

Assembly Bill No. 520

CHAPTER 657

An act to amend Sections 12813, 13353.3, 13353.4, and 23575 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 520, Ammiano. Vehicles: reckless driving: suspension of licenses.

Existing law requires a person's driving privilege to be suspended upon conviction of specified driving-under-the-influence (DUI) offenses for one year. Existing law terminates the licensing suspension if certain conditions are met, including if the person is eligible to apply for a restricted license. Under existing law, a person who drives a vehicle upon a highway in willful or wanton disregard for the safety of a person or property is guilty of reckless driving. Existing law provides that, when a person is charged with, and pleads guilty or nolo contendere to, reckless driving in satisfaction of, or as a substitute for, an original charge for a DUI, and the court accepts the plea of guilty or nolo contendere, the conviction is a prior offense for purposes of specified laws relating to punishments imposed for DUI convictions.

This bill would terminate a driver's license suspension, and make the person eligible for a restricted driver's license, for a person convicted of reckless driving in satisfaction of, or substitute for, an original charge of driving-under-the-influence, if certain conditions are met, including that the person complete a 90-day suspension period and install an ignition interlock device. The bill would require the department to advise the person of the above conditions. The bill would require that the restricted driver's license privilege be subject to certain restrictions, including, among other things, that upon receipt of notification from the installer that a person has attempted to remove, bypass, or tamper with the ignition interlock device, the privilege to operate a motor vehicle shall immediately be suspended.

The bill would make other technical and conforming changes to these provisions.

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

SECTION 1. Section 12813 of the Vehicle Code is amended to read:

12813. (a) The department may, upon issuing a driver's license or after issuance whenever good cause appears, impose restrictions suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices required on, a motor vehicle which the licensee may operate

or impose other restrictions applicable to the licensee that the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue either a special restricted license or may set forth the restrictions upon the usual license form.

(c) The authority of the department to issue restricted licenses under this section is subject to Sections 12812, 13352, 13353.3, and 13352.5.

SEC. 2. Section 13353.3 of the Vehicle Code is amended to read:

13353.3. (a) An order of suspension of a person's privilege to operate a motor vehicle pursuant to Section 13353.2 shall become effective 30 days after the person is served with the notice pursuant to Section 13382 or 13388, or subdivision (b) of Section 13353.2.

(b) The period of suspension of a person's privilege to operate a motor vehicle under Section 13353.2 is as follows:

(1) If the person has not been convicted of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has not been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occurrence occurred within 10 years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for four months.

(2) (A) If the person has been convicted of one or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occasion occurred within 10 years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for one year, except as provided in subparagraphs (B) and (C).

(B) The one-year suspension pursuant to subparagraph (A) shall terminate if the person has been convicted of a violation arising out of the same occurrence and all of the following conditions are met:

(i) The person is eligible for a restricted driver's license pursuant to Section 13352.

(ii) The person installs an ignition interlock device as required in Section 13352 for that restricted driver's license.

(iii) The person complies with all other applicable conditions of Section 13352 for a restricted driver's license.

(C) The one-year suspension pursuant to subparagraph (A) shall terminate after completion of a 90-day suspension period, and the person shall be eligible for a restricted license if the person has been convicted of a violation of Section 23103, as specified in Section 23103.5, arising out of the same

occurrence, has no more than two prior alcohol-related convictions within 10 years, as specified pursuant to subparagraph (A), and all of the following conditions are met:

(i) The person satisfactorily provides, subsequent to the underlying violation date, proof satisfactory to the department of enrollment in a nine-month driving-under-the-influence program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code that consists of at least 60 hours of program activities, including education, group counseling, and individual interview sessions.

(ii) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in clause (i).

(iii) The person installs an ignition interlock device and submits the “Verification of Installation” form described in paragraph (2) of subdivision (h) of Section 13386.

(iv) The person agrees to maintain the ignition interlock device as required pursuant to subdivision (g) of Section 23575.

(v) The person provides proof of financial responsibility, as defined in Section 16430.

(vi) The person pays all license fees and any restriction fee required by the department.

(vii) The person pays to the department a fee sufficient to cover the costs of administration of this paragraph, as determined by the department.

(D) The department shall advise those persons that are eligible under subparagraph (C) that after completion of 90 days of the suspension period, the person may apply to the department for a restricted driver’s license, subject to the conditions set forth in subparagraph (C).

