

AMENDED IN ASSEMBLY JULY 2, 2001

AMENDED IN SENATE APRIL 19, 2001

SENATE BILL

No. 871

Introduced by Senator Burton

February 23, 2001

An act to add Section 3333.7 to the Civil Code, and to amend Sections 15242, 34520, and 34623, of the Vehicle Code, relating to commercial vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 871, as amended, Burton. Commercial vehicles: compliance with drug and alcohol regulations.

(1) Existing law requires motor carriers and drivers to comply with the controlled substances and alcohol use, transportation, and testing requirements of the United States Secretary of Transportation, as specified. Existing law requires every motor carrier to make available for inspection, upon request of an authorized employee of the Department of the California Highway Patrol, copies of all results and other records pertaining to controlled substances and alcohol use and testing conducted pursuant to federal law, including those records contained in individual driver qualification files. Existing law grants the department exclusive jurisdiction for the regulation of safety of operation of motor carriers of property, and provides for the Department of Motor Vehicles to suspend the motor carrier permit of a motor carrier of property on specified grounds.

This bill would permit any person who suffers injury that is proximately caused by the driver of a commercial motor vehicle to recover treble damages from the driver's employer where it is shown

that the driver of a commercial motor vehicle was under the influence of alcohol or a controlled substance at the time that the injury was caused and that the driver's employer willfully failed, *as defined, at the time of the injury* to comply with specified *federal law* requirements.

This bill would require the suspension of the motor carrier permit of a motor carrier of property for failure to comply with the above regulations with respect to controlled substances and alcohol use, or for failure to make available for inspection the results and other records pertaining to alcohol use and testing pursuant to federal law. The bill would require suspensions for serious violations for specified periods of time, as specified.

This bill would prohibit an applicant for employment as a commercial driver or owner-operator *seeking to provide transportation services* from being placed on duty by the motor carrier, until compliance with certain federal laws concerning controlled substance and alcohol use and employment history has occurred, as specified. The bill would require every motor carrier to document all activities regarding the making or receiving of drivers' employment histories.

The bill would provide that a motor carrier that utilizes a preemployment screening service to review applications for purposes of the above is in compliance with the employer duties under those provisions if the preemployment screening services that are provided satisfy the requirements of state and federal law and the motor carrier abides by any findings that would, under federal law, disqualify an applicant from operating a commercial vehicle.

Because a violation of these provisions would be a crime under current law, this bill would impose a state-mandated local program, by expanding the scope of a crime.

(2) Existing law requires a person who is self-employed as a commercial motor vehicle driver to comply with the commercial motor vehicle safety program and the ~~statutes~~ *statutes* pertaining to employees.

This bill would provide that any ~~person who is an owner-operator, as described, and who performs services for a motor carrier for a minimum of 30 days within a one-year period, is an employee of that motor carrier for purposes that engages an owner-operator meeting specified statutory requirements to provide transportation services under the direction and control, as defined, of that motor carrier is responsible for the compliance of that owner-operator with the provisions of the motor carrier safety program and for purposes of certain safety regulations~~



adopted by the Department of the California Highway Patrol *during the period of that direction and control.*

(3) 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 no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 3333.7 is added to the Civil Code, to
2 read:

3 3333.7. (a) Notwithstanding any other provision of law, any
4 person who suffers injury that is proximately caused by the driver
5 of a commercial motor vehicle shall be entitled to recover treble
6 damages from the driver’s employer where it is shown both that
7 the driver of a commercial motor vehicle was under the influence
8 of alcohol or a controlled substance at the time that the injury was
9 caused and that the driver’s employer willfully failed *at the time*
10 *of the injury* to comply with any of the requirements of federal law
11 described in subdivision (a) of Section 34520 of the Vehicle Code
12 *in regard to the involved driver.*

13 (b) *For the purposes of subdivision (a), “willfully failed” has*
14 *the same meaning as “willful failure” as defined in paragraph (3)*
15 *of subdivision (c) of Section 34623 of the Vehicle Code.*

16 ~~(b)~~
17 (c) For purposes of ~~this section~~ *subdivision (a)*, an “employer”
18 is a person or entity who employs the driver or who contracts with
19 an owner-operator, who meets the requirements set forth in
20 *subdivision (b) of Section 34624 of the Vehicle Code*, to provide
21 transportation services, and who is required to engage in
22 mandatory substance abuse testing pursuant to subdivision (a) of
23 Section 34520 of the Vehicle Code.

