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Transportation and Motor Vehicles

Transportation and Motor Vehicles; alcohol breath tests

Vehicle Code §13353.5 (new).

SB 243 (Keene); 1983 STAT. Ch 841

(Effective September 15, 1983)

Support: California District Attorneys Association; California Highway Patrol; Department of Finance; Department of Motor Vehicles

Existing law provides that persons arrested for driving under the influence¹ must be given a blood, breath, or urine test² to determine their blood-alcohol content at the time of arrest.³ Case law has established that admitting the results of these tests into evidence is a denial of due process of law⁴ unless the results are accompanied by a sample of the original specimen, which can be used to determine the accuracy of the test.⁵ Not every breath testing device allows for the preservation of specimen samples.⁶ In an attempt to provide a constitutional procedure for administering the breath test without preserving a breath sample, the California Legislature has enacted Chapter 841.⁷

Under Chapter 841, persons arrested for driving under the influence must be advised that if they choose to take a breath test, a sample cannot be preserved.⁸ Should a person choose the breath test after being so informed, Chapter 841 provides that a blood or urine sample may also be taken.⁹ Consequently, if subsequent analysis is necessary, the results of

1. CAL. VEH. CODE §§23152(a) (driving under the influence of drugs or alcohol), 23153 (causing death or bodily injury while driving under the influence of drugs or alcohol); see also *Byrd v. Municipal Court of City and County of San Francisco*, 125 Cal. App. 3d 1054, 1058, 178 Cal. Rptr. 480, 482 (1981) (defining "under the influence").

2. See CAL. VEH. CODE §13354 (administration of chemical tests).

3. *Id.* §13353. Persons arrested for driving under the influence are permitted to select which test is to be administered. *Id.* §13353(a)(2).

4. Investigative agencies have a duty to preserve and disclose any material evidence on the issue of the guilt or innocence of the defendant that they have gathered, and failure to fulfill this duty constitutes a violation of due process. *People v. Hitch*, 12 Cal. 3d 641, 652-53, 527 P.2d 361, 369-70, 117 Cal. Rptr. 9, 17-18 (1974).

5. See *id.* at 653-54, 527 P.2d at 370, 117 Cal. Rptr. at 18 (breathalyzer test samples must be preserved); *People v. Trombetta*, 142 Cal. App. 3d 138, 144, ___ Cal. Rptr. ___ (1983) (intoxilyzer test samples must be preserved).

6. See 142 Cal. App. 3d at 141-42 (an excellent discussion of the various breath testing devices in current use and their differing technologies).

7. CAL. VEH. CODE §13353.5; see 1983 Cal. Stat. c. 841, §4, at ___.

8. CAL. VEH. CODE §13353.5(a). The person arrested must be advised either before or after the administration of the breath test. *Id.*

9. *Id.* §13353.5(b). The sample of blood or urine taken from a person given a breath test will be taken at no cost and will be preserved in the same manner as if the person

the breath test can be compared with the blood or urine sample. Finally, the person given the breath test must be advised that (1) any blood or urine sample that is taken may be tested at a later date by either party in any criminal proceeding, (2) neither party has a duty to conduct a subsequent analysis of the retained blood or urine, and (3) the failure to perform a subsequent analysis will in no way affect the admissibility of any previously established evidence concerning the blood-alcohol content of the person at the time of arrest.¹⁰

Comment

The law in California concerning the admissibility of breath test results as evidence is, at best, unclear.¹¹ The California Supreme Court, in the 1974 decision of *People v. Hitch*,¹² established the duty to preserve *breathalyzer* test samples, stating that captured evidence must be preserved and a failure to do so constitutes a denial of due process.¹³ The next year in *People v. Miller*,¹⁴ the First District Court of Appeal held that *Hitch* did not apply when the breath testing device was an *intoxilyzer*.¹⁵ *Miller* was overruled in 1983 by the First District Court of Appeal in *People v. Trombetta*.¹⁶ The *Trombetta* court reiterated the *Hitch* duty as applied to *intoxilyzer* test samples, and held that captured evidence, *or its equivalent*, must be preserved.¹⁷

Faced with these decisions, the California Legislature responded with Chapter 841.¹⁸ Under Chapter 841, law enforcement agencies apparently have no duty to retain the evidence gathered with a *breathalyzer*.¹⁹ Instead, these agencies are required only to inform the defendant that a sample cannot be preserved if the breath test is chosen.²⁰ In light of recent case law, however, Chapter 841 leaves many questions unanswered. No differentiation is made between the various breath testing devices,²¹ and thus, the fate of the right to a *breathalyzer* sample as established by *Hitch*, is un-

had chosen a blood or urine test initially. *Id.* See also CAL. ADMIN. CODE §1219.2(a), (d) (requiring that blood and urine specimens be preserved).

