

## **Assembly Bill No. 2578**

### CHAPTER 552

An act to amend, repeal, and add Sections 688.020 and 688.030 of the Code of Civil Procedure, and to amend Sections 1013, 1701.2, 5135, and 5374 of, and amend, repeal, and add Sections 2104, 5317, and 5417 of, the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor September 28, 2008. Filed with  
Secretary of State September 28, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2578, Lieu. Public Utilities Commission: procedures and remedies.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law authorizes the commission to determine whether a proceeding requires a hearing, authorizes the commission to assign one or more commissioners and administrative law judges to oversee cases, and prescribes separate procedures for proceedings that the commission determines are either quasi-legislative, adjudication, or ratesetting cases. Existing law authorizes the commission to impose various remedies upon finding a violation of the Public Utilities Act or certain other violations, and makes any public utility and any corporation other than a public utility, that violates the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission guilty of a crime.

This bill would authorize the commission to determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and if so found, to order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution. The bill would require the respondent to demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within 7 days of the commission commencing an adjudication case. The bill would authorize the commission to delegate to the attorney to the commission the authority to determine whether a sufficient showing has been made by the respondent of an ability to pay and would authorize the respondent to request impartial review by an administrative law judge. The review of the administrative law judge would become part of the record of the adjudication and would be subject to the commission's consideration in its order resolving the adjudication case. Certain public utilities would be presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, thus, these ability to pay provisions would not apply to those public utilities.

The commission also has regulatory authority over household goods carriers pursuant to the Household Goods Carriers Act and over charter-party carriers of passengers pursuant to the Passenger Charter-Party Carriers Act.

The bill would authorize the commission to enjoin the sale of the assets of a public utility, common carrier, household goods carrier, or charter-party carrier of passengers to satisfy unpaid fines and penalties, would authorize, until January 1, 2014, the commission to bring an action pursuant to the Uniform Fraudulent Transfer Act, and would make the fraudulent transfer of assets to avoid paying a commission-imposed fine or penalty subject to prosecution under certain existing criminal provisions. By expanding the definition of a crime, the bill would impose a state-mandated local program.

The bill, until January 1, 2014, would extend certain existing authorizations for the state or a department or agency of the state to levy on property by warrant or notice of levy pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, to any provision of the Public Utilities Code.

The bill would authorize the commission to require, as a precondition to the issuance of certain permits, registrations, or certificates, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against the applicant.

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.

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

SECTION 1. Section 688.020 of the Code of Civil Procedure is amended to read:

688.020. (a) Except as otherwise provided by statute, if a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Public Utilities Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to a judgment creditor, including, but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of those remedies is a court of any of the following counties:

- (1) The county where the debtor resides.
- (2) The county where the property against which enforcement is sought is located.
- (3) If the debtor does not reside in this state, any county of this state.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 688.020 is added to the Code of Civil Procedure, to read:

688.020. (a) Except as otherwise provided by statute, if a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to a judgment creditor, including, but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of those remedies is a court of any of the following counties:

- (1) The county where the debtor resides.
- (2) The county where the property against which enforcement is sought is located.
- (3) If the debtor does not reside in this state, any county of this state.
- (4) This section shall become operative on January 1, 2014.

SEC. 3. Section 688.030 of the Code of Civil Procedure is amended to read:

688.030. (a) If pursuant to any provision of the Public Resources Code, Public Utilities Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment

creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the superior court in the county where the property levied upon is located.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. Section 688.030 is added to the Code of Civil Procedure, to read:

688.030. (a) If pursuant to any provision of the Public Resources Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the superior court in the county where the property levied upon is located.

(d) This section shall become operative on January 1, 2014.

SEC. 5. Section 1013 of the Public Utilities Code is amended to read:

1013. (a) The commission may by rule or order, partially or completely exempt certain telecommunications services offered by telephone and telegraph corporations from the certification requirements of Section 1001 and instead subject them to registration as the commission may determine. Telephone corporations that the commission determines have monopoly power or market power in a relevant market or markets shall have a certificate of public convenience and necessity and shall not be eligible for designation as registered telephone corporations. A telephone corporation that has been found not to have monopoly power or market power in a relevant market or markets by the commission shall be eligible for registration subject to the approval of the commission. A telephone corporation operating in this state shall either have a certificate of public convenience and necessity or be registered under this section or be a telephone corporation authorized to operate in California without a certificate of public convenience and necessity.

(b) Registered telephone corporations qualifying under this section shall maintain an active registration with the commission at all times and comply with commission rules and regulations established for registered telephone corporations qualifying under this section.

(c) The registration of registered telephone corporations qualifying under this section shall be on a form prescribed by the commission and shall contain any information the commission may by rule or order require, but shall include as a minimum the name and address of the telephone corporation's registered agent, if any, the name, address, and title of each officer or director, and a description of the telecommunications services it offers or intends to offer.

(d) Prior to designating any telephone corporation for registration status, the commission shall adopt rules to do both of the following:

- (1) Verify the financial viability of the corporation.
- (2) Verify that the officers of the corporation have no prior history of committing fraud on the public.

