

AMENDED IN ASSEMBLY MAY 13, 2004

AMENDED IN ASSEMBLY APRIL 22, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2858

Introduced by Assembly Member Ridley-Thomas

February 20, 2004

An act to ~~add Chapter 2.8 (commencing with Section 12330) to Title 2 of Part 4 of the Penal Code, relating to the Firearm Victims' Reimbursement Fund; amend Section 5374 of, and to add Section 5384.7 to, the Public Utilities Code, relating to charter-party carriers of passengers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2858, as amended, Ridley-Thomas. ~~Firearm—Victims' Reimbursement Fund~~ *Charter-party carriers of passengers: drivers and key employees: background checks.*

The Transportation Security Administration of the United States Department of Transportation, administered by the Under Secretary of Transportation for Security, is responsible for carrying out measures to ensure aviation security, including hiring, training, and retention of personnel for the security screening of passengers and baggage and conducting background checks for individuals with access to secure areas of airports regularly serving an air carrier holding a certificate issued by the Secretary of Transportation. Individuals with specified criminal backgrounds or other factors as determined by the Under Secretary, are disqualified from employment with an air carrier or airport operator, if they will have access to secured areas. The Under

Secretary is required to adopt measures to improve secured-area access control, including working with airport operators to strengthen access control points in secured areas, including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Charter-party carriers of passengers are subject to the jurisdiction and control of the commission under the Passenger Charter-Party Carriers' Act. The act requires a charter-party carrier of passengers to obtain from the commission a certificate that public convenience and necessity require the operation, except that certain specific transportation services may be conducted under authority of a permit issued by the commission. The act prohibits the commission from issuing or renewing a permit unless the applicant has met specified requirements.

This bill would require the commission to adopt regulations establishing standards and procedures to investigate the criminal background of candidates seeking certificates for employment as drivers or key employees, as defined, with charter-party carriers of passengers that provide passenger transportation to and from airports. The bill would require the commission to restrict a charter-party carrier of passengers to employment of individuals approved for that employment by the commission, based on successful completion of the criminal background investigation. The bill would impose civil penalties for a violation of that employment restriction. The bill would require the commission to issue an identification credential to each applicant that successfully completes that criminal background investigation process and would require that all drivers employed by a charter-party carrier of passengers carry the identification credential at all times on airport property. The bill would impose civil penalties for a failure to produce the credential at the request of airport law enforcement officers. Repeated violations would be grounds for revocation of the carrier's permit. The bill would require the commission to provide for a fee to be charged of the charter-party carrier of passengers and collected by the commission, sufficient to cover certain related costs.



The bill would prohibit the commission from issuing or renewing a permit for a charter-party carrier applicant providing transportation to and from airports unless it certifies its drivers have successfully completed a criminal history background check and have been issued an identification credential.

The bill would prohibit employees and agents of a charter-party carrier from communicating to any other person any information related to the disqualification of a driver or key employee, and would authorize a person disqualified from employment pursuant to the provisions of the bill to request a hearing by the commission to challenge the accuracy of the criminal background investigation.

A violation of the act or of an order or other requirement of the commission in enforcing that act is a crime.

Because the provisions of this bill would be a part of the act and a violation of the bill's provisions or of an order or other requirement of the commission implementing those provisions would be a crime, the bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law generally regulates the sale of ammunition and firearms.~~

~~This bill would, subject to exceptions, impose a fee of 10% of the retail sale price on every munition and a fee of 5% of the retail sale price on every handgun, as defined, sold at retail. The fees would be paid by retailers to the State Board of Equalization, and deposited in the Firearm Victims' Reimbursement Fund. The Firearm Victims' Reimbursement Fund would be used, upon appropriation, to pay firearm-injury victims for uncompensated pecuniary losses and to pay for related administrative costs, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Chapter 2.8 (commencing with Section 12330)~~

2



1 SECTION 1. *It is the intent of the Legislature to reaffirm its*
2 *commitment to homeland security as it relates to charter-party*
3 *carriers of passengers and their employees who drive passengers*
4 *to and from airports. The purpose of this act is to ensure that*
5 *procedures and regulations are in place consistent with the airport*
6 *security programs operated by airports in this state, to assure the*
7 *traveling public that drivers or key employees of privately engaged*
8 *carriers have been through security clearances, and to provide*
9 *uniformity in credentialing among charter-party carriers of*
10 *passengers.*

11 SEC. 2. *Section 5374 of the Public Utilities Code is amended*
12 *to read:*

13 5374. (a) Before a permit is issued or renewed, the
14 commission shall require the applicant to establish reasonable
15 fitness and financial responsibility to initiate and conduct or
16 continue to conduct the proposed or existing transportation
17 services. The commission shall not issue or renew a permit
18 pursuant to this chapter, unless the applicant meets ~~both~~ all of the
19 following requirements:

20 (1) It certifies on a form acceptable to the commission that the
21 applicant will maintain its vehicles in a safe operating condition
22 and in compliance with the Vehicle Code and with regulations
23 contained in Title 13 of the California Code of Regulations relative
24 to motor vehicle safety.

