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# Transportation and Motor Vehicles

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# Transportation and Motor Vehicles

## Transportation and Motor Vehicles; driving under the influence

Government Code §13960 (amended); Health & Safety Code §§11837, 11837.1, 11837.2, 11837.3, 11837.4, 11838, 11838.2 (amended); Insurance Code §§488, 670 (amended); Penal Code §§1203.45, 1463.14, 1463.16 (amended); Vehicle Code §23102.6 (repealed); §§1660.7, 1660.8 (new and repealed); §§1660.5, 1660.6, 23213 (new); §§1660, 1803, 12520, 12520.5, 12805, 13352, 13352.5, 13353, 13354, 13361, 13800, 14601, 14601.1, 14601.2, 21051, 23103.5, 23152, 23153, 23155, 23160, 23161, 23165, 23166, 23167, 23168, 23170, 23171, 23180, 23181, 23185, 23186, 23187, 23190, 23191, 23200, 23211, 40300.5, 40302, 40303 (amended); §23151 (amended and renumbered as §109).

AB 542 (Moorhead); STATS. 1982, Ch 53

*(Effective February 18, 1982)*

Support: California District Attorneys' Association; California Highway Patrol; California Peace Officers' Association; Judicial Council; Mothers Against Drunk Driving

AB 3348 (Wyman); STATS. 1982, Ch 1340

Support: California Highway Patrol; Department of Alcohol and Drug Programs

AB 3405 (Moorhead); STATS. 1982, Ch 1339

*(Effective September 23, 1982)*

Support: Attorney General; California Highway Patrol; California Peace Officers Association; Department of Alcohol and Drug Programs; Department of Finance; Department of Motor Vehicles; Mothers Against Drunk Drivers

SB 1601 (Sieroty); STATS. 1982, Ch 1338

Support: Department of Alcohol and Drug Programs; Department of Finance; Department of Motor Vehicles

SB 745 (Sieroty); STATS. 1982, Ch 1337

Support: California District Attorneys' Association; California Highway Patrol; Department of Alcohol and Drug Programs; Department of Justice; Department of Motor Vehicles

The law pertaining to driving while under the influence of an intoxicating beverage, drug or both<sup>1</sup> (hereinafter referred to as DUI) was substantially revised in 1981.<sup>2</sup> In an apparent effort to further deter drivers from operating motor vehicles while under the influence of intoxicants,<sup>3</sup> the Legislature has enacted Chapters 53,<sup>4</sup> 1337,<sup>5</sup> 1338,<sup>6</sup> 1339,<sup>7</sup> and 1340.<sup>8</sup> These chapters expand the scope of provisions relating to arrest<sup>9</sup> and prosecution,<sup>10</sup> and provide harsher penalties for persons convicted of DUI.<sup>11</sup> In addition to extending DUI provisions to violations on private property<sup>12</sup> and creating implied consent provisions relating specifically to drivers under the influence of drugs,<sup>13</sup> these chapters relax the prosecutor's burden in a court action for DUI,<sup>14</sup> increase minimum fines,<sup>15</sup> grant insurance companies additional grounds for the denial of insurance,<sup>16</sup> and establish more restrictive provisions relating to conditions of probation<sup>17</sup> and suspensions<sup>18</sup>

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1. See generally *People v. De La Torre*, 263 Cal. App. 2d, 409, 412, 69 Cal. Rptr. 654, 656 (1968) (defines "under the influence of an intoxicating liquor" to mean that the liquor had so far affected the nervous system, brain or muscles as to impair to an appreciable degree the ability to operate the vehicle in a manner like that of an ordinary prudent and cautious person in full possession of his faculties, using reasonable care and under like conditions); *Gilbert v. Municipal Court*, 73 Cal. App. 3d 723, 727, 140 Cal. Rptr. 887, 899-90 (1977) (uses the standard set forth in *People v. De La Torre* to define "under the influence of an intoxicating drug").

2. See CAL. STATS. 1981, c. 939, §§1-15, at —; CAL. STATS. 1981, c. 940, §§1-50, at —; CAL. STATS. 1981, c. 941, §§1-14, at —. See generally 13 PAC. L. J., REVIEW OF SELECTED 1981 CALIFORNIA LEGISLATION 787-98 (1982).

3. *Wallace v. Department of Motor Vehicles*, 12 Cal. App. 3d 356, 361, 90 Cal. Rptr. 657, 660 (1970) (the legislature has followed a consistent progression towards more severe punishment for the violation of criminal statutes and more severe limitations on the retention of driving privileges by persons who have been found to have operated vehicles while under the influence). See generally 13 PAC. L. J., REVIEW OF SELECTED 1981 CALIFORNIA LEGISLATION 787-98 (1982).

4. See generally CAL. GOV'T CODE §13960; CAL. HEALTH & SAFETY CODE §§11837, 11837.1, 11837.3, 11838, 11838.2; CAL. INS. CODE §§488, 670; CAL. PENAL CODE §§1203.45, 1463.16; CAL. VEH. CODE §§1660, 1803, 12520, 12520.5, 13352, 13353, 14601, 14601.1, 14601.2, 21051, 23103.5, 23152, 23153, 23155, 23160, 23161, 23165, 23166, 23170, 23171, 23180, 23181, 23185, 23186, 23191, 23200, 23211, 40300.5, 40302, 40303.