(e) The commission shall require as a precondition to registration the procurement of a performance bond sufficient to cover taxes or fees, or both, collected from customers and held for remittance and advances or deposits the telecommunications company may collect from its customers, or order that those advances or deposits be held in escrow or trust.

(f) The commission may require, as a precondition to registration, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against a telecommunications company.

(g) The commission may, with or without a hearing, grant a telephone corporation registration status and an exemption from the certification requirements of Section 1001. However, upon timely application, any person entitled to be heard may file a protest on whether a telephone corporation should be eligible for registration status and the granting of an exemption from the certification requirement of Section 1001. Upon a determination that the protest has presented a prima facie case that a telephone corporation

should not be granted registration status and an exemption from Section 1001, a hearing shall be held.

(h) The commission, after notice and a hearing if requested, may cancel, revoke, or suspend the registration of any telephone corporation upon any of the following grounds:

(1) The corporation does not provide the information required by this article.

(2) The corporation fails to provide or maintain a performance bond.

(3) The corporation conducts any illegal telephone operations.

(4) The corporation violates any of the applicable provisions of this code or of any regulations issued thereunder.

(5) The corporation violates any order, decision, rule, regulation, direction, demand, or requirement established by the commission under this code.

(6) The corporation fails to pay any fee or fine imposed upon the utility under this code.

(7) The corporation files a false statement to the commission.

(8) The corporation knowingly defrauds a customer.

(i) As an alternative to the cancellation, revocation, or suspension of a registration, the commission, after notice and a hearing, may impose upon the holder of the registration a fine in an amount not to exceed twenty thousand dollars (\$20,000) for each offense, and order reparations and restitution to customers for each offense.

(j) Every violation of this section or any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any telephone corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

(k) In construing and enforcing this section relating to penalties, the act, omission, or failure of any officer, agent, or employee of any registered telephone corporation qualifying under this section acting within the scope of his or her official duties or employment, shall in every case be the act, omission, or failure of the corporation. The commission may assess interest to commence upon the day the payment is delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

(l) Actions to enforce the decision of the commission ordering the payment of fines, reparations, or restitution under this section shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides or in which the commission has offices. The enforcement of a commission decision or order under this section shall be commenced and prosecuted to final judgment by the attorney of the commission.

(m) The provisions of this section do not apply to commercial mobile radio service.

SEC. 6. Section 1701.2 of the Public Utilities Code is amended to read:

1701.2. (a) If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo. The scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case. The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The regulation shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any interested party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds. The commission decision shall be based on the record developed by the assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(b) Ex parte communications shall be prohibited in adjudication cases.

(c) Notwithstanding any other provision of law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

(d) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted the parties shall have an opportunity for final oral argument.

(e) (1) The commission may determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission.

(2) If the commission determines that a respondent lacks, or may lack, the ability to pay, the commission may order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential

penalties, fines, or restitution that may be ordered by the commission. The respondent shall demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within seven days of the commission commencing an adjudication case. The commission may delegate to the attorney to the commission the determination of whether a sufficient showing has been made by the respondent of an ability to pay.

(3) Within seven days of the commission's determination of the respondent's ability to pay potential penalties, fines, or restitution, the respondent shall be entitled to an impartial review by an administrative law judge, of the sufficiency of the showing made by the respondent of the respondent's ability to pay. The review by an administrative law judge of the ability of the respondent to pay shall become part of the record of the adjudication and is subject to the commission's consideration in its order resolving the adjudication case. The administrative law judge may enter temporary orders modifying any financial requirement made of the respondent pending the review by the administrative law judge.

(4) A respondent that is a public utility regulated under a rate-of-return or rate-of-margin regulatory structure or that has gross annual revenues of more than one hundred million dollars (\$100,000,000) generated within California is presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, therefore, paragraphs (1) to (3), inclusive, do not apply to that respondent.

SEC. 7. Section 2104 of the Public Utilities Code is amended to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, and in addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this part may be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action, if brought pursuant to this section, shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided. All fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on application of the commission upon the terms the court approves and orders.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 8. Section 2104 is added to the Public Utilities Code, to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, actions to recover penalties under this part shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided. All fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on application of the commission upon the terms the court approves and orders.

(b) This section shall become operative on January 1, 2014.

SEC. 9. Section 5135 of the Public Utilities Code is amended to read:

5135. (a) Before a permit is hereafter issued the commission shall require the applicant to establish ability and reasonable financial responsibility to initiate the proposed operations. The commission shall require the applicant to establish his or her knowledge and ability to engage in business as a household goods carrier by examination. The examination may be written or oral, or in the form of a demonstration of skill or any combination of these, and any investigation of character, experience, and any tests of technical knowledge and manual skill that the commission determines to be appropriate may be employed. In any examination the qualification of the applicant shall be determined by an appraisal made by a member of the commission's staff. An applicant who has been determined to be unqualified may thereafter establish his or her qualifications through a subsequent examination, but no subsequent examination shall be taken prior to 30 days from the date when the applicant was found to be unqualified. If the staff member determines that the applicant is not qualified, then the matter shall be set for hearing and the qualification of the applicant shall be determined by the commission on the basis of evidence of qualifications presented at the hearing, which evidence may include consideration of any written examination of the applicant. If the staff member determines that the

applicant is qualified, the commission may issue a permit without hearing, unless the commission determines that a hearing is desirable, in which event the commission may set the application for hearing.