25 (2) It provides for a mandatory controlled substance and
26 alcohol testing certification program as adopted by the
27 commission pursuant to Section 1032.1.

28 (3) *A charter-party carrier applicant providing transportation*
29 *to and from airports, certifies its drivers and key employees have*
30 *successfully completed a criminal history background check and*
31 *have been issued an identification credential in accordance with*
32 *Section 5384.7. For purposes of this section, “key employees”*
33 *mean the owner or partner of the charter-party carrier or, if the*
34 *carrier is a corporation, the officers and directors of the*
35 *corporation.*

36 (b) (1) Before a certificate is issued or renewed, the
37 commission shall require the applicant to establish reasonable
38 fitness and financial responsibility to initiate and conduct or
39 continue to conduct the proposed or existing transportation
40 services. The commission shall not issue or renew a certificate



1 pursuant to this chapter, unless the applicant meets all of the
2 following requirements:

3 (A) It is financially and organizationally capable of conducting
4 an operation that complies with the rules and regulations of the
5 Department of the California Highway Patrol governing highway
6 safety.

7 (B) It is committed to observing the hours of service
8 regulations of state and, where applicable, federal law, for all
9 persons, whether employees or subcarriers, operating vehicles in
10 transportation for compensation under the certificate.

11 (C) It has a preventive maintenance program in effect for its
12 vehicles used in transportation for compensation that conforms to
13 regulations of the Department of the California Highway Patrol in
14 Title 13 of the California Code of Regulations.

15 (D) It participates in a program to regularly check the driving
16 records of all persons, whether employees or subcarriers,
17 operating vehicles used in transportation for compensation
18 requiring a class B driver's license under the certificate.

19 (E) It has a safety education and training program in effect for
20 all employees or subcarriers operating vehicles used in
21 transportation for compensation.

22 (F) It will maintain its vehicles used in transportation for
23 compensation in a safe operating condition and in compliance with
24 the Vehicle Code and with regulations contained in Title 13 of the
25 California Code of Regulations relative to motor vehicle safety.

26 (G) It has filed with the commission the certificate of workers'
27 compensation insurance coverage or statement required by
28 Section 5378.1.

29 (H) It has provided the commission an address of an office or
30 terminal where documents supporting the factual matters specified
31 in the showing required by this subdivision may be inspected by
32 the commission and the Department of the California Highway
33 Patrol.

34 (I) It provides for a mandatory controlled substance and
35 alcohol testing certification program as adopted by the
36 commission pursuant to Section 1032.1.

37 (2) With respect to subparagraphs (B) and (F) of paragraph (1),
38 the commission may base a finding on a certification by the
39 commission that an applicant has filed, with the commission, a
40 sworn declaration of ability to comply and intent to comply.



1 (c) In addition to the requirements in subdivision (b), class A
2 and class B charter-party carriers shall meet all other state and,
3 where applicable, federal regulations as prescribed.

4 (d) The commission may delegate to its executive director or
5 ~~that executive director's~~ *his or her* designee the authority to renew,
6 or authorize the transfer of, charter-party carrier permits or
7 certificates and to make the findings specified in subdivision (b)
8 that are necessary to that delegated authority.