10. CAL. VEH. CODE §13353.5(c).

11. See *infra* notes 12-26 and accompanying text.

12. 12 Cal. 3d 641, 527 P.2d 361, 117 Cal. Rptr. 9 (1974).

13. *Id.* at 652-54, 527 P.2d at 369-70, 117 Cal. Rptr. at 17-18.

14. 52 Cal. App. 3d 666, 125 Cal. Rptr. 341 (1975).

15. *Id.* at 669-70, 125 Cal. Rptr. at 343. The court stated that *intoxilyzer* test samples are never in actual possession of law enforcement agencies and therefore need not be preserved. *Id.*

16. 142 Cal. App. 3d 138, ___ Cal. Rptr. ___ (1983).

17. *Id.* at 144-45, ___ Cal. Rptr. at ___.

18. 1983 Cal. Stat. c. 841, §4, at ___.

19. See CAL. VEH. CODE §13353.5.

20. *Id.* §13353.5(a).

21. See *id.* §13353.5.

clear.

Additionally, Chapter 841 does not address the issue of the constitutional right to a preserved sample.²² Chapter 841 appears to sanction the denial of a due process right by simply informing the arrested person that a sample cannot be preserved.²³ The concurring opinion in *Trombetta* states that a *knowing* waiver of the right to a preserved sample might be an acceptable solution.²⁴ Under Chapter 841, however, when given the choice of tests, the defendant is not told of the right to a preserved sample nor asked to waive this right.²⁵

22. *Id.*

23. *See id.* §13353.5(a).

24. 142 Cal. App. 3d at 145, ___ Cal. Rptr. at ___ (Christian, J., concurring). The Arizona Supreme Court has held that such a knowing waiver would be constitutional. *Baca v. Smith*, 604 P.2d 617, 618-20 (1979).

25. CAL. VEH. CODE §13353.5.

Transportation and Motor Vehicles; marijuana – penalties

Vehicle Code §§23222, 40000.15 (amended).

AB 373 (Bergeson); 1983 STAT. Ch 1005

Support: California Highway Patrol; California Peace Officers Association; Department of Finance

Under existing law, the possession of an open container¹ of any alcoholic beverage while driving a motor vehicle² upon a highway is an infraction.³ The Uniform Controlled Substances Act⁴ (hereinafter referred to as UCSA), provides that every person who possesses up to one ounce of marijuana is guilty of a misdemeanor.⁵ Chapter 1005 is an apparent attempt to aid law enforcement agencies in obtaining the suspension⁶ or revocation⁷ of the driving privileges of persons arrested for marijuana posses-

1. CAL. VEH. CODE §23222(a) (containers include bottles, cans, or other beverage receptacles which have been opened, or their seals broken, or the contents of which have been partially removed).

2. *Id.* §415 (definition of motor vehicle).

3. *Id.* §23222(a); *see id.* §40000.1 (violations of traffic laws are infractions unless otherwise specified).

4. CAL. HEALTH & SAFETY CODE §§11000-11853.

5. CAL. VEH. CODE §23222(b) (excluded from this prohibition is the possession of concentrated cannabis); *Id.* §40000.15 (specified traffic violations are punished as misdemeanors).

6. *Id.* §13102 (definition of suspension).

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

sion⁸ while driving a motor vehicle.⁹

Prior to the enactment of Chapter 1005, convictions for possession of marijuana under the UCSA¹⁰ did not result in the imposition of traffic violation points¹¹ on a driver's record.¹² Suspension or revocation of a convicted marijuana possessor's drivers license, therefore, could only occur by court order¹³ or pursuant to other specified provisions of the Vehicle Code.¹⁴ Chapter 1005 incorporates provisions of the UCSA pertaining to marijuana possession¹⁵ into the Vehicle Code.¹⁶ As a result, traffic violation points are now imposed on the driving records of violators of these provisions.¹⁷

Additionally, under Chapter 1005, possession of up to one ounce of marijuana while driving a motor vehicle upon a highway is punishable by a fine not exceeding \$100.¹⁸ Furthermore, any person convicted of this offense three times during the two year period immediately preceding the date that the violation charged was committed, must be diverted from the criminal process and referred for education, treatment, or rehabilitation.¹⁹

Existing law establishes procedures to be used for the proper disposition of specified traffic offenses.²⁰ Chapter 1005 supplements existing law

8. See *People v. Sotelo*, 13 Cal. App. 3d 9, 20, 95 Cal. Rptr. 486, 492 (1971); *People v. Toms*, 163 Cal. App. 2d 123, 128, 329 P.2d 90, 93 (1958) (definition of possession in cases involving unlawful possession of narcotics).