(E) The restricted driving privilege shall become effective when the department receives all of the documents and fees required under subparagraph (C) and remain in effect for at least the remaining period of the original suspension and until the person provides satisfactory proof to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. The restricted driving privilege shall be subject to the following conditions:

(i) If the driving privilege is restricted under this section, proof of financial responsibility, as described in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until the proof required pursuant to Section 16484 is received by the department.

(ii) For the purposes of this section, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given to a program activity completed prior to the date of the current violation.

(iii) The department shall terminate the restriction issued pursuant to this section and shall suspend the privilege to operate a motor vehicle pursuant to subparagraph (A) immediately upon receipt of notification from the

driving-under-the-influence program that the person has failed to comply with the program requirements. The privilege shall remain suspended until the final day of the original suspension imposed pursuant to subparagraph (A).

(iv) The department shall terminate the restriction issued pursuant to this section and shall immediately suspend the privilege to operate a motor vehicle pursuant to subparagraph (A) immediately upon receipt of notification from the installer that a person has attempted to remove, bypass, or tamper with the ignition interlock device, has removed the device prior to the termination date of the restriction, or fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to this section. The privilege shall remain suspended for the remaining period of the original suspension imposed pursuant to subparagraph (A).

(3) Notwithstanding any other law, if a person has been administratively determined to have been driving in violation of Section 23136 or to have refused chemical testing pursuant to Section 13353.1, the period of suspension shall not be for less than one year.

(c) If a person's privilege to operate a motor vehicle is suspended pursuant to Section 13353.2 and the person is convicted of a violation of Section 23152 or 23153, including, but not limited to, a violation described in Section 23620, arising out of the same occurrence, both the suspension under Section 13353.2 and the suspension or revocation under Section 13352 shall be imposed, except that the periods of suspension or revocation shall run concurrently, and the total period of suspension or revocation shall not exceed the longer of the two suspension or revocation periods.

(d) For the purposes of this section, a conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

(e) The holder of a commercial driver's license who was operating a commercial motor vehicle, as defined in Section 15210, at the time of a violation that resulted in a suspension or revocation of the person's noncommercial driving privilege is not eligible for the restricted driver's license authorized pursuant to this section.

SEC. 3. Section 13353.4 of the Vehicle Code is amended to read:

13353.4. (a) Except as provided in Section 13353.3, 13353.7, or 13353.8, the driving privilege shall not be restored, and a restricted or hardship permit to operate a motor vehicle shall not be issued, to a person during the suspension or revocation period specified in Section 13353, 13353.1, or 13353.3.

(b) The privilege to operate a motor vehicle shall not be restored after a suspension or revocation pursuant to Section 13352, 13353, 13353.1, or 13353.2 until all applicable fees, including the fees prescribed in Section

14905, have been paid and the person gives proof of financial responsibility, as defined in Section 16430, to the department.

SEC. 4. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) In addition to any other law, the court may require that a person convicted of a first offense violation of Section 23152 or 23153 install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court shall give heightened consideration to applying this sanction to a first offense violator with 0.15 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or to persons who refused the chemical tests at arrest. If the court orders the ignition interlock device restriction, the term shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(2) The court shall require a person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(b) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement and term for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

(c) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(d) A person whose driving privilege is restricted by the court pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. The installer shall notify the court if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with a requirement for the maintenance or calibration of the ignition interlock device. There is no obligation for the installer to notify the court if the person has complied with all of the requirements of this article.

(e) The court shall monitor the installation and maintenance of an ignition interlock device restriction ordered pursuant to subdivision (a) or (l). If a person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.

(f) (1) If a person is convicted of a violation of Section 23152 or 23153 and the offense occurred within 10 years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, or if a person is convicted of a violation of Section 23103, as specified in Section 23103.5, and is suspended for one year under Section 13353.3, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 or 13353.3 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 or 13353.3 are met.

(2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately terminate the restriction issued pursuant to Section 13352 or 13353.3 and shall immediately suspend or revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352 or 13353.3. The privilege shall remain suspended or revoked for the remaining period of the originating suspension or revocation and until all reinstatement requirements in Section 13352 or 13353.3 are met.

(g) A person whose driving privilege is restricted by the Department of Motor Vehicles pursuant to Section 13352 or 13353.3 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this section.

(h) Nothing in this section permits a person to drive without a valid driver's license.

(i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.

(j) Pursuant to this section, an out-of-state resident who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. An ignition interlock device is not required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(l) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for a person to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(m) For the purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.

(n) For the purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating a vehicle that is not owned by the person subject to this section.

(o) For the purposes of this section, "bypass" includes, but is not limited to, either of the following:

(1) A combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) An incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning off the vehicle's engine.