
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 88 **Hearing Date:** April 25, 2023
Author: Skinner
Version: April 17, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Pupil transportation: driver qualifications*

HISTORY

Source: California School Employees Association

Prior Legislation: AB 878 (Skinner) not heard Assembly Floor 2022

Support: American Federation of State, County and Municipal Employees; California Association of School Transportation Officials; California Federation of Teachers; California Federation of Teachers Aft, AFL-CIO; California Labor Federation, AFL-CIO; California Nurses Association/ National Nurses United; California School Employees Association; California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD); State Superintendent of Public Instruction Tony Thurmond

Opposition: Association of California School Administrators; California Association of Suburban School Districts; California School Boards Association; Casa of Los Angeles; Central Valley Education Coalition; Court Appointed Special Advocates of Ventura; Farmworker Institute of Education & Leadership Development; Hopskipdrive INC.; Office of The Riverside County Superintendent of Schools; Riverside County Office of Education; San Lorenzo Unified School District; Alameda County Office of Education (unless amended)

ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE TAKEN IN COMMITTEE

PURPOSE

The purpose of this bill is to impose a number of requirements on drivers who contract with local educational agencies to drive pupils including background checks and making the drivers mandated reporters.

Existing law authorizes the governing board of any school district to provide for the transportation of pupils to and from school whenever, in the judgment of the board, the transportation is advisable and good reasons exist therefor. Authorizes the governing board to purchase or rent and provide for the upkeep, care, and operation of vehicles, or to contract and pay for the transportation of pupils to and from school by common carrier or municipally owned transit system, or to contract with and pay responsible private parties for the transportation.

Authorizes these contracts to be made with the parent or guardian of the pupil being transported. (Education Code (EC) 39800)

Existing law prohibits transportation allowances from being made by the Superintendent of Public Instruction (SPI) for expenses incurred with respect to field trips or excursions that have an out-of-state destination. Requires a school district that transports pupils, teachers, or other employees of the school district in schoolbuses within the state and to destinations within the state, as specified, to report to the SPI on forms prescribed by him or her the total mileage of schoolbuses used in connection with educational excursions. Requires, in computing the allowance to a school district for regular transportation, a deduction from that allowance in an amount equal to the depreciation of schoolbuses used for the transportation in accordance with rules and regulations adopted by the SPI. (EC 35330)

Existing law prohibits any school district and any owner or operator of a private school that provides transportation for pupils that owns, leases, or otherwise has possession or control of a 15-passenger van, from, on or after January 1, 2005, authorizing the operation of that van for the purpose of transporting passengers unless the person driving or otherwise operating that van has both of the following:

- a) A valid class B driver's license issued by the DMV; and
- b) An endorsement for operating a passenger transportation vehicle issued by the DMV.

Existing law defines a "15-passenger van" to mean any van manufactured to accommodate 15 passengers, including the driver, regardless of whether that van has been altered to accommodate fewer than 15 passengers. (EC 39800.5)

Existing law establishes that a schoolbus is any motor vehicle designed, used, or maintained for the transportation of a school pupil at or below the grade 12 level to or from a public or private school or to or from public or private school activities, except the following:

- a) A motor vehicle of any type carrying only members of the household of its owner;
- b) A motor truck transporting pupils who are seated only in the passenger compartment, and a passenger vehicle designed for and when actually carrying not more than 10 persons, including the driver, except any vehicle or truck transporting two or more pupils who use wheelchairs;
- c) A motor vehicle operated by a common carrier, or by and under exclusive jurisdiction of a publicly owned or operated transit system, only during the time it is on a scheduled run and is available to the general public or on a run scheduled in response to a request from a pupil who uses a wheelchair, or from a parent of the pupil, for transportation to or from nonschool activities. However, the motor vehicle is designed for and actually carries not more than 16 persons and the driver, is available to eligible persons of the general public, and the school does not provide the requested transportation service;
- d) A school pupil activity bus, as defined;