9. See Telephone conversation with Julie Froberg, Administrative Assistant to Assemblywoman Marian Bergeson (July 22, 1983) (notes on file at the *Pacific Law Journal*); Telephone conversation with Dave Stufflick, California Highway Patrol (July 22, 1983) (notes on file at the *Pacific Law Journal*) [hereinafter referred to as Telephone conversation, Stufflick].

10. See CAL. HEALTH & SAFETY CODE §11357(b).

11. See CAL. VEH. CODE §12810 (definition and determination of traffic violation points; specified totals of traffic violation points result in a prima facie presumption of negligent operation of a motor vehicle for which the Department of Motor Vehicles may refuse to issue or renew a person's drivers license).

12. See Telephone conversation, Stufflick, *supra* note 9.

13. CAL. VEH. CODE §13201 (the court has discretion to suspend a person's driving privileges upon conviction of certain misdemeanors); *id.* §13202 (the court has discretion to, and in some instances must, suspend or revoke a person's driving privileges upon conviction of specified narcotics offenses).

14. *Id.* §§11110 (conditions under which the Department of Motor Vehicles may cancel, revoke, or suspend licenses); *id.* §§12807, 12810 (pertaining to the Department of Motor Vehicle's mandate or discretionary right to refuse to issue or renew a driver's license under specified conditions).

15. CAL. HEALTH & SAFETY CODE §11357.

16. See CAL. VEH. CODE §23222(b) (incorporating 1982 Cal. Stat. c. 1287, §1, at ____ (amending CAL. HEALTH & SAFETY CODE §11357)).

17. See Telephone conversation, Stufflick, *supra* note 9; see also CAL. VEH. CODE §1803 (court records for specified violations, including California Vehicle Code Section 23222, must be reported to the Department of Motor Vehicles).

18. CAL. VEH. CODE §23222(b).

19. *Id.* A person diverted under this provision is not subject to a court hearing or a fine based on this offense. *Id.* see CAL. PENAL CODE §1000.1 (procedure and requirements for notification to defendant of eligibility for diversion program); §1000.2 (probation department diversion report, diversion hearing and consequences).

20. See CAL. VEH. CODE §§40302-40312 (procedural dispositions include (1) appearance before a magistrate, (2) release on 10-day notice to appear, (3) release on notice with promise to correct, and (4) release on simple notice to appear).

by providing that if a person arrested for violating these provisions does not demand to be taken before a magistrate, the person must be released upon the presentation of proper identification and a written promise to appear in court.²¹

21. *Id.* §23222(b). A person arrested under this marijuana possession provision is not subject to booking. *Id.*

Transportation and Motor Vehicles; license revocation for juveniles driving under the influence

Vehicle Code §§13352.2, 13352.3 (new); Welf. & Inst. Code §783 (new).
AB 624 (Moorhead); 1983 STAT. Ch 934
Support: American Academy of Pediatrics; California Highway Patrol; County of Los Angeles

In 1982, 4,808 minors under the age of eighteen were arrested for driving under the influence of drugs or alcohol¹ (hereinafter referred to as DUI). In this same year, 3,359 minors were involved in traffic accidents while DUI.² Prior to the enactment of Chapter 934, minors found DUI were subject to the same drivers license revocation penalties imposed upon adults.³ Under existing law, persons found DUI may have their drivers licenses suspended⁴ or revoked⁵ for a period of six months to five years, depending on the number of their prior DUI convictions.⁶

In an apparent response to the problem of minors found DUI, Chapter 934 requires the Department of Motor Vehicles (hereinafter referred to as the DMV) to revoke the driving privileges of minors convicted of DUI.⁷ In addition, Chapter 934 provides stricter penalties than those imposed upon adults by requiring revocation of the license of a minor found DUI.⁸ This revocation will be (1) for one year, (2) until the person reaches eighteen years of age, or (3) for the period stated in the DUI statute,⁹ whichever is greater.¹⁰ The minor must provide proof of an ability to respond in dam-

1. Letter from D. O. Helmick, Jr., Captain, Department of California Highway Patrol (August 19, 1983) (letter on file at the *Pacific Law Journal*).

2. *Id.*

3. CAL. VEH. CODE §13367.

4. *Id.* §13102 (definition of suspension).

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

6. *See id.* §13352 (degree of punishment depends on the number of prior convictions and the conditions of probation).

7. *Id.* §13352.3(a).

8. *Compare id. with id.* §13352.

9. *Id.* §13352(a) (establishes periods of revocation based on the number of prior convictions).

