

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 709

Introduced by Assembly ~~Member Hill~~ Members Lieu and Swanson

February 26, 2009

An act to amend Sections 5371.4 and 5374 of, and add Section 5374.1 to, the Public Utilities Code, relating to charter-party carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 709, as amended, ~~Hill~~ *Lieu*. Charter-party carriers of passengers: driver 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, where 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 California 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 or a permit issued by the commission, and to operate within the state on a prearranged basis, as defined. The act prohibits the commission from issuing or renewing a permit unless the applicant has met specified requirements, including the submission of specified filing fees. Existing law prohibits the governing body of any airport from imposing any vehicle safety, licensing, or insurance requirements on charter-party carriers operating limousines that are more burdensome than those imposed by the commission, but authorizes the governing board to require a charter-party carrier operating limousines to obtain an airport permit for operating authority at the airport, and to adopt and enforce reasonable and nondiscriminatory local airport rules, regulations, and ordinances pertaining to access, use of streets and roads, parking, traffic control, passenger transfers, trip fees, and occupancy, and the use of buildings and facilities, that are applicable to charter-party carriers operating limousines on airport property.

This bill would require the commission to adopt rules for criminal history background checks of drivers, or applicants to be a driver, for a charter-party carrier of passengers that provides passenger transportation to and from any airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation (commercial airport) and would disqualify persons convicted of specified crimes from being drivers. ~~The bill would require the commission to develop and make available to charter-party carriers of passengers a list of qualified vendors approved to investigate and certify the background of employees and candidates for employment as drivers. The bill would require that the rules adopted by the commission do the following: (1) require that each driver, and each applicant who is offered employment as a driver, of a charter-party carrier providing passenger transportation to and from a commercial airport submit fingerprints and other pertinent information to the approved vendor, (2) require the vendor to transmit the fingerprints to the Department of Justice, (3) require the Department of Justice to~~

conduct the check, and forward a request for federal level criminal offender record information to the Federal Bureau of Investigation, (4) require the Department of Justice to provide specified information to the vendor, (5) require the vendor to review all information received from the Department of Justice and forward that information to the charter-party carrier of passengers, (6) *for the purpose of obtaining criminal history information*, (2) require that a charter-party carrier of passengers only employ as drivers those individuals that have successfully completed the criminal history background investigation, (7) (3) require the charter-party carrier of passengers provide an identification credential to each employee, or applicant that becomes an employee, that successfully completes the criminal background investigation process, and (8) (4) require all drivers that are employed by a charter-party carrier of passengers to carry identification credentials at all times on airport property. The bill would require any applicant for certification or a permit to operate as a charter-party carrier of passengers to certify that its drivers have successfully completed a criminal history background check and have been issued an identification credential in accordance with the above-described requirements. The bill would prohibit the governing body of any airport from imposing requirements on charter-party carriers providing transportation to and from the airport regarding criminal background checks on drivers, but would authorize the governing body to request a list of all drivers to whom identification credentials have been issued.

Under existing law, a violation of the Passenger Charter-Party Carriers' Act or an order or direction of the commission pursuant to the act is a crime.

Because the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

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.

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

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

1 SECTION 1. It is the intent of the Legislature to reaffirm the
2 state's commitment to homeland security with respect to
3 charter-party carriers of passengers and their employees who
4 transport passengers to and from airports served by commercial
5 air carriers. The purpose of this act is to ensure that uniform
6 procedures and rules are in place consistent with the airport security
7 programs operated by well-run airports in this state, to assure the
8 traveling public that drivers of charter-party carriers of passengers
9 have been through security clearances.

10 SEC. 2. Section 5371.4 of the Public Utilities Code is amended
11 to read:

12 5371.4. (a) The governing body of any city, county, or city
13 and county may not impose a fee on charter-party carriers operating
14 limousines. However, the governing body of any city, county, or
15 city and county may impose a business license fee on, and may
16 adopt and enforce any reasonable rules and regulations pertaining
17 to operations within its boundaries for, any charter-party carrier
18 domiciled or maintaining a business office within that city, county,
19 or city and county.

20 (b) The governing body of any airport may not impose vehicle
21 safety, vehicle licensing, or insurance requirements on charter-party
22 carriers operating limousines that are more burdensome than those
23 imposed by the commission. However, the governing board of any
24 airport may require a charter-party carrier operating limousines to
25 obtain an airport permit for operating authority at the airport.

