

INFORMATION BULLETIN



SENATE BILL (SB) 871

The purpose of this Information Bulletin is to provide information pertaining to SB 871 and its effect on commercial motor vehicle operators within California. Because SB 871 includes four sections, each section will be discussed separately, for the purpose of clarity.

California Civil Code Section 3333.7:

Newly added Section 3333.7, California Civil Code, entitles any person who suffers proximate injury caused by the driver of a commercial motor vehicle to recover treble damages under specific circumstances. The provisions of this section are purely civil and are not within the purview of the California Highway Patrol's (CHP) enforcement policies.

California Vehicle Code (VC) Section 15242:

Amended Section 15242 VC indicates any motor carrier that engages an owner-operator, as defined in Section 34624(b) VC, to provide transportation services under the "direction and control" of that motor carrier is "responsible for the compliance" of the owner-operator. The responsibility of the overlying motor carrier is specific to driver license requirements and regulations adopted pursuant to Section 34501 VC (Title 13, California Code of Regulations, Chapter 6.5, Motor Carrier Safety). For the purposes of this section, "direction and control" is defined as follows:

- The owner-operator is operating under the interstate operating authority of the overlying motor carrier; or
- The owner-operator has performed transportation services for a minimum of 60 days within the past 90 days for the overlying motor carrier, and has been on-duty for that motor carrier for no less than 36 hours within any week in which those services were provided.

This amendment does not have any impact on current owner-operator inspection policy. However, when it is determined through the normal inspection process an engaged owner-operator has failed to comply with driver licensing requirements or motor carrier safety regulations, the overlying motor carrier will be deemed equally responsible. When noncompliance by the owner-operator results in criminal or administrative action, appropriate enforcement action will also be initiated against the overlying motor carrier. For this purpose, appropriate enforcement action will consist of the issuance of a citation to the overlying motor carrier, citing the principle areas of noncompliance.

Section 34520 VC:

Amended Section 34520 VC indicates a motor carrier may not place an owner-operator on-duty until a preemployment test for controlled substances and alcohol has been conducted (pursuant to Title 49, Code of Federal Regulations [49 CFR], 382.301); a negative result has been recorded; and a full investigation of the driver's (owner-operator) employment history (pursuant to 49 CFR 382.413) has been completed, all in accordance with federal regulations. Additionally, amended Section 34520 VC indicates a motor carrier that uses a preemployment screening service is deemed to be in compliance with the driver employment history investigation and preemployment controlled substances screening requirements, when the services provided comply with state and federal regulation and the employer abides by any findings that would, under federal law, disqualify a driver.

These amendments will have no impact on current CHP inspection policies. SB 871 simply places existing federal rules into California statute, providing continued consistency with federal controlled substances and alcohol testing (CSAT) regulations.

Section 34623 VC:

Notwithstanding current suspension terms for Motor Carrier of Property permits listed in Section 34670 VC, newly amended Section 34623 VC introduces a separate suspension criteria for motor carriers of property who willfully fail to perform controlled substances and alcohol testing in accordance with state or federal law. For the purposes of Section 34623 VC, "willful failure" means any of the following:

- An intentional and uncorrected failure to have a controlled substances and alcohol testing program in place.
- An intentional and uncorrected failure to enroll an employed driver into the controlled substances and alcohol testing program.
- A knowing use of a medically disqualified driver, including the failure to remove the driver from safety-sensitive duties upon notification of the medical disqualification.
- An attempt to conceal legal deficiencies in the motor carrier's controlled substances and alcohol testing program.

Questions regarding this Information Bulletin may be directed to the California Highway Patrol, Commercial Vehicle Section, at (916) 445-1865.

ASSISTANT COMMISSIONER, FIELD

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