5. See generally CAL. VEH. CODE §§23152, 23153.

6. See generally CAL. HEALTH & SAFETY CODE §§11837, 11837.1, 11837.2, 11837.3, 11837.4; CAL. VEH. CODE §§13352.5, 23166, 23167, 23168, 23186, 23187.

7. See generally CAL. PENAL CODE §1463.14; CAL. VEH. CODE §§1660.5, 1660.6, 1660.7, 1660.8, 12805, 13352.5, 13353, 13354, 13361, 13800, 14601, 14601.1, 14601.2, 23160, 23161, 23165, 23166, 23170, 23171, 23180, 23181, 23185, 23186, 23190, 23191, 23211, 23213.

8. See generally CAL. VEH. CODE §13353.

9. CAL. VEH. CODE §§13353, 14601, 14601.1, 14601.2, 23152(b).

10. *Id.* §§23152, 23153, 23155.

11. CAL. HEALTH & SAFETY CODE §11837.2; CAL. INS. CODE §§488, 670; CAL. VEH. CODE §§13352, 13353, 14601, 14601.1, 14601.2, 23161, 23166, 23167, 23171, 23181, 23186, 23187, 23191.

12. CAL. VEH. CODE §§13353, 23152(b), 14601(a), 14601.1(a), 14601.2(a).

13. *Id.* §13353(a)(2)(B).

14. *Id.* §§23152(b), 23153(b), 23155(a)(3).

15. *Id.* §§23160, 23165, 23170, 23180, 23185, 23190.

16. CAL. INS. CODE §§488(b)(2)(c), 670(b)(2)(c).

17. CAL. HEALTH & SAFETY CODE §§11837.2(g), 11837.4(a)(6); CAL. VEH. CODE §§23161(a)(1), (2), 23167, 23187.

18. CAL. VEH. CODE §13102 (definition of suspension).

or revocations<sup>19</sup> of the person's driving privilege.<sup>20</sup> Finally, this legislation makes technical changes necessary to conform existing law with the revisions enacted in 1981.<sup>21</sup>

### *Implied Consent*

Prior to the enactment of Chapter 1340, only persons who operated a motor vehicle upon a highway or in a public area were deemed to consent to the administration of a blood, breath or urine test for the purpose of determining the concentration of alcohol in the person's blood.<sup>22</sup> If the law enforcement officer believed the person to be under the influence of a drug, the determination was generally made pursuant to a physical examination of the body.<sup>23</sup> Chapter 1340 now provides that any driver operating a motor vehicle also impliedly consents to the administration of a blood or urine test if the detaining officer has reasonable cause<sup>24</sup> to believe the driver is under the influence of drugs and that a blood or urine sample will reveal the existence of the drugs.<sup>25</sup> Moreover, Chapter 53 applies these implied consent provisions to private property by eliminating reference to highways and public areas.<sup>26</sup>

In addition, Chapter 1339 provides for enhanced penalties for persons who refuse chemical testing<sup>27</sup> if they have prior convictions of specified offenses.<sup>28</sup> Under existing law, persons detained for suspicion of a DUI offense who refuse to submit to a chemical test designed to

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19. *Id.* §13101 (definition of revocation).

20. *Id.* §§13352.5, 23166(a), 23171(a), 23181, 23186(a), 23191(a).

21. *See* CAL. GOV'T CODE §13960; CAL. HEALTH & SAFETY CODE §§11837.1, 11837.3, 11838, 11838.2; CAL. PENAL CODE §§1203.45, 1463.16; CAL. VEH. CODE §§12520, 12520.5, 13352, 21051, 23103.5, 23151, 23211, 40300.5, 40302, 40303.

22. *See* CAL. STATS. 1978, c. 911, §4, at 2872 (amending CAL. VEH. CODE §13353(a)(1)).

23. *See* Telephone conversation with Barry Minett, Drug and Alcohol Detection, California Highway Patrol (July 27, 1982) (conversation pertaining to drug detection) (notes on file at the *Pacific Law Journal*). *See generally* Green, *Forcible Administration of Blood Tests: Schmerber v. California*, 14 U.C.L.A. LAW REVIEW, 680, 692 (1967) (the use of narcotics may frequently be detected by physical examination of the body); B. WITKIN, CALIFORNIA EVIDENCE 2d §656, at 270 (1982 Supp.) (describing the use of the Nalline test as an effective test for the detection of narcotics).

24. *See* *People v. Hollins*, 173 Cal. App. 2d 88, 93, 343 P.2d 174, 176 (1959) (a reasonable cause for an arrest and search exists when the facts would lead a man of ordinary care and prudence to believe, or entertain a strong and honest suspicion that the person arrested is guilty of a crime).

25. CAL. VEH. CODE §13353(a)(2)(B) (this provision is to become effective July 1, 1983).

26. *Id. Compare id. with* CAL. STATS. 1978, c. 911, §4, at 2872 (amended CAL. VEH. CODE §13353).

27. *See generally* CAL. VEH. CODE §13353(a)(2) (the person may choose a blood, breath or urine test).

