
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2687 **Hearing Date:** June 28, 2016
Author: Achadjian
Version: May 27, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicles: Passenger for Hire: Driving Under the Influence*

HISTORY

Source: California District Attorneys Association

Prior Legislation: None

Support: Alcohol Justice; California Alcohol Policy Alliance; California Council on Alcohol Problems; California Sheriffs' Association; Peace Officers Research Association of California

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association; Legal Services for Prisoners with Children

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to make it unlawful for a person driving a motor vehicle with a blood alcohol level of 0.04% or more when a passenger for hire is in his or her vehicle.

Existing law provides it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. (Vehicle Code § 23152(a).)

Existing law provides that it is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (Vehicle Code § 23152(b).)

Existing law provides that it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving. (Vehicle Code § 23152 (b).)

Existing law provides that it is unlawful for a person who is addicted to the use of any drug to drive a vehicle. (Vehicle Code § 23152 (c).)

Existing law provides that it is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210. (Vehicle Code § 23152 (d).)

Existing law, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving. (Vehicle Code, § 23152 (d).)

Existing law provides that it is unlawful for a person who is under the influence of any drug to drive a vehicle. (Vehicle Code, § 23152 (e).)

Existing law provides that it is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle. (Vehicle Code, § 23152 (f).)

Existing law defines "commercial motor vehicle" as "any vehicle or combination of vehicles that requires a class A or class B license, or a class C license with an endorsement issued for the following vehicles: a) A double trailer; (Vehicle Code, § 15278 (a)(1).)

Existing law provides that a passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver; (Vehicle Code, § 15278 (a)(2).)

Existing law defines "charter party carriers of passengers" as "every person engaged in the transportation of person by motor vehicle for compensation, as specified, over any public highway in the state." (Public Utilities Code § 5360.)

This bill would make it unlawful for a person who has 0.04% or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense.

This bill would make it unlawful have a 0.04% or more, by weight of alcohol in his or her blood and o cause an injury to a passenger when driving a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense.

This bill defines "passenger for hire" as a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle.

This bill has a delayed implementation date of January 1, 2018.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

This bill seeks to conform current laws governing commercial drivers with the laws governing passenger for hire vehicles. Current law states that the driver of a passenger for hire vehicle may legally have a BAC of .08 or less whereas a commercial driver must have a BAC of less than .04. AB 2687 would ensure that the drivers of passenger for hire vehicles are held to the strictest standard.

2. Types of Licenses

DMV issues three classes of licenses: A, B, and C. An individual needs a specific class of license in order to legally drive certain vehicles, or tow trailers of a certain weight. Class A licenses allow an individual to drive the largest and heaviest vehicle/trailers. A noncommercial class C license is the standard license that most people have.

Commercial Class A license allows a person to drive any legal combination of vehicles and any vehicles covered under Classes B and C. A Commercial Class A License allows individual to drive 18 wheel tractor trailers.

Commercial Class B license allows a person to drive a single vehicle with gross vehicle weight rating of more than 26,000 lbs., a three axle vehicle weighing over 6,000 lbs, a bus with endorsement, and any vehicle covered under Class C.

Commercial Class C License: Allows a person to drive a vehicle carrying hazardous material which require placards.

Basic Class C License allows a person to drive a 2 axle vehicle with a gross vehicle weight rating of 26,000 lbs. or less, a 3 axle vehicle weighing 6,000lbs. or less, a housecar less than 40 feet, a single vehicle with a gross vehicle weight rating of 10,000 lbs. or less.

3. Commercial Vehicles

Current law defines "commercial motor vehicle" as "any vehicle or combination of vehicles that requires a class A or class B license, or a class C license with an endorsement issued for the following vehicles:

- a. A passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver; (Vehicle Code, § 15278 (a)(2).)
- b. A double trailer; (Vehicle Code, § 15278(a)(1).)
- c. A school bus; (Vehicle Code, § 15278(a)(3).)
- d. A tank vehicle; or (Vehicle Code, § 15278(a)(4).)
- e. A vehicle carrying hazardous materials, as defined, that is required to display placards pursuant to Section 27903, unless the driver is exempt from the endorsement requirement as specified.

