

AMENDED IN ASSEMBLY AUGUST 24, 2002

AMENDED IN ASSEMBLY JULY 15, 2002

AMENDED IN ASSEMBLY JUNE 18, 2002

AMENDED IN SENATE APRIL 1, 2002

SENATE BILL

No. 2079

Introduced by Senator Burton

February 22, 2002

An act to amend ~~Sections~~ *Section 51852 of the Education Code, and to amend Sections 11101, 15242, 34520, 34623, and 34624 of the Vehicle Code, relating to ~~motor carrier drug testing~~ driving, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2079, as amended, Burton. ~~Motor~~ *Driving instruction: motor carriers: drug testing.*

Existing law generally regulates driving schools and driving instructors.

This bill would provide that these regulations may not be construed to direct or restrict driver education courses offered by private secondary schools, as defined, or to require credentialed or certified instructors in courses offered by those schools. The bill would make technical changes.

Existing law imposes various requirements upon owner-operators providing transportation services to a motor carrier under the direction and control of that motor carrier, as specified. Existing law defines, for those purposes, "under the direction and control" as, among other things, the performance of transportation services by the

owner-operator for a minimum of 60 days within the past 90 days, as specified.

This bill would specify that the relevant period would be 60 calendar days within the past 90 calendar days.

Existing law requires motor carriers and drivers to comply with federal requirements relating to, among other things, controlled substances and alcohol use and testing for the same. Existing law prohibits an applicant for employment as a commercial driver from being placed on duty by the motor carrier until compliance with certain federal regulations concerning controlled substance and alcohol use and employment history has occurred, as specified.

This bill would require an owner-operator to notify all other motor carriers with whom he or she is under contract when these requirements have been met. Violation of these provisions would be an infraction.

By creating a new crime, this bill would impose a state-mandated local program.

Existing law establishes a classification of motor carrier of property known as owner-operators.

This bill would require every motor carrier who is within the owner-operator classification to notify all other motor carriers with whom he or she is under contract when the status of the motor carrier changes so that he or she is no longer within the owner-operator classification. Violation of these provisions would be a crime pursuant to other provisions of law.

By creating a new crime, this bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would provide that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 51852 of the Education Code is*
2 *amended to read:*

3 51852. A course of instruction in the laboratory phase of
4 driver education shall include, for each student enrolled in the
5 class, instruction under one of the following plans:

6 (a) Plan One. A minimum of 12 hours allocated as follows:

7 (1) A minimum of six hours of on-street behind-the-wheel
8 practice driving instruction in a dual-control automobile with a
9 qualified instructor.

10 (2) A minimum of six hours in a dual-control automobile with
11 a qualified instructor for the purposes of observation. Practice
12 driving on an off-street multiple-car driving range approved by the
13 department under the supervision of a qualified instructor may be
14 substituted for all or part of the observation time.

15 (b) Plan Two. A minimum of 24 hours allocated as follows:

16 (1) Three hours of on-street behind-the-wheel practice driving
17 instruction in a dual-control automobile with a qualified instructor.

18 (2) Six hours in a dual-control automobile with a qualified
19 instructor for the purposes of observation. Practice driving on an
20 off-street multiple-car driving range approved by the department
21 under the supervision of a qualified instructor may be substituted
22 for all or part of the observation time.

23 (3) Twelve hours of instruction by a qualified instructor in a
24 driving simulator approved by the department.

25 (4) At least three additional hours of instruction specified in
26 one or more of paragraphs 1 to 3, inclusive, of this subdivision.

27 (c) Plan Three. A minimum of 24 hours allocated as follows:

28 (1) Three hours of on-street behind-the-wheel practice driving
29 instruction in a dual-control automobile with a qualified instructor.

30 (2) Six hours in a dual-control automobile with a qualified
31 instructor for the purpose of observation.

32 (3) Twelve hours of instruction by a qualified instructor on an
33 off-street multiple-car driving range.

34 (4) At least three additional hours of instruction specified in
35 one or more of paragraphs 1 to 3, inclusive, of this subdivision.

36 (d) Plan Four. A minimum of 24 hours allocated as follows:

37 (1) Three hours of on-street behind-the-wheel practice driving
38 instruction in a dual-control automobile with a qualified instructor.



1 (2) Three hours in a dual-control automobile with a qualified
2 instructor for the purpose of observation.

3 (3) Eighteen hours of instruction by a qualified instructor in a
4 driving simulator approved by the department and on an off-street
5 multiple-car driving range. The governing board of the district
6 shall establish the proportion of time to be utilized in simulators
7 and on the off-street multiple-car driving range.

8 (e) Plan Five.