28. *Id.* §§13353(a)(1), (b) (prior convictions are defined as previous violations of CAL. VEH. CODE §§23103, 23152, 23153). This provision is effective through July 1, 1983, at which time it will be preempted by CAL. STATS. 1982, c. 1340, §1, at — (enacting CAL. VEH. CODE §13353), providing for a standard six-month license suspension period for *all* persons who refuse chemical testing, regardless of prior convictions.

determine the concentration of alcohol or the existence of drugs in the blood, will have their driving privilege suspended for six months.<sup>29</sup> With the enactment of Chapter 1339, if a person has been convicted within the previous five years of a misdemeanor or a felony DUI offense, or of reckless driving involving alcohol, refusal to take the chemical test will cause the person's driving privilege to be suspended for one year.<sup>30</sup>

### *Blood-Alcohol Content*

Existing law provides that any person who operates a motor vehicle upon a highway or in a public area is subject to misdemeanor charges if chemical tests reveal a blood-alcohol concentration of at least one-tenth of one percent by weight.<sup>31</sup> Persons who cause death or injury to others while driving with this blood-alcohol level are subject to felony charges.<sup>32</sup> In an apparent effort to eliminate exemptions for persons driving under the influence upon private property, Chapter 53 eliminates restrictions upon the location of the violation.<sup>33</sup> Furthermore, for the apparent purpose of clarifying the nature of the circumstances that give rise to a felony conviction,<sup>34</sup> Chapter 53 specifies that the death or injury must specifically pertain to the unlawful or negligent operation of the vehicle.<sup>35</sup>

The 1981 revisions eliminated the legal presumption of intoxication based upon the concentration of alcohol in the driver's blood.<sup>36</sup> Ostensibly, provisions enacted declaring it unlawful for a person to operate a motor vehicle with a blood-alcohol concentration of one-tenth of one percent by weight rendered it unnecessary to retain a legal presumption based upon the same concentration.<sup>37</sup> As a result of the 1981 revision, however, if the driver was charged specifically with driving under the influence of an alcoholic beverage or drug, as opposed to a charge of driving with a blood-alcohol concentration of one-tenth of one percent by weight, it became the burden of the prosecution to prove that the driver was under the influence at the time he or she was driving the

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29. *Id.*

30. *Id.*

31. *Id.* §23152(b).

32. *Id.* §23153(b).

33. *Id.* §23152(b). Compare *id.* with CAL. STATS. 1981, c. 940, §10, at — (enacting CAL. VEH. CODE §23152(b)).

34. Compare CAL. VEH. CODE §23153(a) with *id.* §23153(b).

35. *Id.* §23153(b).

36. See CAL. STATS. 1981, c. 940, §31, at — (repealing CAL. VEH. CODE §23155(a)(3)). Compare *id.* with CAL. STATS. 1969, c. 231, §1, at 565 (enacting CAL. VEH. CODE §23126).

37. CAL. VEH. CODE §§23152(b), 23153(b).

vehicle.<sup>38</sup> In an apparent effort to relax the prosecutor's burden of proof<sup>39</sup> when the person is charged specifically with driving under the influence,<sup>40</sup> Chapter 53 re-establishes a presumption of intoxication based upon a showing that the person was driving with a blood-alcohol concentration of one-tenth of one percent by weight.<sup>41</sup>

In a related change, Chapter 1337 relaxes the prosecutor's burden of proof if the person is *specifically charged* with operating a motor vehicle with a blood-alcohol concentration of one-tenth of one percent by weight.<sup>42</sup> Under prior law, the prosecution was required to prove that the illegal blood-alcohol concentration existed *at the time the person was driving*.<sup>43</sup> Because there often exists a period of delay between the time of arrest and the time the chemical test is administered to determine the blood-alcohol concentration,<sup>44</sup> Chapter 1337 creates a rebuttable presumption that the illegal blood-alcohol concentration existed at the time the person was driving if subsequent chemical tests, administered within three hours of the driving, reveal a blood-alcohol concentration of one-tenth of one percent by weight or more.<sup>45</sup>

### Penalties

#### A. Increased Fines

Existing law authorizes the imposition of a fine upon a conviction of a misdemeanor or felony DUI offense.<sup>46</sup> Chapter 1339 increases the minimum fine to \$390 upon a conviction of a misdemeanor DUI offense,<sup>47</sup> or upon a first or second conviction of a felony DUI offense,<sup>48</sup> whether or not probation is granted.<sup>49</sup> In addition, if the conviction is for a felony DUI offense when there are two or more prior convictions,

38. See 13 PAC. L.J., REVIEW OF SELECTED 1981 CALIFORNIA LEGISLATION 795 (1982).

39. CAL. VEH. CODE §23155(a); see Telephone conversation with Jim Schultz, Assistant to Assemblywoman Jean Moorhead (July 2, 1982) (notes on file at the *Pacific Law Journal*); See generally CAL. EVID. CODE §115 (definition of burden of proof).

40. CAL. VEH. CODE §§23152(a), 23153(a).

41. *Id.* §23155(a)(3).

42. *Id.* §§23152(b), 23153(b).

43. See CAL. STATS. 1981, c. 940, §10, at — (amending CAL. VEH. CODE §23102 and renumbering as §23152); CAL. STATS. 1981, c. 940, §10, at — (amending CAL. VEH. CODE §23101 and renumbering as §23153).

