and use taxes due, any penalty or interest assessed, and a mandatory \$500 fine or an amount equal to 100% of the tax, whichever is greater. *Id.*

## Transportation and Motor Vehicles; vessels—operations and intoxication

Harbors and Navigation Code §§ 670, 671, 672 (repealed); § 76.9 (repealed & new); §§ 655.1, 655.5, 656.1, 656.2, 656.3, 658.5, 663.1 (new); §§ 76.3, 80.6, 655, 656, 668 (amended); Penal Code §§ 192.5, 193.5 (new); § 7 (amended).

SB 1484 (Seymour); 1986 STAT. Ch. 516

Sponsor: Department of Boating and Waterways

Support: Recreational Boaters of California

SB 1509 (Nielson); 1986 STAT. Ch. 877

Sponsor: Shasta County District Attorneys Office

Support: Department of Corrections; Department of Parks and Recreation

Existing law prohibits the reckless and negligent operation of a vessel,<sup>1</sup> water ski, aquaplane, or similar device so as to endanger life

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1. CAL. HARB. & NAV. CODE § 651(c) (vessel includes every description of a watercraft used or capable of being used as a means of transportation on the water).

or property, or to operate such device while under the influence of drugs<sup>2</sup> or alcohol.<sup>3</sup> Under existing law any person under the influence of drugs<sup>4</sup> or alcohol who, while operating a vessel, proximately causes bodily injury to another person is subject to a fine or imprisonment.<sup>5</sup> Chapter 516 clarifies existing law by prohibiting any person with a blood alcohol level of 0.1% or more, by weight, from operating such a device.<sup>6</sup> Accordingly, Chapter 877 empowers a peace officer<sup>7</sup> to arrest without a warrant any person involved in a water accident, when there is reasonable cause to believe the person was operating the vessel while under the influence of drugs or alcohol.<sup>8</sup> In addition, Chapter 516 empowers a peace officer to request an operator of a mechanically propelled vessel,<sup>9</sup> who has been lawfully arrested,<sup>10</sup> to

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2. *Id.* § 651(s) (a drug is a substance other than alcohol that impairs a person's ability to operate a vessel). Chapter 516 specifically prohibits a person with an addiction to any drug from operating a vessel. *Id.* § 655(d).

3. *Id.* § 655(a), (b). Under Chapter 516, a violation of § 655(a) is a misdemeanor punishable by a fine up to \$1,000, confinement in jail up to 6 months, or both. *Id.* § 668(c). The first violation of § 655(b), (c), or (d) is punishable by a fine up to \$1,000, confinement in jail up to 6 months, or both. *Id.* § 668(d). A person convicted of a second or subsequent violation of this provision within 5 years of a prior conviction may be punished by a fine up to \$1,000, confinement in jail up to 1 year, or both. *Id.* 668(e).

4. *Id.* § 655(d). Persons on a methadone maintenance treatment program are excluded. *Id.*

5. *Id.* § 655(e). A person convicted of a first violation must be punished by a fine not less than \$250 and not more than \$5,000 or confinement in jail for not less than 90 days or more than 1 year. *Id.* § 668(f). A person granted probation for a second and subsequent conviction of this provision within 5 years of a prior conviction must be confined in jail not less than 90 days or more than 1 year, and pay a fine not less than \$250 or more than \$5,000. *Id.* 668(g). The court cannot absolve, from the minimum fine and confinement described above any person convicted of a violation of § 655(e) within 5 years of a prior conviction of § 655(b)-(e), unless unusual circumstances require this be done in the interests of justice. *Id.* § 668(h), (i). When a prior conviction is stricken, the court must state the reason for striking the order. *Id.* § 668(i). On appeal, a conclusive presumption arises that the order was stricken for the reason stated, and if no substantial basis for the reason is stated in the record the order must be reversed. *Id.* A person with a prior conviction for operating a vessel while under the influence of alcohol or drugs, who is granted probation, must be confined in jail not less than 5 days or more than 1 year, or pay a fine not less than \$250 or more than \$5,000. *Id.* § 668(g).

6. *Id.* § 655(c). A rebuttable presumption exists that a person's blood alcohol content is 0.10% when the test is performed within 3 hours of operating the vessel. *Id.* § 655(f). A person convicted of a first violation may be punished by a fine up to \$1,000 or confinement in jail up to 6 months. *Id.* § 668(d). A person convicted of a second or subsequent violation of this provision within 5 years of a prior conviction is subject to a fine up to \$1,000, confinement in jail up to 1 year, or both. *Id.* § 668(e).