24 ~~(e)~~
25 (d) Nothing in this section is intended to preclude or affect
26 existing rights.



1 SEC. 2. Section 15242 of the Vehicle Code is amended to
2 read:

3 15242. (a) A person who is self-employed as a commercial
4 motor vehicle driver shall comply with both the requirements of
5 this chapter pertaining to employers and those pertaining to
6 employees.

7 ~~(b) Notwithstanding subdivision (a), any person who is an~~
8 ~~owner-operator meeting the requirements of subdivision (b) of~~
9 ~~Section 34624, and who has performed services for a minimum of~~
10 ~~30 days within a one-year period for a motor carrier, is an~~
11 ~~employee of that motor carrier for the purposes of this chapter and~~
12 ~~for purposes of the regulations adopted by the Department of the~~
13 ~~California Highway Patrol pursuant to Section 34501.~~

14 *(b) Notwithstanding subdivision (a), any motor carrier that*
15 *engages an owner-operator meeting the requirements of*
16 *subdivision (b) of Section 34624 to provide transportation services*
17 *under the direction and control of that motor carrier is responsible*
18 *for the compliance of that owner-operator with this chapter and*
19 *for purposes of the regulations adopted by the department*
20 *pursuant to Section 34501 during the period of that direction and*
21 *control.*

22 *(c) For the purposes of subdivision (b), “direction and control”*
23 *means either of the following:*

24 *(1) The owner-operator is operating under the United States*
25 *Department of Transportation interstate operating authority of the*
26 *motor carrier.*

27 *(2) The owner-operator has performed transportation services*
28 *for a minimum of 45 days within the past 90 days for the motor*
29 *carrier and has been on duty for that carrier for no less than 30*
30 *hours within any week in which transportation services were*
31 *provided.*

32 *(d) Subdivision (b) shall not be construed to change the*
33 *definition of “employer,” “employee,” or “independent*
34 *contractor” for any purpose.*

35 SEC. 3. Section 34520 of the Vehicle Code is amended to
36 read:

37 34520. (a) Motor carriers and drivers shall comply with the
38 controlled substances and alcohol use, transportation, and testing
39 requirements of the United States Secretary of Transportation as
40 set forth in Part 382 (commencing with Section 382.101) of, and



1 Sections 392.5(a)(1) and 392.5(a)(3) of, Title 49 of the Code of
2 Federal Regulations.

3 (b) (1) Every motor carrier shall make available for
4 inspection, upon the request of an authorized employee of the
5 department, copies of all results and other records pertaining to
6 controlled substances and alcohol use and testing conducted
7 pursuant to federal law, as specified in subdivision (a), including
8 those records contained in individual driver qualification files.

9 (2) For the purposes of complying with the return-to-duty
10 alcohol or controlled substances test requirements, or both, of
11 Section 382.309 of Title 49 of the Code of Federal Regulations and
12 the followup alcohol or controlled substances test requirements, or
13 both, of Section 382.311 of that title, the department may use those
14 test results to monitor drivers who are motor carriers.

15 (3) No evidence derived from a positive test result in the
16 possession of a motor carrier shall be admissible in a criminal
17 prosecution concerning unlawful possession, sale, or distribution
18 of controlled substances.

19 (c) Any drug or alcohol testing consortium, as defined in
20 Section 382.107 of Title 49 of the Code of Federal Regulations,
21 shall mail a copy of all drug and alcohol positive test result
22 summaries to the department within three days of the test. This
23 requirement applies only to drug and alcohol positive tests of those
24 drivers employed by motor carriers who operate terminals within
25 this state.