10. *Id.* §13352.3(b).

ages¹¹ before the license may be reinstated.¹²

Under existing law, out-of-state criminal convictions of DUI are treated the same as in-state convictions for purposes of license revocation or suspension.¹³ In addition, in-state juvenile court adjudications finding a minor in violation of the DUI statute are treated the same as criminal convictions for purposes of DUI penalties and sentence enhancements.¹⁴ Prior to the enactment of Chapter 934, out-of-state juvenile adjudications were not dealt with in the DUI penalty statute.¹⁵ Chapter 934 specifically states that *any* adjudication of a DUI violation by a juvenile court is a conviction for purposes of these license revocation provisions.¹⁶ Chapter 934 requires a juvenile court to report a DUI adjudication to the DMV within ten days of the ruling.¹⁷

11. *Id.* Ability to respond in damages is shown by giving proof of current insurance meeting the minimum liability requirements. *Id.* §16430.

12. *Id.* §13352.3(b).

13. *Id.* §13352(d).

14. *Id.* §13352(c).

15. See 1982 Cal. Stat. c. 53, §16, at ___ (amending CAL. VEH. CODE §13352); 1981 Cal. Stat. c. 940, §32, at 3577 (enacting CAL. VEH. CODE §23210).

16. CAL. VEH. CODE §13352.2.

17. CAL. WELF. & INST. CODE §783.

Transportation and Motor Vehicles; search and removal of vehicles

Vehicle Code §§2805, 22651, 25252.5 (amended).

SB 589 (Seymour); 1983 STAT. Ch 1017

Support: Department of Finance

Existing law allows members of the California Highway Patrol, city police departments, and county sheriff's offices who investigate vehicle thefts to inspect vehicles¹ found on a highway, in a public garage, or in other similar establishments² for the title or registration.³ Chapter 1017 expands the scope of this authority to search.⁴ Officers are now permitted to inspect *identifiable vehicle components*⁵ to establish rightful ownership

1. Only vehicles required to be registered under the Vehicle Code are subject to this section. CAL. VEH. CODE §2805(a).

2. The other establishments include repair shops, parking lots, new or used car lots, automobile dismantler's lots, vehicle shredding facilities, vehicle leasing or rental lots, vehicle equipment rental yards, and vehicle salvage pools. *Id.*

3. *Id.*

4. Compare *id.* §2805(a) with 1979 Cal. Stat. c. 252, §1, at 543 (amending CAL. VEH. CODE §2805).

5. An "identifiable vehicle component" means any component which can be distinguished from other similar components by a special number or other unique distinguishing number, sign, or symbol. *Id.*

or possession.⁶

Prior law allowed a peace officer to remove a vehicle from a highway right-of-way if the vehicle was left unattended for more than four hours.⁷ Chapter 1017 revises this provision to permit the removal of any vehicle that is *stopped, parked, or left standing* for more than four hours and that cannot be driven away by the driver, if present.⁸ Chapter 1017 additionally permits an officer to remove a vehicle from the highway if the driver is cited for reckless driving⁹ or driving without a license¹⁰ and no passenger in the car has a valid driver's license and authorization to drive the vehicle.¹¹ Finally, Chapter 1017 authorizes an officer to remove any vehicle found on a highway with an expired vehicle registration if the registration expired more than one year prior to the date the vehicle is found on the highway.¹²

6. *Id.*

7. 1982 Cal. Stat. c. 344, §1, at 2374 (amending CAL. VEH. CODE §22651).

8. CAL. VEH. CODE §22651(f).

9. *Id.* §§14601, 14601.1, 14601.2 (reckless driving statutes).

10. *Id.* §12500.

11. *Id.* §22651(p). Any automobile removed pursuant to this subsection shall be returned to the owner only upon the presentation of a valid driver's license or court order. *Id.*

12. *Id.* §22651(o). Any vehicle removed pursuant to this subsection shall be returned to the owner only upon presentation of a current vehicle registration. *Id.* The agency storing the vehicle may issue, in its discretion, a notice to appear for the registration violation. *Id.*

Transportation and Motor Vehicles; excessive speed

Vehicle Code §§13200.5, 13355, 42000.1 (new); §22348 (amended).

AB 370 (Wright); 1983 STAT. Ch 980

Support: Attorney General; California Highway Patrol; California Peace Officers Association; Peace Officers Research Association of California

Existing law establishes a fifty-five mile per hour speed limit¹ on California highways² and specifies penalties for the violation of this speed limit.³ Under Chapter 980, driving a vehicle⁴ upon a highway at a speed

1. CAL. VEH. CODE §22348(a).

2. *Id.* §360 (definition of highway).

3. *Id.* §§13200 (suspension of license for speeding or reckless driving), 42001 (fines for infractions and special misdemeanors). For a first violation of the speed law, the penalty normally is a fine not exceeding \$50. *Id.* §42001(a).

