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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 45

Introduced by Assembly Member Hill

December 6, 2010

An act to amend ~~Sections 5384.1 and~~ *Section 5384.5* of, *to add Section 5355.5 to, and to repeal and add Section 5384.1 of,* the Public Utilities Code, and to amend Section 23229.1 of, and to add Section 40000.20 to, the Vehicle Code, relating to charter-party carriers of passengers.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as amended, Hill. Charter-party carriers of passengers: alcoholic beverages: open containers.

The Passenger Charter-party Carriers' Act, with certain exceptions, prohibits a charter-party carrier of passengers from engaging in transportation services subject to regulation by the Public Utilities Commission without obtaining a specified certificate or permit, as appropriate, from the commission. The act, except as specified, requires the driver of any limousine for hire operated by a charter-party carrier of passengers (carrier) under a valid certificate or permit to comply with prescribed requirements relating to alcoholic beverages, including

ascertaining whether any passenger is under the age of 21 years, reading to the passenger a statement that the consumption of any alcoholic beverage in the vehicle is unlawful, requiring such a passenger to sign the statement, and, if a minor passenger, after signing the statement, is found to be, or to have been, consuming any alcoholic beverage during the course of the ride, immediately terminating the contract of hire and returning the passenger to the point of origin. The act also subjects the carrier to specified civil penalties, based on the number of offenses, for conviction of a driver, or any officer, director, agent, or employee of the carrier, of a violation of the Vehicle Code that prohibits storage of an opened container of an alcoholic beverage in a motor vehicle.

~~This bill would expand the application of those alcoholic beverage~~ *repeal the above-described provisions concerning the responsibilities of a driver of a limousine for hire operated by a carrier relating to the consumption of alcoholic beverages by passengers under 21 years of age by applying those requirements, except as specified, to the driver of any vehicle providing charter bus transportation for hire operated by a permitted or certificated carrier when the driver knows, or has reasonable reason to believe, that alcoholic beverages are, or will be, transported on the bus and accessible to passengers. The bill would authorize a driver that terminates a contract of hire because of a minor's consumption of alcohol, rather than dropping off the offending passengers and their party at the point of origin of the ride, to drop the offending passengers and their party off at the customer's home, nearest police station, or any other point mutually agreed to by both parties, as long as the conditions are safe for the driver. The bill would instead require that a chartering party, as defined, disclose at the time transportation service is prearranged or the contract of carriage is made (1) if alcoholic beverages will be served by the chartering party, as defined, or be transported in the passenger compartment of the vehicle during transportation and (2) if any member of the party to be provided with transportation services will be under 21 years of age. The bill would require the charting party to designate a designee, as defined, and would impose different requirements for a designee of the chartering party and the driver of the vehicle depending upon the presence of specified circumstances. The bill would make the designee or, when present, the parent or legal guardian legally responsible for any personal injury or property damage that is proximately caused by a violation of laws prohibiting the consumption of alcoholic beverages by a person under 21 years of age when alcoholic beverages are*

consumed during the provision of transportation services under certain circumstances. The bill would specify penalties for the failure to comply with certain requirements and would, among other things, subject the driver providing charter bus transportation services on behalf of a licensed carrier to existing open container prohibitions and make the a 3rd or subsequent violation of a specified open container prohibition by a driver of any vehicle used in the transportation of passengers for hire operating under a valid certificate or permit specified criminal provisions, a misdemeanor. The bill, by creating a new crime, would impose a state-mandated local program.

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. This act shall be known and may be cited as the
- 2 Brett Studebaker Law.
- 3 ~~SEC. 2. Section 5384.1 of the Public Utilities Code is amended~~
- 4 ~~to read:~~
- 5 ~~5384.1. (a) The driver of any limousine for hire operated by~~
- 6 ~~a charter-party carrier of passengers under a valid certificate or~~
- 7 ~~permit shall do all of the following:~~
- 8 ~~(1) The driver shall ascertain whether any passenger is under~~
- 9 ~~21 years of age.~~
- 10 ~~(2) If any passenger is under 21 years of age, the driver shall~~
- 11 ~~read to the passenger a statement that the consumption of any~~
- 12 ~~alcoholic beverage in the vehicle is unlawful, that no alcoholic~~
- 13 ~~beverage may be transported in the passenger compartment of the~~
- 14 ~~vehicle, that all alcoholic beverages are required to be carried in~~
- 15 ~~the vehicle trunk or other locked compartment, and that, if during~~
- 16 ~~the course of the ride any minor is found to be, or to have been,~~
- 17 ~~consuming any alcoholic beverage, the contract will be terminated~~
- 18 ~~and the customer will be brought back to the point of origin of the~~
- 19 ~~ride or, at the option of the driver, dropped off at the customer's~~

