

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 844 (Gipson)
Version: July 3, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Zero-emission trucks: insurance

DIGEST

This bill requires the California Department of Insurance (CDI) to implement specific data collections on the availability and affordability of insurance for heavy-duty trucks and truck fleets, as provided.

EXECUTIVE SUMMARY

According to the sponsor and author of the bill, new technologies without long histories of actuarial and insurance information can face challenges obtaining insurance. Fleets adopting zero emission technologies may be facing a limited market for insurance, which could slow deployment of zero emission heavy duty trucks. This would hamper the state's ability to meet upcoming deadlines for fleets to transition to new zero emission technologies. The bill hopes to address potential barriers for new insurance options and data gaps in order to accelerate the transition to zero emission heavy duty trucks. The bill does this by requiring the CDI to collect data regarding the availability and affordability of insurance for heavy-duty trucks and truck fleets.

The bill is sponsored by the Insurance Commissioner Ricardo Lara and supported by various environmental organizations and transportation associations. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides for the regulation of insurance by CDI, which is under the control of the Insurance Commissioner. (Ins. Code § 12921.)

- 2) Establishes the Air Quality Improvement Program, administered by the California Air Resources Board (CARB), with the primary purpose of funding, upon appropriation by the Legislature, air quality improvement projects relating to fuel and vehicle technologies that reduce criteria air pollutants and improve air quality. (Health and Saf. Code § 44274.)
- 3) Creates the Clean Truck and Bus Program administered by CARB in conjunction with the State Energy Resources Conservation and Development Commission and upon appropriation of funding requires the program to develop, demonstrate, pilot, and deploy zero- and near-zero-emission truck, bus, and off-road vehicle and equipment technologies. (Health and Saf. Code § 39719.2)
- 4) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. Const. art. I, § 3 (b)(1).)
 - a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
- 5) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code §§ 7920.000 et seq.)
 - a) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.525.)
 - b) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
 - c) Defines "public agency" as any state or local agency. (Gov. Code § 7920.525(a).)

This bill:

- 1) Requires CDI to implement specific data collections on the availability and affordability of insurance for heavy-duty trucks and truck fleets that utilize advanced fuels and related technologies to better understand emerging markets important to the State of California's climate change goals, expand insurance options by establishing more robust data for consumers and insurers, and identify potential barriers to zero-emission technologies in the transportation sector.

- 2) Requires CDI to issue a bulletin on or before February 1, 2024, to initiate the first data collection. Admitted insurers are required to respond on or before May 1, 2024.
- 3) Requires data collections to include surveys and data calls that include all of the following information:
 - a) whether an insurance company offers insurance for zero-emission truck options;
 - b) loss experience information per claim over a specified time period, such as annually;
 - c) the number of vehicles covered under insurance policies;
 - d) policy level experience, including, but not limited to, premium per type of medium- and heavy-duty truck insured, the time the truck is insured from effective start date to end date of coverage, and type of coverage, which may include both liability and physical damage type coverage; and
 - e) minimum, maximum, and average overall coverage limit of the policy, and per type of medium- and heavy-duty truck within a truck fleet.
- 4) Specifies that information submitted to the commissioner is confidential and exempt from the CPRA; that information is not be subject to subpoena or subpoena duces tecum; and that testimony by the commissioner, the commissioner's staff, an employee of the department, or a person to whom the reporting was disclosed, regarding the contents of any report submitted is inadmissible as evidence in a civil proceeding.
- 5) Provides that, notwithstanding the provisions of 4), above, the Commissioner is required to publish information compiled from the data submitted in the aggregate, and is prohibited from identifying an individual respondent or insurer, except to support consumer understanding of insurance options, as specified. Requires the Commissioner to establish and maintain a link on CDI's website to provide public access to the aggregate information required to be disclosed.

COMMENTS

1. Stated need for the bill

The author writes:

By working with the Insurance Commissioner we will guide the availability and affordability of insurance for heavy duty trucks and truck fleets that utilize advanced fuels and related technologies. To better understand emerging markets important to California's climate change goals. This bill can strengthen insurance markets by providing both consumers and important information to increase understanding of insurance availability and affordability identify potential barriers for expanding insurance options, and provide both the insurance regulator and air

quality regulator with critical information to inform policy alternatives. AB 844 addresses the existing data gaps by directing the Department of Insurance to collect specific data.

The Insurance Commissioner Ricardo Lara, sponsor of the bill, writes:

In 2020, the Air Resources Board approved their Advanced Clean Trucks regulation, ensuring that truck manufacturers produce and sell zero-emission medium- and heavy-duty trucks as an increasing portion of their sales from 2024 to 2035. The regulation is anticipated to result in 100,000 zero-emission trucks by 2030 and 300,000 by 2035. In April 2023, the Air Resources Board finalized their Advanced Clean Fleet regulation that includes provisions to require all drayage trucks entering seaports and intermodal railyards to be zero emission by 2035, and would end the sale of combustion-powered heavy duty trucks in California by 2036. Furthermore, in the past five years, the State of California has appropriated over \$1 billion in incentives, administered by the Air Resources Board, to incentivize zero-emission medium and heavy duty trucks.

AB 844 provides a forward-looking approach that complements and supports the goals of these regulations by closing data gaps for insurance availability and affordability. As these trucks represent new technology of which there is presently limited data, the emerging truck technologies could face an insurance market with few options that could slow deployment of the technology and achievement of state air quality goals. AB 844 directs my Department to collect data on the availability of insurance for this emerging marketplace and the role of insurance in meeting emission reduction targets. In consultation with the Air Resources Board, my Department will use the collected data, along with additional insurance information, to create a strategy that would address current and future insurance gaps for adopting this new clean technology. The strategy would be informed by the number of insurance companies covering this product and losses in the market. It would also determine available insurance coverage limits and monitor accessibility as the percentage of zero-emission trucks increases in accordance with state goals.

