Transportation and Motor Vehicles

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Transportation and Motor Vehicles; chemical sobriety tests

Vehicle Code § 13353 (amended).
AB 2488 (Stirling); STATS 1980, Ch 675

Support: California Highway Patrol; California Peace Officers' Association; Department of Motor Vehicles; Office of the Governor, Legal Affairs Unit

Under existing law any person who drives a motor vehicle on a highway 1 is deemed to have given consent to a blood, urine, or breath test for the purpose of determining the alcoholic content of his or her blood if that person is arrested for any offense allegedly committed while driving a motor vehicle under the influence of intoxicating liquor. 2 A refusal to take one of these tests results in the suspension of the individual's driving privileges for six months. 3 Prior to the enactment of Chapter 675, however, 4 the scope of this "implied consent" law was confined to public highways, 5 and a person arrested anywhere other than on a public highway could refuse to submit to one of the tests without suffering an automatic suspension of driving privileges. 6

In Serenko v. Bright, 7 the California Court of Appeal upheld the constitutionality of the implied consent law and stated that "the act of driving a motor vehicle upon a California highway . . . is the conduct from which the driver's implied consent to a chemical test . . . flows

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1. See CAL. VEH. CODE §360 (definition of highway).
3. See CAL. VEH. CODE §13353(a). But see id. §§13353(c) (allows an arrested person to challenge the proposed suspension), 13353(d) (exempts a person with hemophilia from taking a blood test), 13353(e) (exempts a person inflicted with a heart condition who is using an anticoagulant drug under the direction of a physician from taking a blood test).
4. See id. §13353.
Chapter 675 expands the scope of the implied consent law to include all highways and all areas open to the general public, but the Chapter does not provide any definition of an area open to the general public. Therefore, it is not clear where a person’s consent can be implied for purposes of a chemical sobriety test.

Chapter 675 makes an additional change by augmenting the responsibilities of an officer to include advising an arrested person of his or her rights under the implied consent law. Currently, when an officer has reasonable cause to believe that a person is driving under the influence of intoxicating liquor, the officer is required (1) to inform the person that refusal to take one of the tests will result in an automatic six-month suspension of the driving privilege and (2) to inform the person that he or she has no right to have an attorney present before or during the administration of the chemical test. Chapter 675 further requires the officer to inform the arrested person that refusal to submit to a chemical test may be used against that person in a court of law.

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8. Id. at 687, 70 Cal. Rptr. at 4 (emphasis added).
11. See id.
12. See id. §13353(a).
13. See id.
14. See id.