44. See *Lacy v. Orr*, 276 Cal. App. 2d, 198, 205, 81 Cal. Rptr. 276, 281 (1969) (the intoxicating effect of alcohol diminishes with the passage of time). *Contra* Fitzgerald & Hume, *The Single Test for Intoxication: A Challenge to Admissibility*, 66 MASS. L.J. 23 (1981) (blood-alcohol concentration may increase after an accident or an arrest so that a person who at the time of arrest is not legally intoxicated may become so in the period of delay between arrest and the test).

45. CAL. VEH. CODE §§23152(b), 23153(b).

46. See *id.* §§23160, 23161, 23165, 23166, 23170, 23171, 23180, 23181, 23185, 23186, 23190, 23191.

47. *Id.* §§23160, 23161, 23165, 23166, 23170, 23171.

48. *Id.* §§23180, 23181, 23185, 23186.

49. Compare *id.* §§23160, 23161, 23165, 23166, 23170, 23171, 23180, 23181, 23185, 23186 with

the minimum fine is increased to \$1015 when probation is not granted<sup>50</sup> and to \$390 when probation is granted.<sup>51</sup>

### *B. Conditions of Probation*

Under existing law, if a person is convicted for a first offense of misdemeanor DUI and is granted probation, the person must attend an alcohol treatment program if a certified program exists in the county.<sup>52</sup> Furthermore, the court is required to impose either incarceration or payment of a fine as an additional condition of probation.<sup>53</sup> Prior to the enactment of Chapter 53, if the court required payment of a fine, the person's driving privilege was restricted<sup>54</sup> to travel demanded by the person's employment.<sup>55</sup> With the enactment of Chapter 53, the court is authorized to expand the driving privilege to include travel to and from the alcohol treatment program.<sup>56</sup> In addition, Chapter 53 allows the court to suspend the person's driving privilege if incarceration is imposed as a condition of probation.<sup>57</sup>

In a related change, Chapter 1339 revises specific requirements for participation in treatment programs as conditions of probation.<sup>58</sup> Under prior law, if a person was convicted for a first offense of misdemeanor DUI and probation was granted, the court was required to direct the person to an alcohol *or* a drug treatment program.<sup>59</sup> Moreover, if the person was convicted of a first offense of felony DUI and probation was granted, the court was not required to impose as a probationary condition participation in a treatment program.<sup>60</sup> With the enactment of Chapter 1339, the court may direct a person convicted for a first offense of misdemeanor DUI to attend both an alcohol and a drug treatment program.<sup>61</sup> Furthermore, if the person is convicted for a first offense of felony DUI, the court is required to direct the proba-

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CAL. STATS. 1981, c. 940, §32, at — (enacting CAL. VEH. CODE §§23160, 23161, 23165, 23166, 23170, 23171, 23180, 23181, 23185, 23186) (under prior law the minimum fine was \$375).

50. CAL. VEH. CODE §23190. *Compare id.* with CAL. STATS. 1981, c. 940, §32, at — (enacting CAL. VEH. CODE §23190) (under prior law the minimum fine was \$1000).

51. CAL. VEH. CODE §23191. *Compare id.* with CAL. STATS. 1981, c. 940, §32, at — (enacting CAL. VEH. CODE §23191) (under prior law the minimum fine was \$375).

52. *Id.* §23160(b). *See generally id.* §1660.5 (responsibility for first offender programs is placed upon the county).

53. *Id.* §§23161(a)(1), 23161(a)(2).

54. *See generally id.* §12813 (definition of restrictions).

55. *See* CAL. STATS. 1981, c. 940, §32, at — (enacting CAL. VEH. CODE §23161).

56. CAL. VEH. CODE §23161(a)(2).

57. *Id.* §23161(a)(1) (providing for a six-month suspension period). *Compare id.* with *id.* §23160 (providing for the suspension of the driver's license if probation is not granted).

58. *Id.* §§23161(b), 23181(b).

59. *See* CAL. STATS. 1981, c. 940, §32, at — (enacting CAL. VEH. CODE §23161).

60. *See* CAL. STATS. 1981, c. 940, §32, at — (enacting CAL. VEH. CODE §23181).

61. CAL. VEH. CODE §23161(b).

tioner to attend an alcohol or a drug treatment program, or both.<sup>62</sup>

Chapters 1338 and 1339 also establish regulatory provisions that relate to the conduct of probationers participating in treatment programs.<sup>63</sup> Under Chapter 1338, the alcohol treatment program is required to devise a system for notifying the court, the Department of Motor Vehicles (hereinafter referred to as the Department), and the probationer if the probationer fails to comply with rules and regulations of the program.<sup>64</sup> In addition, Chapter 1338 expressly grants the court the power to terminate probation upon a showing that the person failed to comply with any term of probation.<sup>65</sup> Finally, Chapter 1339 prohibits a patient residing in a treatment facility from retaining an automobile registered in the patient's name on or near the premises if the person's driving privilege has been suspended or revoked.<sup>66</sup>

### C. Suspension, Revocation and Restriction

Chapter 53, 1338, and 1339 establish express driver's license suspension, revocation and restriction<sup>67</sup> requirements for persons convicted of a misdemeanor or a felony DUI offense if probation is granted and prior convictions exist.<sup>68</sup> Under existing law the court is directed to suspend or revoke the driving privilege of a person who has prior convictions if probation is not granted.<sup>69</sup> Chapter 53 provides that the court must also suspend the driving privilege of a person granted probation pursuant to a conviction of misdemeanor DUI, if the conviction occurs within five years of a previous conviction and conditions of probation do not include participation in an alcohol treatment program.<sup>70</sup> If the probationer is directed to a program, however, Chapter 1338 directs the Department to restrict the person's driving privilege.<sup>71</sup> More-

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62. *Id.* §23181(b).

