

Assembly Bill No. 2572

Passed the Assembly August 24, 2010

Chief Clerk of the Assembly

Passed the Senate August 23, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 5360, 5373.1, 5374, 5374.5, 5378, 5378.6, 5385, 5392, and 5411.5 of the Public Utilities Code, relating to charter-party carriers of passengers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2572, Bradford. Charter-party carriers of passengers.

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, as defined, are subject to the jurisdiction and control of the commission under the Passenger Charter-Party Carriers' Act. The act defines a charter-party carrier of passengers, subject to certain exceptions, to mean every person that is engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway.

This bill would provide that a charter-party carrier of passengers includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver. The bill would, however, make certain provisions of the act inapplicable to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver, and make certain insurance requirements applicable only to the driver supplied by the charter-party carrier of passengers engaged in the provision of a hired driver service when the car is separately rented.

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.

This bill, by expanding the definition of a charter-party carrier of passengers, would impose a state-mandated local program by expanding the definition of a crime.

The act requires a charter-party carrier of passengers to obtain from the commission a certificate of public convenience and necessity, or for certain carriers, to obtain a permit, sets forth the requirements to be met before a certificate or permit may be issued or renewed, establishes fees to be charged by the commission to different classes of certificate holders and for permit holders for issuance or renewal of a certificate or permit, and provides that a certificate or permit, or renewal thereof, is effective for 3 years, unless suspended or revoked by the commission.

This bill would revise the fees charged by the commission for a new or renewed certificate or permit. The bill would authorize the commission to cancel, revoke, or suspend any operating certificate or permit upon the failure of a certificate or permit holder, or of any of its employees, to follow any order, decision, rule, regulation, direction, demand, ordinance, or other requirements established by the governing body of an airport.

Existing law authorizes a peace officer, as defined, that arrests a person for operating a charter-party carrier of passengers without a valid certificate or permit to impound and retain possession of the vehicle, subject to certain exceptions and provisions for notice and return of the vehicle. Existing law limits this authority to arrests made at a public airport or within 2 miles of the international border with Mexico.

This bill would delete that limitation.

Existing law requires that an impounded vehicle be immediately returned to the owner, without cost to the owner, if the infraction or violation is not prosecuted or is dismissed, or used in violation of a specified law without the knowledge and consent of the owner.

This bill would delete the requirement that the impounded vehicle be returned without cost to the owner. The bill would require that if a vehicle is seized due to a violation of a person other than the owner, the impounded vehicle be returned to the owner after all impoundment fees are paid.

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. It is the intent of the Legislature to achieve all of the following:

(a) Ensure that the Public Utilities Commission utilizes access to information on drivers for licensed charter-party carriers of passengers through the Department of Motor Vehicle's Employer Pull Notice Program implementing Section 1808.1 of the Vehicle Code.

(b) Ensure the public safety when utilizing the services of charter-party carriers of passengers and to increase enforcement of laws to prevent illegal charter-party operators.

(c) Have the Public Utilities Commission implement procedures to have an approved drug and alcohol testing provider submit to the commission timely information on the status of licensed charter-party carriers of passengers that have contracted with the drug and alcohol testing provider for compliance with commission rules and statutes.

(d) Create an online renewal process for charter-party carriers of passengers and a renewal process that is administratively efficient.

SEC. 2. Section 5360 of the Public Utilities Code is amended to read:

5360. Subject to the exclusions of Section 5353, "charter-party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. "Charter-party carrier of passengers" includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver.

SEC. 3. Section 5373.1 of the Public Utilities Code is amended to read:

5373.1. (a) Each application for a charter-party carrier of passengers certificate or permit shall be accompanied by a filing fee as follows:

(1) Class A certificates (new): one thousand five hundred dollars (\$1,500).

(2) Class A certificates (renewal): one hundred dollars (\$100).

(3) Class B certificates (new): one thousand dollars (\$1,000).

