

AMENDED IN ASSEMBLY APRIL 13, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2597

Introduced by Assembly Member ~~Murray~~ Brewer

February 23, 1998

An act to amend Sections 1808.1 and ~~34520~~ of, 34505.6, and 34520 of, and to add Section 34521 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2597, as amended, ~~Murray~~ Brewer. Vehicles: drivers.

Existing

(1) Existing law requires the prospective employer of a driver who drives any specified vehicle to obtain a report showing the driver's current public record as recorded by the Department of Motor Vehicles.

Existing law also requires motor carriers and drivers to comply with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as specified.

This bill would make technical, nonsubstantive changes in these provisions.

(2) Existing federal regulations require the implementation of certain controlled-substances and alcohol-use testing with regard to prescribed employers of drivers of certain motor vehicles.

Existing state law requires motor carriers and drivers, except as specified, to comply with the described federal

regulations and expressly requires every motor carrier to make specified records available to authorized employees of the Department of the California Highway Patrol.

This bill would revise these latter provisions by authorizing both the Department of the California Highway Patrol and the Department of Motor Vehicles to adopt regulations to implement these provisions.

(3) Existing law requires any drug or alcohol testing consortium, as specified in federal regulations, to mail a copy of all drug-positive and alcohol-positive test result summaries to the Department of the California Highway Patrol within 3 days of the test.

This bill would repeal these provisions and, instead, would require drug-testing consortiums to comply with the controlled substances and alcohol use testing requirements of the federal regulations.

(4) The bill would require every driver, subject to the provisions specified in (3) above, to report to a collection center at the direction of his or her employer or consortium for controlled substances or alcohol testing, as specified. The bill would require every driver who tests positive to be advised by his or her employer, or by the drug-testing consortium, of the resources available to the driver for evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances. The bill also would provide for the suspension or revocation, based upon a specified hearing procedure, of the commercial driver's license of a driver who tests positive for controlled substance or alcohol testing.

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

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

1 SECTION 1. *It is the intent of the Legislature in*
 2 *enacting this bill to ensure that commercial vehicles are*
 3 *not operated on the streets and highways of California by*
 4 *drivers and owners who do not comply with controlled*
 5 *substances and alcohol use testing requirements. Since*
 6 *the enactment of Chapter 832 of the Statutes of 1994*



1 *(Senate Bill 2034), which adopted the controlled*
2 *substances and alcohol use testing requirements of the*
3 *federal program, experience with the federal program*
4 *has shown that certain modifications are necessary to*
5 *provide the degree of safety to the citizens of California*
6 *which the Legislature intended.*

7 SEC. 2. Section 1808.1 of the Vehicle Code is amended
8 to read:

9 1808.1. (a) The prospective employer of a driver who
10 drives any vehicle specified in subdivision (k) shall obtain
11 a report showing the driver's current public record as
12 recorded by the department. For the purposes of this
13 subdivision, a report is current if it was issued less than 30
14 days prior to the date the employer employs the driver.
15 The report shall be reviewed, signed, and dated by the
16 employer and maintained at the employer's place of
17 business until receipt of the pull-notice system report
18 pursuant to subdivisions (b) and (c). These reports shall
19 be presented upon request to any authorized
20 representative of the Department of the California
21 Highway Patrol during regular business hours.

22 (b) The employer of a driver who drives any vehicle
23 specified in subdivision (k) shall participate in a
24 pull-notice system, which is a process for the purpose of
25 providing the employer with a report showing the
26 driver's current public record as recorded by the
27 department, and any subsequent convictions, failures to
28 appear, accidents, driver's license suspensions, driver's
29 license revocations, or any other actions taken against the
30 driving privilege or certificate, added to the driver's
31 record while the employer's notification request remains
32 valid and uncanceled. As used in this section,
33 participation in the pull-notice system means obtaining a
34 requester code and enrolling all employed drivers who
35 drive any vehicle specified in subdivision (k) under that
36 requester code.