26 (d) A transit agency receiving federal financial assistance
27 under Section 3, 9, or 18 of the Federal Transit Act, or under
28 Section 103(e)(4) of Title 23 of the United States Code, as defined
29 in Section 653.7 of Title 49 of the Code of Federal Regulations,
30 concerning controlled substance use, and Section 654.7 of Title 49
31 of the Code of Federal Regulations, concerning alcohol abuse,
32 shall comply with the controlled substances and alcohol use and
33 testing requirements of the United States Secretary of
34 Transportation as set forth in Part 653 (commencing with Section
35 653.1) of, and Part 654 (commencing with Section 654.1) of, Title
36 49 of the Code of Federal Regulations.

37 (e) An applicant for employment as a commercial driver or an
38 owner-operator *seeking to provide transportation services and*,
39 meeting the requirements of subdivision (b) of Section 34624,
40 may not be placed on duty by a motor carrier until a



1 preemployment test for controlled substances and alcohol use
2 ~~required under~~ *meeting the requirements of* the federal regulations
3 referenced in subdivision (a) have been completed and a negative
4 test result has been reported.

5 (f) An applicant for employment as a commercial driver or an
6 owner-operator, *seeking to provide transportation services and*
7 *meeting the requirements of subdivision (b) of Section 34624,*
8 may not be placed on duty by a motor carrier until the motor carrier
9 has completed a full investigation of the driver's employment
10 history ~~as required under~~ *meeting the requirements of* federal law.
11 Every motor carrier, whether making or receiving inquiries
12 concerning a driver's history, shall document all activities it has
13 taken to comply with this subdivision.

14 (g) *A motor carrier that utilizes a preemployment screening*
15 *service to review applications is in compliance with the employer*
16 *duties under subdivisions (e) and (f) if the preemployment*
17 *screening services that are provided satisfy the requirements of*
18 *state and federal law and the motor carrier abides by any findings*
19 *that would, under federal law, disqualify an applicant from*
20 *operating a commercial vehicle.*

21 (h) It is a misdemeanor punishable by imprisonment in the
22 county jail for six months and a fine not to exceed five thousand
23 dollars (\$5,000), or by both the imprisonment and fine, for any
24 person to willfully violate this section. As used in this subdivision,
25 "willfully" has the same meaning as defined in Section 7 of the
26 Penal Code.

27 ~~(h)~~

28 (i) This section does not apply to a peace officer, as defined in
29 Section 830.1 or 830.2 of the Penal Code, who is authorized to
30 drive vehicles described in Section 34500 if that peace officer is
31 participating in a substance abuse detection program within the
32 scope of his or her employment.

33 SEC. 4. Section 34623 of the Vehicle Code is amended to
34 read:

35 34623. (a) The Department of the California Highway Patrol
36 has exclusive jurisdiction for the regulation of safety of operation
37 of motor carriers of property.

38 (b) The motor carrier permit of a motor carrier of property may
39 be suspended for failure to do any of the following:



1 (1) Maintain any vehicle of the carrier in a safe operating
2 condition or to comply with this code or with applicable
3 regulations contained in Title 13 of the California Code of
4 Regulations, if that failure is either a consistent failure or presents
5 an imminent danger to public safety.

6 (2) Enroll all drivers in the pull notice system as required by
7 Section 1808.1.

8 (3) Submit any application or pay any fee required by
9 subdivision (e) or (h) of Section 34501.12 within the timeframes
10 set forth in that section.

11 (c) The motor carrier permit of a motor carrier of property shall
12 be suspended for failure to either (1) comply with the requirements
13 of federal law described in subdivision (a) of Section 34520 of the
14 Vehicle Code, or (2) make copies of results and other records
15 available as required by subdivision (b) of that section. The
16 suspension shall be as follows:

17 (1) For a serious violation, which is a willful failure to perform
18 substance abuse testing in accordance with state or federal law:

19 (A) For a first offense, a mandatory five-day suspension.

20 (B) For a second offense within three years of a first offense,
21 a mandatory three-month suspension.

22 (C) For a third offense within three years of a first offense, a
23 mandatory one year suspension.

24 (2) For a nonserious violation, the time recommended to the
25 department by the Department of the *California* Highway Patrol.

