

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 1046(Hill) – As Amended June 8, 2016

**SENATE VOTE:** 39-0

*NOTE: This bill is double-referred and is scheduled to be heard in the Assembly Committee on Transportation on Monday, June 27, 2016.*

**SUBJECT:** Driving under the influence: ignition interlock device

**SUMMARY:** This bill requires a driving under the influence (DUI) offender to install an ignition interlock device (IID) on his or her vehicle for a specified period of time in order to get a restricted license or to reinstate his or her license and to remove the required suspension time before a person can get a restricted license.

**EXISTING LAW:**

- 1) Makes it unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. (Vehicle Code (VEH) § 23152(a))
- 2) Makes it unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (VEH § 23152(b))
- 3) Establishes the Department of Motor Vehicles' (DMV's) administrative penalties and sanctions for a person convicted of a DUI. (VEH §§ 13350-13392)
- 4) Provides that a person convicted of a first-time DUI may apply for a restricted license for driving to and from work and to and from a driver-under-influence program if specified requirements are met, paying all applicable fees, submitting proof of insurance and proof of participation in a program. (Vehicle Code § 13352.4)
- 5) Authorizes the DMV to reinstate the license of a second or subsequent DUI offender earlier if the offender agrees to install an IID along with the offender's enrollment in the required program, proof of insurance, and payment of specified fees. (Vehicle Code § 13352)
- 6) Creates an IID pilot project in Alameda, Los Angeles, Sacramento and Tulare Counties requiring a person convicted of a DUI to install an IID for five months upon a first offense, 12 months for a second offense, 24 months for a third offense and for 36 months for a fourth or subsequent offense. (Vehicle Code § 23700)
- 7) Establishes the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (BEARHFTI) under the supervision and control of the Director of Consumer Affairs and requires the director to administer and enforce the Electronic the Appliance Repair Dealer Registration Law. (Business & Professions Code (BPC) §§ 9800 – 9874)
- 8) Authorizes a registered service dealer to install, calibrate, service, maintain, and monitor IIDs. (BPC § 9807)

- 9) Authorizes the director to deny, suspend, revoke, or place on probation the registration of an electronic and appliance repair service dealer for violations of the Appliance Repair Dealer Registration Law, including fraud, dishonest dealing, and untrue or misleading statements. (BPC §§ 9830 – 9833)
- 10) Establishes the Bureau of Automotive Repair (BAR) under the supervision and control of the Director of Consumer Affairs and requires the director to administer and enforce the Automotive Repair Act, which provides for the registration and regulation of automotive repair dealers (ARDs). (BPC §§ 9880 – 9889.68)
- 11) Requires the BAR to cooperate with the Office of Traffic Safety to adopt standards for installation, maintenance, and servicing of IIDs by ARDs. (BPC § 9882.14)
- 12) Authorizes ARDs to install, maintain, and service an IID. (Title 16 California Code of Regulations §§ 3363.1 – 3363.4)
- 13) Authorizes the director to deny, suspend, revoke, or place on probation the registration of an ARD for violations of the Automotive Repair Act, including dishonesty, fraud, or deceit. (BPC §§ 9889.1 – 9889.10)

**THIS BILL:**

- 1) Extends the existing pilot project until July 1, 2017.
- 2) Provides that beginning July 1, 2017 all DUI offenders will be required to install an IID for a specified period of time in order to have their license reinstated, as specified.
- 3) Removes the time a person must have a suspended license before he or she is able to apply for a restricted license if he or she installs an IID.
- 4) Allows a court to order a person convicted of a “wet reckless” to install an IID on his or her car.
- 5) Requires the DMV to issue a report to the Legislature by June 1, 2021, regarding the implementation and efficacy of the requirements under this bill.
- 6) Requires IID manufacturers to adopt a fee schedule under which the manufacturer will absorb a varying amount of an offender’s cost for the IID based on the offender’s income relative to the federal poverty level.
- 7) Clarifies that the BAR and BEARFHTI may bring an administrative action against an ARD or registered service dealer for failing to adhere to the fee schedule.
- 8) Makes other conforming changes.

**FISCAL EFFECT:** According to the Senate Appropriation Committee:

- 1) IID program automation: Significant one-time programming costs in excess of \$500,000 for DMV to update programs. Costs are estimated to be covered by the authority of the DMV to charge a fee for administration of the program.