1 home, nearest police station, or any other point mutually agreed
2 to by both parties, as long as the conditions are safe for the driver.

3 ~~(3) After reading the statement described in paragraph (2) to
4 every passenger under 21 years of age, the driver shall require
5 every passenger under 21 years of age to sign the statement. The
6 limousine operator shall retain the signed statement for the period
7 required by the commission.~~

8 ~~(4) If any minor passenger, after signing a statement pursuant
9 to paragraph (3), is found to be, or to have been, consuming any
10 alcoholic beverage during the course of any ride subject to this
11 section, the driver shall immediately terminate the contract of hire
12 and shall return the offending passengers and their party to the
13 point of origin of the ride or, at the option of the driver, dropped
14 off at the customer's home, nearest police station, or any other
15 point mutually agreed to by both parties, as long as the conditions
16 are safe for the driver.~~

17 ~~(b) The driver of a vehicle providing charter bus transportation,
18 as defined in Section 5363, for hire operated by a charter-party
19 carrier of passengers under a valid certificate or permit shall do
20 all of the following when the driver knows, or has reasonable
21 reason to believe, that alcoholic beverages are, or will be,
22 transported on the bus and accessible to passengers:~~

23 ~~(1) The driver shall ascertain whether any passenger is under
24 21 years of age.~~

25 ~~(2) If any passenger is under 21 years of age, the driver shall
26 read to the passenger a statement that the consumption of any
27 alcoholic beverage in the bus is unlawful, that no alcoholic
28 beverage may be transported in the passenger compartment of the
29 bus, that all alcoholic beverages are required to be carried in the
30 vehicle trunk or other locked compartment, and that, if during the
31 course of the ride any minor is found to be, or to have been,
32 consuming any alcoholic beverage, the contract will be terminated
33 and the customer will be brought back to the point of origin of the
34 ride or, at the option of the driver, dropped off at the customer's
35 home, nearest police station, or any other point mutually agreed
36 to by both parties, as long as the conditions are safe for the driver.~~

37 ~~(3) After reading the statement described in paragraph (2) to
38 every passenger under 21 years of age, the driver shall require
39 every passenger under the age of 21 years to sign the statement.~~

1 The driver shall retain the signed statement for the period required
2 by the commission.

3 ~~(4) If any minor passenger, after signing a statement pursuant
4 to paragraph (3), is found to be, or to have been, consuming any
5 alcoholic beverage during the course of any ride subject to this
6 section, the driver shall immediately terminate the contract of hire
7 and shall return the offending passengers and their party to the
8 point of origin of the ride or, at the option of the driver, dropped
9 off at the customer's home, nearest police station, or any other
10 point mutually agreed to by both parties, as long as the conditions
11 are safe for the driver.~~

12 ~~(e) Any failure of a driver to comply with subdivision (a) that
13 results in the conviction of the driver of a violation of Section
14 23225 of the Vehicle Code, shall be subject to the penalties
15 prescribed in Section 5384.5.~~

16 ~~(d) Notwithstanding any other provision of law, this section
17 does not prohibit a parent or legal guardian from consuming
18 alcoholic beverages in a vehicle charter-party carrier of passengers
19 for hire while accompanied by his or her minor children.~~

20 ~~(e) This section does not apply to the driver of any of the
21 following:~~

22 ~~(1) A bus, taxicab, or van exempted from this chapter pursuant
23 to Section 5353.~~

24 ~~(2) A pupil activity bus, including any motor vehicle specified
25 in subdivision (k) of Section 545 of the Vehicle Code.~~

