

INITIAL STATEMENT OF REASONS

Title 13, Division 1, Chapter 1

Article 2.55 – California Ignition Interlock Device Program

The Department of Motor Vehicles (department) proposes to amend Sections 125.00, 125.02, 125.12, 125.16, 125.18, 125.20, and 125.22 and adopt Sections 126.00, 126.02, 126.04, 127.00, 127.02, 127.04, 127.06, 127.08 and 127.10 in Article 2.55, Chapter 1, Article 1, Title 13 of the California Code of Regulations, relating to the California Ignition Interlock Device Program.

This action is based on the passage of Senate Bill (SB) 1388 (Chapter 404, Statutes of 2008), Assembly Bill (AB) 91 (Chapter 217, Statutes of 2009) and Senate Bill 598 (Chapter 193, Statutes of 2009). Passage of these bills implement changes in the California Ignition Interlock Device Program and are being combined into one rulemaking file.

SB 1388 implements Vehicle Code section 23573. Vehicle Code section 23573 requires the department, upon receipt of a court's abstract of conviction of Vehicle Code section 14601.2, 14601.4 or 14601.5, subsequent to prior conviction(s) of Vehicle Code section 14601.2, 14601.4, 14601.5, 23103.5, 23152 or 23153, to notify the convicted person of his or her requirement to have an ignition interlock device (IID) installed in their vehicle.

Vehicle Code section 23573 allows the department to charge an administrative fee sufficient to offset the costs of administering the department ordered IID program.

Vehicle Code section 23573 requires program participants to have the IID installed within thirty days of the mail date of the department's notice by an authorized IID installer and verification of the installation to be submitted to the department on a department prescribed "Verification of Installation" form.

Vehicle Code section 23573 requires participants to return the vehicle at least once every sixty days for the installer to ensure the IID is operating properly and check for signs of tampering, attempts at removing, or bypassing the IID.

The department has determined it necessary to promulgate regulations providing the application process, including the adoption of a new, distinguishing verification of installation form, and fee requirements for participants required to have an IID installed. These regulations will provide an exemption process for drivers authorized to claim such an exemption pursuant to Vehicle Code section 23573(g)(1)(A) and provide the distribution of documents required to ensure all parties have paperwork necessary to comply with Article 2.55, California Code of Regulations.

AB 91 implements Vehicle Code section 23700. Vehicle Code section 23700 requires the department to establish a pilot program in the counties of Alameda, Los Angeles, Sacramento and Tulare, whereby, as a condition of being issued or reissued a driver license, a driver convicted of certain driving under the influence provisions is required to

have an ignition interlock device (IID) installed in his or her vehicle for a specified period of time.

In addition to requiring the department to notify drivers of IID installation and monitoring requirements, AB 91 requires IID manufacturers and manufacturer's agents to adopt a reduced fee schedule, based on a person's ability to pay proportionate with that person's income relative to the federal poverty level, for payment of IID costs. IID manufacturers and manufacturer's agents are currently required to adopt fee schedules that provide for the payment of the costs of the IID by applicants equal to the applicant's ability to pay. Under this program, a driver convicted of violating Vehicle Code section 23152 is required to have a certified IID installed in all vehicles owned or operated by the driver for a term as follows:

- First offense – Mandatory term of five months
- Second offense – Mandatory term of twelve months
- Third offense – Mandatory term of twenty-four months
- Fourth and subsequent offense – Mandatory term of thirty-six months

A driver convicted of violating Vehicle Code section 23153 is required to have a certified IID installed in all vehicles owned or operated by the driver for a term as follows:

- First offense – Mandatory term of twelve months
- Second offense – Mandatory term of twenty-four months
- Third offense – Mandatory term of thirty-six months
- Fourth and subsequent offense – Mandatory term of forty-eight months

Provisions of AB 91 require drivers to adhere to IID monitoring requirements similar to those established in current IID regulations and provide for exclusions similar to those permitted by SB 1388.

Both of these programs allow the department to charge a fee that will be sufficient to offset the department's cost in administering the terms of these provisions. The department determined a forty-five (\$45) administrative fee is required for participation in the pilot program for a conviction of Vehicle Code section 23152 or 23153. The department also determined a forty (\$40) administrative fee is required for DMV ordered ignition interlock device installation resulting from a conviction of Vehicle Code section 14601.1, 14601.4 or 14601.5.

§ 125.00. Definitions.

Subdivision (c) is amended to correct the statute citation reference for consistency purposes.