- 2) DMV field offices: Potential increase in annual costs of \$700,000 to \$750,000 for additional transaction time required in field offices to verify IID installation for applications for restricted driver licenses. Costs are estimated to be covered by the authority of the DMV to charge a fee for administration of the program.
- 3) DMV headquarters: Ongoing increase in workload costs of \$400,000 to \$450,000 resulting from processing proof of IID installation forms and reinstatements requiring manual review and processing. One-time costs for the development of regulations, changes to existing forms, and preparation/distribution of notifications. Costs are estimated to be covered by the authority of the DMV to charge a fee for administration of the program.
- 4) Legislative report: One-time costs of \$500,000 for the DMV to research, develop, and submit the report on the IID program.
- 5) IID vendor oversight: Unknown, but potentially significant ongoing costs for enforcement to the Bureau of Electronic Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs to the extent a significant number of violations materialize resulting from substantive complaints as a result of this bill.
- 6) DUI violations: Unknown, potential future impact on the number of DUI arrests and convictions that would result in related impacts to the costs incurred by the courts, treatment programs, law enforcement, local jails, and state prisons.

#### COMMENTS:

**Purpose.** This bill is sponsored by the author and Mothers Against Drunk Driving (MADD). According to the author, “In California, each year about 1,000 people die from drunk drivers and more than 20,000 are injured.... Over the last five years ignition interlock devices have prevented drinking and driving over one million times in California. Let me state that again: California’s ignition interlock program for DUI offenders has prevented someone from drinking and driving over 1 million times during the last five years. This bill expands the program statewide so all Californians can benefit from safer roadways.”

**Background.** This bill requires any person convicted of a DUI to install an IID on all the cars he or she owns for a specified period of time. As proposed by this bill, a person convicted of a first offense has a six month suspension and the IID must be installed for six months. A person with a second offense has a two-year suspension and the IID must be installed for 12 months. A person with a third offense has a three year suspension and the IID must be installed for 24 months. A person with a fourth or subsequent offense has a four year suspension and the IID must be installed for 36 months.

*Pilot Project.* AB 91 (Feuer), Chapter 217, Statutes of 2009, created an IID pilot project in four counties which mandates the use of an IID for all DUI offenders. The rationale for a pilot project was to see what impact a mandatory IID program has on recidivism in California.

While the impact of IID has been studied elsewhere, with mixed results, the comparisons are not perfect because while some of the other states began mandating IID at the same time they strengthened other sanctions, California has had a complex group of sanctions including high fines, jail time, licensing sanctions, mandatory DUI treatment programs and optional IID in place

since the mid-1980's with sanctions being evaluated, changed and strengthened on an ongoing basis since.

The thought was that with a pilot project, the DMV can evaluate how best a mandatory IID system should work in California. By evaluating four counties, the counties without the mandatory programs act like a control group for the researchers at DMV. Evaluating how the DUI sanctions work is something the DMV researchers have been doing with great success since 1990. The DMV's reports have helped inform the Legislature on where changes needed to be made which may have contributed to reduce recidivism in California.

*DMV Reports on AB 91.* So far, the DMV has released two studies on the efficacy of the county pilot programs. The first report was published in 2015 and was entitled *General Deterrent Evaluation of the Ignition Interlock Pilot Program in California*. In the report, the DMV found that:

The IID pilot program... does not appear to be associated with a reduction in the number of first-time DUI convictions and repeat DUI offenses in the pilot counties... Even though the IID pilot program was not found to have a general deterrent effect on the occurrence of DUI convictions in designated pilot counties, this evaluation does not provide information about the specific deterrence effect of this pilot program. To determine if this IID pilot program is associated with changes in the specific behavior of individual drivers who were convicted of DUI subsequent to the implementation of the AB 91 law and thus were subject to the IID pilot program requirements, a separate, so called, specific deterrence evaluation needs to be conducted.

The second report was the DMV's *Specific Deterrent Evaluation of the Ignition Interlock Pilot Program in California*, published on June 17, 2016, which found that:

- 1) Pilot participants had lower DUI recidivism rates than other DUI offenders, but these lower rates significantly diminished over time; and,
- 2) Individuals obtaining an IID-restricted license had a higher increase in crashes, including fatal/injury crashes, compared to DUI offenders whose licenses remained suspended or revoked.

In discussing the results, the DMV noted that:

Although the reduction in DUI recidivism provides evidence of benefits associated with IID restrictions, the increased crash risks associated with the AB 91 pilot program suggest that additional investigation and research could be beneficial. Inclusion of information regarding crash responsibility (i.e. at-fault/not-at-fault), alcohol involvement, or severity level (i.e., fatal/injury crashes versus property-damage only crashes) may provide further insight.

Future discussions regarding IID requirements should consider the effectiveness of IIDs as a single countermeasure or whether combining IIDs with driver license revocation or suspension actions and other countermeasures, could provide a more effective approach to enhancing traffic safety.