- e) A motor vehicle operated by a carrier licensed by the Interstate Commerce Commission that is transporting pupils on a school activity entering or returning to the state from another state or country; and
- f) A state-owned motor vehicle being operated by a state employee upon the driveways, paths, parking facilities, or grounds, as specified, that are under the control of a state hospital under the jurisdiction of the State Department of Developmental Services where the posted speed limit is not more than 20 miles per hour. (EC 39830 and Vehicle Code (VC) 545)

Existing law defines a “bus” as vehicle designed, used, or maintained for carrying more than 10 persons, including the driver, which is used to transport persons for compensation or profit, or is used by any nonprofit organization or group, is also a bus. (VC 233)

Existing law specifies that it is unlawful for any person under the age of 18 years to drive a school bus transporting pupils to or from school. (VC 12516)

Existing law specifies that no driver of a schoolbus, school pupil activity bus (SPAB), youth bus shall drive more than ten hours within a work period, or after the end of the 16th hour after coming on duty following eight consecutive hours off duty. (Title 13, California Code of Regulations, Section 1212.5)

Existing law defines “school pupil activity bus (SPAB)” to mean any motor vehicle, other than a schoolbus, operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned or operated transit system, or by a passenger charter-party carrier, used under a contractual agreement between a school and carrier to transport school pupils at or below the 12th grade level to or from a public or private school activity, or used to transport pupils to or from residential schools, when the pupils are received and discharged at off-highway locations where a parent or adult designated by the parent is present to accept the pupil or place the pupil on the bus. Defines, “common carrier,” “publicly owned or operated transit system,” and “passenger charter-party carrier” to mean carriers in business for the principal purpose of transporting members of the public on a commercial basis.

Existing law requires that the driver of a SPAB to be subject to the regulations adopted by the Department of the California Highway Patrol (CHP) governing schoolbus drivers, except that the regulations must not require drivers to duplicate training or schooling that they have otherwise received that is equivalent to that required pursuant to the regulations, and the regulations may not require drivers to take training in first aid. Establishes that a valid certificate to drive a SPAB does not entitle the bearer to drive a schoolbus. (EC 39830.1 and VC 546)

Existing law requires the California Department of Education (CDE) to develop or approve courses for training SPAB, transit bus, schoolbus, and farm labor vehicle drivers that will provide them with the skills and knowledge necessary to prepare them for certification. Requires the CDE to seek the advice and assistance of the Department of Motor Vehicles (DMV) and the CHP in developing or approving those courses. (EC 40081)

This bill specifies that its provisions apply to all drivers, whether employed by or contracted with a LEA, providing pupil transportation for compensation and nothing shall be construed to apply to drivers of municipally owned transit systems offering supplementary service.

This bill requires a driver who provides transportation services for pupils in a vehicle with a maximum capacity of eight or fewer passengers, excluding the driver, to:

- a) Hold a valid California driver's license for the appropriate class of vehicle.
- b) Be at least 18 years of age with a minimum of two years of driving experience.
- c) Pass a criminal background check, as specified.
- d) Have a satisfactory driving record that includes none of the following:
 - i) Within three years, has committed any violation that results in a conviction assigned a violation point count of two or more.
 - ii) Within three years, has had their driving privilege suspended, revoked, or on probation for any reason involving the unsafe operation of a motor vehicle.
 - iii) Has been determined by the DMV to be a negligent or incompetent operator.
- e) Not have demonstrated irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe that the driver's ability to perform the duties of a driver may be impaired.
- f) Not have been convicted of any specified offenses listed in the VC.
- g) Obtain a report showing the driver's current public record as recorded by the DMV and participate in the DMV pull-notice system.
- h) Comply with drug and alcohol testing pursuant to the VC.
- i) Be a mandated reporter and comply with the provisions of law as required by the Child Abuse and Neglect Reporting Act.
- j) Complete a medical examination consistent with the VC, but, as proposed to be amended the exam needs to be turned into the employer or contractor not the DMV.
- k) Submit and clear a tuberculosis risk assessment.
- l) Not drive or be on duty for more than 12 hours in the aggregate following eight consecutive hours off duty.
- m) Complete a minimum of 10 hours of initial training and a minimum of two hours of annual refresher courses in all of the following:
 - i) Pretrip vehicle inspections.
 - ii) Safe loading and unloading of passengers.