(b) An applicant may qualify in one of the following ways:

(1) If an individual, he or she may qualify by personal examination or by examination of his or her responsible managing employee.

(2) If a copartnership or corporation, or any other type of business organization, it may qualify by examination of the responsible managing officer, employee who works at least 32 hours per week, or partner of the applicant firm.

(c) If the individual qualified by examination ceases to be connected with the permitholder, the permitholder shall notify the commission in writing within 30 days after the cessation. If notice is given the permit shall remain in force a reasonable length of time in order that another representative of applicant may be qualified before the commission. If the permitholder fails to notify the commission of the cessation within a 30-day period, at the end of that period the permit shall be automatically suspended.

(d) The commission shall require each applicant for a permit to submit fingerprints for each owner, partner, officer, and director as a prerequisite to the issuance of a permit to operate as a household goods carrier. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use any information obtained from the national criminal history record check conducted pursuant to this section to determine the applicant's qualification for permit.

(e) The commission may require, as a precondition to the issuance of a permit, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against the applicant.

(f) The commission may refuse to issue a permit if it is shown that an applicant or an officer, director, partner, or associate thereof has committed any act constituting dishonesty or fraud; committed any act which, committed by a permitholder would be grounds for a suspension or revocation of the permit; misrepresented any material fact on the application; or, committed a felony, or crime involving moral turpitude.

(g) The commission shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity, and financial resources and responsibility to perform the service within the scope of their application.

(h) A permit may not be issued unless it has been shown that applicant meets one of the following residence requirements: If an individual, applicant shall have resided in the State of California for not less than 90 days next preceding the filing of the application. If a partnership, the partner having the largest percentage interest in the partnership shall have resided in the State of California continuously for not less than 90 days next preceding

the filing of the application. If a corporation, applicant shall be a domestic corporation or shall have qualified to transact business in the State of California as a foreign corporation at the time of filing the application.

(i) The commission shall prescribe, amend, and repeal rules in accordance with law for the administration of this section.

SEC. 10. Section 5317 of the Public Utilities Code is amended to read:

5317. (a) In addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this chapter may be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action, if brought pursuant to this section, shall be commenced and prosecuted to final judgment by the attorney of the commission. The commission may enjoin the sale of the assets of a household goods carrier to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution pursuant to Sections 154, 531, and 531a of the Penal Code.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 11. Section 5317 is added to the Public Utilities Code, to read:

5317. (a) Actions to recover penalties under this chapter shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action shall be commenced and prosecuted to final judgment by the attorney of the commission.

(b) This section shall become operative on January 1, 2014.

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

5374. (a) (1) Before a permit or certificate is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a permit or certificate pursuant to this chapter unless the applicant meets all of the following requirements:

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

(B) It is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or

subcarriers, operating vehicles in transportation for compensation under the certificate.

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

(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation.

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

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

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

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

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

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

(3) The commission may require, as a precondition to the issuance of a permit or certificate, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against the applicant.

(b) In addition to the requirements in subdivision (a), charter-party carriers shall meet all other state and, where applicable, federal regulations as prescribed.

(c) The commission may delegate to its executive director or that executive director's designee the authority to issue, renew, or authorize the transfer of, charter-party carrier permits or certificates and to make the findings specified in subdivision (a) that are necessary to that delegated authority.

SEC. 13. Section 5417 of the Public Utilities Code is amended to read:

5417. (a) In addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this chapter may be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained

of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action, if brought pursuant to this section, shall be commenced and prosecuted to final judgment by the attorney of the commission. The commission may enjoin the sale of the assets of a charter-party carrier of passengers to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution pursuant to Sections 154, 531, and 531a of the Penal Code.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 14. Section 5417 is added to the Public Utilities Code, to read:

5417. (a) Actions to recover penalties under this chapter shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action shall be commenced and prosecuted to final judgment by the attorney of the commission.

(b) This section shall become operative on January 1, 2014.

SEC. 15. On or before January 1, 2013, the Public Utilities Commission shall submit to the Senate Committee on Judiciary and the Assembly Committee on Judiciary a report on the changes made by this act to Sections 688.020 and 688.030 of the Code of Civil Procedure and to Section 2104 of the Public Utilities Code, as they pertain to the status of the commission as a judgment creditor. The report shall include both of the following:

(a) The number of judgment debtors the commission was able to collect from as a judgment creditor, the dollar amount of those judgments, and the total dollar amount collected.

(b) The effectiveness of the changes made by this act that grant the commission status as a judgment creditor.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.