Subdivision (d) is amended to correct the statute citation reference for consistency purposes.

Subsection (j) is adopted to define the term “false positive.” This term is used to identify a test result, when the driver’s breath alcohol concentration is above the alcohol setpoint, and the test results of two or more subsequent breath tests taken immediately within a 15 minute time period thereafter provide a breath alcohol concentration below the alcohol setpoint. The inclusion of this definition is necessary to ensure the affected public is informed when the term appears later in this article.

Subsection (k) is adopted to define the term “time to reset the device.” This term is used to identify the time it physically takes to service an IID when it has been returned to the installer due to an early recall. The inclusion of this definition is necessary to ensure the affected public is informed when the term appears later in this article.

Subdivision (j) is adopted to define the term “pause of restriction.” This term is used to identify the expiration of the required term of restriction is temporarily stopped when the department is notified that the participant failed to maintain the IID. The inclusion of this definition is necessary to ensure the affected public is informed when the term appears later in this article.

Subdivision (m) is adopted to define the term “reset of restriction.” This term is used to identify the remainder of the original restriction term that will be re-imposed when the participant provides the department with form DL 924. The inclusion of this definition is necessary to ensure the affected public is informed when the term appears later in this article.

§ 125.02. Certification of Ignition Interlock Devices.

Subsection (a)(1) is amended to delete subsections (A), (B), (C), (D), (E) and (F) which identified the elements of form DL 9, Application of Certification of Ignition Interlock Device (REV. 4/2000.)

Subdivision (a)(4) is amended to correct the statute citation reference for consistency purposes.

Subdivision (a)(4)(A) is amended to add punctuation to the sentence structure.

Subdivision (a)(4)(B) is amended to correct capitalization and add punctuation to the sentence structure.

Subdivision (a)(4)(C) is amended to correct capitalization add punctuation to the sentence structure.

Subdivision (a)(5) is amended to add “is hereby incorporated by reference”, update the revision date on form DL 28 Laboratory Report and delete the elements of the form.

§ 125.12. Service and Maintenance of Ignition Interlock Devices.

Subdivision (a)(1)(A)(i) is amended to update the revision date on form DL 920, Verification of Installation and correct the statute citation reference for consistency purposes.

Subdivision (a)(1)(A)(ii) is amended to delete “Ignition Interlock Device” and “ignition interlock device” to consistently reference this device and update the revision date on form DL 920, Verification of Installation for consistency and clarification.

Subsection (a)(1)(A)(iii) is added to require an IID installer to submit a Department of Motor Vehicles Ordered Verification of Ignition Interlock, form DL 924 (REV 7/2010), which is hereby incorporated by reference, to the department when the department has ordered the installation of an IID.

This verification form contains five sections, mailing instructions and a second page providing instructions for completing the DMV ordered installation of Ignition Interlock Form.

Section one solicits information relating to the driver’s (hereinafter referred to as participant) contact information. The participant is required to document his or her full name, driver license number and mailing/residence address. This information is necessary to ensure department records are accurate and maintain tracking documentation to ensure the applicant is complying with the provisions of Vehicle Code section 23573.

Section two solicits information relating to the Manufacturer of the Ignition Interlock Device installed in the vehicle and information relating to the facility at which the device is being installed. This section will be completed by the individual installing the device in the vehicle.

The installer is required to indicate the manufacturer of the device. This information is necessary to allow the department to verify the device and its manufacturer have been properly certified pursuant to Vehicle Code section 13386 and Article 2.55 of the California Code of Regulations.

The installer is required to indicate the name of the facility at which the device is being installed and the Bureau of Automotive Repair Number issued by the Department of Consumer Affairs, Bureau of Automotive Repair. This information is necessary to enable the department to verify the facility is authorized under this article to install an IID and verify the facility is licensed by the State of California.

The installer is required to indicate the facility address. This information is necessary to ensure the facility site is authorized by the manufacturer as well as the State of California.

Section three solicits information relating to the Ignition Interlock Device. The installer is required to indicate the date of installation. This information is necessary to ensure the subject vehicle is affixed with an IID within the statutory limits of Vehicle Code section 23573. The installer is also allowed to indicate the date of the next required monitor check, although this information is not required. This information is necessary to give the participant notice of when he or she will be required to complete the next IID check to be in compliance with the provisions of Vehicle Code section 23573.