- iii) Proper use of seatbelts and child safety restraints.
 - iv) Handling accidents, incidents, and emergency situations.
 - v) Providing proper accommodations for pupils with disabilities.
 - vi) Defensive driving.
 - vii) Operations in inclement weather.
 - viii) Operations at night or under impaired visibility conditions.
- n) Maintain a daily log sheet and complete the daily pretrip inspection of the vehicle being driven that day, which shall include all of the following:
- i) A check of the operability of all lights, initialed by the driver before the vehicle is first driven in service that day.
 - ii) A check for fluid leaks, initialed by the driver before the vehicle is first driven in service that day.
 - iii) A check for the operability of the brakes, initialed by the driver before the vehicle is driven in service that day.

This bill specifies that, for vehicles with a maximum capacity of eight or fewer passengers, excluding the driver, only street-legal coupes, sedans, or light-duty vehicles, including vans, minivans, sport utility vehicles, and pickup trucks, shall be used for pupil transportation.

This bill requires a driver who provides transportation services for pupils in a vehicle with a capacity of more than eight passengers, excluding the driver, to:

- Hold a valid California commercial driver's license for the appropriate class of vehicle, endorsed for passenger transportation pursuant to VC.
- Comply with specified sections above if not already required to.

This bill requires an LEA contracting with a private entity to provide pupil transportation to obtain from the private entity a written attestation to all of the following:

- That it not have any applicable law violations at the time of applying for the contract.
- That it will maintain compliance with applicable laws for the duration of the contract.
- That it will retain direct control over the manner and means for performance of any individual driver during the duration of the contract.
- (as proposed to be amended) the only drivers who meet the requirements will work under the contract between the private entity and local educational agency.

- (as proposed to be amended) that it has on file all the reports and documents required for the duration of the contract and they should be available for inspection.

This bill requires any vehicle used to provide pupil transportation for compensation by an LEA to meet both of the following:

- Be inspected every 12 months, or every 50,000 miles, whichever comes first, at a facility licensed by the California Bureau of Automotive Repair to ensure that the vehicle passes a 19-point vehicle inspection, as specified, before allowing the vehicle to be driven. This requirement does not apply to vehicles owned or contracted with a LEA already subject to a statutory inspection program.
- Be equipped with a first aid kit and a fire extinguisher.

COMMENTS

1. Need for This Bill

According to the author:

Last year, California allocated a record \$680 million for home-to-school transportation so that more kids have a guaranteed ride to and from school each day and to ensure that California is no longer dead last in the nation when it comes to per pupil funding for public school transportation. SB 88, Safe Rides to School, will build on last year's historic funding increase by ensuring that the transportation we provide to public school students is as safe as possible. Currently, bus drivers employed by school districts are mandated to meet high safety standards, but unfortunately, some school districts in recent years have turned to rideshare companies that contract with drivers who aren't required to meet those same high standards. SB 88 will level the playing field and ensure that all people who drive our kids to school meet the same rigorous safety standards that our school district employees are already mandated to meet."

2. Home to school transportation

In California, it is not compulsory for districts to provide transportation services to students. Rather, the governing board of each district has discretion to provide transportation services if they deem it advisable and if good reasons exist. However, federal law mandates that districts must provide transportation to students with disabilities if it is required by their Individualized Education Plan (IEP), as well as to homeless students. In the 1970s, several school districts implemented large transportation programs to comply with court-ordered desegregation requirements.

Based on a 2014 report by the Legislative Analyst's Office (LAO), approximately 12% of California students utilized school buses on a daily basis during the 2011-12 academic year, while up to 50% of students nationally ride the bus to school. The report suggests that this lower

rate in California may be due to the fact that an estimated 70% of students live within two miles of their school, compared to 50% nationally.