63. CAL. HEALTH & SAFETY CODE §§11837.2(g), 11837.4(a)(6); CAL. VEH. CODE §§23167, 23187, 23213.

64. *Id.* §11837.4(a)(6).

65. *Id.* §§23167, 23187.

66. *Id.* §23213.

67. *See generally id.* §13352.5(e) (the scope of the driving privilege is limited to driving necessitated by the person's employment and participation in an alcohol treatment program).

68. *Id.* §§23166(a), 23171(a), 23186(a), 23191(a).

69. *Id.* §§23165 (providing for a one year suspension period), 23170 (providing for a one year revocation period), 23185 (providing for a three year revocation period), 23190 (providing for a five year revocation period) (prior conviction is defined as a previous conviction of a misdemeanor or a felony DUI offense); *see id.* §§13352(a)(3), (a)(4), (a)(5), (a)(6).

70. *Id.* §23166(a) (providing for a one year suspension period).

71. CAL. HEALTH & SAFETY CODE §11837(a); *see also* CAL. VEH. CODE §§13352.5(a), 23166(b) (providing for a one-year restriction period). *Compare* CAL. HEALTH & SAFETY CODE §11837(a) with CAL. STATS. 1982, c. 53, §2, at — (providing that the court shall restrict the driving privilege). *See generally id.* §§13352.5(c) (the person must pay a \$35.00 fee, and present evidence of participation in a treatment program).



over, if the court has directed the person to an alcohol treatment program pursuant to a second conviction of a felony DUI offense, Chapter 1339 requires that the Department suspend for one year, and restrict for two years, the person's driving privilege.<sup>72</sup> Furthermore, if probation is granted for either the conviction of a misdemeanor or felony DUI offense when two or more prior convictions exist, the court must revoke the person's driving privilege.<sup>73</sup> In addition, Chapter 53 specifically restricts the court from striking any prior convictions in order to avoid revoking, suspending, or restricting a person's driving privilege.<sup>74</sup> Finally, Chapter 1339 expressly directs the Department to conduct an investigation for the purpose of determining whether a person's driving privilege should be suspended or revoked, if the person has been convicted of any DUI offenses, or has been involved in any accidents involving alcohol within three consecutive years.<sup>75</sup>

Existing law provides that it is a misdemeanor for a person to knowingly<sup>76</sup> operate a motor vehicle with a driver's license suspended or revoked for 1) a DUI offense,<sup>77</sup> 2) reckless driving,<sup>78</sup> or 3) other reasons.<sup>79</sup> Furthermore, a person is subject to enhanced penalties if there exists a prior conviction of driving with a suspended or revoked driver's license.<sup>80</sup> Prior law, however, defined a prior conviction as a previous conviction of driving with a license that had been suspended or revoked pursuant only to the same provision.<sup>81</sup> For instance, a previous conviction for driving with a license suspended for reckless driving would not satisfy the definition of a prior conviction if the subsequent conviction was for driving with a license suspended for DUI.<sup>82</sup> Chapter 53 expands the definition of a prior conviction by stating that a conviction under any one of the three provisions will serve as

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72. CAL. VEH. CODE §13352.5(b); *see also id.* §§23185, 23186 (prior conviction is defined as a previous conviction of a misdemeanor or a felony DUI offense). *See generally id.* §13352.5(d) (the person must pay a \$35.00 fee, and present evidence of participation in a treatment program).

73. *Id.* §§23171(a), 23191(a) (prior conviction is defined as a previous conviction of a misdemeanor or a felony DUI offense).

74. *Id.* §23200(a).

75. *Id.* §13800.

76. *Id.* §§14601(a), 14601.1(a), 14601.2(a), 14601.2(c) (knowledge of license suspension or revocation is presumed if notice has been given to the person by the Department). *Compare id. with id.* §14601.2(c) (knowledge of license restriction is presumed if notice has been given by the court). *See generally id.* §14601.2(b) (it is a misdemeanor for a person to operate a motor vehicle with a restricted license except in compliance with the restriction).

77. *Id.* §14601.2.

78. *Id.* §14601.

79. *Id.* §14601.1.

80. *Id.* §§14601(b)(2), 14601.1(b)(2), 14601.2(d).

81. *See* CAL. STATS. 1968, c. 963, §3, at 1849 (enacting CAL. VEH. CODE §14601); CAL. STATS. 1981, c. 940, §8.5, at — (enacting CAL. VEH. CODE §14601.2).