4. *Id.* §670 (definition of vehicle).

greater than 100 miles per hour is an infraction.⁵ Persons convicted⁶ of driving over 100 miles per hour will pay a fine of up to \$500,⁷ and may have their driving privileges⁸ suspended⁹ for a period not exceeding thirty days.¹⁰ Furthermore, Chapter 980 provides that a subsequent conviction within three years¹¹ will result in another fine not exceeding \$500.¹² Driving privileges also must be suspended¹³ or restricted to necessary, job-related travel for six months.¹⁴ Upon a third conviction within a five year period, the offender is subject to a fine of not more than \$500.¹⁵ Again, driving privileges must be suspended¹⁶ or restricted to necessary, job-related travel, this time for one year.¹⁷

5. *Id.* §22348(b); *see* CAL. PENAL CODE §16 (crimes and public offenses include infractions). An infraction is not punishable by imprisonment. *Id.* §19(c). Persons charged with infractions are not entitled to a trial by jury, nor are they entitled to have a public defender or other counsel appointed at public expense to represent them, unless they are arrested and not released on their written promise to appear, their own recognizance, or after a deposit of bail. *Id.*

6. *See* CAL. VEH. CODE §13103 (definition of conviction).

7. *Id.* §§22348(b)(1), 42000.1.

8. A drivers license merely grants a privilege to drive a motor vehicle, subject to revocation for reasons, and in a manner provided by law. *Sleeper v. Woodmansee*, 11 Cal. App. 2d 595, 599, 54 P.2d 519, 521 (1936).

9. *See* CAL. VEH. CODE §§13102 (definition of suspension), 13200-13209 (suspension or revocation by court), 13361 (grounds for suspension and revocation by the Department of Motor Vehicles).

10. *Id.* §§13200.5, 22348(b)(1).

11. Notification of conviction may come from the record of any court, or the report of a judge of a juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court. *Id.* §13355.

12. *Id.* §§22348(b)(2), 42000.1.

13. *Id.* §§13355(a), 22348(b)(2).

14. *Id.* §13355(a). Travel is restricted to necessary travel to and from the person's place of employment, and driving within the person's scope of employment that is essential to the performance of the person's job. *Id.*

15. *Id.* §§22348(b)(3), 42000.1.

16. *Id.* §§13355(b), 22348(b)(3).

17. *Id.* §13355(b).

Transportation and Motor Vehicles; engaging in speed contests

Vehicle Code §§ 13352, 23109 (amended), 23109.5 (new).

AB 369 (Wright); 1983 STAT. Ch 935

Support: California Highway Patrol; City of Los Angeles

SB 319 (Roberti); 1983 STAT. Ch 953

Existing law prohibits persons from engaging in or aiding and abetting a motor vehicle speed contest.¹ Prior to the enactment of Chapter 935, violators of these provisions were subject to a fine of up to \$250, imprison-

1. CAL. VEH. CODE §23109; *see id.* §23109(a) (definition of motor vehicle speed contest).

ment in the county jail for up to ninety days, or both.² Chapter 935 increases the maximum penalty for engaging in unlawful speed contests by requiring imprisonment in the county jail for at least twenty-four hours, but not more than ninety days, and by requiring a fine of not less than \$355 or more than \$500, or both a fine and imprisonment.³

Under Chapter 935, a person convicted of violating the speed contest provisions more than once within a five year period *must* pay a fine of not less than \$500 or more than \$1000, and *must* be imprisoned for a time period of not less than four days or more than six months.⁴ Furthermore, if a person is convicted of a second speed contest violation within five years, the Department of Motor Vehicles⁵ must either suspend the person's privilege to operate a motor vehicle for not less than ninety days or more than six months, or restrict the person's privilege to operate a motor vehicle to necessary travel for six months.⁶ Finally, if a person is convicted of a speed contest, and the person is the registered owner⁷ of the vehicle used in the contest, Chapter 935 permits impoundment of the vehicle at the owner's expense for not less than one day or more than thirty days.⁸

2. 1959 Cal. Stat. c. 3, §1, at 1709 (enacting CAL. VEH. CODE § 23109(f)).

3. Compare CAL. VEH. CODE §23109(e) with 1959 Cal. Stat. c. 3, §1, at 1709 (enacting CAL. VEH. CODE §23109(i)). Persons who aid or abet a speed contest are punished according to provisions of existing law. CAL. VEH. CODE §23109(f).

4. CAL. VEH. CODE §23109(f). Although the court may grant probation in suitable cases, as a condition of probation the person must be confined in the county jail for not less than 48 hours or more than 6 months. *Id.* §23109(g).

5. *Id.* §290 (definition of Department of Motor Vehicles).

6. *Id.* §23109(f). Necessary travel is defined as travel to and from the person's place of employment and, if driving a motor vehicle is necessary to perform the duties of employment, driving within the scope of employment. *Id.* If a person's privilege to operate a motor vehicle is restricted, the restriction and dates of the restriction must be marked on the person's driver's license. *Id.* §23109(j).

7. *Id.* §505 (definition of registered owner).

8. *Id.* §23109(h).