26 (c) Notwithstanding subdivisions (a) and (b), the governing
27 body of any airport may adopt and enforce reasonable and
28 nondiscriminatory local airport rules, regulations, and ordinances
29 pertaining to access, use of streets and roads, parking, traffic
30 control, passenger transfers, trip fees, and occupancy, and the use
31 of buildings and facilities, that are applicable to charter-party
32 carriers operating limousines on airport property.

33 (d) This section does not apply to any agreement entered into
34 pursuant to Sections 21690.5 to 21690.9, inclusive, between the
35 governing body of an airport and charter-party carriers operating
36 limousines.

37 (e) The commission shall conduct an audit and review of the
38 annual gross revenues earned by charter-party carriers operating

1 limousines for the purpose of ascertaining whether the imposition
2 of additional fees based on a charter-party carrier's gross annual
3 revenues would place an undue administrative or financial burden
4 on the charter-party carrier industry. The commission shall report
5 its findings to the Legislature on or before June 30, 1992.

6 (f) The governing body of any airport shall not impose a fee
7 based on gross receipts of charter-party carriers operating
8 limousines.

9 (g) Notwithstanding subdivisions (a) to (f), inclusive, nothing
10 in this section prohibits a city, county, city and county, or the
11 governing body of any airport, from adopting and enforcing
12 reasonable permit requirements, fees, rules, and regulations
13 applicable to charter-party carriers of passengers other than those
14 operating limousines.

15 (h) Notwithstanding subdivisions (a) to (f), inclusive, a city,
16 county, or city and county may impose reasonable rules for the
17 inspection of waybills of charter-party carriers of passengers
18 operating within the jurisdiction of the city, county, or city and
19 county, for purposes of verifying valid prearranged travel.

20 (i) For the purposes of this section, "limousine" includes any
21 sedan or sport utility vehicle, of either standard or extended length,
22 with a seating capacity of not more than 10 passengers including
23 the driver, used in the transportation of passengers for hire on a
24 prearranged basis within this state.

25 (j) The governing body of an airport may not require criminal
26 history background checks on a driver for a charter-party carrier
27 providing transportation to and from airports regarding criminal
28 background checks on drivers, but may request a list of all drivers
29 to whom identification credentials have been issued pursuant to
30 Section 5374.1.

31 SEC. 3. Section 5374 of the Public Utilities Code is amended
32 to read:

33 5374. (a) (1) Before a permit or certificate is issued or
34 renewed, the commission shall require the applicant to establish
35 reasonable fitness and financial responsibility to initiate and
36 conduct or continue to conduct the proposed or existing
37 transportation services. The commission shall not issue or renew
38 a permit or certificate pursuant to this chapter unless the applicant
39 meets all of the following requirements:

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

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

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

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

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

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

23 (G) It has filed with the commission the certificate of workers'
24 compensation insurance coverage or statement required by Section
25 5378.1.

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

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

34 (J) For any applicant providing transportation to and from any
35 airport regularly serving an air carrier holding a certificate issued
36 by the United States Secretary of Transportation, it certifies that
37 its drivers have successfully completed a criminal history
38 background check and have been issued an identification credential
39 in accordance with Section 5374.1.

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

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

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

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

18 SEC. 4. Section 5374.1 is added to the Public Utilities Code,
19 to read:

20 5374.1. (a) (1) The commission shall adopt rules requiring
21 that a complete criminal history background check be conducted
22 and an identification credential be issued for each employee, or
23 applicant for employment, who is, or is applying to be, a driver
24 for a charter-party carrier of passengers that provides passenger
25 transportation to and from any airport regularly serving an air
26 carrier holding a certificate issued by the United States Secretary
27 of Transportation. The criminal history background check shall
28 use criminal history information to determine whether employees
29 and applicants for employment as drivers have a conviction for a
30 crime that disqualify them from being drivers because they would
31 be a threat to the safety of the public if employed as drivers of a
32 charter-party carrier of passengers.

33 (2) The rules shall require that a fingerprint-based criminal
34 history background investigation be used to determine past
35 convictions for the following specified criminal acts that disqualify
36 the employee or applicant for employment from serving as a driver
37 of passengers to the airport:

38 (A) Unlawful transportation of a hazardous material (49 U.S.C.
39 Sec. 46312).

1 (B) Carrying a weapon or explosive aboard an aircraft (49
2 U.S.C. Sec. 46505).