In sum, the DMV found that, while the pilot programs did not demonstrate a greater general deterrent effect (i.e. preventing drinking and driving before it happens), it did find that IID

installation is associated with a lower risk of DUI recidivism (i.e. potentially more effective at preventing DUI offenders from offending again). However, because the DMV contends that there may be superior combinations of mandatory suspension periods and IID installations based on offender types, the DMV does not recommend expanding the pilot program statewide at this time. Specifically, the DMV recommends:

- 1) Convene a task force including representatives from the Legislature, judiciary, law enforcement, and other public agencies to develop recommendations for strengthening components of California's comprehensive DUI countermeasure system.
- 2) Evaluate the traffic safety benefits of the IID program implemented under SB 598 (Huff), Chapter 193, Statutes of 2009, including the effectiveness of shortening a hard license suspension or revocation period for those DUI offenders who choose to obtain an IID-restricted license.
- 3) Collaborate with representatives from the courts, law enforcement, and other entities to explore options for using IIDs as an effective DUI countermeasure, including using IIDs as an "alcohol-abstinence-compliance" monitoring tool in a modified version of the traditional DUI court model.
- 4) Conduct and report to the Legislature an evaluation of prior studies on the effectiveness of DUI countermeasures in place in California (including IIDs). This report will offer recommendations on legislative reforms to both retain and/or expand effective countermeasures and revise and/or strengthen less effective countermeasures.

*Hard Suspension.* Under existing law, a person convicted of a DUI must wait a period of time before they can apply to the DMV for a restricted license. Since 2005, all licensing actions have gone through the DMV not the courts. This bill removes that mandatory suspension and allows a person to immediately get an IID if he or she installs an IID and meets the other requirements. It may also allow the installation during any time of any administrative suspension since it allows the installation without "any suspension."

According to the latest DMV report on the DUI Management Information System, DUI arrests in 2011 decreased by 8.0% following decreases of 6.1% in 2010 and 2.9% in 2009 (*California DMV 2013 Annual Report of the California DUI Management Information System*). The report further indicated that the one-year recidivism rates for all first DUI offenders decreased to the lowest level seen in the past 21 years.

The 2013 and prior reports have all indicated a link between the decline in DUIs and the mandatory suspension of a license because a significant decline occurred after a mandatory administrative suspension (APS) was indicated:

The re-offense rates of second offenders remain higher than those of first offenders across all years. Previous DUI -MIS reports suggested that, while many factors may be associated with the overall decline in DUI incidents for both first and second offenders, the reduction may largely be attributed to the implementation of APS suspensions in 1990. An evaluation (Rogers, 1997) of the California APS Law documents recidivism reductions of up to 21.1% for first offenders and 19.5% for repeat offenders, attributable to the law.

*Sliding Scale for IID Costs.* The sliding scale language in the bill describes the provider absorbing portions of “the cost of the ignition interlock device” for those that meet specified income limits. It does not specify what is included in the cost of the IID. The IID is one cost but the monitoring costs are additional. Further, this bill says that the cost of the IID can only be raised equal to the Consumer Price Index but does not indicate where that price shall currently start.

Regardless, this bill specifies that the BAR and the BEARHFTI have the authority to verify whether ARDs and registered service dealers who install IIDs are following the sliding scale. This is a clarifying change, as both bureaus have the authority to require an ARD or registered service dealer to follow the fee schedule. For instance, both practice acts prohibit overcharging, an act of dishonesty, and negligence.

**Prior Related Legislation.** SB 61 (Hill), Chapter 350, Statutes of 2015, extended the operation of the pilot program until July 1, 2017.

SB 55 (Hill) of 2013, would have established a statutory scheme under which, as a condition of being issued a restricted driver’s license, being reissued a driver’s license, or having the privilege to operate a motor vehicle reinstated for a 2nd or subsequent conviction for a an alcohol-related violation of the above offenses, a person would be required to install for a specified period of time an ignition interlock device on all vehicles he or she owns or operates, except as provided. *NOTE: This bill was held in the Assembly Committee on Appropriations.*

SB 598 (Huff), Chapter 193, Statutes of 2009, requires the DMV to advise a person convicted of a second or third offense of DUI with a BAC of .08% or more that he or she may receive a restricted license, as specified, if he or she shows verification of installation of a certified IID and pays a fee sufficient to include the costs of administration, as specified.

AB 91 (Feuer), Chapter 217, Statutes of 2009, established an IID pilot project in four counties which mandates the use of an IID for all DUI offenders.