Transportation and Motor Vehicles; bicycles

Vehicle Code §§231, 21200 (amended).

SB §131 (Deddeh); 1983 STAT. Ch 273

Support: California Highway Patrol

Under existing law, bicycles¹ are excluded from the definition of vehi-

1. Cal. Veh. Code §231 (definition of bicycle). Chapter 273 expands the existing definition of bicycles to include a device upon which any person may ride, propelled exclusively by human power through a belt, chain or gears, having *one* or more wheels, thus including unicycles. Compare *Id.* with 1978 c. 421, §1, at 1320 (enacting Cal. Veh. Code §231).

cles² for purposes of the Vehicle Code.³ Prior to the enactment of Chapter 273, however, persons riding bicycles on roadways⁴ or paved shoulders were subject to specified provisions of the Vehicle Code relating to accidents and accident reports,⁵ rules of the road,⁶ offenses and prosecutions,⁷ and driving under the influence of liquor or drugs.⁸ Chapter 273 expands the application of these provisions to every person riding a bicycle upon any highway.⁹ Finally, Chapter 273 requires persons riding bicycles to satisfy additional provisions of existing law relating to (1) registration and licensing,¹⁰ (2) penalties,¹¹ (3) disposition of fees,¹² and (4) forfeitures.¹³

2. CAL. VEH. CODE §670 (definition of vehicle). A vehicle is a device *not* moved exclusively by human power. *Id.*

3. *Id.*

4. *Id.* §530 (definition of roadway).

5. *Id.* §§20000-20016.

6. *Id.* §§21000-23343.

7. *Id.* §§40000-41603.

8. 1982 Cal. Stat. c. 6, §1, at 74 (amending CAL. VEH. CODE §21200); *see* CAL. VEH. CODE §§23151-229.

9. *Compare id.* §21200(a) with 1982 Cal. Stat. c. 6, §1, at 74 (amending CAL. VEH. CODE §21200). A highway is a way or place of whatever nature, including a street, publicly maintained and open to the use of the public for purposes of vehicular travel. CAL. VEH. CODE §360. The provisions applied to bicycles by Chapter 273 do not include those which, by their very nature, cannot be applied to bicycles. *Id.* §21200(a).

10. CAL. VEH. CODE §21200(a); *see id.* §§39000-39013 (registration and licensing of bicycles).

11. *Id.* §§21200(a), 42000-42276 (penalties and disposition of fees, fines, and forfeitures).

12. *Id.*

13. *Id.*

Transportation and Motor Vehicles; past due license fees

Revenue and Taxation Code §§10858, 10876, 10877 (amended); Vehicle Code §§5301, 8005, 8164 (new); §§4751, 5204, 5301, 5304, 8005, 9259, 9562, 9800, 9801, 9802 (amended); §§5301, 8005 (repealed).

AB 23 (Mountjoy); 1983 STAT. Ch 759

Support: Department of Motor Vehicles; Department of Finance; Independent Automobile Dealers of California

SB 552 (Deddeh); 1983 STAT. Ch 986

Chapter 759 is an apparent attempt to eliminate the problem faced by used car buyers and dealers who become responsible for unpaid registration fees owed by a prior owner of a vehicle.¹ In addition, Chapter 759 establishes new procedures governing the seizure and sale of automobiles

1. *See* CAL. REV. & TAX. CODE §10858, CAL. VEH. CODE §9562.

for the purpose of satisfying past due fees.²

Waiver of Registration Fees

Under existing law, when a new owner of a vehicle applies for a transfer of vehicle registration,³ the Department of Motor Vehicles (hereinafter referred to as the DMV) is authorized to waive license and registration fees that were due before the new owner took possession.⁴ This waiver is contingent upon a finding by the DMV that the new owner was unaware of the past due fees.⁵ Prior law permitted a waiver of registration fees and fines for past years only after the fees for the current year were paid.⁶ Chapter 759 authorizes the DMV to waive *all* unpaid registration fees and fines for *any* year, provided (1) the new owner is unaware of the past unpaid fees,⁷ (2) the license plate assigned to the vehicle displays a validating device for the requested year of waiver,⁸ and (3) the new owner presents a registration card indicating the vehicle is registered for the year shown on the validating device.⁹

Liens for Nonpayment of Fees

Under existing law, nonpayment of past due vehicle license and registration fees constitutes a lien¹⁰ on the vehicle for which the payment is due.¹¹ With the enactment of Chapters 759 and 986,¹² this lien may be imposed upon *other* vehicles owned by the lienee.¹³ In addition, the DMV may refuse to register, renew, or transfer the registration of any vehicle owned by the lienee until the fees are paid.¹⁴

Existing law provides that past due fees can be collected through the seizure and sale of the liened vehicle.¹⁵ Chapter 759 authorizes the seizure

2. Compare CAL. REV. & TAX. CODE §10877 with 1963 Cal. Stat. c. 1863, §6, at 3847 (amending CAL. REV. & TAX. CODE §10877); and compare CAL. VEH. CODE §9801 with 1982 Cal. Stat. c. 664, §8 at ___ (adding CAL. VEH. CODE §9801).

