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LEGAL UPDATE

July 15, 2005

To: Superintendents, Member School Districts (K-12)

From: Robert J. Henry, Of Counsel

Subject: Transporting Students
Memo No. 7-2005

This memorandum addresses several legal issues relating to the transporting of students to or from school sites or on school sponsored field trips or excursions.

1. Infants and Small Children (New)

Effective January 1, 2005 Vehicle Code section 27360 (copy attached) has been amended so as to further regulate the way in which students who are under six years of age or less than 60 pounds in weight may be transported in public or private vehicles.

As a general matter such students must be transported in “a rear seat in a child passenger restraint system...”

There are several exceptions to this general rule:

- a. if the parent/legal guardian is present in the vehicle and is not the driver of the vehicle;
- b. the child may be transported in the front seat “if properly secured in a passenger restraint system...” and one or more of the following circumstances exist:

- (A) There is no rear seat.
- (B) The rear seats are side-facing jump seats.
- (C) The rear seats are rear-facing seats.

(D) The child passenger restraint system cannot be installed properly in the rear seat.

(E) All rear seats are already occupied by children under the age of 12 years.

(F) Medical reasons necessitate that the child or ward not ride in the rear seat. The court may require satisfactory proof of the child's medical condition.

Note: These exceptions do not apply if the vehicle has an "active passenger airbag" and the child "is one of the following":

(A) Under one year of age.

(B) Less than 20 pounds.

(C) Riding in a rear-facing child passenger restraint system.

Significance

These rules apply to students who are transported to and from field trips by parents as well as by school bus drivers.

2. 15 Passenger Vans (New)

Effective January 1, 2005 the special driver's license rules applicable to 15 passenger vans apply regardless of whether "the van has been altered to accommodate fewer than 15 passengers." In other words, if the van was manufactured to accommodate 15 passengers removing a row of seats does not exempt the van from the licensing requirements applicable to 15 passenger vans.

Significance

The driver of a "15 passenger van" must have both of the following:

(1) A valid class B driver's license, as provided in Division 6 (commencing with Section 12500) of the Vehicle Code, issued by the Department of Motor Vehicles.

(2) An endorsement for operating a passenger transportation vehicle, as provided in Article 6 (commencing with Section 15275) of Chapter 7 of Division 6 of the Vehicle Code, issued by the Department of Motor Vehicles.

3. School Bus Drivers (New)

Effective September 20, 2005 Vehicle Code section 12517 and 12517.4 have been amended so as to further regulate the licensing of school bus operators.

§12517 has been modified to now require that a person can not “operate a schoolbus unless that person has in his or her immediate possession a valid driver’s license for the appropriate class of vehicle to be driven endorsed for schoolbus and passenger transportation.”

Significance

A person must possess not only a valid commercial driver’s license with a passenger endorsement, but they must also be issued a school bus driver’s certificate.

§ 12517.4 governs the issuance of a certificate to drive a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle. The modified section requires that:

...

A permanent driver's certificate shall be issued by the department after an applicant has passed all tests and met all applicable provisions of this code. Certificates are valid for a maximum of five years and shall expire on the fifth birthday following the issuance of an original certificate or the expiration of the certificate renewed.

...

Significance

The expiration of the permanent driver’s certificate will not be based on the expiration date of the applicant’s driver’s license, but rather on the fifth birthday following the issuance of an original certificate or the expiration of the renewed certificate.

4. Transportation Safety Plans

Education Code sections 39831.3 and 39831.5, which have existed since 1997, require each district to “prepare a transportation safety plan...to ensure the safe transport of pupils” and to provide instruction in “school bus emergency procedures” to all pupils “who are transported in a school bus.”

If you have any questions about any of these changes please call any attorney in our office.

RJH:dlh

§ 27360. Children under the age of six or weighing under sixty pounds; obligations of parents or legal guardians; violations; penalties; allocation of fines

(a) A parent or legal guardian, when present in a motor vehicle, as defined in Section 27315, may not permit his or her child or ward to be transported upon a highway in the motor vehicle without properly securing the child or ward in a rear seat in a child passenger restraint system meeting applicable federal motor vehicle safety standards, unless the child or ward is one of the following:

(1) Six years of age or older.

(2) Sixty pounds or more.

(b)(1) A driver may not transport on a highway a child in a motor vehicle, as defined in Section 27315, without properly securing the child in a rear seat in a child passenger restraint system meeting applicable federal motor vehicle safety standards, unless the child is one of the following:

(A) Six years of age or older.

(B) Sixty pounds or more.

(2) This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c)(1) For purposes of subdivisions (a) and (b), and except as provided in paragraph (2), a child or ward under the age of six years who weighs less than 60 pounds may ride in the front seat of a motor vehicle, if properly secured in a child passenger restraint system that meets applicable federal motor vehicle safety standards, under any of the following circumstances:

(A) There is no rear seat.

(B) The rear seats are side-facing jump seats.

(C) The rear seats are rear-facing seats.

(D) The child passenger restraint system cannot be installed properly in the rear seat.

(E) All rear seats are already occupied by children under the age of 12 years.

(F) Medical reasons necessitate that the child or ward not ride in the rear seat. The court may require satisfactory proof of the child's medical condition.

(2) A child or ward may not ride in the front seat of a motor vehicle with an active passenger airbag if the child or ward is one of the following:

(A) Under one year of age.

(B) Less than 20 pounds.

(C) Riding in a rear-facing child passenger restraint system.

(d)(1)(A) [FN1] A first offense under this section is punishable by a fine of one hundred dollars (\$100), except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead, refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of a child passenger restraint system for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(2) A second or subsequent offense under this section is punishable by a fine of two hundred fifty dollars (\$250), no part of which may be waived by the court, except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of child passenger restraint systems for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(e) Notwithstanding any other provision of law, the fines collected for a violation of this section shall be allocated as follows:

(1) Sixty percent to health departments of local jurisdictions where the violation occurred, to be used for a community education program that includes, but is not limited to, demonstration of the installation of a child passenger restraint system for children of all ages and also assists an economically disadvantaged family in obtaining a restraint system through a low-cost purchase or loan. The county or city health department shall designate a coordinator to facilitate the

creation of a special account and to develop a relationship with the court system to facilitate the transfer of funds to the program. The county or city may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall attend an education program that includes demonstration of proper installation and use of a child passenger restraint system.

As the proceeds from fines become available, county or city health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county or city shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency and the courts, birthing centers, community child health and disability prevention programs, county clinics, prenatal clinics, women, infants, and children programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county or city for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).