

## Assembly Bill No. 2118

### CHAPTER 544

An act to amend Sections 5109, 5133, 5139, 5142, 5143, 5311, 5314.5, 5315, and 5322 of, and to add Sections 5110.7, 5144, and 5314.7 to, the Public Utilities Code, relating to household goods carriers.

[Approved by Governor September 25, 2012. Filed with  
Secretary of State September 25, 2012.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2118, Butler. Household goods carriers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Under existing law, the Household Goods Carriers Act, household goods carriers, as defined, are subject to the jurisdiction and control of the commission. The act prohibits a household goods carrier from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in the state, including advertising, soliciting, offering, or entering into an agreement, without a permit issued by the commission authorizing transportation entirely within the state, or a valid operating authority issued by the Federal Motor Carrier Safety Administration, for interstate transportation. The act declares that it is not to be construed as a regulation of interstate or foreign commerce, except as permitted under the United States Constitution and the acts of Congress.

This bill would expand the definition of a household goods carrier to include a household goods carrier that engages in the permitted or unpermitted transportation for compensation or hire as a business by means of a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects over any public highway in this state. The bill would require a broker, as defined, to be considered a household goods carrier. The bill would additionally prohibit a household goods carrier from arranging, by any means or media, as a broker for the transportation of used household goods and personal effects. The bill would require the commission to establish rules permitting electronic transactions, as specified and would authorize specified documents to be in electronic form, if agreed upon by the carrier and the customer. The bill would require a household goods carrier to add a prominent link to the carrier's Internet Web site that directs consumers to an Internet Web site hosted by the commission that promotes consumer rights and protection.

(2) Existing law requires telephone companies and related entities, as specified, upon demand and the order of a magistrate, to provide the commission, or an authorized official of the commission, access to the name

and address of the subscriber to a telephone number being used by an unlicensed household goods carrier. Existing law prescribes the circumstances under which telephone corporations may release information regarding residential subscribers without their written consent.

This bill would require telephone companies, as prescribed, to provide this access to the commission as specified above, without the written consent of the subscriber.

(3) Under the act, every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of the act, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and if the violation is not willful, is punishable by a fine of not more than \$1,000 or by imprisonment in the county jail, as prescribed, or both.

This bill would provide that the fine for this misdemeanor is instead not more than \$2,500. The bill would also provide that a fine shall be not less than \$1,000 for a violation involving operating or holding one's self as a household goods carrier without a permit.

This bill also would provide that a household goods carrier that falsifies permit status, membership in an association, or location is liable for a civil penalty of not more than \$2,500 per day of violation.

Because a violation of the act or an order of the commission is a crime, this bill would impose a state-mandated local program by expanding the scope of a crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 5109 of the Public Utilities Code is amended to read:

5109. "Household goods carrier" includes every corporation or person, their lessees, trustee, receivers, or trustees appointed by any court whatsoever, engaged in the permitted or unpermitted transportation for compensation or hire as a business by means of a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects over any public highway in this state. A broker, as defined in Section 5110.7, shall be considered a household goods carrier.

SEC. 2. Section 5110.7 is added to the Public Utilities Code, to read:

5110.7. “Broker” means a person engaged by others in the act of arranging, for compensation, the intrastate transportation of used household goods by a motor vehicle over the highways of this state for, or on behalf of, a shipper, a consignor, or a consignee.

SEC. 3. Section 5133 of the Public Utilities Code is amended to read:

5133. (a) No household goods carrier shall engage, or attempt to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in this state, including, by any means or media, advertising, soliciting, offering, arranging as a broker, or entering into an agreement regarding the transportation of used household goods and personal effects, unless both of the following are satisfied:

(1) For transportation of household goods and personal effects entirely within this state, there is in force a permit issued by the commission authorizing those operations.

(2) For transportation of household goods and personal effects from this state to another state or from another state to this state, there is in force a valid operating authority issued by the Federal Motor Carrier Safety Administration.

(b) A household goods carrier that engages, or attempts to engage, in the business of the transportation of used household goods and personal effects in violation of subdivision (a) may not enforce any security interest or bring or maintain any action in law or equity to recover any money or property or obtain any other relief from any consignor, consignee, or owner of household goods or personal effects in connection with an agreement to transport, or the transportation of, household goods and personal effects or any related services. A person who utilizes the services of a household goods carrier operating in violation of subdivision (a) may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to that household goods carrier.

(c) The operation of a motor vehicle used in the business of transporting household goods and personal effects by a household goods carrier that does not possess a valid permit or operating authority, as required by subdivision (a), constitutes a public nuisance. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove any motor vehicle located within the territorial limits in which the officer may act, when the vehicle is found upon a highway and is being used in a manner constituting a public nuisance. At the request of the commission, the Attorney General, district attorney, city attorney, or county counsel, the law enforcement agency may impound the vehicle for a period not to exceed 72 hours to enable the requesting agency to abate the public nuisance, to obtain an order from the superior court of the county in which the vehicle has been impounded to prevent the use of the motor vehicle in violation of law, and to obtain any other remedy available under law as permitted by Section 5316.