Section four solicits information relating to the subject vehicle information. The installer is required to indicate the vehicle make, year, license plate number and vehicle identification number. This information is necessary to ensure the vehicle to which the device is being affixed is authorized to have an IID installed.

Section five is provided for the installer to print and sign his or her name certifying or declaring under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. This statement is authorized by the California Code of Civil Procedure section 2015.5.

The bottom of page one provides form distribution instructions to the installer, as well as an address for participants who choose to remit the form by mail rather than delivering it to a public field office.

Page two of the form contains instructions on completing the form for the driver and for the installer.

The driver is instructed to maintain a photocopy of the completed form for his or her records and to mail the original with the fee to the department's Mandatory Actions Unit or submit it in person at the nearest DMV public field office.

The driver is notified that a \$40 administrative service fee is required for department ordered IID installation. This fee is discussed further in section 126.00 of the initial statement of reasons. The driver is also notified that a \$40 administrative service fee is not required if several devices are installed in multiple vehicles or if a device is removed and immediately replaced.

The form makes the following notifications to the driver:

- Even though an IID has been installed in the vehicle, you may not drive without a valid driver license. This restriction is provided in Vehicle Code section 23573(b).
- To retain your driving privilege, you must arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every sixty (60) days. This requirement is provided in Vehicle Code section 23573(e)(1).
- The installer will check the ignition interlock device to make sure it continues to work properly. This requirement is provided in Vehicle Code section 23573(e)(1).

- The installer is required by law to report to DMV if the device shows any of the following:
 - Evidence of attempts to remove
 - Attempts to bypass
 - Attempts to tamper with, or
 - If you fail three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device.

This reporting requirement is provided in Vehicle Code section 23573(e)(2).

The installer is instructed to retain a photocopy of the form for the facility's records and submit a photocopy to the manufacturer or the manufacturer's agent. This requirement is required in the proposed adoption of Section 126.02(a)(2) of this article. The installer is required to supply the driver with the original document and one photocopy, as the driver is required to submit the form to the department.

If the driver has two or more vehicles being fitted with an IID, the installer is required to complete a separate installation verification form for each vehicle. The installer is also required to complete the form in its entirety and emboss the installation verification form with the required manufacturer's stamp. These requirements are necessary to ensure the department records are accurate and verify the driver is complying with provisions of this article as well as Vehicle Code section 23573.

Subsection (a)(3)(E) is amended to add Vehicle Code section 23573 as an authority that will allow the installer to report non-compliance to the department.

Subsection (a)(3)(F) is amended to ensure installers are following proper procedures when reporting non-compliance to the DMV.

Section (c)(4) is amended to consistently reference the DL 922 Verification of Installation form number and to update the revisions dates for forms DL 922 and DL 920.

Section (d)(1) and (2) is amended to replace the symbol for "section" with the word.

§ 125.16. Verification of Installation.

Subsection (a) is amended to clarify that a participant shall submit the \$15 fee and Verification of Installation Ignition Interlock form DL 920 upon an application for a restricted driver license.

Subsection (a) is amended to update the revision date of form DL 920 and incorporated by reference the form to this article.

Subsection (a) is amended to delete subsections (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), and (11) which identified the elements of form DL 920, Verification of Installation Ignition Interlock.

Subsection (b) is added to require a participant pursuant to Vehicle Code section 13352(a)(3) and (a)(5) to submit the Verification of Installation Ignition Interlock form DL 920 and a forty-five dollar (\$45) administrative service fee.

Existing subsections (b)(c)(d) and (e) are renumbered to (c)(d)(e) and (f) to reflect the addition of the new subdivision (b).

Subsections (c)(d)(e)(f) and (f)(1) are amended to correct the form name and revision date of form DL 920.

§ 125.18. Notice of Non-Compliance.

Subsection (a) is amended to add “which is hereby incorporated by reference” to clarify that form DL 921 is incorporated by reference to this section.

Subsection (a) is amended to add Vehicle Code sections 23573(e)(2) and 23700(a)(5)(B) as authority for the installer to notify the department of a participants non-compliance with IID maintenance and/or compliance.

Subsection (a) is amended to delete subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) and (a)(7) which identified the elements of form DL 921, Notice of Non-Compliance.

§ 125.20. Notice of Removal.

Subsection (a) is amended to add “which is hereby incorporated by reference” to clarify that form DL 922 is incorporated by reference to this section.

Subsection (a) is amended to add subsection (b) to 125.12 to clarify the installer’s authority to remove the ignition interlock device.