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

6 (D) Destruction of an aircraft or aircraft facility (18 U.S.C. Sec.
7 32).

8 (E) Violence at international airports (18 U.S.C. Sec. 37).

9 (F) Unlawful possession, use, sale, distribution, or manufacture
10 of an explosive, incendiary device, or assault weapon.

11 (G) Felony arson.

12 (3) Crimes where the conviction was obtained, or incarceration
13 was completed, more than 10 years prior to the date of application
14 or employment shall not be used or considered in making
15 employment determinations.

16 (4) For purposes of this section, a conviction means a plea or
17 verdict of guilty or a conviction following a plea of nolo
18 contendere.

19 ~~(b) The commission shall develop and make available to~~
20 ~~charter-party carriers of passengers a list of qualified vendors~~
21 ~~approved to investigate and certify the criminal history background~~
22 ~~of employees and candidates for employment as drivers for~~
23 ~~charter-party carriers of passengers that provide passenger~~
24 ~~transportation to and from an airport regularly serving an air carrier~~
25 ~~holding a certificate issued by the United States Secretary of~~
26 ~~Transportation.~~

27 (e)

28 (b) The rules shall require that a charter-party carrier of
29 passengers shall only employ an individual as a driver of
30 passengers to and from any airport regularly serving an air carrier
31 holding a certificate issued by the United States Secretary of
32 Transportation if that individual has successfully completed the
33 criminal history background investigation. This requirement shall
34 apply retroactively to drivers employed on or after January 1, 2009,
35 and to all future applicants. Employment of individuals as drivers
36 that have not successfully completed the criminal background
37 investigation constitutes a violation of the rules and shall subject
38 the charter-party carrier of passengers to civil penalties not to
39 exceed two thousand dollars (\$2,000) per incident. Repeated

violations of this subdivision shall be grounds for revocation of the charter-party carrier's certification or permit.

~~(d)~~

(c) The rules shall require that a charter-party carrier of passengers require each driver, and each applicant who is offered employment as a driver, of passengers to and from any airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation, to submit fingerprints and other pertinent information, as required by the rules, ~~to the approved vendor selected by the charter-party carrier of passengers,~~ for the purpose of obtaining criminal history background information.

~~(e) The vendor shall transmit the fingerprints to the Department of Justice. The Department of Justice shall conduct the check, and forward a request for federal level criminal offender record information to the Federal Bureau of Investigation. The Department of Justice shall provide the following information to the vendor:~~

~~(1) Every conviction rendered against the applicant.~~

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

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

~~(f) The vendor shall review all information received from the Department of Justice and forward that information to the charter-party carrier of passengers. All~~

~~(d) All information received by the vendor and charter-party carrier of passengers commission shall be held as confidential, except that if employment is terminated or denied based on criminal history information, the charter-party carrier of passengers commission shall notify the employee or applicant of the disqualification, and provide a copy of the history response and an explanation of the termination to the employee, or the denial of employment to the applicant. Employees and agents of a charter-party carrier of passengers are prohibited from communicating to any other person any information related to the disqualification of a driver, or applicant for driver, except that upon request by law enforcement or an airport authority, the charter-party carrier of passengers shall provide access to the criminal history background information. A person who is~~

1 disqualified pursuant to this section may request a hearing by the
2 commission to challenge the accuracy of the criminal history
3 background investigation.

4 ~~(g)~~

5 (e) The charter-party carrier of passengers shall provide an
6 identification credential to each employee, or applicant that
7 becomes employee, that successfully completes the criminal history
8 background investigation process. The identification credential
9 shall include the person's legal name, a photograph of the person
10 identified, the name of the charter-party carrier, and the appropriate
11 license number issued by the commission.

12 ~~(h)~~

13 (f) The rules adopted by the commission shall provide that all
14 drivers that are employed by a charter-party carrier of passengers
15 shall carry identification credentials at all times on airport property,
16 and shall produce the credentials for inspection upon the request
17 of law enforcement officers at the airport property. Failure to
18 produce the credential at the request of law enforcement officers
19 at the airport is a violation of the rules and shall subject the driver
20 and the charter-party carrier of passengers to civil penalties not to
21 exceed two hundred and fifty dollars (\$250) per incident. Repeated
22 violations of this subdivision shall be grounds for revocation of
23 the charter-party carrier's certificate or permit.

24 SEC. 5. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.