According to 2009 data, California students use various modes of transportation to travel to and from school, with 54% relying on automobiles, 28% walking or biking, 14% utilizing school buses, and 4% using public transit or other methods. Furthermore, approximately 275 districts, or a quarter of the districts in the state, transport fewer than 10% of their students, while 100 districts transport more than half of their students. The districts that transport a higher proportion of students are typically smaller, located in rural areas, and enroll a higher percentage of low-income students. Many districts with larger transportation programs report providing such services because their students lack viable alternatives for getting to school, such as living in areas with unsafe conditions or long distances between homes and schools.

Currently, some LEAs contract with third-party private transportation companies to transport specific student populations, primarily students with disabilities and homeless youth. While LEAs that engage in such arrangements may enjoy economies of scale, some stakeholders claim that few state laws govern this type of student transportation.

Per the National Highway Traffic Safety Administration (NHTSA), school buses are an exceptionally safe mode of transportation for students. According to the NHTSA, students who travel by school bus are approximately 70 times more likely to arrive at school safely compared to those who travel by car. This is due to the fact that school buses are the most regulated vehicles on the road, and their design emphasizes safety and injury prevention. Additionally, stop-arm laws, which are in effect in every state, help safeguard children from other drivers.

The NHTSA's 2021 publication, The Unedited Summary of School Bus Report, reveals that school buses are much safer than other forms of transportation. The fatality rate for school buses is only 0.2 fatalities per 100 million vehicle miles traveled (VMT), compared to 1.5 fatalities per 100 million VMT for cars. Between 2010 and the present, school buses have averaged approximately 26,000 crashes each year, resulting in 10 fatalities; of those, 25% were drivers, and 75% were passengers. Frontal crashes account for an average of two passenger deaths each year.

3. Types of vehicles used to transport students

Statute establishes several types of vehicles used to transport students, and the two used most frequently by LEAs include a schoolbus and a SPAB.

A schoolbus includes any motor vehicle designed, used, or maintained for the transportation of a school pupil at or below the grade 12 level to or from a public or private school or to or from public or private school activities, with several exemptions, including: a SPAB; a vehicle designed for and when actually carrying not more than 10 persons, including the driver, except any vehicle transporting two or more pupils who use wheelchairs; or a motor vehicle used by a common carrier, such as a municipal transit system.

A SPAB includes any motor vehicle, other than a schoolbus, operated by a common carrier, or a publicly owned or operated transit system, or by a passenger charter-party carrier, used under a contractual agreement between a school and carrier to transport school pupils at or below the 12th grade level to or from a public or private school activity, and other specified uses. A driver of a SPAB is subject to the regulations adopted by the CHP governing schoolbus drivers,

including a requirement to obtain a special driver's certificate. A common use of SPABs are buses operated by a passenger charter-party carrier used to transport students on field trips.

4. Mandated Reporters

The Child Abuse Reporting Act (CANRA) (Penal Code §§11164 et seq.) provides “a comprehensive reporting scheme aimed toward increasing the likelihood that child abuse victims [will] be identified.” (Ferraro v. Chadwick (1990) 221 Cal.App.3d 86, 90.) “The Act requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation.” (Ibid.; accord, James W. v. Superior Court (1993) 17 Cal.App.4th 246, 253-254.) The Act identifies over 40 separate categories of mandated reporters. A mandated reporter must report known or reasonably suspected child abuse or neglect to a designated agency under section 11165.9, specifically “any police or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive such reports, or county welfare department.” Failure to make the required report is a misdemeanor.

Included in the list of mandated reporters are classified school employees of public school, which would include a bus driver for a public school district. This bill adds to the mandated reporter list a driver, whether or not employed by or contracted with a local educational agency, providing pupil transportation for compensation pursuant to the Education Code. This would put all drivers who are employed to drive children in the same position.

5. Background check

Existing law requires all school employees, either certified or non-certified, which includes bus drivers, to have a criminal employees. This bill requires that a driver who provides transportation to services for a pupil in a vehicle with 10 or fewer passengers is also required to have a background check.