7. *Id.* § 663 (every peace officer of the state, city, county, or other political subdivision of the state must enforce these provisions).

8. *Id.* § 663.1.

9. *Id.* § 655.1(a) (mechanically propelled vessel includes any machine-propelled vessel, regardless of whether the machinery is the principal source of propulsion).

10. *Id.* § 655.1(b) (the person must be lawfully arrested for (1) operating the vessel while under the influence of drugs or alcohol, (2) operating the vessel with a blood alcohol content of 0.10% or more, (3) operating the vessel while doing an unlawful or negligent act which causes bodily injury to another, or (4) operating the vessel as a drug addict).

submit to a chemical test to determine the drug or alcohol content of the blood.<sup>11</sup> Chapter 516 requires the person in custody be informed that the refusal to submit to a test may be used in court and may result in increased penalties.<sup>12</sup>

Chapter 516 permits the person in custody to choose one of three chemical tests: A blood test,<sup>13</sup> urine test, or breath test.<sup>14</sup> If a person has requested a breath test, Chapter 516 specifies that the person must be advised that the sample will not be retained.<sup>15</sup> Chapter 516 entitles the person in custody to request that an additional sample of blood or urine be taken and stored for future testing.<sup>16</sup> In addition, if the person in custody is clearly intoxicated and has requested a breath test, Chapter 516 authorizes the peace officer to obtain an additional sample of blood or urine.<sup>17</sup> If the person in custody is not capable of completing a particular test, Chapter 516 permits the remaining test or tests to be used.<sup>18</sup> If the person is unconscious or not capable of refusing a test, Chapter 516 permits the completion of a test and allows the results to be admitted into court.<sup>19</sup>

Chapter 516 sets forth the following three presumptions in criminal<sup>20</sup> actions: (1) blood alcohol contents that are less than 0.05% carry a presumption that a person was not intoxicated;<sup>21</sup> (2) blood alcohol contents that are greater than 0.05% and less than 0.1% carry no presumption;<sup>22</sup> and (3) blood alcohol contents that are greater than

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11. *Id.* The peace officer must have reasonable cause to believe that the person is intoxicated. *Id.*

12. *Id.* See *id.* § 655.5(b) (willful refusal to submit to chemical testing must be pleaded and proven).

13. A person using anticoagulants or afflicted with hemophilia is exempt from taking the blood test. *Id.* § 655.1(i), (j).

14. *Id.* § 655.1(c)(1), (2). The person in custody does not have the right to have an attorney present when choosing whether to be tested, which test to take, or during the administration of the test. *Id.* § 655.1(d). All chemical testing must be done in accordance with Vehicle Code § 23158 (relating to the procedural aspect of the chemical tests). *Id.* § 655.1(l). See generally *Schmerber v. California*, 384 U.S. 757 (1966) (court upheld the constitutionality of a blood sample being drawn on police directive over the objection of the defendant after being arrested for drunk driving).

15. CAL. HARB. & NAV. CODE § 655.1(f)(1).

16. *Id.* § 655.1(f)(2). Blood and urine samples may be requested by either party in a criminal prosecution. *Id.* § 655.1(f)(3).

17. *Id.* § 655.1(e). The officer must state in the report the facts that support a finding that the person operating a mechanically propelled vessel was clearly intoxicated. *Id.*

18. *Id.* § 655.1(c)(1).

19. *Id.* § 655.1(h).

20. *Id.* § 655(g).

21. *Id.* § 655(g)(1).

22. *Id.* § 655(g)(2).

0.1% carry the presumption that the person was intoxicated.<sup>23</sup> Chapter 516 does not limit the gathering or introduction of additional evidence concerning the issue of intoxication.<sup>24</sup> In addition, Chapter 516 allows an operator of a mechanically propelled vessel who is taken into custody to request that a chemical test be performed.<sup>25</sup>

Existing law requires the operator of a vessel involved in a collision, accident, or other casualty resulting in injuries or property damage to render assistance and to provide identification to persons injured or to the owner of the damaged property.<sup>26</sup> Chapter 877 requires the operator to provide information to any occupants of the other vessel or to the peace officer at the scene.<sup>27</sup> In addition, Chapter 877 requires an operator that knows or has reason to know that the accident has resulted in a death or disappearance of a person to report the accident without delay to a law enforcement agency, if a peace officer is not at the scene.<sup>28</sup>