9 *SEC. 3. Section 5384.7 is added to the Public Utilities Code,*
10 *to read:*

11 *5384.7. (a) The commission shall adopt regulations, in*
12 *accordance with this section and Chapter 3.5 (commencing with*
13 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
14 *Code, to establish standards and procedures to investigate the*
15 *background of candidates seeking certificates for employment as*
16 *drivers or key employees with charter-party carriers of passengers*
17 *that provide passenger transportation to and from airports. These*
18 *regulations shall direct the Carriers Branch of the commission,*
19 *which licenses charter-party carriers of passengers, to use*
20 *criminal history information to determine whether applicants for*
21 *employment as drivers or key employees have a conviction for a*
22 *qualifying felony crime that would disqualify them from being*
23 *hired as drivers or key employees because they would be a threat*
24 *to the safety of the public if employed as drivers or key employees*
25 *of the charter-party carrier.*

26 *(b) The commission shall provide, by regulation, that a*
27 *fingerprint-based criminal background investigation be used to*
28 *determine past convictions for the following specified criminal*
29 *acts that disqualify the applicant for employment in this capacity:*

30 *(1) Unlawful transportation of a hazardous material (49*
31 *U.S.C. Sec. 46312).*

32 *(2) Carrying a weapon or explosive aboard an aircraft (49*
33 *U.S.C. Sec. 46505).*

34 *(3) Unlawful entry into an aircraft or airport area that serves*
35 *air carriers or foreign air carriers contrary to established security*
36 *requirements (49 U.S.C. Sec. 46314).*

37 *(4) Destruction of an aircraft or aircraft facility (18 U.S.C. Sec.*
38 *32).*

39 *(5) Violence at international airports (18 U.S.C. Sec. 37).*



1 (6) *Unlawful possession, use, sale, distribution, or*
2 *manufacture of an explosive, incendiary device, or assault*
3 *weapon.*

4 (7) *Felony arson.*

5 (8) *Hate crime, as described in paragraph (2) of subdivision*
6 *(b) of Section 628.1 of the Penal Code, including, but not limited*
7 *to, offenses in Title 11.6 (commencing with Section 422.6) of Part*
8 *1 of the Penal Code.*

9 (9) *Conspiracy or attempt to commit any of the criminal acts*
10 *listed in paragraphs (1) to (8), inclusive.*

11 (c) *The commission shall also require, by regulation, that the*
12 *criminal background investigation be used to determine the*
13 *existence of any outstanding felony warrants for the arrest of the*
14 *applicant for employment. If the criminal background*
15 *investigation reveals one or more felony warrants, the commission*
16 *shall notify the appropriate law enforcement agency of the*
17 *application.*

18 (d) *The commission shall ensure, by regulation, compliance*
19 *with Section 50.12 of Title 28 of the Code of Federal Regulations*
20 *as it exists on January 1, 2003, with regard to records of the*
21 *Federal Bureau of Investigation, and provide similar requirements*
22 *with regard to state records.*

23 (e) *The commission shall require, by regulation, that a*
24 *charter-party carrier of passengers may only employ an individual*
25 *as a driver of passengers to or from airports or as a key employee*
26 *if that individual has been approved for that employment by the*
27 *commission, based on successful completion of the criminal*
28 *background investigation. This requirement shall apply*
29 *retroactively to drivers and key employees employed on or after*
30 *January 1, 2003, and to all future applicants. Employment of*
31 *individuals not approved as drivers or key employees by a*
32 *charter-party carrier of passengers shall constitute a violation of*
33 *the regulations and subject the carrier to civil penalties not to*
34 *exceed two thousand dollars (\$2,000) per incident. Repeated*
35 *violations of this nature shall be grounds for revocation of the*
36 *carrier's permit.*

37 *While a criminal background investigation is pending, a driver*
38 *or key employee may be employed by the carrier. This section does*
39 *not prohibit a charter-party carrier from employing a driver who*
40 *is disqualified pursuant to this article from being employed by the*



1 carrier in a capacity that does not involve driving passengers to
2 and from the airport. A charter-party carrier subject to this article
3 shall inform an applicant for employment as a driver or key
4 employee, both on the employment application and through oral
5 communication, of the requirements of this chapter and the
6 consequences that may occur if the driver or key employee is
7 disqualified from employment. If the charter-party carrier is a
8 subcarrier that does not employ any drivers other than the holder
9 of the permit to operate as a charter-party carrier, the subcarrier
10 shall be treated as an employee of the parent carrier for the
11 purposes of complying with the criminal background check
12 requirements of this section and Section 5374.

13 (f) The commission shall require, by regulation, that
14 charter-party carriers of passengers require applicants who are
15 offered employment as a driver of a motor vehicle providing
16 passenger transportation to and from airports or as a key
17 employee, to submit fingerprints and other pertinent information,
18 as required by the regulations, to the commission for the purpose
19 of obtaining criminal background information.

