

Assembly Bill No. 45

Passed the Assembly August 30, 2012

Chief Clerk of the Assembly

Passed the Senate August 29, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend 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, 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 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. The bill would instead require the charter-party carrier of passengers to ask the chartering party, as defined, to disclose at the time transportation service is prearranged or the contract of carriage is made and, upon being

asked, would require the chartering party to disclose (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 chartering 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 reasonably foreseeable 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 make failure to comply with certain of its requirements a misdemeanor and would make any violation of its requirements by a charter-party carrier of passengers or its driver subject to civil penalties imposed by the commission. 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.

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

SECTION 1. This act shall be known and may be cited as the Brett Studebaker Law.

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

5355.5. (a) “Chartering party” means the person, corporation, or other entity that prearranges with a charter-party carrier of passengers for transportation services.

(b) “Designee” means a person who is 25 years of age or older and who is designated by the chartering party as being the person responsible for compliance with the requirements of Section 5384.1

during the provision of transportation services whenever persons under 21 years of age are to be transported unaccompanied by a parent or legal guardian. If the chartering party is a person and the minor is not accompanied by a parent or legal guardian, the chartering party shall be the designee unless the chartering party identifies another person to be the designee and the person so designated acknowledges and agrees that he or she is the designee. If there is more than one chartering party for a joint carriage of passengers, each chartering party shall designate a designee who is responsible for compliance with the requirements of Section 5384.1 whenever persons under 21 years of age are to be transported unaccompanied by a parent or legal guardian, and that person shall be the designee only for those passengers provided with transportation services on behalf of that chartering party.

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

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

5384.1. (a) At the time transportation service is prearranged or the contract of carriage is made, the charter-party carrier of passengers shall ask the chartering party and, upon being asked, the chartering party shall disclose to the charter-party carrier of passengers, whether the following are true:

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

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

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

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

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

(B) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the consumption of alcoholic

beverages by persons under 21 years of age who are members of the party and are not accompanied by a parent or legal guardian.

(C) The designee shall check the identifications of all passengers to determine who is under 21 years of age and shall read the statement specified in paragraph (7) to each passenger in the party who is under 21 years of age. The driver shall not commence transport until the designee has verified with the driver that the designee has checked the identifications of all passengers and has read the statement. If passengers are picked up at more than one location, the driver shall not commence transport from the subsequent location until the designee has verified with the driver that the designee has checked the identifications of all passengers boarding the vehicle at that location and has read the statement to all passengers boarding the vehicle at that location.

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

(E) The designee shall be responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by the consumption of alcoholic beverages by a person under 21 years of age while being supplied with transportation services if the designee knew or reasonably should have known that the person is under 21 years of age or has consumed alcoholic beverages while being supplied with transportation services.

(F) If a trip is terminated because of the consumption of alcoholic beverages by a person under 21 years of age who is a member of their party, the designee's responsibility for that minor shall continue until that person who is under 21 years of age is returned safely to his or her home or entrusted into the care of his or her parent or legal guardian or taken to a location reasonably believed to be safer than his or her home.

(2) (A) The charter-party carrier of passengers shall provide a copy of the written form described in paragraph (4) to the chartering party and shall verify the written form has been returned with the signature of the designee no later than 72 hours prior to the commencement of the travel date. If the transportation service is prearranged within 72 hours of the travel date, the charter-party carrier of passengers shall immediately provide the written form described in paragraph (4) to the chartering party as a stand-alone form separate from the contract of carriage, to be returned prior

to the commencement of transportation services with the signature of the designee. A charter-party carrier of passengers may supply the chartering party with additional forms for a replacement designee in the event the planned designee is unable to accompany the party during transport. The charter-party carrier of passengers shall verify the written form of a replacement designee has been returned with the signature of the replacement designee no later than 72 hours prior to the commencement of the travel date.

(B) (i) If the charter-party carrier of passengers does not provide the written notice specified in subparagraph (A), and the designee does not return the signed form prior to the commencement of the transport, the charter-party carrier of passengers shall do any of the following:

(I) Provide a designee who is not the driver and shall incur any and all liabilities of that designee.

(II) Remove and lock all alcoholic beverages in the vehicle's trunk or other locked compartment.

(III) Prohibit all persons under 21 years of age from boarding the vehicle.