### **ARGUMENTS IN SUPPORT:**

The Advocates for Highway Safety write in support, “Drunk driving is a deadly and costly threat to California families. While nationally drunk driving fatalities decreased 2.5 percent in 2013, California experienced a 6 percent increase from the previous year (National Highway Traffic Safety Administration (NHTSA)), and statistics for 2014 alcohol involved crashes show that fatalities remain high. In 2014, 1,053 people were needlessly killed in alcohol-related crashes on California’s streets and roads, accounting for over one quarter (29 percent) of all traffic fatalities. Moreover, drunk driving is costly. California taxpayers were burdened by \$5.4 billion in drunk driving related costs in 2013 (MADD). Clearly, this is a serious and expensive problem on California’s roads which requires urgent attention and the effective solution of IIDs.

California’s current law allows optional use of IIDs statewide, but only about 20 percent of convicted drunk drivers who have a choice of installing an IID or driving on a limited restricted license opt for IID installation. The state also continues to maintain a pilot program requiring the use of IIDs for all offenders in Alameda, Los Angeles, Sacramento, and Tulare counties. Data from the California Department of Motor Vehicle (DMV) shows a higher rate of IID use in the pilot program counties. A recent MADD report on the effectiveness of IIDs in California noted that since the California pilot program began, IIDs have ‘prevented vehicles from starting over 1

million times because alcohol was detected on the driver's breath.' According to the MADD report, IIDs prevent over 1,900 drunk driving incidents per month in California."

### **ARGUMENTS IN OPPOSITION:**

The California Attorneys for Criminal Justice write in opposition, "This bill will eliminate judges' discretion in 54 counties, to require an ignition interlock device (IID) for first time DUI offenders as part of sentencing and applicable probation conditions. Currently, four counties are experimenting with mandatory IID in EVERY case even if a judge makes an alternative finding.

There are sample studies supporting the effectiveness of IID use and greater compliance when ordered on a case-by-case basis or included in a negotiated plea. SB 1046 simply imposes the 4-county experiment statewide. Thus far DMV has not concluded that such a blanket approach is more effective than current law in 54 counties. Furthermore, California law incentivizes the installation of IID's for second time offenders with significant success. SB 1046 conflicts with this proven approach by mandating its usage for every first-time offenders.

For years DMV statistics have shown that, under current law and using best practices, very few drivers reoffend with the first six months, which is the period covered by [this bill]. As such, a statewide mandate seems to be inconsistent with empirical evidence.

A 54-county expansion will result in an exponential increase in business for IID companies and there has been limited oversight of these companies, especially those who plan to be rewarded with significant increase in revenues as a result of [this bill]. This artificial spike in profits should be contemplated only after a thorough assessment of the practices of the IID businesses in California. This is especially critical when DMV studies do not appear to support such a mandatory approach.

Lastly, the four-county experiment of eliminating judicial discretion has not been fully analyzed to determine whether this is the most appropriate public policy. We anticipate the DMV report will address many of these concerns and the Legislature can explore the department's findings to determine appropriate next steps. Until then, any action on this issue is premature."

### **REGISTERED SUPPORT:**

Mothers Against Drunk Driving (co-sponsor)  
AAA Automobile Club of Northern and Southern California  
Advocates for Highway and Auto Safety  
Alameda District Attorney O'Malley  
Alcohol Justice  
Association for Los Angeles Deputy Sheriffs  
Association of Deputy District Attorneys  
Association of Orange County Deputy Sheriffs  
California Air Shock Trauma Rescue  
California Ambulance Association  
California Association of Code Enforcement Officers  
California Association of Highway Patrolmen  
California College and University Police Chiefs Association  
California Fraternal Order of Police  
California Medical Association

California Narcotic Officers Association  
California Statewide Law Enforcement Association  
City of El Cajon  
Crime Victims United of California  
Emergency Nurses Association  
Insurance Commissioner Dave Jones  
John Muir Health serving Contra Costa, Solano, Alameda and Marin  
League of California Cities  
Long Beach Police Officers Association  
Los Angeles City Attorney Mike Feuer  
Los Angeles County Professional Peace Officers Association  
Los Angeles Police Protective League  
National Transportation Safety Board  
Peace Officers Research Association of California  
Personal Insurance Federation of California  
Regional Medical Center of San Jose  
Riverside Sheriffs Association  
Sacramento County Deputy Sheriff's Association  
Safety Council  
San Diego County  
San Francisco Chief of Police Greg Suhr  
San Marcos Prevention Coalition  
Tulare County Supervisor Ennis

**REGISTERED OPPOSITION:**

California Attorneys for Criminal Justice

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301