9 (1) Competency-based driver training which means a program
10 in which each student receives a minimum of three hours of
11 on-street behind-the-wheel practice driving instruction, a
12 minimum of one hour of behind-the-wheel pretesting, and a
13 minimum of one hour of behind-the-wheel posttesting. The pretest
14 and posttest for public school programs shall include basic skill
15 evaluation by the instructor, as adopted by the Superintendent of
16 Public Instruction pursuant to paragraph (2). The one hour posttest
17 shall be conducted by an instructor other than the instructor who
18 conducted the three hours of behind-the-wheel practice driving
19 instruction or the pretest. Each student shall receive at least one
20 additional hour of either behind-the-wheel practice driving
21 instruction or observation time.

22 (2) The Superintendent of Public Instruction shall adopt rules,
23 regulations, and basic skill requirements for public school
24 programs pursuant to this subdivision.

25 (3) Local district superintendents offering this program shall
26 annually report to the Superintendent of Public Instruction, on a
27 form developed by the State Department of Education, on student
28 completion of instruction pursuant to paragraph (1).

29 (f) For purposes of this section, one hour means 60 minutes
30 including passing time.

31 (g) Any deviation from the standard use of a simulator or
32 off-street multiple-car driving range, or both, shall have prior
33 approval by the Department of Education before the school
34 district, county superintendent of schools, the California Youth
35 Authority, or the Department of Education can be reimbursed for
36 the students trained.

37 (h) Nothing in this ~~section~~ *chapter* shall be construed to direct
38 or restrict courses of instruction in the classroom phase or the
39 laboratory phase of driver education offered by private elementary
40 and secondary schools or to require the use of credentialed or



1 certified instructors in the laboratory phase of driver education
2 offered by private elementary and secondary schools, except that
3 each student enrolled in a course shall satisfactorily complete a
4 minimum of six hours of on-street behind-the-wheel driving
5 instruction. This ~~section~~ *chapter* shall not be construed to limit
6 eligibility for a provisional driver’s license for pupils who have
7 completed driver education or driver training courses offered in
8 private elementary or secondary schools.

9 (i) For the purposes of this section, private elementary or
10 secondary schools are those subject to the provisions of Sections
11 33190 and 48222.

12 *SEC. 2. Section 11101 of the Vehicle Code is amended to read:*

13 11101. (a) The provisions of this chapter shall not apply to
14 any of the following:

15 (1) Public schools or educational institutions in which driving
16 instruction is part of the curriculum.

17 (2) Nonprofit public service organizations offering instruction
18 without a tuition fee.

19 (3) Nonprofit organizations engaged exclusively in giving
20 off-the-highway instruction in the operation of motorcycles, if the
21 course of instruction is approved by the National Highway Traffic
22 Safety Administration and is not designed to prepare students for
23 examination by the department for a class 4 drivers license.

24 (4) Commercial schools giving only off-the-highway
25 instruction in the operation of special construction equipment, as
26 defined in this code.

27 (5) Vehicle dealers or their salesmen giving instruction without
28 charge to purchasers of motor vehicles.

29 (6) Employers giving instruction to their employees.

30 (7) Commercial schools engaged exclusively in giving
31 off-the-highway instruction in the operation of racing vehicles or
32 in advanced driving skills to persons holding valid drivers’
33 licenses, except whenever such instruction is given to persons who
34 are being prepared for examination by the department for any class
35 of driver’s license.

36 (b) For purposes of this section, “racing vehicle” means a
37 motor vehicle of a type which is used exclusively in a contest of
38 speed and which is not intended for use on the highways.

39 (c) (1) *Nothing in this chapter shall be construed to direct or*
40 *restrict courses of instruction in driver education offered by*



1 *private secondary schools or to require the use of credentialed or*
2 *certified instructors in driver education courses offered by private*
3 *secondary schools.*

4 (2) *For the purposes of this section, private secondary schools*
5 *are those subject to the provisions of Sections 33190 and 48222 of*
6 *the Education Code.*

7 SEC. 3. Section 15242 of the Vehicle Code is amended to
8 read:

9 15242. (a) A person who is self-employed as a commercial
10 motor vehicle driver shall comply with both the requirements of
11 this chapter pertaining to employers and those pertaining to
12 employees.

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

20 (c) For the purposes of subdivision (b), “direction and control”
21 means either of the following:

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

25 (2) The owner-operator has performed transportation services
26 for a minimum of 60 calendar days within the past 90 calendar days
27 for the motor carrier and has been on duty for that carrier for no
28 less than 36 hours within any week in which transportation
29 services were provided.