26 ~~(3) A school pupil activity bus, as defined in Section 546 of the
27 Vehicle Code.~~

28 *SEC. 2. Section 5355.5 is added to the Public Utilities Code,
29 to read:*

30 *5355.5. (a) "Chartering party" means the person, corporation,
31 or other entity that prearranges with a charter-party carrier of
32 passengers for transportation services.*

33 *(b) "Designee" means a person who is 25 years of age or older
34 and who is designated by the chartering party as being the person
35 responsible for compliance with the requirements of Section 5384.1
36 during the provision of transportation services whenever persons
37 under 21 years of age are to be transported unaccompanied by a
38 parent or legal guardian. If the chartering party is a person and
39 the minor is not accompanied by a parent or legal guardian, the
40 chartering party shall be the designee unless the chartering party*

1 identifies another person to be the designee and the person so
2 designated acknowledges and agrees that he or she is the designee.
3 If there is more than one chartering party for a joint carriage of
4 passengers, each chartering party shall designate a designee who
5 is responsible for compliance with the requirements of Section
6 5384.1 whenever persons under 21 years of age are to be
7 transported unaccompanied by a parent or legal guardian, and
8 that person shall be the designee only for those passengers
9 provided with transportation services on behalf of that chartering
10 party.

11 SEC. 3. Section 5384.1 of the Public Utilities Code is repealed.

12 ~~5384.1. (a) The driver of any limousine for hire operated by~~
13 ~~a charter-party carrier of passengers under a valid certificate or~~
14 ~~permit shall do all of the following:~~

15 ~~(1) The driver shall ascertain whether any passenger is under~~
16 ~~the age of 21 years.~~

17 ~~(2) If any passenger is under the age of 21 years, the driver shall~~
18 ~~read to the passenger a statement that the consumption of any~~
19 ~~alcoholic beverage in the vehicle is unlawful, that no alcoholic~~
20 ~~beverage may be transported in the passenger compartment of the~~
21 ~~vehicle, that all alcoholic beverages are required to be carried in~~
22 ~~the vehicle trunk or other locked compartment, and that, if during~~
23 ~~the course of the ride any minor is found to be, or to have been,~~
24 ~~consuming any alcoholic beverage, the contract will be terminated~~
25 ~~and the customer will be brought back to the point of origin of the~~
26 ~~ride.~~

27 ~~(3) After reading the statement described in paragraph (2) to~~
28 ~~every passenger under the age of 21 years, the driver shall require~~
29 ~~every passenger under the age of 21 years to sign the statement.~~
30 ~~The limousine operator shall retain the signed statement for the~~
31 ~~period required by the commission.~~

32 ~~(4) If any minor passenger, after signing a statement pursuant~~
33 ~~to paragraph (3), is found to be, or to have been, consuming any~~
34 ~~alcoholic beverage during the course of any ride subject to this~~
35 ~~section, the driver shall immediately terminate the contract of hire~~
36 ~~and shall return the passengers to the point of origin of the ride.~~

37 ~~(b) Any failure of a driver to comply with subdivision (a) that~~
38 ~~results in the conviction of the driver of a violation of Section~~
39 ~~23225 of the Vehicle Code, shall be subject to the penalties~~
40 ~~prescribed in Section 5384.5.~~

1 ~~(e) Notwithstanding any other provision of law, this section~~
2 ~~does not apply to the driver of any bus, taxicab, or van, and it does~~
3 ~~not prohibit a parent or legal guardian from consuming alcoholic~~
4 ~~beverages in a limousine for hire while accompanied by his or her~~
5 ~~minor children.~~

6 *SEC. 4. Section 5384.1 is added to the Public Utilities Code,*
7 *to read:*

8 *5384.1. (a) At the time transportation service is prearranged*
9 *or the contract of carriage is made, the chartering party shall*
10 *disclose to the charter-party carrier of passengers whether the*
11 *following are true:*

12 *(1) Alcoholic beverages will be served by the chartering party*
13 *or be transported in the passenger compartment of the vehicle*
14 *during transportation.*

15 *(2) A member of the party to be provided with transportation*
16 *services will be under 21 years of age.*