37 (c) The employer of a driver of any vehicle specified
38 in subdivision (k) shall, additionally, obtain a periodic
39 report from the department at least every six months,
40 except that an employer who enrolls more than 500



1 drivers in the pull-notice system under a single requester
2 code shall obtain a report at least every 12 months. The
3 employer shall verify that each employee's driver's
4 license has not been suspended or revoked, the
5 employee's traffic violation point count, and whether the
6 employee has been convicted of a violation of Section
7 23152 or 23153. The report shall be signed and dated by
8 the employer and maintained at the employer's principal
9 place of business. The reports shall be presented upon
10 demand to any authorized representative of the
11 Department of the California Highway Patrol during
12 regular business hours.

13 (d) Upon the termination of a driver's employment,
14 the employer shall notify the department to discontinue
15 the driver's enrollment in the pull-notice system.

16 (e) For the purposes of the pull-notice system and the
17 periodic report process required by subdivisions (b) and
18 (c), owners, other than owner-operators as defined in
19 Section 34624, and employers who drive vehicles
20 described in subdivision (k), shall be enrolled as if they
21 were employees. Family members and volunteer drivers
22 who drive vehicles described in subdivision (k) also shall
23 be enrolled as if they were employees.

24 (f) An employer who, after receiving any driving
25 record pursuant to this section, employs or continues to
26 employ as a driver any person against whom a
27 disqualifying action has been taken regarding his or her
28 driving privilege or required driver's certificate, is guilty
29 of a public offense, and upon conviction thereof, shall be
30 punished by imprisonment in a county jail for not more
31 than six months, by a fine of not more than one thousand
32 dollars (\$1,000), or by both that imprisonment and fine.

33 (g) As part of its inspection of bus-maintenance
34 facilities and terminals required at least once every 13
35 months pursuant to subdivision (c) of Section 34501, the
36 Department of the California Highway Patrol shall
37 determine whether each transit operator, as defined in
38 Section 99210 of the Public Utilities Code, is then in
39 compliance with this section and Section 12804.6, and
40 shall certify each operator found to be in compliance. No



1 funds shall be allocated under Chapter 4 (commencing
2 with Section 99200) of Part 11 of Division 10 of the Public
3 Utilities Code to a transit operator which the Department
4 of the California Highway Patrol has not certified under
5 this section.

6 (h) A request to participate in the pull-notice system
7 established by this section shall be accompanied by a fee
8 determined by the department to be sufficient to defray
9 the entire actual cost to the department for the
10 notification service. For the receipt of subsequent
11 reports, the employer also shall be charged a fee
12 established by the department pursuant to Section 1811.
13 Any employer who qualifies under Section 1812 shall be
14 exempt from any fee required under this section. Failure
15 to pay the fee shall result in automatic cancellation of the
16 employer's participation in the notification services.

17 (i) The department, as soon as feasible, may establish
18 an automatic procedure to provide the periodic reports
19 to employers, as required by subdivision (c), on a regular
20 basis without the need for individual requests.

21 (j) The employer of a driver who is employed as a
22 casual driver is not required to enter that driver's name
23 in the pull-notice system, as otherwise required by
24 subdivision (a). However, the employer of a casual driver
25 shall be in possession of a report of the driver's current
26 public record as recorded by the department, prior to
27 allowing a casual driver to drive any vehicle specified in
28 subdivision (k). A report is current if it was issued less
29 than six months prior to the date the employer employs
30 the driver.

31 For the purposes of this subdivision a driver is
32 employed as a "casual driver" when the employer has
33 employed the driver less than 30 days during the
34 preceding six months. "Casual driver" does not include
35 any driver who operates a vehicle that requires a
36 passenger transportation endorsement.