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

33 ~~SEC. 2.~~

34 SEC. 4. Section 34520 of the Vehicle Code is amended to
35 read:

36 34520. (a) Motor carriers and drivers shall comply with the
37 controlled substances and alcohol use, transportation, and testing
38 requirements of the United States Secretary of Transportation as
39 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, shall
29 comply with the controlled substances and alcohol use and testing
30 requirements of the United States Secretary of Transportation as
31 set forth in Part 655 (commencing with Section 655.1) of Title 49
32 of the Code of Federal Regulations.

33 (e) The owner-operator shall notify all other motor carriers
34 with whom he or she is under contract when the owner-operator
35 has met the requirements of subdivision (c) of Section 15242.
36 Notwithstanding subdivision (i), a violation of this subdivision is
37 an infraction.

38 (f) Except as provided in Section 382.301 of Title 49 of the
39 Code of Federal Regulations, an applicant for employment as a
40 commercial driver or an owner-operator seeking to provide



1 transportation services and meeting the requirements of
2 subdivision (b) of Section 34624, may not be placed on duty by a
3 motor carrier until a preemployment test for controlled substances
4 and alcohol use meeting the requirements of the federal
5 regulations referenced in subdivision (a) have been completed and
6 a negative test result has been reported.

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

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

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

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

34 ~~SEC. 3.~~

35 *SEC. 5.* Section 34623 of the Vehicle Code is amended to
36 read:

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



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

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

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

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

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

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

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

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

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

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

28 (3) For the purposes of this subdivision, “willful failure”
29 means any of the following:

30 (A) An intentional and uncorrected failure to have a controlled
31 substances and alcohol testing program in place.

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

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

38 (D) An attempt to conceal legal deficiencies in the motor
39 carrier’s controlled substances and alcohol testing program.



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

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

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

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

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



1 not filed a written request for a hearing with the department or has
2 failed to submit a request for reinstatement pursuant to subdivision
3 (e).

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

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

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

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

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

29 ~~SEC. 4.~~

30 *SEC. 6.* Section 34624 of the Vehicle Code is amended to
31 read:

32 34624. (a) The department shall establish a classification of
33 motor carrier of property known as owner-operators.

34 (b) As used in this section and in Sections 1808.1 and
35 34501.12, an owner-operator is a person who meets all of the
36 following requirements:

37 (1) Holds a class A or class B driver's license or a class C
38 license with a hazardous materials endorsement.

39 (2) Owns, leases, or otherwise operates not more than one
40 power unit and not more than three towed vehicles.



1 (3) Is required to obtain a permit as a motor carrier of property
2 by the department under this division.

3 (c) (1) As used in this section, “power unit” is a motor vehicle
4 described in subdivision (a), (b), (g), (f), or (k) of Section 34500,
5 or a motortruck of two or more axles that is more than 10,000
6 pounds gross vehicle weight rating, but does not include those
7 vehicles operated by household goods carriers, as defined in
8 Section 5109 of the Public Utilities Code or persons providing
9 transportation of passengers. A “towed vehicle” is a
10 nonmotorized vehicle described in subdivision (d), (e), (f), (g), or
11 (k) of that section.

12 (2) As used in this section, subdivision (f) of Section 34500
13 includes only those combinations where the gross vehicle weight
14 rating of the towing vehicle exceeds 11,500 pounds, and
15 subdivision (g) of Section 34500 includes only those vehicles
16 transporting hazardous materials for which the display of placards
17 is required pursuant to Section 27903, a license is required
18 pursuant to Section 32000.5, or for which a hazardous waste
19 transporter registration is required pursuant to Section 25163 of
20 the Health and Safety Code.

21 (d) The department, upon suspending or revoking the driving
22 privilege of an owner-operator shall also suspend the
23 owner-operator’s motor carrier permit, unless the owner-operator,
24 within 15 days, shows good cause why the permit should not be
25 suspended.

26 (e) Every motor carrier who is within the classification
27 established by this section is responsible for notifying all other
28 motor carriers with whom he or she is under contract when the
29 status of the motor carrier changes so that he or she is no longer
30 within the classification established by this section.

31 (f) This section shall not be construed to change the definition
32 of “employer,” “employee,” or “independent contractor” for
33 any other purpose.

34 ~~SEC. 5.~~

35 *SEC. 7.* No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of



1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 ~~SEC. 6.~~

5 *SEC. 8.* This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety
7 within the meaning of Article IV of the Constitution and shall go
8 into immediate effect. The facts constituting the necessity are:

9 In order to ensure appropriate compliance with federal and state
10 regulations regarding drug and alcohol testing relative to motor
11 carriers, owner-operators, and drivers, it is necessary that this
12 statute take immediate effect.

O