82. *See* CAL. STATS. 1968, c. 963, §3, at 1849; CAL. STATS. 1981, c. 940, §8.5, at —.

a prior conviction despite the nature of the subsequent offense.<sup>83</sup> Chapter 1339 adds that the previous conviction will satisfy the definition of prior conviction only if it occurred within five years of the subsequent offense.<sup>84</sup> Finally, Chapter 53 provides that if the court grants probation to a person convicted of driving with a license suspended for a DUI offense when that person had been convicted within the previous five to seven years of driving with a suspended license, the court must impose as a condition of probation a period of confinement in the county jail for a minimum of ten days.<sup>85</sup>

### *C. Insurance*

Presently, an insurer is prohibited from increasing the premium on a policy issued to a person who has been convicted of traffic violations committed while the insured was operating a motor vehicle in the course of employment.<sup>86</sup> In addition, an insurer may not cancel or deny renewal of an insurance policy issued to a commercial business because drivers employed by the business had been convicted of traffic violations while operating private passenger cars.<sup>87</sup> Exceptions, however, exist to these provisions for specific violations.<sup>88</sup> Chapter 53 establishes an additional exception to each provision, stating that a conviction for driving with a license suspended or revoked for a DUI offense will be grounds for an increased premium, or cancellation or denial of renewal of an insurance policy.<sup>89</sup>

### *Conclusion*

Chapters 53,<sup>90</sup> 1337,<sup>91</sup> 1338,<sup>92</sup> 1339,<sup>93</sup> and 1340<sup>94</sup> revise the law relating to DUI for the purpose of deterring intoxicated persons from operating motor vehicles.<sup>95</sup> Chapters 53, 1339 and 1340 significantly change the law relating to implied consent by extending provisions to include private property,<sup>96</sup> establishing specific chemical test require-

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83. CAL. VEH. CODE §§14601(b), 14601.1(b)(2), 14601.2(d)(2).

84. *Id.*

85. *Id.* §14601.2(g).

86. CAL. INS. CODE §488.

87. *Id.* §670.

88. CAL. INS. CODE §§488(b), 670(b).

89. *Id.* §§488(b)(2)(C), 670(b)(2)(C).

90. *See supra* note 6.

91. *See generally* CAL. VEH. CODE §§23152, 23153.

92. *See supra* note 6.

93. *See supra* note 7.

94. *See generally* CAL. VEH. CODE §23153.

95. *See* Wallace v. Department of Motor Vehicles, 12 Cal. App. 3d 356, 361, 90 Cal. Rptr. 657, 660 (1970).

96. CAL. VEH. CODE §13353.

ments for persons believed to be under the influence of drugs,<sup>97</sup> and providing harsher penalties for a refusal to submit to a chemical test.<sup>98</sup> Furthermore, Chapters 53 and 1337 expand the scope of misdemeanor and felony DUI offenses by applying provisions to private property,<sup>99</sup> and establishing a presumption of intoxication based upon the concentration of alcohol in the person's blood.<sup>100</sup> Moreover, Chapters 53 and 1338 grant the court greater authority to terminate probation,<sup>101</sup> and to establish more restrictive provisions for driver's license suspension or revocation when a person convicted of a DUI offense has prior convictions.<sup>102</sup> In addition, Chapter 53 expands the definition of prior conviction for the purpose of enhancing the penalty for a conviction of driving with a suspended or revoked driver's license.<sup>103</sup> Finally, Chapter 53 establishes additional exceptions to provisions prohibiting insurers from increasing or denying insurance<sup>104</sup> and effects technical changes designed to bring existing provisions of law into conformance with the revisions made in 1981.<sup>105</sup>

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97. *Id.* §13353(a)(2)(B).

98. *Id.* §13353(b).

99. *Id.* §§14601(a), 14601.1(a), 14601.2(a), 23152(b).

100. *Id.* §23155(a)(3).

101. *Id.* §§23167, 23187.

102. *Id.* §§13352.5(b), 23166(a), 23171(a), 23181, 23186(a), 23191(a).

103. *Id.* §§14601(b), 14601.1(b), 14601.2(d).

104. CAL. INS. CODE §§488(b)(2)(C), 670(b)(2)(C).

105. *See supra* note 2.

## **Transportation and Motor Vehicles; revocation of drivers' licenses—habitual traffic offenders**

Vehicle Code §13351 (repealed); §§13351, 14601.3 (new); §13350 (amended).

AB 3529 (Mountjoy); STATS. 1982, Ch 655

Support: California Highway Patrol; Department of Finance; Department of Motor Vehicles

Chapter 655 reorganizes existing laws regarding the suspension<sup>1</sup> and revocation<sup>2</sup> of a person's driving privilege<sup>3</sup> by adding new circumstances that require the revocation of a driver's license<sup>4</sup> and increasing

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1. CAL. VEH. CODE §13102 (definition of suspension).

2. *Id.* §13101 (definition of revocation).

3. *See* CAL. STATS. 1982, c. —, §§1-4, at — (repealing and enacting CAL. VEH. CODE §13351, amending CAL. VEH. CODE §§13350, 13361).