37 (k) This section applies to any vehicle for the
38 operation of which the driver is required to have a class
39 1, class 2, class A, or class B driver's license, a class C license
40 with a hazardous materials endorsement, or a certificate



1 issued pursuant to Section 2512, 12517, 12519, 12520, 12523,
 2 or 12523.5, or any passenger vehicle having a seating
 3 capacity of not more than 10 persons, including the
 4 driver, operated for compensation by a charter-party
 5 carrier of passengers or passenger stage corporation
 6 pursuant to a certificate of public convenience and
 7 necessity or a permit issued by the Public Utilities
 8 Commission.

9 (l) This section shall not be construed to change the
 10 definition of “employer,” “employee,” or “independent
 11 contractor” for any purpose.

12 ~~SEC. 2.—~~

13 *SEC. 3. Section 34505.6 of the Vehicle Code is*
 14 *amended to read:*

15 34505.6. (a) (1) Upon determining that a motor
 16 carrier of property who is operating any vehicle
 17 described in subdivision (a), (b), (e), (f), (g), or (k) of
 18 Section 34500, or any motortruck of two or more axles that
 19 is more than 10,000 pounds gross vehicle weight rating, on
 20 a public highway; has done ~~either any of the following: (1)~~
 21 ~~failed to maintain any vehicle of a type described above~~
 22 ~~in a safe operating condition or to comply with the~~
 23 ~~Vehicle Code or with regulations contained in Title 13 of~~
 24 ~~the California Code of Regulations relative to motor~~
 25 ~~carrier safety, and, in the department’s opinion, that~~
 26 ~~failure presents an imminent danger to public safety or~~
 27 ~~constitutes a consistent failure so as to justify a suspension~~
 28 ~~or revocation of the motor carrier’s motor carrier permit~~
 29 ~~or (2) failed to enroll all drivers in the pull notice system~~
 30 ~~as required by Section 1808.1, the department shall~~
 31 recommend that the Department of Motor Vehicles
 32 suspend or revoke the carrier’s motor carrier permit. ~~For:~~

33 (A) *Failed to maintain any vehicle of a type described*
 34 *above in a safe operating condition or to comply with this*
 35 *code or with regulations contained in Title 13 of the*
 36 *California Code of Regulations relative to motor carrier*
 37 *safety, and, in the department’s opinion, that failure*
 38 *presents an imminent danger to public safety or*
 39 *constitutes a consistent failure so as to justify a suspension*
 40 *or revocation of the motor carrier’s motor carrier permit.*



1 (B) Failed to enroll all drivers in the pull-notice system
2 as required by Section 1808.1.

3 (C) Failed, after obtaining a driver's written
4 authorization, to inquire of the driver's previous
5 employers during the preceding two years from the date
6 of application for employment about all of the following:

7 (i) Alcohol tests with a result of 0.04 alcohol
8 concentration or greater.

9 (ii) Verified positive controlled substances test results.

10 (iii) Any refusals to be tested.

11 (iv) Resignation from employment after notification
12 to report for a test and before the test is conducted.

13 (D) Failed, upon written request of an employer or
14 prospective employer with written authorization from
15 the driver, to provide any information described in
16 subparagraph (C).

17 (E) Failed to make reports required under subdivision
18 (g) of Section 34521.

19 (2) No employer may be held civilly liable for good
20 faith compliance with the requirements of subparagraphs
21 (C) to (E), inclusive of paragraph (1).

22 (3) For interstate operators, the department shall
23 recommend to the federal Highway Administration
24 Office of Motor Carriers that appropriate administrative
25 action be taken against the carrier. For

26 (4) For the purposes of this subdivision, two
27 consecutive unsatisfactory compliance ratings for an
28 inspected terminal assigned because the motor carrier
29 failed to comply with the periodic report requirements of
30 Section 1808.1 or the cancellation of the carrier's
31 enrollment by the Department of Motor Vehicles for
32 nonpayment of required fees is a consistent failure. The

33 (5) The department shall retain a record, by operator,
34 of every recommendation made pursuant to this section
35 subdivision.