6. Other requirements

This bill also puts a number of other drivers licensing, medical exam, vehicle inspection, and drug and alcohol testing requirements on the drivers that are driving students through contracts with private companies. These requirements are within the jurisdiction of the Education Committee which passed this bill on April 13 with a 4-2 vote.

The bill currently requires a medical examination consistent with provisions of the Vehicle Code. As proposed to be amended, the bill clarifies that the medical examination certificate of clearance shall be provided to the employer or the private entity contracting with the local educational agency but that neither the driver nor medical examiner need to submit this examination result to the DMV.

7. Argument in Support

The California Association of School Transportation Officials support this bill stating:

Home-to school transportation has traditionally been performed by schoolbus drivers, who are heavily regulated by the California Department of Education, the California Department of Motor Vehicles, and the California Highway Patrol.

There is a growing trend where Transportation Network Companies (TNCs) are commonly known as app-based companies, are contracting with school districts to provide home-to-school transportation and related pupil transportation.

TNCs are normally regulated by the Public Utilities Commission.... However, Public Utilities Code ... exempts “Transportation of school pupils conducted by or under contract with the governing board of any school district entered into pursuant to the Education Code” from being regulated under its normal TNCs statutes.

SB 88 fills this unregulated space by requiring all drivers to meet the same requirements and standards that schoolbus drivers are already required to meet. Under SB 88, all pupil drivers would be required to have a satisfactory driving record, comply with drug and alcohol testing, be a mandated child abuse and neglect reporter, complete medical examination, and clear a tuberculosis assessment, among other provisions that ensure safety and fitness of duty for the job. The bill requires minimum hours of training on various safety components such as pre-trip inspection, proper loading and unloading of passengers, defensive driving, and operations of a vehicle in inclement weather or under impaired visibility conditions. It also requires the vehicles being used to transport pupils to be in safe working condition with an annual inspection by a state-licensed facility and to be equipped with first-aid kits and fire extinguishers in case of emergencies.

8. Argument in Opposition

HopSkipDrive opposes this bill stating:

We know that the way that kids get to and from school has an impact on our kids, their families, our schools, and our communities. Positive experiences getting to school have a huge impact on the quality of a student's day, and ultimately, their future. This is particularly true of children who are the most vulnerable. HopSkipDrive currently partners with over 350 local education agencies in California, providing transportation services to approximately 1,000 pupils in the child welfare system, 2,000 pupils on IEPs, and nearly 500 pupils experiencing homelessness – Oftentimes, these vulnerable students are not able to utilize traditional bus routes or public transportation. They may be traveling across school district boundaries or even cities to reach their school of origin or school tailored to their special needs. HopSkipDrive and the California Legislature are completely aligned in the priority of ensuring safe transportation for California students. Two other working mothers and I founded HopSkipDrive in Los Angeles in 2014; our safety policies and procedures are all designed with this question in mind: “What would it take for me to use HopSkipDrive for my own child?” We took time to research safety measures, look at the data and incorporate the measures that have a proven impact on safety. These include: requiring drivers to have 5 years of caregiving experience; conducting extensive fingerprint-based background checks through the Trustline system as well as continuous monitoring; leveraging GPS and mobile telematics to detect any problematic driving behavior; live safety support team that uses advanced technology to monitor each ride in real-time and provide alerts of any ride anomalies; and annual reporting of our safety data.

At inception, we also proactively approached the CPUC to ensure we were adhering to the right regulations. We exceeded existing regulations and took extensive care when developing our technology, which is why we were disappointed that SB 88 falsely claims we are unregulated and unsafe. HopSkipDrive **is** regulated by the California Public Utilities Commission (CPUC), which **has already established requirements for a specific licensing category of transportation network companies that serve unaccompanied youth**. Under SB 88, transportation network companies transporting unaccompanied minors would now need to comply with two separate, inconsistent, or, in some cases, incompatible sets of requirements. In effect, these duplicative regulations would shut down HopSkipDrive operations in California.

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