20 (g) The commission shall transmit the fingerprints to the
21 Department of Justice. The Department of Justice shall conduct
22 the check, and forward the request for federal level criminal
23 offender record information to the Federal Bureau of
24 Investigation. The Department of Justice shall provide the
25 following information to the commission:

26 (1) Every conviction rendered against the applicant.

27 (2) Every arrest for an offense for which the Department of
28 Justice has determined that the applicant is presently awaiting
29 trial, or whether the applicant is incarcerated or has been released
30 on bail or on his or her own recognizance pending trial.

31 (3) Every warrant for the arrest of the applicant.

32 (h) The commission shall review all information received from
33 the charter-party carrier of passengers and the Department of
34 Justice pursuant to the regulations. All information received by the
35 commission shall be held as confidential, except that if
36 employment is to be denied based on criminal history information,
37 the commission shall notify the charter-party carrier of passengers
38 of the applicant's disqualification, and provide a copy of the
39 history and an explanation of the denial to the applicant.
40 Employees and agents of a charter-party carrier of passengers are



1 prohibited from communicating to any other person any
2 information related to the disqualification of a driver or key
3 employee. A person who is disqualified pursuant to this section
4 may request a hearing by the commission to challenge the
5 accuracy of the criminal background investigation and to present
6 evidence that, notwithstanding the grounds for disqualification, he
7 or she is fully rehabilitated and should be permitted employment.
8 The commission may grant any relief it deems appropriate,
9 including restoration of the right of employment.

10 (i) The commission shall provide, by regulation, that an
11 identification credential be issued to each applicant that
12 successfully completes that criminal background investigation
13 process.

14 (j) The commission shall provide, by regulation, that all drivers
15 and key employees employed by a charter-party carrier of
16 passengers shall carry the identification credential at all times on
17 airport property, and shall produce the credential for inspection
18 upon request of airport law enforcement officers. Failure to
19 produce the credential at the request of airport law enforcement
20 officers shall constitute a violation of the regulations and subject
21 the driver and the carrier to civil penalties not to exceed five
22 hundred dollars (\$500) per incident. Repeated violations of this
23 nature shall be grounds for revocation of the carrier's permit.

24 (k) The commission shall provide, by regulation, for a fee to be
25 charged of the charter-party carrier of passengers, to be collected
26 by the commission, sufficient to cover the costs of the commission
27 and Department of Justice for processing fingerprint records,
28 reviewing documents, and issuing identification credentials
29 pursuant to this section. An employee or applicant for employment
30 may not be charged a fee for the performance of the criminal
31 background check required by this section.

32 (l) For the purposes of this section, "key employees" mean the
33 owner or partner of the charter-party carrier or, if the carrier is a
34 corporation, the officers and directors of the corporation.

35 SEC. 4. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of



1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 is added to Title 2 of Part 4 of the Penal Code, to read:

5

6 CHAPTER 2.8.— FIREARM VICTIMS' REIMBURSEMENT FUND

7

8 12330. — (a) (1) There shall be imposed a fee upon the retailer
9 for all munitions sold at retail at the rate of 10 percent of the retail
10 sale price for each munition sold at retail in this state on or after
11 January 1, 2005.

12 (2) Except as provided in paragraph (1), the fee shall also be
13 imposed upon and paid by the purchaser of munitions for
14 munitions purchased outside of the state and that are intended to
15 be stored or used in the state.

16 (3) There shall be imposed a fee upon the retailer for all
17 handguns sold at retail at the rate of 5 percent of the retail sale price
18 for each handgun sold at retail in this state on or after January 1,
19 2005.

20 (4) The fees imposed pursuant to this section shall not exceed
21 the costs authorized for expenditure pursuant to subdivisions (f)
22 and (g).

23 (b) The fees imposed by this section shall be administered and
24 enforced by the State Board of Equalization.

25 (c) (1) For purposes of this section, "munition" means either
26 a finished munition product consisting of a projectile with its fuse,
27 propelling charge, or primer, or a primer component, as
28 applicable. "Munition" does not include a BB or a pellet
29 commonly used in an air rifle or pistol, or "blank" munitions
30 which lack a projectile.

31 (2) For purposes of this section, "handgun" means a handgun,
32 as defined in Section 12001, that is on the approved list pursuant
33 to Section 12131.

34 (d) (1) The fees provided for in this section may not be
35 imposed upon any munition or primer component, or handgun
36 purchased by any peace officer required to carry a firearm while
37 on duty, or upon any governmental law enforcement agency
38 employing that officer, or upon any government agency
39 purchasing those items on behalf of a law enforcement agency, for
40 use in the normal course of employment.