36 (b) (1) Upon determining that a household goods
37 carrier operating any vehicle described in subdivision
38 (a), (b), (e), (f), (g), or (k) of Section 34500 on a public
39 highway has done either of the following, the department
40 shall recommend that the Public Utilities Commission



1 deny, suspend, or revoke the carrier's operating
2 authority: ~~(1) failed~~

3 (A) Failed to maintain any vehicle used in
4 transportation for compensation in a safe operating
5 condition or to comply with ~~the Vehicle Code~~ this code
6 or with regulations contained in Title 13 of the California
7 Code of Regulations relative to motor carrier safety, and,
8 in the department's opinion, that failure presents an
9 imminent danger to public safety or constitutes a
10 consistent failure so as to justify a suspension, revocation,
11 or denial of the motor carrier's operating authority ~~or (2)~~
12 ~~failed.~~

13 (B) Failed to enroll all drivers in the ~~pull notice~~
14 ~~pull-notice~~ system as required by Section 1808.1, ~~the~~
15 ~~department shall recommend that the Public Utilities~~
16 ~~Commission den, suspend, or revoke the carrier's~~
17 ~~operating authority. For~~

18 (2) For interstate operators, the department shall
19 recommend to the Federal Highway Administration
20 Office of Motor Carriers that appropriate administrative
21 action be taken against the carrier. ~~For~~

22 (3) For the purposes of ~~this subdivision~~ paragraph (1),
23 two consecutive unsatisfactory compliance ratings for an
24 inspected terminal assigned because the motor carrier
25 failed to comply with the periodic report requirements of
26 Section 1808.1 or the cancellation of the carrier's
27 enrollment by the Department of Motor Vehicles for the
28 nonpayment of required fees is a consistent failure. ~~The~~

29 (4) The department shall retain a record, by operator,
30 of every recommendation made pursuant to this section.

31 (c) Before transmitting a recommendation pursuant
32 to subdivision (a), the department shall notify the carrier
33 in writing of all of the following:

34 (1) That the department has determined that the
35 carrier's safety record is unsatisfactory, furnishing a copy
36 of any documentation or summary of any other evidence
37 supporting the determination.

38 (2) That the determination may result in a suspension,
39 revocation, or denial of the carrier's motor carrier permit
40 by the Department of Motor Vehicles, suspension,



1 revocation, of the motor carrier's operating authority by
2 the California Public Utilities Commission, or
3 administrative action by the federal Highway
4 Administration Office of Motor Carriers.

5 (3) That the carrier may request a review of the
6 determination by the department within five days of its
7 receipt of the notice required under this subdivision. If a
8 review pursuant to this paragraph is requested by the
9 carrier, the department shall conduct and evaluate that
10 review prior to transmitting any notification pursuant to
11 subdivision (a) or (b).

12 (d) Upon receipt of a written recommendation from
13 the department that a motor carrier permit or operating
14 authority be suspended, revoked, or denied, the
15 Department of Motor Vehicles or *the* Public Utilities
16 Commission, as appropriate, shall, pending a hearing in
17 the matter pursuant to Section 34623 or appropriate
18 Public Utilities Commission authority, suspend the motor
19 carrier permit or operating authority. The written
20 recommendation shall specifically indicate compliance
21 with subdivision (c).

22 *SEC. 4.* Section 34520 of the Vehicle Code is amended
23 to read:

24 34520. (a) Motor carriers, *drug-testing consortiums*,
25 and drivers shall comply with the controlled substances
26 and alcohol use ~~and~~ testing requirements of the United
27 States Secretary of Transportation as set forth in Part 382
28 (commencing with Section 382.101) of Title 49 of the
29 Code of Federal Regulations. *The department and the*
30 *Department of Motor Vehicles may adopt regulations to*
31 *implement this section.*

32 (b) (1) Every motor carrier *and drug-testing*
33 *consortiums* shall make available for inspection, upon the
34 request of an authorized employee of the department *or*
35 *the Department of Motor Vehicles*, copies of all results
36 and other records pertaining to controlled substances and
37 alcohol use ~~and~~ testing conducted pursuant to federal
38 law, as specified in subdivision (a), including those
39 records contained in individual driver qualification files.