Chapter 877 requires an operator who has been involved in an accident that has resulted in property damage to stop at the scene, and either (1) locate and notify the owner of the damaged property, and upon request exhibit the vessel registration and furnish identification of the owner of the vessel causing the damage;<sup>29</sup> or (2) leave on the damaged property a written notice that specifies the current name and address of the owner and operator of the vessel causing the damage, and notify the law enforcement agency of the accident, if the property owner cannot be found.<sup>30</sup>

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23. *Id.* § 655(g)(3). See *Burg v. Municipal Court*, 35 Cal. 3d 257, 673 P.2d 732, 198 Cal. Rptr. 145 (1983). The constitutionality of Vehicle Code § 23152(b), establishing the presumption that a person with a blood alcohol level of 0.10% or more is under the influence of alcohol, was upheld on due process grounds. *Id.* at 269-73, 673 P.2d at 739-42, 198 Cal. Rptr. at 152-54. The court stated that proof as to a person being under the influence of alcohol was no longer necessary, but proof that the defendant was driving with a blood alcohol level exceeding 0.10% must be established beyond a reasonable doubt. *Id.* at 265, 673 P.2d at 737, 198 Cal. Rptr. at 149.

24. CAL. HARB. & NAV. CODE §§ 655(h), 655.1(m).

25. *Id.* § 655.1(k).

26. *Id.* §§ 656(a), 656.2. Assistance need not be attempted if the operator or his or her vessel, crew, or passengers are placed in a position of serious danger. *Id.* §§ 656(a), 656.2.

27. *Id.* § 656.2 (the person must furnish his or her name, address, registration number of the vessel, and the name of the owner of the vessel). A violation of this provision is punishable by a fine up to \$10,000, confinement in the state prison or county jail for up to 1 year, or both. *Id.* § 668(j).

28. *Id.* § 656.3. A violation of this provision is punishable by a fine up to \$10,000, confinement in the state prison or county jail for up to 1 year, or both. *Id.* § 668(j).

29. *Id.* § 656.1(a). A violation of this provision is punishable by a fine up to \$1,000 or confinement in jail up to 6 months, or both. *Id.* § 668(c).

30. *Id.* § 656.1(b). A violation of this provision is punishable by a fine up to \$1,000, or confinement in jail up to 6 months, or both. *Id.* § 668(c).

Chapter 877 prohibits any person who is twelve years of age or younger from operating a motorboat.<sup>31</sup> In addition, Chapter 877 prohibits an adult from permitting a person twelve years of age or younger to (1) operate a motorboat engaged in towing a person on skis, an aquaplane, or similar device; (2) operate a motorboat designed for one person; or (3) operate a motorboat of more than ten horsepower without the supervision of a person eighteen years of age or older on board.<sup>32</sup>

Existing law defines the crime of manslaughter to include the unlawful killing of a person without malice, and classifies manslaughter as involuntary, voluntary, or vehicular.<sup>33</sup> Chapter 877 includes within the crime of vehicular manslaughter, manslaughter committed during the unlawful operation of a vessel.<sup>34</sup>

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31. *Id.* § 658.5(b). *See id.* § 668(k) (subject to fines up to \$100).

32. *Id.* § 658.5(a). The use of a dinghy directly between the shoreline and a moored vessel is exempt. *Id.* A violation of this provision is punishable by a fine up to \$100. *Id.* § 668(k).

33. CAL. PENAL CODE § 192.

34. *Id.* § 192.5(a)-(d). Vehicular manslaughter includes the killing of another human being while a person is operating a vessel under the influence of alcohol or drugs, with or without gross negligence, while engaged in an unlawful act that is not a felony. *Id.*

## Transportation and Motor Vehicles; vista points and rest areas

Streets and Highways Code §§ 35, 225.5 (new).

AB 2414 (Filante); STAT. Ch. 920

(Effective September 22, 1986)

Sponsor: Author

Support: State Department of Transportation

Under existing law, the California Department of Transportation may enact rules and regulations governing the time and manner of use of vista points<sup>1</sup> and safety roadside rest areas.<sup>2</sup> Chapter 920

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1. Under Chapter 920, vista point is defined as any signed roadside area on the state highway system developed and maintained by the Department of Transportation for the purpose of providing the motorist with a place to stop to view the scenic panorama or points of visual interest. CAL. STS. & HIGH. CODE § 35.