(d) Any person having possession or control of used household goods or personal effects, who knows, or through the exercise of reasonable care should know, that a household goods carrier transported those household goods or personal effects in violation of subdivision (a), shall release the household goods and personal effects to the consignor or consignee, as defined in Section 5142, upon the request of the consignor or consignee. If that person fails to release the household goods and personal effects, any peace officer, as defined in subdivision (c), may take custody of the household goods and personal effects and release them to the consignor or consignee.

SEC. 4. Section 5139 of the Public Utilities Code is amended to read:

5139. (a) The commission may establish rules for the performance of any service of the character furnished or supplied by household goods carriers. Every household goods carrier shall observe these rules. Failure to do so is unlawful.

(b) No later than July 1, 2013, the commission shall establish rules to authorize an electronic form of documents required by this chapter, consistent with the purpose of the document and if the carrier and the customer agree to the use of an electronic form.

SEC. 5. Section 5142 of the Public Utilities Code is amended to read:

5142. (a) Except as provided in Section 5133, a household goods carrier in compliance with this chapter has a lien on used household goods and personal effects to secure payment of the amount specified in subdivision (b) for transportation and additional services ordered by the consignor. A lien does not attach to food, medicine, or medical devices, items used to treat or assist an individual with a disability, or items used for the care of a minor child.

(b) (1) The amount secured by the lien is the maximum total dollar amount for the transportation of the household goods and personal effects and any additional services (including any bona fide change order permitted under the commission's tariffs) that is set forth clearly and conspicuously in writing adjacent to the space reserved for the signature of the consignor and that is agreed to by the consignor before any goods or personal effects are moved from their location or any additional services are performed.

(2) The dollar amount for the transportation of household goods and personal effects and additional services may not be preprinted on any form, shall be just and reasonable, and shall be established in good faith by the household goods carrier based on the specific circumstances of the services to be performed.

(c) Upon tender to the household goods carrier of the amount specified in subdivision (b), the lien is extinguished, and the household goods carrier shall release all household goods and personal effects to the consignee.

(d) A household goods carrier may enforce the lien on household goods and personal effects provided in this section except as to any goods that the carrier voluntarily delivers or unjustifiably refuses to deliver. The lien shall be enforced in the manner provided in this section and Chapter 6 (commencing with Section 9601) of Division 9 of the Commercial Code

for the enforcement of a security interest in consumer goods in a consumer transaction. To the extent of any conflict between this section and that Chapter 6, this section shall prevail. Every act required in connection with enforcing the lien shall be performed in good faith and in a commercially reasonable manner.

(e) The household goods carrier shall provide a notification of disposition at least 30 days prior to any disposition to each consignor and consignee by personal delivery, or in the alternative, by first-class and certified mail, postage prepaid and return receipt requested, at the address last known by the carrier and at the destination address, and by electronic mail if an electronic mail address is known to the carrier. If any of the required recipients of notice are married to each other, and according to the carrier's records, reside at the same address, one notice addressed to both shall be sufficient. Within 14 days after a disposition, the carrier shall provide to the consignors any surplus funds from the disposition and an accounting, without charge, of the proceeds of the disposition.

(f) Any person having possession or control of household goods or personal effects, who knows, or through the exercise of reasonable care should know, that the household goods carrier has been tendered the amount specified in subdivision (b), shall release the household goods and personal effects to the consignor or consignee, upon the request of the consignor or consignee. If the person fails to release the household goods and personal effects to the consignor or consignee, any peace officer, as defined in subdivision (c) of Section 5133, may take custody of the household goods and personal effects and release them to the consignor or consignee.

(g) This section shall not affect any rights, if any, of a household goods carrier to claim additional amounts, on an unsecured basis, or of a consignor or consignee to make or contest any claim, and tender of payment of the amount specified in subdivision (b) is not a waiver of claims by the consignor or consignee.

(h) Any person injured by a violation of this section may bring an action for the recovery of the greater of one thousand dollars (\$1,000) or actual damages, injunctive or other equitable relief, reasonable attorney's fees and costs, and exemplary damages of not less than three times the amount of actual damages for a willful violation.

(i) Any waiver of this section shall be void and unenforceable.

(j) Notwithstanding any other law, this section exclusively establishes and provides for a household goods carrier's lien on used household goods and personal effects to secure payment for transportation and additional services ordered by the consignor.

(k) For purposes of this section, the following terms have the following meaning:

(1) "Consignor" means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person's agent.

(2) “Consignee” means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person’s agent.