1 (2) For the purposes of complying with the
 2 return-to-duty alcohol or controlled substances test
 3 requirements, or both, of Section 382.309 of Title 49 of the
 4 Code of Federal Regulations and the followup alcohol or
 5 controlled substances test requirements, or both, of
 6 Section 382.311 of that title, the department *and the*
 7 *Department of Motor Vehicles* may use those test results
 8 to monitor drivers who are motor carriers.

9 (3) No evidence derived from a positive test result in
 10 the possession of a motor carrier, *drug-testing*
 11 *consortium, medical review officer, or substance-abuse*
 12 *professional* shall be admissible in a criminal prosecution
 13 concerning unlawful possession, sale, or distribution of
 14 controlled substances.

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

22 ~~(d)~~
 23 (c) It is a misdemeanor, punishable by imprisonment
 24 in a county jail for six months, by a fine not to exceed five
 25 thousand dollars (\$5,000), or by both that imprisonment
 26 and fine, for any person to willfully violate this section.

27 As used in this subdivision, “willfully” has the same
 28 meaning as defined in Section 7 of the Penal Code.

29 ~~(e)~~
 30 (d) This section does not apply to a driver operating
 31 any of the vehicles specified in Section 35002 if that driver
 32 is participating in a substance-abuse detection program
 33 sponsored by the driver’s employer.

34 ~~(f)~~
 35 (e) This section does not apply to a peace officer, as
 36 defined in Section 830.1 or 830.2 of the Penal Code, who
 37 is authorized to drive vehicles described in Section 34500
 38 if that peace officer is participating in a substance-abuse
 39 detection program within the scope of his or her
 40 employment.



1 SEC. 5. Section 34521 is added to the Vehicle Code, to
2 read:

3 34521. (a) Every driver subject to Section 34520 shall
4 report to a collection center at the direction of his or her
5 employer or consortium for controlled substances or
6 alcohol use testing.

7 (b) Every driver directed to report for controlled
8 substances or alcohol use testing pursuant to subdivision
9 (a) shall comply with that directive. No driver after
10 receiving such a directive may avoid the test by resigning
11 employment or consortium membership unless the
12 driver surrenders his or her commercial driver's license
13 to the Department of Motor Vehicles or requests that the
14 license be suspended at a hearing as described under
15 subdivision (i). Failure of any driver to comply with this
16 subdivision shall constitute a refusal to test within the
17 meaning of subdivision (g).

18 (c) The collection center shall do all of the following:

19 (1) Collect specimens as required by Part 382
20 (commencing with Section 382.101) of Title 49 of the
21 Code of Federal Regulations.

22 (2) Transmit each driver's specimen to a drug-testing
23 laboratory as required by Title 40 (commencing with
24 Section 40.1) of, and Part 382 (commencing with Section
25 382.101) of Title 49, of the Code of Federal Regulations.

26 (3) Report to the employer or consortium any failure
27 of the driver to make himself or herself available for
28 testing, either by nonappearance or refusal, by executing
29 and transmitting to the employer or consortium a
30 noncompliance form.

31 (d) The drug-testing laboratory shall convey its test
32 results to the designated medical review officer.

33 (e) If the designated medical review officer makes a
34 verified positive finding pursuant to Part 382
35 (commencing with Section 382.101) of Title 49 of the
36 Code of Federal Regulations, the medical review officer
37 shall advise the driver and the employer or drug-testing
38 consortium within three business days and shall execute
39 and transmit a noncompliance form to the Department
40 of Motor Vehicles at that time.



1 (f) Every driver who has been notified by a medical
2 review officer of a verified positive finding pursuant to
3 Part 382 (commencing with Section 382.101) of Title 49
4 of the Code of Federal Regulations shall be advised by the
5 employer or by the drug-testing consortium of the
6 resources available to the driver for evaluating and
7 resolving problems associated with the misuse of alcohol
8 and the use of controlled substances, including the names,
9 addresses, and telephone numbers of substance-abuse
10 professionals and counseling and treatment programs.

