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Transportation and Motor Vehicles

University of the Pacific; McGeorge School of Law

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Transportation and Motor Vehicles

Transportation and Motor Vehicles; California Commercial Motor Vehicle Safety Act of 1988

Public Utilities Code § 3557 (new); Vehicle Code §§ 1808.3, 34501.12, 34505.5, 34505.6 (new); §§ 612, 1808.1, 2807.2, 12810.5, 34506, 40000.6, 40000.21, 40000.22 (amended).

AB 2706 (Katz); 1988 STAT. Ch. 1586*

Chapter 1586 enacts the California Commercial Motor Vehicle Safety Act of 1988.¹ The legislature enacted Chapter 1586 in response to an unacceptable number of mechanical defects in commercial motor vehicles discovered at California Highway Patrol roadside checks, the perceived need to regularly inspect commercial trucks, and the belief that an employer of heavy vehicle drivers should be aware of driver records and check for proper licensing.²

Chapter 1586 mandates that actual and prospective employers of class one and class two vehicle drivers participate in the existing³ Department of Motor Vehicle's pull notice program.⁴ Existing law provides that employers of tour bus drivers must periodically⁵ obtain and review⁶ their driver's driving reports.⁷ Chapter 1586 extends the

* Chapter 1586 provisions relating to Vehicle Code sections 1808.3, 34505.6 and 40000.21 become effective on January 1, 1990.

1. 1988 Cal. Stat. ch. 1586, sec. 1, at ____.

2. *Id.*, sec. 2, at ____.

3. Existing law provides that the Department of Motor Vehicles operate a pull notice program to provide a report, upon request of certain employers, showing a driver's current public record and also provide future reports indicating subsequent additions made to the driving record. CAL. VEH. CODE §§ 1808.1(a)-(b).

4. *Id.* See *id.* §§ 1808.1(d) (employers must notify the Department of Motor Vehicles to cancel the pull notice request upon termination of the employee); 1808.1(g) (fee charged for each report).

5. Employers with 500 or fewer drivers must obtain and review reports at least every six months while employers with more than 500 drivers must obtain and review reports at least annually. CAL. VEH. CODE § 1808.1(c).

6. The employer must verify that the driver's license has not been suspended or revoked, determine the driver's traffic violation point count, and check for any charges of driving under the influence. *Id.* § 1808.1(c).

7. *Id.*

periodic report review⁸ to employers who employ class one or class two drivers.⁹

Additionally, Chapter 1586 mandates that the Department of Motor Vehicles notify the Public Utilities Commission upon the suspension or revocation of an owner-operator's¹⁰ driving privilege.¹¹ Upon notification, the Public Utilities Commission must, after fifteen days,¹² suspend the owner-operator's operating authority.¹³

Existing law assigns equivalent traffic violation point counts for all drivers regardless of the type of vehicle driven.¹⁴ Chapter 1586 mandates higher point counts for traffic violations committed by drivers in vehicles requiring class one or class two licenses.¹⁵

Under prior law, a class one or class two driver was allowed, in a specified time period, to accumulate more traffic violation point counts than other licensed drivers before a presumption of negligence arose.¹⁶ Chapter 1586 changes the presumption of negligence standard for class one and class two drivers by initially requiring that all drivers be considered on an equivalent point count scale.¹⁷ Chapter 1586 will subsequently provide a class one or class two driver a higher allowance of points if the driver requests and appears at a Department of Motor Vehicles hearing.¹⁸

Chapter 1586 requires the Department of the California Highway Patrol (Department) to provide preventive maintenance inspection guides for use by operators of specified motor trucks and other heavy vehicles.¹⁹

8. Compare 1987 Cal. Stat. ch. 726, sec. 3, at ____ (amending CAL. VEH. CODE § 1808.1) (review is to include employees charged with driving under the influence) with CAL. VEH. CODE § 1808.1(c) (review is to include employees convicted of driving under the influence).

9. CAL. VEH. CODE § 1808.1(c).

10. CAL. PUB. UTIL. § 3557 (owner-operator defined).

11. CAL. VEH. CODE § 1808.3.

12. The 15 days is the time limit for the owner-operator to demonstrate why the license should not be suspended. CAL. PUB. UTIL. § 3557(d).

13. *Id.*

14. *See Id.* § 12810.

15. *Id.* § 12810.5(b)(2).