4. *See id.* §1, at —. *See generally* CAL. VEH. CODE §310 (definition of driver's license).

the period of time a person must lose the driving privilege after conviction of certain offenses.<sup>5</sup> Chapter 655 also creates a habitual traffic offender classification for drivers who accumulate a driving record history during a period when their license is suspended or revoked, and provides punishment for habitual offenders.<sup>6</sup>

### *Revocation of Drivers' Licenses*

Under prior law, the Department of Motor Vehicles (hereinafter referred to as the Department) could suspend the license of a person convicted of reckless driving causing bodily injury.<sup>7</sup> Chapter 655 instead *requires* the Department to *revoke* the license of persons convicted of reckless driving causing bodily injury.<sup>8</sup> The license will not be renewed for at least one year after the revocation, and then only if the person whose privilege was revoked can give proof of an ability to respond in damages.<sup>9</sup>

Existing law requires revocation of the driving privilege of any person convicted of manslaughter resulting from the operation of a motor vehicle,<sup>10</sup> failure to stop and comply with statutory requirements after an accident resulting in injury or death,<sup>11</sup> or a felony in the commission of which a motor vehicle is used, except in specified situations.<sup>12</sup> Existing law also requires revocation for persons convicted of three or more violations within one year of any of the following crimes: (1) violating statutory provisions regarding reckless driving,<sup>13</sup> (2) reckless driving causing bodily injury,<sup>14</sup> or (3) not performing required actions at the scene of an accident resulting in damage to property.<sup>15</sup> Prior to

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5. See CAL. VEH. CODE §13351(b).

6. See *id.* §14601.3.

7. See CAL. STATS. 1967, c. 253, §3, at 1401 (amending CAL. VEH. CODE §13361(b)). See generally CAL. VEH. CODE §23104 (definition of reckless driving causing bodily injury).

8. See CAL. VEH. CODE §13350(a)(3). Compare *id.* §13361(b) with CAL. STATS. 1967, c. 253, §3, at 1401.

9. Compare CAL. VEH. CODE §13350 with CAL. STATS. 1971, c. 1530, §8, at 3025 (amending CAL. VEH. CODE §13350). See generally CAL. VEH. CODE §16430 (definition of ability to respond in damages).

10. See CAL. VEH. CODE §13351(a). Compare *id.* with CAL. STATS. 1971, c. 1530, §8, at 3025 (amending CAL. VEH. CODE §13350(a)) (Chapter 655 retains the substantive content of this section, and merely renumbers it). Both prior law and new law require that a person convicted of this offense must not be guilty of manslaughter resulting from the operation of a motor vehicle that was caused by the commission of either an unlawful act done without gross negligence or a lawful act done in an unlawful manner without gross negligence. See CAL. VEH. CODE §13351(a); CAL. PENAL CODE §192(3)(b).

11. See CAL. VEH. CODE §13350(a)(1). Compare *id.* with CAL. STATS. 1971, c. 1530, §8, at 3025 (this section is renumbered by Chapter 655, retaining its substantive content).

12. See CAL. VEH. CODE §13350(a)(2). Compare *id.* with CAL. STATS. 1971, c. 1530, §8, at 3025.

13. CAL. VEH. CODE §23103 (definition of reckless driving).

14. *Id.* §23104 (definition of reckless driving causing bodily injury).

15. See CAL. VEH. CODE §§13351(a)(2), 20002 (definition of statutory requirements after in-

the enactment of Chapter 655, the period of revocation for *all* these offenses was one year.<sup>16</sup> Chapter 655 increases the period of revocation to three years for (1) a conviction of manslaughter resulting from the operation of a motor vehicle,<sup>17</sup> (2) a conviction of three or more violations within any one year period, of reckless driving, reckless driving causing bodily injury, failing to follow statutory requirements at the scene of an accident causing injury or death, or failing to meet statutory requirements at the scene of an accident causing property damage.<sup>18</sup> The person whose license is revoked must also give proof of an ability to respond in damages before the driving privilege is restored.<sup>19</sup>

### *Habitual Traffic Offender*

Chapter 655 makes it unlawful for any person whose driver's license has been suspended or revoked to accumulate a driving record history<sup>20</sup> resulting from driving during a period of suspension or revocation.<sup>21</sup> Furthermore, a person who is found guilty of this crime will be designated a habitual traffic offender.<sup>22</sup> Knowledge<sup>23</sup> by the person of the suspension or revocation is presumed when the Department has given notice<sup>24</sup> to the person of its actions.<sup>25</sup>

Within 30 days of receipt of a certified copy of a court record or accident report that designates a person as a habitual traffic offender, the Department is required to notify the district attorney having jurisdiction over the location of the last known address of the habitual traffic offender of this classification.<sup>26</sup> In turn, the district attorney's office must notify the Department, within 30 days of receiving the notice, of whether it will prosecute the person as a habitual traffic offender.<sup>27</sup>

The punishment for a first conviction of this offense is imprisonment

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volvement in an accident causing damage to property). *Compare id.* §13351(a)(2) with CAL. STATS. 1971, c. 1530, §8, at 3025.

16. *See* CAL. STATS. 1959, c. 3, §13351, at 1625 (enacting CAL. VEH. CODE §13351).

17. *See* CAL. VEH. CODE §13351(a)(1), (b).

18. *See id.* §13351(a)(2), (b).

19. *Compare id.* §13351(b) with CAL. STATS. 1971, c. 1530, §8, at 3025.

20. *See* CAL. VEH. CODE §14601.3(a) (definition of driving record history).