11 (g) The failure or refusal of any driver to test as
12 directed shall be reported by the employer or consortium
13 to the Department of Motor Vehicles within three
14 business days using the noncompliance form prescribed
15 by subdivision (l).

16 (h) The failure of a driver to comply with any
17 requirement of this section shall constitute the
18 presumption that the driver is medically unqualified to
19 occupy a safety-sensitive position and to possess a
20 California commercial driver's license until a
21 determination is made otherwise by the Department of
22 Motor Vehicles at a hearing under subdivision (i) or until
23 the commercial driver's license has been reinstated
24 pursuant to subdivision (j).

25 (i) The Department of Motor Vehicles, upon receipt
26 of a noncompliance form, shall notify the driver of his or
27 her right to request a hearing to show cause why his or her
28 commercial driver's license should not be suspended
29 until the driver complies with all of the requirements of
30 this section, or why his or her license should not be
31 revoked. Hearings requested and conducted pursuant to
32 this section shall be those as set forth in Article 3
33 (commencing with Section 14100) of Chapter 3 of
34 Division 6, except that declarations required by this
35 section shall be received as evidence without requiring
36 the personal appearance of declarants to show cause why
37 the license should not be suspended. The driver shall be
38 notified of the date, time, and place of the hearing. If,
39 after a hearing, it is determined that the driver has not
40 complied with all of the requirements of this section, or



1 if the driver fails to request a hearing within 10 days after
2 notice is sent, the Department of Motor Vehicles shall
3 suspend or revoke the commercial driver's license of the
4 driver. No license suspended under this subdivision shall
5 be reinstated except in accordance with subdivision (j).

6 (j) A commercial driver's license surrendered under
7 subdivision (b), or suspended after a hearing as described
8 in subdivision (i), shall be reinstated by the Department
9 of Motor Vehicles upon notification by a substance-abuse
10 professional that the licensee is qualified under Part 382
11 (commencing with Section 382.101) of Title 49 of the
12 Code of Federal Regulations for return to a
13 safety-sensitive position. The Department of Motor
14 Vehicles shall not impose or collect a fee for
15 reinstatement of a license for the remainder of its term
16 pursuant to this subdivision.

17 (k) The Department of Motor Vehicles shall establish
18 and maintain a separate data base file for all commercial
19 driver's license suspension or revocation proceedings
20 under this section. This separate data base file shall be the
21 exclusive repository of all information maintained by the
22 Department of Motor Vehicles relating to commercial
23 driver's license suspensions or revocations pursuant to
24 this section. Any indication of the existence or status of a
25 commercial driver's license suspended or revoked
26 pursuant to this section shall be deleted from other data
27 base files at the Department of Motor Vehicles until the
28 commercial driver's license has been reinstated pursuant
29 to subdivision (j). The separate data base file required by
30 this subdivision shall be accessible only to the
31 Department of Motor Vehicles and to local and state law
32 enforcement authorities to enforce this section.

33 (l) The Department of Motor Vehicles shall develop a
34 "noncompliance form" for reporting failures to comply
35 with this section. The form shall specify each possible act
36 of noncompliance by a driver under this section. The
37 form shall provide for the collection of each driver's
38 name, social security number, and commercial driver's
39 license number. The form shall be made available upon
40 request to each employer, drug-testing consortium, and



1 *medical review officer. The noncompliance form shall be*
2 *in the form of a declaration.*

3 *(m) No employer or drug-testing consortium shall be*
4 *held civilly liable for good faith compliance with the*
5 *reporting requirements of subdivision (g). No medical*
6 *review officer shall be held civilly liable for good faith*
7 *compliance with the requirements of subdivision (e) in*
8 *its reporting to the department.*

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