1 ~~(2) The fees provided for in this section shall not be imposed~~
2 ~~upon purchasers who have a valid California hunting license, and~~
3 ~~are purchasing ammunition intended to be used in a rifle or~~
4 ~~shotgun, as those terms are defined in Section 12020. The retailer~~
5 ~~shall complete and maintain a purchaser's certificate, in a form and~~
6 ~~for a period determined by the Board of Equalization,~~
7 ~~documenting and verifying the purchaser's qualifications for the~~
8 ~~exemption from the fees pursuant to this paragraph.~~

9 ~~(3) The fees imposed pursuant to this section shall not be~~
10 ~~imposed on any of the following transactions:~~

11 ~~(A) A transaction conducted pursuant to Section 12082 or~~
12 ~~12084 in order to comply with subdivision (d) of Section 12072.~~

13 ~~(B) A transaction that complies with an exemption from the~~
14 ~~requirements of subdivision (d) of Section 12072.~~

15 ~~(C) A transaction conducted pursuant to paragraph (2) of~~
16 ~~subdivision (f) of Section 12072.~~

17 ~~(e) All amounts required to be paid to the state under this~~
18 ~~section shall be paid to the State Board of Equalization in the form~~
19 ~~of remittances that are payable to that board and are separate from~~
20 ~~the remittance of any other fee. The board shall transmit the~~
21 ~~payments to the Treasurer to be deposited in the State Treasury to~~
22 ~~the credit of the Firearm Victims' Reimbursement Fund, which is~~
23 ~~hereby created.~~

24 ~~(f) The Firearm Victims' Reimbursement Fund may be used,~~
25 ~~upon appropriation by the Legislature, for the following purposes:~~

26 ~~(1) To pay the State Board of Equalization for the board's cost~~
27 ~~of implementation and administration of this section, provided~~
28 ~~however, that amount appropriated for those purposes may not~~
29 ~~exceed 10 percent of the total amount of moneys deposited in the~~
30 ~~fund for that fiscal year.~~

31 ~~(2) To pay the California Victims Compensation and~~
32 ~~Government Claims Board for the board's cost of implementation~~
33 ~~and administration of this section, provided however, that amount~~
34 ~~appropriated for those purposes may not exceed 5 percent of the~~
35 ~~total amount of moneys deposited in the fund for that fiscal year.~~

36 ~~(3) To compensate those persons who are injured by firearms~~
37 ~~and who suffer uncompensated pecuniary loss, under the~~
38 ~~guidelines of the federal Victims of Crime Act, provided however,~~
39 ~~that no person who is injured by a firearm while committing or~~



1 attempting to commit a crime may be eligible for compensation
2 pursuant to this section.

3 (g) The fund shall be administered by the California Victims
4 Compensation and Government Claims Board in a similar manner
5 and for similar purposes as the board administers the Restitution
6 Fund.

7 (h) If the amount credited to the Firearm Victims'
8 Reimbursement Fund exceeds the amount necessary to fully cover
9 reimbursable costs pursuant to subdivision (f), the State Board of
10 Equalization shall temporarily adjust, for the following one-year
11 period, the fee to be charged pursuant to subdivision (a) to an
12 amount estimated to deplete any surplus in the fund during the next
13 calendar year.

14 (i) The Board of Equalization and the California Victims
15 Compensation and Government Claims Board shall adopt
16 regulations necessary to implement this chapter.

17 12331. For purposes of this chapter, the State Board of
18 Equalization may collect the fees pursuant to the Fee Collection
19 Procedures Law, Part 30 (commencing with Section 55001) of
20 Division 2 of the Revenue and Taxation Code.

21 12332. (a) The fees imposed by this chapter and the amounts
22 thereof required to be collected by munitions and handgun
23 retailers are due quarterly on or before the last day of the month
24 next succeeding each calendar quarter.

25 (b) On or before the last day of the month following each
26 calendar quarter, a return for the preceding quarterly period shall
27 be filed with the State Board of Equalization in a form as the board
28 shall prescribe. The return shall be signed by the person required
29 to file the return or by his or her authorized agent.

30 12333. A person who is not a retailer, and who purchases
31 munitions pursuant to paragraph (2) of subdivision (a) of Section
32 12330, shall, not more than 90 days after the transaction, pay the
33 fees due and file a form as the Board of Equalization may prescribe
34 that is signed by that person.

