

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution TL 18266
Transportation Division
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R E S O L U T I O N

RESOLUTION RESCINDING RESOLUTION TL-18257 AND DIRECTING THE EXECUTIVE DIRECTOR TO DENY, SUSPEND AND REVOKE THE OPERATING AUTHORITIES OF PASSENGER CARRIERS AND PROPERTY CARRIERS ON THE BASIS OF THE RECOMMENDATION OF THE CALIFORNIA HIGHWAY PATROL.

Resolution 18257 directs the Executive Director to suspend the operating authority of Passenger Stage Corporations, and to deny, suspend or revoke the operating authority of Charter-Party Carriers of Passengers, for failure to pass Highway Patrol inspection.

Resolution 18257 applies only to passenger carriers, relying on P.U. Code Sections 768 and 1033.5 pertaining to Passenger Stage Corporations, and Sections 5378 (a) and 5380 pertaining to Charter-Party Carriers.

Section 5380 has been repealed, effective January 1, 1989. However, legislation which affects both passenger carriers and property carriers with regard to safety was also passed, to be effective January 1, 1989. (AB 3489 (Ch. 916) 1988)

This resolution will delegate to the Executive Director authority to respond to California Highway Patrol recommendations for both passenger carriers and property carriers. It relies on both new legislation and continuing statutory authority.

Section 768 reads, in part: "The Department of the California Highway Patrol shall have the primary responsibility for the regulation of the safety of operation of passenger stage corporations, highway common carriers, and other motor carriers. The Commission shall cooperate with the Department of the California Highway Patrol to ensure safe operation of the carriers."

Sections 1033.5 (passenger stage corporations) and 5378 (a) (charter-party carriers) authorize the suspension or revocation of the operating authority of these carriers for safety-related reasons as shown by the records of the Commission, the Department of Motor Vehicles, the Highway Patrol or the carrier.

Sections 1070 (highway common carriers and cement carriers) and 3774 (highway permit carriers) authorize the suspension or revocation of the operating authority of these carriers for safety-related reasons as shown by the records of the commission, the Highway Patrol or the carrier.

Section 5373.1 (c), effective January 1, 1989, reads, in part: "The Commission shall require each charter-party carrier to pass an annual bus terminal inspection conducted by the Department of the California Highway Patrol"

Section 5374, (Charter-Party Carriers) effective January 1, 1989 reads: Before a permit or certificate is issued, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services. The commission shall not issued a permit or certificate pursuant to this chapter unless the applicant certifies on a form acceptable to the commission that the applicant will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations in Title 13 of the California Administrative Code relative to motor vehicle safety.

Section 1033.7, effective January 1, 1989, reads:

(a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate of a passenger stage corporation be suspended for consistent failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety, the commission shall, pending a hearing in the matter pursuant to subdivision (c), suspend the corporation's certificate. The department's written recommendation shall be made under oath, and shall specifically indicate compliance with subdivision (b). The department's written recommendation shall include a statement that the corporation's continued operation presents an immediate danger to the safety of the public and

of its employees. The commission shall reinstate the corporation's certificate suspended under this subdivision promptly upon receipt of a written recommendation from the department that the corporation's safety compliance has improved to the satisfaction of the department, unless the certificate has been suspended for another reason. A corporation whose certificate has been suspended may request that the department reinspect its terminal and vehicles. Upon receipt of a request, the department shall perform a reinspection within a reasonable time.

(b) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the passenger stage corporation in writing of all of the following:

(1) That the department has determined that the corporation's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the corporation's certificate by the commission.

(3) That the corporation may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the corporation, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(c) Whenever the commission suspends the certificate of any passenger stage corporation pursuant to subdivision (a), the commission shall furnish the corporation written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the corporation shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other applicable penalty provided in this part, terminate the suspension, continue the suspension in effect, or revoke the certificate.

Sections 3774.5 (highway permit carriers), 5285.5 (household goods carriers), and 5378.5 (charter-party carriers), all also effective January 1, 1989, read essentially the same as 1033.7, the difference being the type of carrier named.