17 *(b) If, at the time transportation was prearranged with the*
18 *charter-party carrier of passengers, the chartering party discloses*
19 *that alcoholic beverages will be served or transported in the*
20 *passenger compartment and a member of the party is under 21*
21 *years of age, each of the following applies:*

22 *(1) The charter-party carrier of passengers, at the time*
23 *transportation services are arranged, shall notify the chartering*
24 *party of all of the following:*

25 *(A) A designee who is 25 years of age or older shall be present*
26 *whenever persons under 21 years of age who are not accompanied*
27 *by a parent or legal guardian are being transported.*

28 *(B) The designee shall ensure compliance with all laws*
29 *prohibiting the consumption of alcoholic beverages by persons*
30 *under 21 years of age who are members of the party and are not*
31 *accompanied by a parent or legal guardian.*

32 *(C) The designee shall read the statement specified in paragraph*
33 *(6) to each passenger in the party who is under 21 years of age.*

34 *(D) The designee shall notify the driver of the vehicle if, at any*
35 *time during the trip, a passenger in their party who is under 21*
36 *years of age is consuming or has consumed alcoholic beverages.*

37 *(E) The designee shall be responsible for any personal injury*
38 *or property damage that is proximately caused by the consumption*
39 *of alcoholic beverages by a person under 21 years of age while*
40 *being supplied with transportation services.*

1 (F) If a trip is terminated because of the consumption of
2 alcoholic beverages by a person under 21 years of age that is a
3 member of their party, the designee's responsibility for that minor,
4 and for any personal injury or property damage, shall continue
5 until that minor is returned safely to his or her home or entrusted
6 into the care of his or her parent or legal guardian.

7 (2) The charter-party carrier of passengers shall inform the
8 driver of the vehicle that alcohol will be present and that there
9 will be persons under 21 years of age present during the provision
10 of transportation services and the name of the designee.

11 (3) The driver of the vehicle shall obtain the designee's signature
12 or initials on a written form indicating the designee's
13 acknowledgment and agreement to all of the following:

14 (A) Alcoholic beverages will be served by the chartering party
15 or be transported in the passenger compartment of the vehicle
16 during transportation.

17 (B) A member of the party to be provided with transportation
18 services will be under 21 years of age.

19 (C) The person signing or initialing is the designee and is 25
20 years of age or older.

21 (D) The designee is responsible for ensuring compliance with
22 all laws prohibiting the consumption of alcoholic beverages by
23 persons under 21 years of age who are members of the party and
24 are not accompanied by a parent or legal guardian.

25 (E) The designee is responsible for reading the statement
26 specified in paragraph (6) to each passenger in the party who is
27 under 21 years of age.

28 (F) The designee is responsible for notifying the driver of the
29 vehicle if, at any time during the trip, a passenger in their party
30 who is under 21 years of age is consuming or has consumed
31 alcoholic beverages and that the designee is in violation of the
32 law if he or she fails to notify the driver.

33 (G) The designee is legally responsible for any personal injury
34 or property damage that is proximately caused by the consumption
35 of alcoholic beverages by a person under 21 years of age while
36 being supplied with transportation services.

37 (H) If a trip is terminated because of the consumption of
38 alcoholic beverages by a person under 21 years of age who is a
39 member of their party, the designee's responsibility for that minor,
40 and for any personal injury or property damage, continues until

1 *that minor is returned safely to his or her home or entrusted into*
2 *the care of his or her parent or legal guardian.*

3 *(4) The designee shall be a passenger of the vehicle during the*
4 *provision of transportation services and shall be responsible for*
5 *the conduct of all persons in the vehicle who are members of the*
6 *party who are under 21 years of age and who are not accompanied*
7 *by a parent or legal guardian.*