16. 1986 Cal. Stat. ch. 1305, sec. 6, at ____ (amending CAL. VEH. CODE § 12810.5).

17. CAL. VEH. CODE § 12810.5(a).

18. *Id.* § 12810.5(b)(1). A higher point count will not apply if violations attributable to a driver's operation of a vehicle requiring only a class three or class four license would exceed the lower point count scale. *Id.*

19. *Id.* § 2807.2. Existing law requires the Department to provide a preventive maintenance inspection guide to operators of tour buses and other specified vehicles. *Id.* *See id.* (record of inspection shall be signed by the person making the inspection and inspection records shall be made available to the Department for review and inspection). Vehicles covered include: Motor trucks of three or more axles that are more than 6000 pounds unladen weight, truck tractors, various trailers and vehicles transporting hazardous materials. *Id.* §§ 34500(a)-(b), 34500(d)-(g).

Under existing law, tour bus operators are required to perform specified safety inspections²⁰ at least every forty-five days and maintain records of the inspections and repairs performed.²¹ Chapter 1586 further extends existing law by applying the same periodic safety inspection requirements²² imposed on tour bus operators to operators of other specified motor trucks and other heavy vehicles.²³ Chapter 1586 prohibits the operation of these vehicles until defects have been corrected.²⁴

Chapter 1586 provides that the Department must inspect, at least once every twenty-five months, every maintenance or terminal facility of any person who operates motor trucks and other heavy vehicles.²⁵ Chapter 1586 makes it a misdemeanor for specified motor carriers to operate motor trucks and other heavy vehicles when inspection regulations have not been complied with.²⁶

Chapter 1586 makes it a misdemeanor to employ a class one or class two driver against whom a disqualifying action has been taken.²⁷ Chapter 1586 makes it a misdemeanor to violate authorized regulations of the Department pertaining to equipment, maintenance, or operation of motor trucks and other heavy vehicles.²⁸ Additionally, Chapter 1586 makes it a misdemeanor for an operator to require a motor truck or other heavy vehicle to operate on an excessive speed schedule.²⁹ Additionally, a carrier's operating authority will be denied, suspended or revoked if the carrier violates vehicle inspection requirements, pull notice and periodic report requirements, or if an operator's terminal is rated unsatisfactory.³⁰

CWS

20. CAL. VEH. CODE § 34505(a) (description of tour bus inspection procedure).

21. *Id.* § 34505(c). A violation of this provision is a misdemeanor. *Id.* § 40000.21(e). Chapter 1586 imposes inspection requirements on additional motor vehicles by redefining the term tour bus to include buses designed to carry more than ten passengers including the driver. Compare CAL. VEH. CODE § 612 (definition of tour bus) with 1987 Cal. Stat. ch. 726, sec. 2, at (amending CAL. VEH. CODE § 612) (stating that a tour bus is a bus designed to carry more than ten passengers and the driver). This provision of Chapter 1586 was immediately operative. 1988 Cal. Stat. ch. 1586, sec. 12, at

22. *But see* CAL. VEH. CODE § 34505.5(d) (alternative inspection schedules are authorized as determined by the Department).

23. CAL. VEH. CODE §§ 34505.5 (safety inspection requirements). A violation of this provision is a misdemeanor. *Id.* § 40000.21(f).

24. *Id.* § 34505.5(b).

25. *Id.* § 34501.12(a).

26. *Id.* §§ 34501.12(c)-(d), 40000.22. *See generally id.* § 34501.12(b)(1) (the motor carrier is responsible for inspection scheduling and payment of a \$100 or \$400 fee).

27. CAL. VEH. CODE §§ 1808.1(e), 40000.6.

28. *Id.* §§ 34506, 40000.21(f).

29. *Id.* § 40000.21(g).

30. *Id.* § 34505.6. *See id.* § 34505.6(b) (application for reinstatement of operating authority shall be accompanied by a fee of \$500).

**Transportation and Motor Vehicles; negligent operators—
financial responsibility**

Code of Civil Procedure § 117.24 (new); Vehicle Code §§ 16370.5, 16370.7 (new).

