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AB-1829 Vessels: operation under the influence of alcohol or drugs: chemical testing. (2015-2016)

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Assembly Bill No. 1829

CHAPTER 68

An act to amend Section 655.1 of the Harbors and Navigation Code, relating to vessels.

[Approved by Governor July 22, 2016. Filed with Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1829, Levine. Vessels: operation under the influence of alcohol or drugs: chemical testing.

Existing law makes it unlawful for any person to operate a vessel or water-related device while under the influence of an alcoholic beverage or any drug, or both. Existing law directs the administration of a chemical test that is used to analyze an individual's breath, blood, or urine for evidence of drug or alcohol use when the individual is arrested for these actions. Existing law requires the arrested individual to be informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in court and that the court, upon convicting the arrested individual, may impose increased penalties for his or her refusal or failure.

This bill would instead require the arrested individual to be advised that a criminal complaint may be filed against him or her for operating a vessel or water-related device while under the influence of an alcoholic beverage or any drug, or both; that he or she has a right to refuse chemical testing; and that the officer has the authority to seek a search warrant compelling him or her to submit a blood sample. By imposing new duties on local peace officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 655.1 of the Harbors and Navigation Code is amended to read:

655.1. (a) As used in this section, "mechanically propelled vessel" means any vessel actively propelled by machinery, whether or not the machinery is the principal source of propulsion.

(b) (1) A peace officer, having reasonable cause to believe that any person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, who lawfully arrests the person for any violation of subdivision (b), (c),

(d), (e), or (f) of Section 655, may request that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood.

(2) The arrested person shall be advised of all of the following:

(A) A criminal complaint may be filed against him or her for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug.

(B) He or she has a right to refuse chemical testing.

(C) An officer has the authority to seek a search warrant compelling the arrested person to submit a blood sample as described in paragraph (16) of subdivision (a) of Section 1524 of the Penal Code.

(D) He or she does not have the right to have an attorney present before stating whether he or she will submit to the chemical testing, before deciding which chemical test or tests to take, or during the administration of the chemical test or tests chosen.

(c) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage and submits to the chemical testing, the person has the choice of whether the chemical test shall be of his or her blood or breath and the person shall be advised by the arresting officer that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then subdivision (n) applies.

(d) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug or the combined influence of an alcoholic beverage and any drug and submits to the chemical testing, the person has the choice of whether the chemical test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(e) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the arresting officer has reasonable cause to believe that the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug, or the combined influence of an alcoholic beverage and any drug, and if the arresting officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The arresting officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person shall have the choice of submitting to and completing a blood or urine test, and shall be advised by the arresting officer that he or she is requested to submit to an additional test, and that he or she may choose a test of either blood or urine. If the person arrested is either incapable, or states that he or she is incapable, of completing either chosen chemical test, the person shall submit to and complete the other remaining chemical test.

(f) (1) A person who chooses to submit to a breath test shall be advised before or after the breath test that the breath-testing equipment does not retain any sample of the breath, and that no breath sample will be available after the breath test which could be analyzed later by the person or any other person.

(2) The person shall also be advised that, because no breath sample is retained, the person will be given an opportunity to provide a blood or urine sample that will be retained at no cost to the person so that there will be something retained that may be subsequently analyzed for the alcoholic content of the person's blood. If the person completes a breath test and wishes to provide a blood or urine sample to be retained, the sample shall be collected and retained in the same manner as if the person had chosen a blood or urine test initially.

(3) The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution. The failure of either party to perform this chemical test shall place no duty upon the opposing party to perform the chemical test nor affect the admissibility of any other evidence of the drug or alcoholic content of the blood of the person arrested.

(g) If the person is lawfully arrested for any offense allegedly committed in violation of subdivision (b), (c), (d), (e), or (f) of Section 655, and because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular chemical test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of submitting to those chemical tests which are available at the facility to which that person has been transported. In this event, the arresting officer shall advise the person of those chemical tests which are available at the medical facility, and that the person's choice is limited to those chemical tests which are available.

(h) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal may be subjected to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood, whether or not the person is advised of the information specified in paragraph (2) of subdivision (b).

(i) Any person who is afflicted with hemophilia is exempt from the blood test provided for in this section.

(j) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test provided for in this section.

(k) A person lawfully arrested for any offense allegedly committed while the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 may request the arresting officer to have a chemical test made of his or her blood or breath for the purpose of determining the drug or alcoholic content of the blood and, if so requested, the arresting officer shall have the chemical test performed. However, if a blood or breath test, or both, are unavailable, then subdivision (n) applies.

(l) Any chemical test of blood, breath, or urine to determine the percentage, by weight, of alcohol in the blood shall be performed in accordance with Section 23158 of the Vehicle Code.

(m) Nothing in this section limits the authority of a peace officer to gather evidence from a person lawfully arrested for a violation of subdivision (b), (c), (d), (e), or (f) of Section 655.

(n) If a blood or breath test is not available under paragraph (1) of subdivision (c) or under subdivision (k), the person shall submit to the remaining test in order to determine the percentage, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.