(IV) Cancel the trip and refund all payments for the transportation services.

(ii) A charter-party carrier of passengers that fails to comply with clause (i) shall incur the liabilities of a designee.

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

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

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

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

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

(D) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the consumption of alcoholic

beverages by persons under 21 years of age who are members of the party and are not accompanied by a parent or legal guardian.

(E) The designee must check the identifications of all passengers to determine who is under 21 years of age and shall read the statement specified in paragraph (7) to each passenger in the party who is under 21 years of age. The driver will not commence transportation services until the designee has verified with the driver that the designee has checked the identifications of all passengers and has read the statement. If passengers are to be picked up at more than one location, the driver will not commence transport from the subsequent location until the designee has verified with the driver that the designee has checked the identifications of all passengers boarding the vehicle at that location and has read the statement to all passengers boarding the vehicle at that location.

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

(G) The designee is legally responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by the consumption of alcoholic beverages by a person under 21 years of age while being supplied with transportation services if the designee knew or reasonably should have known that the person is under 21 years of age and is consuming or has consumed alcoholic beverages while being supplied with transportation services.

(H) If a trip is terminated because of the consumption of alcoholic beverages by a person under 21 years of age who is a member of their party, the designee's responsibility for that person under 21 years of age continues until that person who is under 21 years of age is returned safely to his or her home or entrusted into the care of his or her parent or legal guardian or taken to a location reasonably believed to be safer than his or her home.

(5) The designee shall be a passenger of the vehicle during the provision of transportation services and shall make reasonable efforts to ensure the lawful conduct of all persons in the vehicle who are members of the party who are under 21 years of age and who are not accompanied by a parent or legal guardian.

(6) (A) The designee shall make reasonable efforts to ensure compliance with all laws related to the consumption of alcoholic beverages by persons in the party who are under 21 years of age and who are not accompanied by a parent or legal guardian.

(B) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the providing of alcoholic beverages to persons under 21 years of age by adult members of the party who are 21 years of age or older.

(C) If a person under 21 years of age is accompanied by a parent or legal guardian, then the parent or legal guardian shall make reasonable efforts to ensure that person complies with laws prohibiting the consumption of alcoholic beverages.

(D) A designee or, when present, the parent or legal guardian who fails to act reasonably shall be responsible for any reasonably foreseeable 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 if the designee, parent, or legal guardian knew or reasonably should have known that the person is under 21 years of age and is consuming or has consumed alcoholic beverages during the provision of transportation services.

(E) Nothing in this paragraph limits the right of a designee to seek indemnity from any person, corporation, or other entity other than the charter-party carrier of passengers.

(F) Nothing in this section relieves a passenger of legal responsibility for his or her own conduct.

(7) (A) The designee shall read the following statement to those persons under 21 years of age:

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

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

(8) (A) If, during the course of providing transportation services, any person under 21 years of age is found to be, or to have been, consuming any alcoholic beverage, the designee shall immediately notify the driver and the driver shall terminate the trip. All passengers, including all passengers of a joint carriage if more than one party is participating in the trip, shall be brought back to the point of origin of the trip. All payment for transportation services shall be forfeited and not subject to refund.

(B) Should the designee, or when present, the parent or legal guardian, fail to inform the driver, or if the designee, parent, or legal guardian permits the drinking of alcoholic beverages by persons under 21 years of age to occur in the vehicle, the designee, parent, or legal guardian shall be subject to prosecution for violation of subdivision (a) of Section 25658 of the Business and Professions Code.

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

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

(2) If any passenger is under 21 years of age, the failure to disclose the age of this passenger is a violation of the contract of carriage, and transportation services shall be terminated, and no refund given, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

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

(1) If the driver of the vehicle has reason to believe that alcoholic beverages are, or will be, transported in the vehicle and accessible to passengers, the driver shall verify whether alcoholic beverages were brought into the vehicle.

(2) If alcoholic beverages were brought into the vehicle without prior notification to the charter-party carrier of passengers, that

act is a violation of the contract of carriage, and the transportation services shall be terminated, and no refund given, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(e) (1) If the driver is informed or learns that alcoholic beverages will be served or transported in the passenger compartment and a member of the party is under 21 years of age, the failure by the driver to do any of the following is a misdemeanor:

(A) To commence or continue transport without a designee who is 25 years of age or older present, unless the person who is under 21 years of age is accompanied by a parent or guardian.