AB 3026 (Lancaster); 1988 STAT. Ch. 395
(Effective August 11, 1988)

Sponsor: Department of Motor Vehicles

Existing law authorizes the Department of Motor Vehicles (DMV) to revoke,¹ suspend, or deny the renewal of the driving privilege of any driver presumed to be a negligent operator.² Chapter 395 further authorizes the DMV to require a negligent operator whose driving privilege has been suspended³ to submit proof of financial responsibility before reinstating the operator's driving license.⁴

1. CAL. VEH. CODE § 13101 (definition of revocation).

2. *Id.* § 12809(e). Any person whose driving record shows a violation point count of 4 or more points in 12 months, 6 or more points in 24 months, or 8 or more points in 36 months shall be prima facie presumed to be a negligent operator of a motor vehicle. *Id.*

3. *Id.* § 13102 (definition of suspension). Existing law states that failure to prove financial responsibility when stopped for a motor vehicle violation or when involved in an accident will result in suspension of the driving privilege. *Id.* § 16028. A driver involved in an accident must prove financial responsibility at the time of the accident, or the DMV will suspend the driving privilege of that person. *Id.* § 16070. See also *id.* §§ 16034 (a driver must file proof of financial responsibility with the DMV upon conviction of a motor vehicle violation within 60 days of the conviction, and failure to do so will result in suspension of the driving privilege); 16075(a)-(e) (suspension of the driving privilege will not apply until 15 days after the DMV sends the driver a notice of intent to suspend and advises the driver of his right to a hearing). See generally, *Anacker v. Sillas*, 65 Cal. App. 3d 416, 421, 135 Cal.Rptr. 537, 540 (1977) (holding that amendments to the financial responsibility laws preclude fault from becoming an issue when the question of financial responsibility of a driver involved in an accident arises, and therefore the equal protection clauses of the federal and state constitutions were not violated).

4. CAL. VEH. CODE § 12810.5(c). Existing law requires every driver or owner of a motor vehicle to possess evidence of financial responsibility. *Id.* § 16020. See generally, CAL. VEH. CODE §§ 16000-16110); *Bell v. Burson*, 402 U.S. 535 (1971) (where suspension of a driving license depends on fault, due process requires a pre-suspension hearing considering fault); *Escobedo v. State Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P. 2d 1 (1950) (suspending the drivers license without a prior hearing, but with subsequent judicial review, did not violate due process, providing the suspension was justified by a compelling public interest: reducing the large numbers of financially irresponsible drivers); *Rio v. Cozens*, 7 Cal. 3d 792, 103 Cal. Rptr. 299, 499 P. 2d 979 (1972) (in overturning *Escobedo* the court stated fault based plan for suspension of driving privilege is constitutionally invalid unless there can be a pre-suspension hearing considering fault, accompanied by the opportunity for cross-examination); *Jenkins, Financial Responsibility Laws in Constitutional Perspective*, 61 CALIF. L. REV. 1073 (1973) (requiring that an individual show financial responsibility before determining fault presents due process problems and therefore, only after the individual has the opportunity for a hearing may a license be suspended for failure to maintain financial responsibility); *Review of Selected 1974 California Legislation*, 6 PAC. L.J.(1975) 336, 340 (following the *Rios* decision, more than 20,000 persons requested such hearings, and the DMV, unable to conduct adequate hearings due to lack of funds, stayed all proceedings on suspension until the legislature changed the law or provided funds).

Under Chapter 395, the judgment creditor of a unsatisfied small claims court judgment⁵ arising from a motor vehicle accident can file a notice with the DMV that such judgment has remained unsatisfied.⁶ Chapter 395 allows the DMV to suspend the driving privilege of any judgment debtor upon receipt of notice of failure to satisfy the judgment.⁷

KAB

5. The small claims judgment must be under \$500. CAL. CIV. PROC. CODE § 117.24(a).

6. *Id.* § 117.24(a) (the judgment must remain unsatisfied for 90 days). *See also* CAL. VEH. CODE §§ 16251, 16370 (existing law provides for suspension of the driving privilege of a person against whom a judgment resulting from a motor vehicle accident in excess of \$500 has not been satisfied).

7. CAL. VEH. CODE § 16370.5. Upon receipt of the notice, the DMV shall attempt to notify the judgment debtor that his or her driving privilege will be suspended for 90 days, beginning 10 days after receipt of the notice from the judgment creditor. CAL. CIV. PROC. CODE, § 117.24(c). *See also id.* § 16370.7 (notice of unsatisfied judgment must be accompanied by a \$20 fee for processing and issuing of the suspension order).