3. See CAL. VEH. CODE §§4150-4153 (vehicle registration procedures).

4. CAL. REV. & TAX. CODE §10858(a); CAL. VEH. CODE §9562(a).

5. CAL. REV. & TAX. CODE §10858(a); CAL. VEH. CODE §9562(a).

6. 1976 Cal. Stat. c. 935, §1, at 2141 (amending CAL. REV. & TAX. CODE §10858(c)); *id.* c. 935, §6, at 2142 (amending CAL. VEH. CODE §9562(c)).

7. CAL. REV. & TAX. CODE §10858(c); CAL. VEH. CODE §9562(c).

8. CAL. REV. & TAX. CODE §10858(c)(1); CAL. VEH. CODE §9562(c)(i).

9. CAL. REV. & TAX. CODE §10858(c)(2); CAL. VEH. CODE §9562(c)(2).

10. See CAL. VEH. CODE 9800(a)(1)-(5) (liens imposed for nonpayment of registration, transfer or license fees, use taxes, or bail for driving offenses).

11. CAL. REV. & TAX. CODE §10876, CAL. VEH. CODE §9800(a).

12. Chapter 986 enacts other changes relating to fleet vehicles. See 1983 Cal. Stat. c. 986, §§1, 1.5, 2, 2.5, 3, 4.7, at ___ (amending CAL. VEH. CODE §§5204, 5301, 5304, 80005, 9259, and adding §1864).

13. Compare CAL. REV. & TAX. CODE §10876 with 1941 Cal. Stat. c. 40, §1, at 607 (enacting CAL. REV. & TAX. CODE §10876); CAL. VEH. CODE §9800(a) with 1982 Cal. Stat. c. 664, §8, at (enacting CAL. VEH. CODE §9800).

14. CAL. VEH. CODE §4751(f).

15. CAL. REV. & TAX. CODE §10877; CAL. VEH. CODE §9801(a).

and sale of *any* vehicle owned by the lienee,¹⁶ and the institution of any other appropriate civil action to satisfy the past due fees.¹⁷ Under existing law, notice of an intent to seize a liened vehicle must be given at least ten days before the seizure.¹⁸ The DMV may seize the vehicle without prior notice, however, if reasonable cause exists to believe that the lien may be jeopardized.¹⁹ When this reasonable cause to seize existed under prior law, the owner and any other security interest holder of the vehicle were to receive immediate notice.²⁰ In contrast, Chapter 759 mandates that the notice be given within forty-eight hours *after* the seizure, excluding Saturdays, Sundays, and holidays.²¹

16. CAL. REV. & TAX. CODE §10877; CAL. VEH. CODE §9801(a).

17. CAL. REV. & TAX. CODE §10877. CAL. VEH. CODE §9801(a). Upon the sale of the vehicle the DMV may collect the amount of the lien, plus costs not exceeding \$250; CAL. VEH. CODE §9801(a).

18. CAL. VEH. CODE §9801(b).

19. *Id.* §9801(f).

20. 1982 Cal. Stat. c. 664, §8, at ____ (amending CAL. VEH. CODE §9801).

21. Compare CAL. VEH. CODE §9801(f) with 1982 Cal. Stat. c. 664, §8, at ____ (amending CAL. VEH. CODE §9801).

Transportation and Motor Vehicles; consolidated disposition

Vehicle Code §41610 (new).

SB 1266 (Petris); 1983 STAT. Ch 989

Support: Attorney General; California Highway Patrol; Department of Motor Vehicles; Los Angeles Municipal Court Judges

Chapter 989 allows persons who are in custody to consolidate the disposition of Vehicle Code violations filed against them in different judicial districts¹ within the same county.² Specifically, individuals in custody who plead guilty to an infraction³ or misdemeanor⁴ under the Vehicle Code may also plead guilty in the same court to any other violation of the Vehicle Code, or to a violation of specified local ordinances⁵ for which an arrest warrant has been issued.⁶ Consolidation of guilty pleas is not permitted, however, for offenses involving parking violations, driving under the influence of alcohol or drugs,⁷ driving with a suspended or revoked li-

1. See CAL. ELEC. CODE §30 (definition of a judicial district).

2. CAL. VEH. CODE §41610(a).

3. *Id.* §40000.1 (definition of infraction).

4. *Id.* §40000.5-40000.28 (definition of misdemeanor).