2. Background on state's goals to address climate change with the transition to zero-emission trucks

According to the California Energy Commission, transportation is responsible for roughly 50 percent of California's greenhouse gas emissions (GHGs) – the largest single source.¹ This includes both light-duty (passenger) and medium- and heavy-duty fleets. The Commission states that transitioning this sector away from current fuels to low-carbon fuels and zero or near-zero emission technologies is vital if the state intends to

¹ Cal. Energy Comm. *Transforming Transportation*, available at <https://www.energy.ca.gov/about/core-responsibility-fact-sheets/transforming-transportation>.

meet its goals on climate change. In 2022, CARB adopted the Advanced Clean Cars II rule that requires 100 percent of new cars and light-duty trucks sold in California to be a zero-emission vehicle or plug-in hybrid electric vehicle by 2035. Estimates by CARB indicate that this rule will cut GHG emissions from cars, pickups, and SUVs in half by 2040 compared to current projections if the rule had not been adopted.² In 2020, Governor Newsom issued Executive Order (EO) N-79-20, which requires 100% of medium- and heavy-duty vehicles in the state be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks, and charges CARB with developing and proposing medium- and heavy-duty vehicle regulations requiring increasing volumes of new zero-emission trucks and buses sold and operated in the state towards that goal.³ Final regulations were approved by CARB in April.

3. CDI data collection on availability and affordability of insurance for heavy-duty trucks and truck fleets, and limitation on access to public records

The proponents of the bill state that it will support the rapid deployment of new, cleaner trucking technologies by directing the CDI to collect data on this emerging marketplace to identify potential barriers to expanding insurance options and provide both the insurance regulator and air quality regulator with critical and timely information to inform policy options. The bill requires CDI to implement specific data collections on the availability and affordability of insurance for heavy-duty trucks and truck fleets that utilize advanced fuels and related technologies to better understand emerging markets important to the State of California's climate change goals, expand insurance options by establishing more robust data for consumers and insurers, and identify potential barriers to zero-emission technologies in the transportation sector. In recognition that the information they are requesting may be proprietary and to encourage sharing of information, the bill specifies that information submitted to the Commissioner is confidential and exempt from the CPRA. However, it does require publication of the information compiled from the data submitted in the aggregate. The aggregate data is prohibited from identifying an individual respondent or insurer, except to support consumer understanding of insurance options.

California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right. At the same time, the state recognizes that this right must be balanced against the right to privacy. The CPRA includes an explicit prohibition of disclosure of applications filed with the CDI or any information received in confidentiality by the CDI. (Gov. Code § 7929.000.) The general right of access to public records may, therefore, be limited where records include sensitive information. In light of the proprietary information being collected by CDI and the fact that information compiled from the data will be posted publically in the

² Cal. Air Resources Bd., *California moves to accelerate to 100% new zero-emission vehicle sales by 2035*, available at <https://ww2.arb.ca.gov/news/california-moves-accelerate-100-new-zero-emission-vehicle-sales-2035>.

³ Governor's Exec. Order No. N-79-20 (Sept. 23, 2020).

aggregate, the bill's finding on the need for limiting access to public records seems warranted.

The bill additionally provides that the information received by the CDI is not subject to subpoena or subpoena duces tecum, and that testimony by the Commissioner, the Commissioner's staff, an employee of the department, or a person to whom the reporting was disclosed regarding the contents of any information submitted is inadmissible as evidence in a civil proceeding.

There are several provisions in the Insurance Code that specify information required to be provided to the CDI is not subject to a subpoena. (*see* Ins. Code § 925.3, 929.1, 1874.3, and 1877.4.) Additionally, existing provisions of law regarding the CDI's authority to collect data on wildfire risk and insurance includes the same limitation on testifying regarding the contents of the information submitted. (Ins. Code § 929.1.) Though these provisions would limit the ability of a party to issue a subpoena or require certain testimony, they are drafted to narrowly limit the prohibitions only to the specific information provided to the CDI.

3. Statements in support

The California Trucking Association writes in support stating:

Early adopters of zero-emission trucks have indicated that insurers were initially reluctant to underwrite them and, in some cases, only agreed to insure the partial value of the truck.

Additionally, the cost to insure these trucks will increase dramatically. For instance, a used drayage truck could traditionally be acquired for \$50,000 and insured against physical damage for \$1,000-2,000/annually. A new zero-emission drayage truck, estimated to cost more than \$400,000, is projected to cost \$8,000-12,000/annually to insure.

Nearly half the trucks on the road in California are operated by fleets with fewer than three vehicles. Accordingly, affordability and availability of insurance for zero-emission trucks is a critical area for CARB and the Department of Insurance to study to ensure viability of California's climate agenda.

SUPPORT

Insurance Commissioner Ricardo Lara (sponsor)
California Electric Transportation Coalition
California Environmental Voters
California Trucking Association
CALSTART

Greenlining Institute
Natural Resources Defense Council

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 824 (Lara, Ch. 616, Stats. 2018) among other things, required an admitted insurer, as specified, to submit a report with specified fire risk information on its residential property policies to the CDI, and made that information confidential, not subject to subpoena, and admissible in testimony in a civil proceed, as provided.

PRIOR VOTES

Senate Insurance Committee (Ayes 7, Noes 0)
Assembly Floor (Ayes 75, Noes 0)
Assembly Appropriations Committee (Ayes 16, Noes 0)
Assembly Insurance Committee (Ayes 13, Noes 0)
Assembly Transportation Committee (Ayes 15, Noes 0)