8 *(5) The designee shall ensure compliance with all laws related*
9 *to the consumption of alcoholic beverages by persons in the party*
10 *who are under 21 years of age and who are not accompanied by*
11 *a parent or legal guardian. The designee shall ensure compliance*
12 *with all laws prohibiting the providing of alcoholic beverages to*
13 *minors by adult members of the party. If a person under 21 years*
14 *of age is accompanied by a parent or legal guardian, then the*
15 *parent or legal guardian shall ensure that person complies with*
16 *laws prohibiting the consumption of alcoholic beverages. The*
17 *designee or, when present, the parent or legal guardian shall be*
18 *responsible for any personal injury or property damage that is*
19 *proximately caused by a violation of laws prohibiting the*
20 *consumption of alcoholic beverages by a person under 21 years*
21 *of age when alcoholic beverages are consumed during the*
22 *provision of transportation services. Nothing in this paragraph*
23 *limits the right of a designee to seek indemnity from any person,*
24 *corporation, or other entity other than the charter-party carrier*
25 *of passengers. Nothing in this paragraph relieves a passenger of*
26 *legal responsibility for his or her own conduct.*

27 *(6) (A) The designee shall read the following statement to those*
28 *persons under 21 years of age:*

29
30 *“Consumption of alcoholic beverages by persons under 21 years*
31 *of age is illegal. It is also illegal for an adult to provide alcoholic*
32 *beverages to a person under 21 years of age. If you consume*
33 *alcoholic beverages, this trip will be terminated and all payments*
34 *for transportation services shall be forfeited and not subject to*
35 *refund.”*

36
37 *(B) The terms of the statement required to be read pursuant to*
38 *subparagraph (A) shall be a part of the contract of carriage*
39 *between the charter-party carrier of passengers and the chartering*
40 *party.*

1 (7) If, during the course of providing transportation services,
2 any person under 21 years of age is found to be, or to have been,
3 consuming any alcoholic beverage, the designee shall immediately
4 notify the driver and the driver shall terminate the trip. All
5 passengers, including all passengers of a joint carriage if more
6 than one party is participating on the trip, shall be brought back
7 to the point of origin of the trip or the driver may drop off the
8 minor consuming alcoholic beverages at a point mutually agreed
9 to by both the charter-party carrier of passengers and the designee,
10 on behalf of the chartering party, provided that the conditions for
11 doing so are safe for the driver. All payment for transportation
12 services shall be forfeited and not subject to refund. Should the
13 designee, or when present, the parent or legal guardian, fail to
14 inform the driver, or if the designee, parent, or legal guardian
15 permits the drinking of alcoholic beverages by persons under 21
16 years of age to occur in the vehicle, the designee, parent, or legal
17 guardian shall be subject to prosecution for violation of subdivision
18 (a) of Section 25658 of the Business and Professions Code.

19 (c) If, at the time transportation is prearranged with the
20 charter-party carrier of passengers, the chartering party discloses
21 that alcoholic beverages will be served or transported in the
22 passenger compartment, but that no member of the party is or will
23 be under 21 years of age, each of the following applies:

24 (1) If the driver has reason to believe that passengers under 21
25 years of age will be present during transportation services, the
26 driver shall verify the age of all passengers to be transported in
27 the vehicle with the chartering party or designee.

28 (2) If any passenger is under 21 years of age, the failure to
29 disclose the age of this passenger is a violation of the contract of
30 carriage, and transportation services shall be terminated, unless
31 all alcoholic beverages are removed and locked in the vehicle
32 trunk or other locked compartment.

33 (d) If, at the time transportation is prearranged with the
34 charter-party carrier of passengers, the chartering party discloses
35 that a member of the party is under 21 years of age, but that no
36 alcoholic beverages will be served or transported in the passenger
37 compartment, each of the following applies:

38 (1) If the driver of the vehicle has reason to believe that
39 alcoholic beverages are, or will be, transported in the vehicle and

1 *accessible to passengers, the driver shall verify whether alcoholic*
2 *beverages were brought onto the vehicle.*

3 *(2) If alcoholic beverages were brought onto the vehicle without*
4 *prior notification to the charter-party carrier of passengers, that*
5 *act is a violation of the contract of carriage, and the transportation*
6 *services shall be terminated, unless all alcoholic beverages are*
7 *removed and locked in the vehicle trunk or other locked*
8 *compartment.*