Subsection (a) is amended to delete subsections (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) which identified the elements of form DL 922, Ignition Interlock Notice of Removal.

Existing subsection (a)(7) is renumbered to (b); (a)(7)(A) is renumber to (b)(1); and (a)(7)(B) is renumber to (b)(2) to clarify that the installer must complete Section II “Removal/Installation” on form DL 922, when a interlock ignition device is removed from a vehicle and reinstalls into another vehicle operated by the same participant.

Existing subsections (b) and (c) are renumbered to (c) and (d) to reflect the addition of the new subdivision (b).

§ 125.22. Notice to Employers Regarding an Ignition Interlock Restriction.

Subsection (b) is amended to add “which is hereby incorporated by reference” to clarify that form DL 923 is incorporated by reference to this section.

Subsection (b) is amended to delete subsections (1), (2), (3), and (4), which identified the elements of form DL 923, Notice to Employers, Ignition Interlock Restriction.

§ 126.00. Verification of Installation for Department of Motor Vehicles Required Ignition Interlock Device.

Section 126.00 is added to provide the form and fee requirements when a person is required to have an IID installed after receiving notice from the department pursuant to Vehicle Code section 23573.

Subsection (a) is added to require a person to install a certified IID within thirty days of the mail date of the department’s notice, when the person has been convicted of Vehicle Code section 14601.2, 14601.4 or 14601.5 and is required to have an IID installed pursuant to Vehicle Code section 23573.

Subsection (b) is added to prescribe the department form required for a participant to verify that his or her vehicle(s) have been equipped with a certified IID.

Subsection (b)(1) is added to require a participant to submit a Department of Motor Vehicles Ordered Verification of Installation, form DL 924 (7/2010), when his or her vehicle has been equipped with an IID.

Subsection (b)(2) is added to require the applicant to submit a \$40 fee when his or her vehicle is being equipped with an IID. Vehicle Code section 23573(c)(3) allows the department to establish a fee in an amount to offset the costs of implementing this program. A cost breakdown of the DMV ordered IID restriction is attached and incorporated by reference.

§ 126.02. Distribution of Verification of Installation, form DL 924.

Subsection (a) is added to establish the distribution criteria for a completed Department of Motor Vehicles Ordered Verification of Installation, form DL 924, to ensure all parties who are required to maintain IID related files, are given the necessary documentation to do so.

Subsection (a)(1) is added to require the completed original copy of the form 924 to be remitted to the Department of Motor Vehicles, either personally at a local public field office or by mail to the Mandatory Actions Unit.

Subsection (a)(2) is added to require a completed copy of the form 924 to be provided to the driver, the installer to attach to the participant’s file, and the manufacturer.

Subsection (b) is added to ensure the manufacturer is aware that it is responsible for the form 924's issued to it by the department. This subsection also requires the manufacturer to notify law enforcement if any forms are lost, stolen or misplaced, and provide such documentation to the department for its records.

§ 126.04. Exemption from Department of Motor Vehicles Required Ignition Interlock Device.

Subsection (a) is added to provide statutory exemptions allowed for those individuals who fall under circumstances provided in Vehicle Code section 23573(g)(1)(A). The participant is required to submit an Exemption for Ignition Interlock Device, form DL 4054B, to the department within 30 days of receipt of the mail date of the department's notice to the driver of an IID requirement. This subsection instructs the driver to remit the completed original form to the department at either a local public field office or by mail to the Mandatory Actions Unit.

The DL 4054B is a department generated document that is sent to the driver when the department sends notice that the driver is required to have an IID installed.

The form requires the applicant to indicate his or her name and driver license number. This information is necessary to ensure the exemption is being applied to the correct driving record. The driver is indicating that he or she understands the exemption from installation is valid only if all provisions of Vehicle Code section 23573 are met.

These provisions require that the driver:

- Does not own a vehicle.
- Does not have access to a vehicle at his or her place of residence.
- No longer has access to the vehicle used when he or she was arrested for the violation leading to the IID requirement.
- Acknowledge that he or she is only allowed to drive a vehicle fitted with an IID.
- Is required to have a valid driver license before driving.
- Is subject to the requirements of Vehicle Code section 23573 if he or she purchases a vehicle or should have access to a vehicle.

The form requires the applicant to sign and date under penalty of perjury under the laws of the State of California that the foregoing information on the document is true and correct. Vehicle Code section 1652(a) allows the department to prescribe forms and Vehicle Code section 1652(b) allows the department to require the applicant to sign forms under penalty of perjury.