Section 34505.1 of the California Vehicle Code reads: Upon determining that a tour bus operator failed to complete and document an inspection required by this code, or that a tour bus operator's terminal is rated unsatisfactory, the department shall recommend to the Public Utilities Commission or the Interstate Commerce Commission that the carrier's operating authority be denied, suspended, or revoked, whichever is appropriate. The department shall retain a record, by operator, of every recommendation made pursuant to this action.

Prompt action on Highway Patrol recommendations is necessary for the protection of the public. The proposed resolution would permit the full implementation of the actions prescribed by the Code for both passenger carriers and property carriers.

IT IS ORDERED that:

1. Resolution TL-18257 is rescinded.
2. The Executive Director is directed to suspend the operating authority of any Passenger Stage Corporation, Charter-Party Carrier, Highway Common Carrier, Cement Carrier, Highway Permit Carrier or Household Goods Carrier upon written notification from the California Highway Patrol that:
 - (a) the carrier has consistently failed to maintain vehicles used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety;
 - (b) the Patrol recommends that the carrier's operating authority be suspended;
 - and
 - (c) the Patrol has informed the carrier in writing that:
 - (i) the Patrol has determined that the carrier's safety record is unsatisfactory (and furnished the carrier a copy of any documentation or summary of any evidence supporting the determination),
 - (ii) this determination may result in a suspension or revocation of the carrier's authority by the commission, and
 - (iii) the carrier may request a review of the determination by the Patrol, within five days of the carrier's receipt of the notice of the determination;
 - and (d) the Patrol has conducted a review of its determination, if such review was properly

requested. However, the Executive Director shall suspend such operating authority only if the Patrol's recommendation is made under oath, and includes a statement that the carrier's continued operation presents an immediate danger to the safety of the public and of its employees.

3. Upon receipt of written recommendation from the Highway Patrol that an application for new, or renewal, charter-party carrier authority be denied for failure to pass safety inspection the Executive Director shall deny the application.
4. Upon receipt of written notification from the Highway Patrol that a Charter-Party Carrier has failed its annual bus terminal inspection the Executive Director shall suspend the carrier's authority.
5. The Executive Director shall promptly furnish the carrier with written notice of any denial or suspension under paragraph 2, 3, or 4 above. The notice of any such denial of renewal authority or of any such suspension shall inform the carrier: (a) how it may obtain a reinspection by the Highway Patrol; and (b) that if it wishes to contest the commission's action it may obtain a hearing by filing with the commission's docket office an original and five (5) copies of a completed Application for Hearing form, with a copy thereof furnished to the California Highway Patrol. (A blank copy of this form shall accompany the notice sent to the carrier.) On receipt of a completed Application for Hearing form, the ALJ Division shall schedule a hearing, to be held within 21 days from the date the form was filed (unless the carrier requests a postponement). The notice of any suspension pursuant to this resolution shall also inform the carrier that its operating authority will be revoked 90 days after suspension, if it has not been reinstated by then, and if no hearing has been requested.
6. The Executive Director shall reinstate a Passenger Stage Corporation, Charter-Party Carrier, Highway Common Carrier, Cement Carrier, Highway Permit Carrier or Household Goods Carrier suspended pursuant to this resolution upon written recommendation from the Patrol that the carrier's safety compliance has improved to the satisfaction of the Patrol. However, the Executive

Director shall not reinstate operating authority that is then suspended, revoked, or subject to suspension for other reasons.


7. After 90 days, any operating authority suspended pursuant to this resolution and not eligible for reinstatement pursuant to Patrol recommendation shall be revoked by the Executive Director, unless the carrier has requested a hearing pursuant to paragraph 5 hereof.
8. Each denial, suspension or revocation issued under authority of this resolution shall recite that it was issued pursuant to this resolution. Each such denial, suspension or revocation, when signed by the Executive Director, shall be deemed to be the order of the commission.

This resolution is effective January 1, 1989.

I certify that this resolution was adopted by the Public Utilities
Commission at its regular meeting on DEC 19 1988.

The following Commissioners approved it.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners



Executive Director