26 (3) *For the purposes of this subdivision, "willful failure"*
27 *means any of the following:*

28 (A) *An intentional and uncorrected failure to have a controlled*
29 *substances and alcohol testing program in place.*

30 (B) *An intentional and uncorrected failure to enroll an*
31 *employed driver into the controlled substances and alcohol testing*
32 *program.*

33 (C) *A knowing use of a medically disqualified driver, including*
34 *the failure to remove the driver from safety-sensitive duties upon*
35 *notification of the medical disqualification.*

36 (D) *An attempt to conceal legal deficiencies in the motor*
37 *carrier's controlled substances and alcohol testing program.*

38 (d) The department, pending a hearing in the matter pursuant
39 to subdivision (f), may suspend a carrier's permit.



1 (e) (1) A motor carrier whose motor carrier permit is
2 suspended pursuant to subdivision (b) may obtain a reinspection
3 of its terminal and vehicles by the Department of the California
4 Highway Patrol by submitting a written request for reinstatement
5 to the department and paying a reinstatement fee as required by
6 Section 34623.5.

7 (2) A motor carrier whose motor carrier permit is suspended for
8 failure to submit any application or to pay any fee required by
9 Section 34501.12 shall present proof of having submitted that
10 application or have paid that fee to the Department of the
11 California Highway Patrol before applying for reinstatement of its
12 motor carrier permit.

13 (3) The department shall deposit all reinstatement fees
14 collected from motor carriers of property pursuant to this section
15 in the fund. Upon receipt of the fee, the department shall forward
16 a request to the Department of the California Highway Patrol,
17 which shall perform a reinspection within a reasonable time, or
18 shall verify receipt of the application or fee or both the application
19 and fee. Following the term of a suspension imposed under Section
20 34670, the department shall reinstate a carrier's motor carrier
21 permit suspended under subdivision (b) upon notification by the
22 Department of the California Highway Patrol that the carrier's
23 safety compliance has improved to the satisfaction of the
24 Department of the California Highway Patrol, or that the required
25 application or fees have been received by the Department of the
26 California Highway Patrol, unless the permit is suspended for
27 another reason or has been revoked.

28 (f) Whenever the department suspends the permit of any carrier
29 pursuant to subdivision (b) or paragraph (3) of subdivision (i), the
30 department shall furnish the carrier with written notice of the
31 suspension and shall provide for a hearing within a reasonable
32 time, not to exceed 21 days, after a written request is filed with the
33 department. At the hearing, the carrier shall show cause why the
34 suspension should not be continued. Following the hearing, the
35 department may terminate the suspension, continue the suspension
36 in effect, or revoke the permit. The department may revoke the
37 permit of any carrier suspended pursuant to subdivision (b) at any
38 time that is 90 days or more after its suspension if the carrier has
39 not filed a written request for a hearing with the department or has



1 failed to submit a request for reinstatement pursuant to subdivision
2 (e).

3 (g) Notwithstanding any other provision of this code, no
4 hearing shall be provided when the suspension of the motor carrier
5 permit is based solely upon the failure of the motor carrier to
6 maintain satisfactory proof of financial responsibility as required
7 by this code, or failure of the motor carrier to submit an application
8 or to pay fees required by Section 34501.12.

9 (h) A motor carrier of property may not operate a commercial
10 motor vehicle on any public highway in this state during any
11 period its motor carrier of property permit is suspended pursuant
12 to this division.

13 (i) (1) A motor carrier of property whose motor carrier permit
14 is suspended pursuant to this section or Section 34505.6, which
15 suspension is based wholly or in part on the failure of the motor
16 carrier to maintain any vehicle in safe operating condition, may not
17 lease, or otherwise allow, another motor carrier to operate the
18 vehicles of the carrier subject to the suspension, during the period
19 of the suspension.

20 (2) A motor carrier of property may not knowingly lease,
21 operate, dispatch, or otherwise utilize any vehicle from a motor
22 carrier of property whose motor carrier permit is suspended, which
23 suspension is based wholly or in part on the failure of the motor
24 carrier to maintain any vehicle in safe operating condition.

25 (3) The department may immediately suspend the motor
26 carrier permit of any motor carrier that the department determines
27 to be in violation of paragraph (2).

28 SEC. 5. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

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