2. *Id.* § 225. *See also id.* § 219 (regarding safety roadside rest areas).

provides that no person may display, sell, offer for sale, or otherwise vend or attempt to vend, any merchandise, foodstuff, or service within any vista point or safety roadside rest area.<sup>3</sup> Chapter 920 also provides that a uniformed member of the Department of the California Highway Patrol, or other peace officer<sup>4</sup> may remove or relocate any person or property if, in the officer's opinion, the presence of the person or property creates, or may be reasonably expected to create, a safety hazard at or near the vista point or safety roadside rest area.<sup>5</sup>

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3. *Id.* § 225.5(a). Chapter 920 also specifies that any provision adopted by the Department of Transportation that conflicts with Chapter 920 is void. *Id.* § 225.5(c).

4. See CAL. PENAL CODE §§ 830.31 (definition of peace officer); 830.2 (persons who have the authority of peace officers); CAL. VEH. CODE § 2409 (all members of the California Highway Patrol have powers of a peace officer). See also CAL. PENAL CODE § 834 (persons authorized to arrest).

5. CAL. STS. & HIGH. CODE § 225.5(b). Chapter 920 was amended in an apparent response to constitutional concerns regarding the regulation of religious activities at vista points and safety roadside rest areas. Telephone interview with Susan Doyle, Legislative Counsel to Assemblyman Filante (August 29, 1986) (on file at the *Pacific Law Journal*). Compare A.B. 2414, 1985-86, 2nd Reg. Sess. (as amended April 24, 1986) (which only allowed individuals and organizations seeking to engage in religious expression to distribute merchandise at vista points and safety roadside rest areas) with A.B. 2414, 1985-86, 2nd Reg. Sess. (as amended August 25, 1986) (which prevents all persons from displaying, selling, or vending any merchandise, foodstuff, or service within any vista point or safety roadside rest area) (on file at the *Pacific Law Journal*).

## **Transportation and Motor Vehicles; warrantless arrest for driving under the influence**

Vehicle Code § 40300.6 (new).

AB 2991 (Stirling); 1986 STAT. Ch. 584

Sponsor: Author

Support: California Highway Patrol

Existing law allows a peace officer<sup>1</sup> to make a warrantless arrest of any person involved in a traffic accident,<sup>2</sup> or observed by the

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1. CAL. PENAL CODE § 830-830.9 (definition of peace officer).

2. The term "traffic accident," as used in this provision, refers to an accident involving at least one vehicle, and describes the type, not the place, of the accident. *People v. Ashley*, 17 Cal. App. 3d 1122, 1127, 95 Cal. Rptr. 509, 511 (1971). Injury from the accident is not required for an arrest pursuant to this provision. *Cowman v. Department of Motor Vehicles*, 86 Cal. App. 3d 851, 854, 150 Cal. Rptr. 559, 560 (1978).

officer to be in or about a vehicle that is obstructing a roadway, when the officer has reasonable cause<sup>3</sup> to believe that the person has been driving while under the influence of alcohol, any drug, or both.<sup>4</sup> Chapter 584 expands the scope of this provision to include an arrest within a reasonable time and distance away from the scene of a traffic accident.<sup>5</sup>

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3. Case law has defined reasonable cause to be a state of facts that will lead a person of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person to be arrested is guilty of a crime. *See, e.g.,* *People v. Rhinehart*, 9 Cal. 3d 139, 151, 507 P.2d 642, 650, 107 Cal. Rptr. 34, 42 (1973); *People v. Knutson*, 60 Cal. App. 3d 856, 863, 131 Cal. Rptr. 846, 850 (1976).

4. CAL. VEH. CODE § 40300.5. *See generally* *Review of Selected 1984 California Legislation*, 16 PAC. L.J. 744 (analysis of Vehicle Code § 40300.5).

5. CAL. VEH. CODE § 40300.6. A finding of reasonable cause is still required under this section. *Id. Compare* *People v. Walker*, 203 Cal. App. 2d 552, 555, 21 Cal. Rptr. 692, 694 (1962) (a warrantless arrest for driving under the influence was unlawful since the offense was not committed in the arresting officer's physical presence) *with* *McDonald v. Justice Court*, 249 Cal. App. 2d 960, 963, 58 Cal. Rptr. 29, 31 (1967) (sufficient cause existed for a warrantless arrest for driving under the influence since police officers arrived at the scene less than one minute after receiving a report of the accident).