The form instructs the applicant to remit the completed document to the department.

§127.00. Ignition Interlock Device Restriction.

Subsections (a) is adopted for clarity and require a person convicted of violating Vehicle Code section 23152 or 23153, in the counties of Alameda, Los Angeles, Sacramento or Tulare, to have an IID installed in his or her vehicle(s) as a condition of being granted a

restricted driver license. The term of installation is contingent upon the violation and the number of prior convictions. Terms of installation, as provided in Vehicle Code section 23700, are detailed in the proposed adoption of Section 127.10 of this article.

Subsection (b) is adopted under the authority of Vehicle Code section 23700(a)(8) and requires the department, upon notification from a court in the counties of Alameda, Los Angeles, Sacramento or Tulare, to notify the convicted driver of his or her requirement to have a certified IID installed in every vehicle registered.

Subsection (c) is adopted to identify the terms of installation as required by Vehicle Code section 23700(a)(7)(A) or (B), as a condition of reinstating a driving privilege

Subsection (d) is adopted to establish the department issued form required for a driver to submit verifying installation of a certified IID in his or her vehicle(s).

Subsection (e) is adopted to establish the administrative service fee required by Vehicle Code section 23700(a)(3)(C).

§127.02 Administrative Fees.

Subdivision (a) is adopted to establish the administrative service fee required by Vehicle Code section 23700(a)(3)(C) for participation in this pilot program for a conviction of Vehicle Code section 23152 or 23153.

Subdivision (b) is adopted to establish the administrative service fee required by Vehicle Code section 13352(a)(3)(F) and (5)(F) for a participant conviction of Vehicle Code section 23152 or 23153 who agrees to maintain a interlock ignition device pursuant to Vehicle Code section 13352(a)(3) or (5).

§127.04. Exemption from Ignition Interlock Device Requirements.

Subsection (a) is added to provide statutory exemptions allowed for those individuals who fall under circumstances provided in Vehicle Code section 23700. The participant is required to submit an Exemption for Ignition Interlock Device, form DL 4055B, to the department no later 30 days from the department's mail date of the notice to the driver of an IID requirement. The form provisions have been identified in Section 126.04 above.

§127.06 Annual Report.

Subsection (a) is adopted under authority of Vehicle Code section 13386(g) which requires a manufacturer or a manufacturer's agent to provide the department with yearly information regarding the number of false positives and the time to reset the device. This information is necessary to supply the department with information it needs to evaluate the continued certification on an IID.

Subsection (b) is adopted to require the first report of information identified in subsection (a) to be submitted by the department no later than July 30, 2011 and annually thereafter no later than July 30th each year through July 30, 2015. The final report is due no later

than January 30, 2016. The manufacturers or manufacturer's agent shall submit the report on a Report of False Positives/Reset Time, form DL 9A (NEW 7/2010).

§127.08 Reset of Ignition Interlock Restriction Term.

Section 127.08 is adopted for clarity and under the authority granted in Vehicle Code section 23700(a)(10) and provides that if a person fails to comply with any of the requirements regarding IID compliance, shall have the required duration of the restriction paused until the driver submits a Department of Motor Vehicles Ordered Verification of Installation, form DL 924. Once submitted, the mandatory term for which the device is required to be installed shall be re-imposed for remainder of the original term of restriction. This is necessary for the department to document that drivers are complying with IID maintenance and service conditions as required by Vehicle Code section 23700.

§127.12. Term of Restriction.

Section 127.10 is adopted for clarity and under the authority of Vehicle Code section 23700. This section provides that a driver convicted of violating Vehicle Code section 23152 or 23153 is required to have a term of IID installation as follows:

A driver convicted of violating Vehicle Code section 23152 is subject to the following terms of installation:

- First offense – Mandatory term of five months
- Second offense – Mandatory term of twelve months
- Third offense – Mandatory term of twenty-four months
- Fourth and subsequent offense – Mandatory term of thirty-six months

A driver convicted of violating Vehicle Code section 23153 is subject to the following terms of installation:

- First offense – Mandatory term of twelve months
- Second offense – Mandatory term of twenty-four months
- Third offense – Mandatory term of thirty-six months
- Fourth and subsequent offense – Mandatory term of forty-eight months

This section also provides that, under the authority of Vehicle Code section 23700, that the restriction expiration date shall be paused if the driver fails to maintain or install the device as required in Vehicle Code section 23575.