(B) To commence transport without obtaining the designee's signature or initials on the form described in paragraph (4) of subdivision (b).

(C) To commence transport without the designee verifying to the driver that the designee has checked the identifications of all passengers to determine who is under 21 years of age and read the statement specified in paragraph (7) of subdivision (b) to each member of the party who is under 21 years of age.

(D) To not terminate the trip and to return the chartering party to the place of origin if informed by the designee or, if present, a parent or guardian, that a person under 21 years of age is consuming or has consumed alcoholic beverages or by otherwise learning that a person under 21 years of age is consuming or has consumed alcoholic beverages.

(2) If the driver is informed or learns that alcoholic beverages will be served or transported in the passenger compartment and is informed that no member of the party is under 21 years of age, the failure to do any of the following is a misdemeanor:

(A) To fail to take reasonable steps to verify the age of any passenger reasonably believed to be under 21 years of age.

(B) To commence transport if a party member is under 21 years of age, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(C) To not terminate the trip and to return the chartering party to the place of origin if the driver learns that a person under 21 years of age is consuming or has consumed alcoholic beverages.

(3) If the driver is informed or learns that one or more members of the party are under 21 years of age and is informed that no

alcoholic beverages will be served or transported in the passenger compartment, the failure to do any of the following is a misdemeanor.

(A) If the driver reasonably believes that alcoholic beverages were brought into the vehicle, to fail to take reasonable steps to verify that no alcoholic beverages were brought into the vehicle.

(B) To commence or continue transport if the driver learns that alcoholic beverages were brought onto the vehicle, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(f) A failure by the designee to do any of the following is a misdemeanor:

(1) To check the identifications of all passengers to determine who is under 21 years of age.

(2) To read the statement specified in paragraph (7) of subdivision (b) to each passenger in the party who is under 21 years of age.

(3) To notify the driver of the vehicle if, at any time during the trip, a passenger in the designee's party who is under 21 years of age is consuming or has consumed alcoholic beverages.

(4) Upon termination of a trip because of the consumption of alcoholic beverages by a person under 21 years of age, to safely return any person under 21 years of age who is a member of the designee's party to his or her home, to take him or her to a location reasonably believed to be safer than his or her home, or to entrust him or her into the care of his or her parent or legal guardian.

(g) When present, the failure of a parent or guardian to notify the driver when a member of the party who is under 21 years of age and for whom the parent or guardian is responsible is consuming or has consumed alcoholic beverages during the provision of transportation services is guilty of a misdemeanor.

(h) If the commission, after a hearing, finds that a charter-party carrier of passengers or the driver of a charter-party carrier of passengers has violated this section, the commission shall do the following:

(1) For a first violation, the commission shall impose a civil penalty of not more than two thousand dollars (\$2,000) upon the carrier, as determined appropriate by the commission.

(2) For a second violation, the commission shall impose a civil penalty of not more than two thousand dollars (\$2,000) upon the

carrier or may suspend the carrier's certificate or permit for not more than 30 days, or both, as determined appropriate by the commission.

(3) For a third violation, the commission shall revoke the carrier's certificate or permit.

(i) The authority granted the commission in subdivision (h) is in addition to any authority the commission has to enforce the requirements of this chapter, and the commission may impose any penalties available pursuant to this chapter for a violation of this section.

(j) Nothing in this section shall change the liability of a party knowingly furnishing the alcoholic beverage to a person who they know or reasonably should know to be under 21 years of age.

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

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

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

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

(c) For a third offense, the commission shall revoke the carrier's certificate or permit.

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

23229.1. (a) Subject to subdivision (b), Sections 23223 and 23225 apply to any driver providing transportation services on a prearranged basis as a charter-party carrier of passengers, as defined in Section 5360 of the Public Utilities Code, when the driver of the vehicle transports any passenger under 21 years of

age and fails to comply with the requirements of Section 5384.1 of the Public Utilities Code.

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

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

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

40000.20. A third or subsequent violation of Section 23225, relating to the storage of an opened container of an alcoholic beverage, or Section 23223, relating to the possession of an open container of an alcoholic beverage, of a driver of any vehicle used to provide transportation services on a prearranged services, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code), is a misdemeanor.

SEC. 8. 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 _____, 2012

Governor