4. DUI Standards for Commercial Vehicles v. Taxis or Ride Sharing Vehicles

Under current law individuals driving "commercial vehicles" are prohibited from driving such a vehicle with .04 or more Blood Alcohol Content (BAC), at the time of driving. Generally, individuals are prohibited from driving if they have .08 or more BAC. Taxi drivers and drivers for ride sharing services (Uber, Lyft) are governed by the .08 limit. That limit applies whether or not there are passengers in their vehicles.

Under current law commercial vehicles include a vehicle that can carry more than 10 people. This includes bus drivers and individuals driving larger shuttles. One of the reasons the law imposes lower alcohol limits for drivers of commercial vehicles is that commercial vehicles are much larger vehicles with a greater potential to cause injury and death in the event of a collision.

Commercial vehicles do include passenger transportation vehicle when designed, used, or maintained to carry more than 10 persons including the driver. (Vehicle Code, § 15278, subd. (a)(2). Such vehicles includes shuttles and larger vans used in manners that would be consistent with the definition in this bill of “passenger for hire.”

A lower limit for drivers of commercial vehicles is also consistent with the increased regulations that are placed on commercial drivers generally. Taxi drivers and drivers for hire, such as Uber, are providing a commercial service to the public. The government applies different legal standards and regulatory frameworks to commercial service providers of all varieties. Such regulations are in place to ensure public trust and provide consumer protections. Is a lower BAC limit for drivers of passengers for hire consistent with those regulatory goals?

5. Support

The sponsor of this bill, the California District Attorneys Association notes:

Currently, Vehicle Code section 223152(d) places the legal blood alcohol limit at 0.04% for commercial motor vehicle drivers. Neither taxis, nor private vehicles engaged in the commercial transport of passengers, are considered commercial vehicles, and operators are not required to have a commercial driver’s license. Thus despite engaging in the business of transporting passengers, these drivers are not held to any higher standard or behavior.

These quasi-commercial drivers present an increased risk to public safety when driving under the influence of alcohol or drugs while carrying passengers for hire. Were they to be involved in a traffic collision, it is likely that their passengers would suffer injury in addition to any injuries inflicted upon pedestrians or occupants of other involved vehicles. This behavior also violates their passengers’ trust that they will be able to get their passengers safely from point A to point B, despite the frequency with which we encourage the use of these alternatives to drinking and driving.

6. Opposition

The California Public Defenders Association opposes this bill stating:

V.C. 23152 prohibits driving under the influence or driving with a blood alcohol level of .08% or higher. A few years ago, a new subdivision was added to also make it a violation of the DUI statute, and punishable to the same extent, to drive a commercial vehicle with a blood alcohol level of .04, even though the driving ability of most individuals is not impaired at .04 BA. The justification was that commercial vehicles are very large, or carry hazardous materials, or involve the transportation of numerous passengers such as school busses, or public or commercial busses, and therefore the hazard to the public is multiplied to the extent that greater margin for safety should be employed to make it even less likely that

drivers of such vehicles MIGHT be impaired. The same standard applies to VC 23153, drunk driving with injury in a commercial vehicle.

This bill would expand this subdivision to include not only commercial drivers, but anyone who carries passengers for hire, such as taxi drivers, or Uber or Lyft drivers, even though the hazard to the public is the same as for any other passenger vehicle. Therefore, the original rationale for lower BA threshold of this subdivision is not justified.

Moreover, the definition of “passenger for hire” is very loose and vague; namely that it is “a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly...” As phrased this *could* include a carpool, or friends that go “barhopping” and buy the food or drinks for the driver of the vehicle, or even a woman a date who expects “consideration” for driving the other person during the date.

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