- (4) Class B certificates (renewal): one hundred dollars (\$100).
- (5) Class C certificates (new): one thousand dollars (\$1,000).
- (6) Class C certificates (renewal): one hundred dollars (\$100).
- (7) Permits (new): one thousand dollars (\$1,000).
- (8) Permits (renewal): one hundred dollars (\$100).

(b) The commission shall also require each application to be accompanied by a fee to offset the cost of the charter-party carrier bus terminal inspections conducted by the Department of the California Highway Patrol. The fee shall be fifteen dollars (\$15) per tour bus, as defined in Section 612 of the Vehicle Code, or a maximum of six thousand five hundred dollars (\$6,500) for each operating carrier.

(c) The commission shall require each charter-party carrier that operates tour buses, as defined in Section 612 of the Vehicle Code, to undergo an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars (\$15) per tour bus, or a maximum of six thousand five hundred dollars (\$6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

SEC. 4. 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.

(J) Subparagraphs (C), (F), and (H) do not apply to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver.

(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. 5. Section 5374.5 of the Public Utilities Code is amended to read:

5374.5. (a) At the time of each bus terminal inspection conducted by the Department of the California Highway Patrol pursuant to subdivision (c) of Section 34501 of the Vehicle Code, every charter-party carrier of passengers shall furnish both the Department of the California Highway Patrol and the commission a list, prepared under oath, of all vehicles used in transportation for compensation during the period since the last inspection. The commission shall furnish a copy of the list to the carrier's insurer, if the carrier's accident liability protection is provided by a policy of insurance. This subdivision does not apply to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver.

(b) If the charter-party carrier's insurer informs the commission that the carrier has failed to obtain insurance coverage for any vehicle reported on the list, the commission may, in addition to any other penalty provided in this chapter, for a first occurrence, suspend the carrier's certificate or permit or impose a fine, or both, and for a second or subsequent occurrence may suspend or revoke the certificate or impose a fine, or both.

SEC. 6. Section 5378 of the Public Utilities Code is amended to read:

5378. (a) The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds:

(1) The violation of any of the provisions of this chapter, or of any operating permit or certificate issued thereunder.

(2) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.

(3) The conviction of the charter-party carrier of passengers of any misdemeanor under this chapter while holding operating authority issued by the commission or the conviction of the carrier or its officers of a felony while holding operating authority issued by the commission, limited to robbery, burglary, larceny, fraud, or intentional dishonesty for personal gain.

(4) The rendition of a judgment against the charter-party carrier of passengers for any penalty imposed under this chapter.

(5) The failure of a charter-party carrier of passengers to pay any fee imposed upon the carrier within the time required by law.

(6) On request of the holder of the permit or certificate.

(7) Failure of a permit or certificate holder to operate and perform reasonable service. That failure may include repeated violations of the Vehicle Code or of regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety, by employees of the permitholder or certificate holder, that support an inference of unsafe operation or willful neglect of the public safety by the permitholder or certificate holder.

(8) Consistent failure of the charter-party carrier of passengers to maintain its vehicles 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, as shown by the records of the commission, the Department of Motor Vehicles, the Department of the California Highway Patrol, or the carrier. This paragraph does not apply to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver.

(9) The knowing and willful filing of a false report that understates revenues and fees.

(10) Failure of a permit or certificate holder, or of any of its employees, to follow any order, decision, rule, regulation, direction, demand, ordinance, or other requirement established by the governing body of an airport, including solicitation practices.

(b) The commission may levy a civil penalty of up to seven thousand five hundred dollars (\$7,500) upon the holder of an operating permit or certificate issued pursuant to this chapter, for any of the grounds specified in subdivision (a), as an alternative to canceling, revoking, or suspending the permit or certificate. The commission may also levy interest upon the civil penalty, which

shall be calculated as of the date on which the civil penalty is unpaid and delinquent. The commission shall deposit at least monthly all civil penalties and interest collected pursuant to this section into the General Fund.