9 *(e) Any driver convicted of violating Section 23223 of the*
10 *Vehicle Code as a result of his or her failure to comply with this*
11 *section shall, in addition, be subject to the civil penalties prescribed*
12 *in Section 5384.5. A third or subsequent conviction by the driver*
13 *shall be punishable pursuant to Section 40000.20 of the Vehicle*
14 *Code as a misdemeanor.*

15 ~~SEC. 3.~~

16 *SEC. 5.* Section 5384.5 of the Public Utilities Code is amended
17 to read:

18 5384.5. If the driver of any charter-party carrier of passengers
19 for hire operating under a valid certificate or permit, or any officer,
20 director, agent, or employee of a charter-party carrier of passengers
21 operating vehicles used in the transportation of passengers for hire
22 under such a certificate or permit, is convicted of a violation of
23 Section 23225 of the Vehicle Code, the commission, after a
24 hearing, shall do the following:

25 (a) For a first offense, the commission may impose a civil
26 penalty of not more than two thousand dollars (\$2,000) upon the
27 carrier, as determined appropriate by the commission.

28 (b) For a second offense, the commission may impose a civil
29 penalty of not more than two thousand dollars (\$2,000) upon the
30 carrier or suspend the carrier's certificate or permit for not more
31 than 30 days, or both, as determined appropriate by the
32 commission.

33 (c) For a third offense, the commission shall revoke the carrier's
34 certificate or permit. ~~A third or subsequent offense shall also be~~
35 ~~punishable pursuant to Section 40000.20 of the Vehicle Code.~~

36 ~~SEC. 4.~~

37 *SEC. 6.* Section 23229.1 of the Vehicle Code is amended to
38 read:

39 23229.1. (a) Subject to subdivision (b), Sections 23223 and
40 23225 apply to any *driver providing transportation services on a*

1 *prearranged basis as a charter-party carrier of passengers, as*
 2 *defined in Section 5360 of the Public Utilities Code, ~~operating for~~*
 3 *~~hire~~ when the driver of the vehicle transports any passenger under*
 4 *21 years of age and fails to comply with the requirements of Section*
 5 *5384.1 of the Public Utilities Code.*

6 (b) For purposes of subdivision (a), it is not a violation of
 7 Section 23225 for any *driver providing transportation services on*
 8 *a prearranged basis as a charter-party carrier of passengers*
 9 *~~operating for hire~~ that is licensed pursuant to the Public Utilities*
 10 *Code to keep any bottle, can, or other receptacle containing any*
 11 *alcoholic beverage in a locked utility compartment within the area*
 12 *occupied by the driver and passengers.*

13 (c) In addition to the requirements of Section 1803, every clerk
 14 of a court in which any driver in subdivision (a) was convicted of
 15 a violation of Section 23225 shall prepare within 10 days after
 16 conviction, and immediately forward to the Public Utilities
 17 Commission at its office in San Francisco, an abstract of the record
 18 of the court covering the case in which the person was convicted.
 19 If sentencing is not pronounced in conjunction with the conviction,
 20 the abstract shall be forwarded to the commission within 10 days
 21 after sentencing, and the abstract shall be certified, by the person
 22 required to prepare it, to be true and correct. For the purposes of
 23 this subdivision, a forfeiture of bail is equivalent to a conviction.

24 ~~SEC. 5.~~

25 SEC. 7. Section 40000.20 is added to the Vehicle Code, to
 26 read:

27 40000.20. A third or subsequent violation of Section 23225,
 28 relating to *the storage of an opened container of an alcoholic*
 29 *beverage, ~~by or Section 23223, relating to the possession of an~~*
 30 *open container of an alcoholic beverage, of a driver of any vehicle*
 31 *used in the transportation of passengers for hire to provide*
 32 *transportation services on a prearranged services, operating under*
 33 *a valid certificate or permit pursuant to the Passenger Charter-party*
 34 *Carriers' Act (Chapter 8 (commencing with Section 5351) of*
 35 *Division 2 of the Public Utilities Code), is a misdemeanor.*

36 ~~SEC. 6.~~

37 SEC. 8. No reimbursement is required by this act pursuant to
 38 Section 6 of Article XIII B of the California Constitution because
 39 the only costs that may be incurred by a local agency or school
 40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

O