Transportation and Motor Vehicles; sales advertising regulation

Vehicle Code § 11713.1 (amended).

AB 4020 (Sher); 1988 STAT. Ch. 1584

Sponsor: Attorney General's Office

Support: Motor Car Dealers Association of Southern California;
Northern California Dealers Association; Alameda County District
Attorney's Office

Existing law prohibits certain advertising practices by vehicle dealers.¹ Chapter 1584 clarifies the prohibitions by requiring advertisements to include a vehicle's identification or registration number,² the total price,³ and notice that certain costs will be added.⁴ Additionally, Chapter 1584 makes it unlawful to: (1) Fail to sell a vehicle to a buyer at the advertised price,⁵ or charge a buyer more than the cash price for receiving advertised credit terms;⁶ (2) advertise certain

1. *E.g.*, CAL. VEH. CODE § 11713(a)-(d) (lists unlawful advertising practices, such as making untrue statements in advertising and advertising vehicles not actually for sale). *See id.* § 285 (definition of dealer).

2. CAL. VEH. CODE § 11713.1(a).

3. *Id.* §11713.1(b) (sales tax, registration and compliance certificate fees, or finance and dealer documentary preparation charges are not required).

4. *Id.* § 11713.1(c) (costs include sales tax, registration and certificate fees, financing charges, and dealer documentary preparation charges). This requirement applies only to newspaper display advertisements. *Id.* *See id.* (definition of newspaper display advertisement).

5. *Id.* § 11713.1(e).

6. *Id.* § 11713.1(k). *See* CAL. CIV. CODE § 2981(e) (definition of cash price).

free gifts,⁷ guaranteed trade-in allowances,⁸ rebates,⁹ or incentives¹⁰ offered by the manufacturer or distributor;¹¹ (3) advertise vehicles with an intent not to supply a reasonably expected demand;¹² (4) advertise as new any vehicle for which the dealer does not hold a franchise;¹³ (5) misrepresent the authority of an agent to negotiate the final terms of a transaction;¹⁴ (6) falsely state that a vehicle is equipped with all optional equipment,¹⁵ or violate any law prohibiting bait and switch advertising;¹⁶ or (7) advertise a vehicle at a specified amount above, below, or at the manufacturer's or distributor's invoice price to the dealer without disclosing that the invoice amount may exceed the actual dealer cost because of allowances to the dealer.¹⁷ Further, Chapter 1584 allows a dealer's supplemental price sticker which represents a price higher than the manufacturer's asking price to be attached to a vehicle under certain circumstances.¹⁸ Finally, for a dealer to claim lawfully having the lowest price, the dealer must have conducted a comparative price survey.¹⁹

HSP

7. CAL. VEH. CODE § 11713.1(h) (free gifts that are contingent upon the purchase of a vehicle).

8. *Id.* § 11713.1(l) (guaranteed trade-in allowances not provided by the manufacturer or distributor).

9. *Id.* § 11713.1(j) (rebates that do not specify a dollar amount). The vehicle manufacturer or distributor must be offering the "rebate," or words to that effect, directly to the buyer or to the assignee of the buyer. *Id.*

10. *Id.* § 11713.1(s) (definition of incentive).

11. The dealer is prohibited from advertising incentives that require the dealer to contribute to the cost of the incentive. *Id.* The dealer may advertise the incentive, however, if the dealer discloses in a clear manner that dealer participation may affect consumer cost. *Id.*

12. *Id.* § 11713.1(i) (unless they disclose limitation of quantity).

13. *Id.* § 11713.1(f).

14. *Id.* § 11713.1(m).

15. *Id.* § 11713.1(p).

16. *Id.* § 11713.1(o).

17. *Id.* § 11713.1(e), (f), (h)-(p), (s).

18. *Id.* § 11713.1(q)(1)-(3). The supplemental sticker must: (1) Clearly disclose in the largest print on the sticker other than that used for the dealer's name, that the price is the dealer's price rather than the suggested retail price; (2) state the manufacturer's suggested retail price; and (3) list each item not included in this price along with both the prices of such items and the words "added mark-up," if the supplemental sticker price exceeds the suggested retail price plus the prices of the added items. *Id.*

19. *Id.* § 11713.1(r) (the dealer must keep records that substantiate such claims and that are available to the Department of Transportation on request).