21. *See id.*

22. *Id.*

23. Courts have held in adjudications of similar provisions of other Vehicle Code sections that, despite the implied knowledge imposed by statute, *actual* knowledge that the acts are unlawful and that the driving privilege has been suspended or revoked is required before a person can be found guilty of violating the code section. *See In re Murdock*, 68 Cal. 2d 313, 315-17, 437 P.2d 764, 766-67, 66 Cal. Rptr. 380, 382-83 (1968).

24. CAL. VEH. CODE §22 (definition of method of notice).

25. *See id.* §14601.3(b). This presumption affects the burden of proof as to the knowledge of the revocation or suspension. *Id.* *See generally* CAL. EVID. CODE §606 (definition of a presumption on the burden of proof).

26. CAL. VEH. CODE §14601.3(c).

27. *Id.* §14601.3(d).

in the county jail for 30 days and a fine of \$500,<sup>28</sup> while the punishment for a second or subsequent conviction within seven years of a prior conviction under this section is imprisonment in the county jail for 80 days and a fine of \$1000.<sup>29</sup>

In summary, Chapter 655 increases the penalties imposed on persons who frequently violate traffic laws by extending the period that their drivers' licenses can be revoked after convictions of certain offenses.<sup>30</sup> Chapter 655 also provides criminal sanctions for convictions of traffic offenses that occurred while the person's driving privilege was suspended or revoked.<sup>31</sup>

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28. *Id.* §14601.3(e)(1).

29. *Id.* §14601.3(e)(2).

30. *See id.* §13351.

31. *See id.* §14601.3.

### **Transportation and Motor Vehicles; child passenger seat restraints**

Vehicle Code §§27360, 27361, 27362, 27363, 27364 (new); §27351 (amended).

SB 537 (Petris); STATS. 1982, Ch 839

Support: American Academy of Pediatrics; California Highway Patrol; Department of Finance; Department of Health Services; Health Officers Association of California

The purpose of Chapter 839 is to ensure that children who are helpless and dependent passengers have the safest transportation possible when riding in motor vehicles.<sup>1</sup> In an effort to reduce the number of deaths and serious injuries among children in automobile accidents,<sup>2</sup> Chapter 839 establishes express requirements for the use, sale and installation of federally approved<sup>3</sup> child passenger seat restraints.<sup>4</sup>

Chapter 839 renders it unlawful for any parent or legal guardian to fail to install and properly use seat restraints for any child or ward under the age of four or weighing less than forty pounds (hereinafter

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1. CAL. VEH. CODE §27364.

2. *See id.* §27351. *See generally id.* §27350 (establishes that the use of seat restraints is the most promising means for reducing the number of deaths and serious injuries among children in automobile accidents); *Greyhound Lines v. The Superior Court of Shasta County*, 3 Cal. App. 3d 356, 83 Cal. Rptr. 343 (1970); *Werber, A Multi-Disciplinary Approach to Seat Belt Issues*, 29 CLEV. ST. L. REV. 217 (1980).

3. CAL. VEH. CODE §27360(a) (requiring that seat restraint systems meet federal safety standards); *see* 49 C.F.R. §571.213 (establishing federal standards for child seat restraint systems).

4. *See* CAL. VEH. CODE §§27360-27362.

referred to as the specified child) in any motor vehicle weighing less than 6001 pounds unladen weight, registered in the state, and owned by the parent or guardian.<sup>5</sup> In addition, Chapter 839 provides that it is unlawful for a parent, guardian or any other person operating a motor vehicle not owned by the parents or legal guardians of the specified child, but registered in the state, to fail to use seat restraints or *available safety belts* for specified child passengers.<sup>6</sup> If the parent or guardian is present in the vehicle at the time of the violation but is not driving, the parent or guardian will incur responsibility.<sup>7</sup>

Chapter 839 also provides that a law enforcement officer may issue a notice to appear for a violation of the seat restraint requirements.<sup>8</sup> If the parent or guardian cited for a violation shows that the system has been obtained for the use of the specified child, Chapter 839 requires the dismissal of charges against the party.<sup>9</sup> The court, under Chapter 839, is authorized to use its discretion in determining whether to dismiss a second or subsequent charge.<sup>10</sup> If any party fails to make the requisite showing or fails to appear in court,<sup>11</sup> the party will be subject to standard statutory penalties.<sup>12</sup> Moreover, upon a determination that use of the seat restraint system would be impractical, the court may exempt from these requirements any class of child by age, weight or size.<sup>13</sup> Finally, Chapter 839 prohibits retailers from selling or installing restraint systems that do not conform to federal motor vehicle safety standards.<sup>14</sup>

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5. *Id.* §27360(a).

6. *Id.* §27360(b), (c).

7. *Id.* §27360(c).

8. *Id.* §27361. Compare *id.* §27351 with CAL. STATS. 1980, c. 1170, §1, at 3936 (enacting CAL. VEH. CODE §27351).

9. CAL. VEH. CODE §27360(a).

10. *Id.*

11. See generally *id.* §§40508(a) (providing that a violation of a promise to appear is a misdemeanor); 40515 (providing for the issuance of a warrant for arrest upon the violation of a promise to appear).

12. See generally *id.* §§42001 (setting forth the maximum fines for the conviction of an infraction); 42002 (setting forth the penalties for the conviction of a misdemeanor).

13. *Id.* §27363 (the court may demand a showing of adequate proof of impracticality).

14. *Id.* §27362.