SEC. 7. Section 5378.6 of the Public Utilities Code is amended to read:

5378.6. (a) The commission shall deny a new or renewal application for a charter-party carrier certificate or permit upon receipt of a written recommendation from the Department of the California Highway Patrol that specifically indicates compliance with subdivision (b), and indicates that the applicant has failed to do either of the following:

(1) Maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or the regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety. This paragraph does not apply to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver.

(2) Enroll all drivers in the Department of Motor Vehicles' Employer Pull Notice Program implementing Section 1808.1 of the Vehicle Code.

(b) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the applicant for the charter-party carrier certificate or permit of all of the following in writing:

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

(2) That the determination may result in a denial of the applicant's certificate or permit by the commission.

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

(c) Whenever the commission denies an application for renewal pursuant to subdivision (a), the commission shall furnish the charter-party carrier written notice of the denial and shall hold a

hearing within a reasonable time, not to exceed 21 days, after a written request is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the denial was improper or unwarranted. At the conclusion of the hearing, the commission may, in addition to any other remedy provided in this part, reverse the denial, or sustain the denial.

(d) Any applicant for a charter-party carrier certificate or permit denied pursuant to subdivision (a), whose denial has not been reversed as a result of the hearing provided for in subdivision (c), that wishes to obtain a certificate or permit shall reapply for the desired authority.

SEC. 8. Section 5385 of the Public Utilities Code is amended to read:

5385. A charter-party carrier of passengers, except those engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver, shall not operate any motor vehicle on any public highway unless there is displayed on the vehicle a distinctive identifying symbol in the form prescribed by the commission, showing the classification to which the carrier belongs. Such an identifying symbol shall not be displayed on any vehicle until a permit or certificate of public convenience and necessity under this chapter has been issued to the carrier. The identifying symbol displayed by charter-party carriers subject to the Interstate Commerce Commission shall serve in lieu of the display requirements of this section.

SEC. 9. Section 5392 of the Public Utilities Code is amended to read:

5392. (a) The protection required under Sections 5391 and 5391.2 shall be evidenced by the deposit of any of the following with the commission covering each vehicle used or to be used under the certificate or permit applied for:

(1) A policy of insurance, issued by a company licensed to write insurance in this state, or by nonadmitted insurers subject to Section 1763 of the Insurance Code, if the policies meet the rules promulgated therefor by the commission.

(2) A bond of a surety company licensed to write surety bonds in the state.

(3) Evidence of the qualification of the charter-party carrier of passengers as a self-insurer as may be authorized by the commission.

(b) This section applies only to the driver supplied by a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver. The requirements of this section do not apply to the separately rented vehicle.

SEC. 10. Section 5411.5 of the Public Utilities Code is amended to read:

5411.5. (a) Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, arrests a person for operation of a charter-party carrier of passengers without a valid certificate or permit, the peace officer may impound and retain possession of the vehicle.

(b) Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, arrests a person for operating a charter-party carrier of passengers as a taxicab in violation of an ordinance or resolution of a city, county, or city and county, the peace officer may impound and retain possession of the vehicle.

(c) If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

(d) The vehicle shall immediately be returned to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of Section 5411 without the knowledge and consent of the owner. The vehicle shall be returned to the owner upon payment of any fine ordered by the court. If the vehicle is seized due to a violation of a person other than the owner of the vehicle, the vehicle shall be returned to the owner after all impoundment fees are paid. After the expiration of six weeks from the final disposition of the criminal case, unless the owner is in the process of making payments to the court, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

(e) At any time, a person may make a motion in superior court for the immediate return of the vehicle on the ground that there was no probable cause to seize it or that there is some other good

cause, as determined by the court, for the return of the vehicle. A proceeding under this section is a limited civil case.

(f) No peace officer, however, may impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services or a rented motor vehicle that is being operated by a hired driver of a charter-party carrier of passengers that is providing hired driver service.

SEC. 11. 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.

Approved _____, 2010

Governor