5. The local ordinance must have been adopted pursuant to the Vehicle Code. *Id.* §41610(a).

6. *Id.* The court must have a record of the violation. *Id.*

7. See *id.* §§23152, 23153.

cense,⁸ reckless driving,⁹ failing to stop when property is damaged by a vehicle,¹⁰ or violating the habitual traffic offender statute.¹¹

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8. *See id.* §§14601(a), 14601.1(a), 14601.2.
 9. *See id.* §§23103, 23104.
 10. *Id.* §20002.
 11. *Id.* §§14601.3, 41610(b).

Transportation and Motor Vehicles; traffic adjudications

Vehicle Code §§40658.5, 40701.5, 40760, 40761, 40762 (new); §§40653, 40656, 40658, 40666, 40691, 40702, 40750, 40750.5, 40752 (amended).

SB 527 (Petris); 1983 STAT. Ch 1016

Support: California Department of Finance; California Highway Patrol; Traffic Adjudication Board

The Traffic Adjudication Board¹ (hereinafter referred to as the Board) was established as a demonstration program to determine the feasibility of administrative adjudication of traffic safety violations.² This pilot program was to last only until July 1, 1984.³ In an effort to ensure an expeditious transition from administrative to court adjudication without imposing unnecessary operational and fiscal burdens on the courts, Chapter 1016 extends the program until July 1, 1985.⁴ The one year extension is applicable only to Sacramento and Yolo Counties.⁵ Although the Board will not adjudicate notices to appear or notices of violations issued after December 31, 1984,⁶ all driving privilege suspensions⁷ and revocations⁸ imposed by the Board before July 1, 1985, will remain in effect.⁹

Under Chapter 1016, regardless of the disposition of charges specified

1. *See* CAL. VEH. CODE §§40658 (configuration of Traffic Adjudication Board), 40666 (duties and powers of the Board). Under prior law, the Board chose an executive director. With the enactment of Chapter 1016, the Board now is under the Business, Transportation, and Housing Agency, and the director is appointed by, and serves at the pleasure of, the Governor. *Id.* §40658.

2. *Id.* §§40650, 40652(m) (definition of traffic safety violation). *See Review of Selected 1978 California Legislation* 10 PAC. L.J. 536 (1979). The program was established in Sacramento, Yolo, and Placer Counties. CAL. VEH. CODE §40750.

3. 1978 Cal. Stat. c. 722, §3, at 2254 (enacting CAL. VEH. CODE §40750.5).

4. CAL. VEH. CODE §40760. Terms of the current board members expire on July 1, 1984. Under Chapter 1016, the Governor must appoint new members, whose terms will expire on July 1, 1985. *Id.* §40658. Chapter 1016 requires that a final report of the demonstration project be prepared by an independent consultant and be submitted to the Governor and the legislature on January 1, 1984. *Id.* §40752.

5. *Id.* §40750.

6. CAL. VEH. CODE §40762(a). Citations unresolved by July 1, 1985, will be transferred to the jurisdiction of the courts. *Id.* §40760.

7. *Id.* §13102 (definition of suspension).

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

9. *Id.* §40761. The municipal court for the district in which the underlying citation

in the notice, persons who willfully violate a lawfully granted continuance of the promise to appear before the Board, or more than one written promise to appear, are guilty of a misdemeanor.¹⁰ A person with an outstanding failure to appear,¹¹ who then willfully fails to appear on a subsequent notice to appear, may be subject to arrest.¹²

Under existing law, persons receiving a notice to appear for traffic safety violations may answer by mail or by personal appearance at a traffic adjudication office.¹³ One of the statutorily specified ways¹⁴ in which a person may answer a violation is a denial with waiver of a full hearing.¹⁵ Under Chapter 1016, however, this answer option is not available to any person who (1) has been cited by a notice of violation, or (2) has answered a notice to appear by a denial with waiver within the three years immediately preceding the violation date shown on the notice to appear.¹⁶ An answer by a denial with waiver is not available to any person ninety days after the citation issuance date.¹⁷

was issued has jurisdiction to determine whether the cited person has complied with all applicable orders of the Board or hearing officer. *Id.*

10. *Id.* §40701.5(a); CAL. PENAL CODE §17(a) (definition of misdemeanor).

11. CAL. VEH. CODE §40701.5(b).

12. *Id.* §40701.5(c). The Board must deliver a copy of the notice to appear, and an affidavit explaining the circumstances, to the magistrate in the county in which the notice to appear was issued. *Id.* §40701.5(b).

13. *Id.* §§40691(a), 40652(l) (definition of traffic adjudication office).

14. Answer options available for persons alleged to have committed traffic safety violations include (1) admission, (2) admission with explanation, (3) denial, (4) denial with waiver of full hearing, and (5) no contest. *Id.* §40691(b).

15. *Id.* §40691(b)(4).

16. *Id.* §40691(c).

17. *Id.*