(l) Any document required by this section may be in an electronic form, if agreed upon by the carrier and the customer.

SEC. 6. Section 5143 of the Public Utilities Code is amended to read:

5143. (a) For purposes of this section, the following terms have the following meaning:

(1) “Consignor” means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person’s agent.

(2) “Consignee” means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person’s agent.

(b) Any household goods carrier engaged in the business of transportation of used household goods and personal effects by motor vehicle over any public highway in this state shall provide each consignor with a completed copy of the notice set forth in this section. The notice shall be printed in at least 12-point type, except the title and first two paragraphs which shall be printed in boldface type, and provided to each consignor at least three days prior to the date scheduled for the transportation of household goods or personal effects. If the consignor requests services on a date that is less than three days before the scheduled date for transportation of the household goods or personal effects, the carrier shall provide the notice as soon as practicable, but in no event may the carrier commence any services until the consignor has signed and received a signed copy of the notice. The carrier shall obtain sufficient information from the consignor to fill out the form and shall include the correct maximum amount and a sufficient description of services that will be performed. The carrier shall retain a copy of the notice, signed by the cosignor, for at least three years from the date the notice was signed by the cosignor.

(c) Any waiver of the requirements of this section is void and unenforceable.

(d) The “Not To Exceed” amount set forth in the notice and the agreement between the household goods carrier and the consignor shall be the maximum total dollar amount for which the consignor may be liable for the transportation of household goods and personal effects and any additional services ordered by the consignor (including any bona fide change order permitted under the commission’s rules and tariffs) and agreed to by the consignor before any goods or personal effects are moved from their location or any other services are performed.

(e) A household goods carrier may provide the notice set forth in this section either as a separate document or by including it as the centerfold of the informational booklet that the household goods carrier is required to provide the consignor under the commission’s tariffs. If the household goods carrier provides the notice as part of the informational booklet, the booklet shall contain a tab that extends beyond the edge of the booklet at the place

where the notice is included. The statement “Important Notice” shall be printed on the tab in at least 12-point boldface type. In addition, the statement “Customer Must Read And Sign The Important Notice In The Middle Of This Booklet Before A Move Can Begin” shall be set forth in 14-point boldface type on the front cover of the booklet.

(f) The notice provided the consignor shall be in the following form:

“IMPORTANT NOTICE ABOUT YOUR MOVE

“IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A “NOT TO EXCEED” AMOUNT THAT YOU THINK IS A PROPER AND REASONABLE FEE FOR THE SERVICES YOU ARE REQUESTING. THE “NOT TO EXCEED” AMOUNT THIS MOVER IS REQUESTING IS \$ \_\_\_\_\_ to perform the following services:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

“IF YOU DO NOT AGREE TO THE “NOT TO EXCEED” AMOUNT LISTED OR THE DESCRIPTION OF SERVICES, YOU HAVE THE RIGHT TO REFUSE THE MOVER’S SERVICE AT NO CHARGE TO YOU.

“If you request additional or different services at the time of the move, you may be asked to complete a Change Order which will set forth your agreement to pay for additional fees for those newly requested services. If you agree to the additional charges on that Change Order, those charges may be added to the “NOT TO EXCEED” amount set forth above. If you do not agree to the amounts listed in the Change Order, you should not sign it and may refuse the mover’s services.

“A mover cannot refuse to release your goods once you have paid the “NOT TO EXCEED” amount for the transportation of your goods and personal effects and any additional services that you have agreed to in writing. The “NOT TO EXCEED” amount must be reasonable.

“A mover cannot, under any circumstances, withhold food, medicine, medical devices, items to treat or assist a disabled person, or items used for care of a minor child. An unlicensed mover has no right to withhold your goods for any reason including claims that you have not adequately paid for services rendered.

“For additional information or to confirm whether a mover is licensed by the California Public Utilities Commission, please call the Public Utilities Commission toll free at:

\_\_\_\_\_  
insert toll-free number

“I have completed this form and provided the consumer (shipper) with a copy of this notice.

“Signed \_\_\_\_\_ Dated \_\_\_\_\_

“I have been provided with a copy of this form.

“Signed \_\_\_\_\_ Dated \_\_\_\_\_”

(g) Any document required by this section may be in an electronic form, if agreed upon by the carrier and the customer.

SEC. 7. Section 5144 is added to the Public Utilities Code, to read:

5144. Every household goods carrier shall add a prominent link to the household goods carrier’s home Internet Web site, if the household goods carrier operates, posts to, or uses an Internet Web site, that immediately directs all consumers to the commission’s Internet Web site on moving companies and household goods carriers that promotes consumer rights and protection.

SEC. 8. Section 5311 of the Public Utilities Code is amended to read:

5311. (a) Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and is punishable by a fine of not more than two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail for not more than three months, or both. If a violation is willful, each willful violation is punishable by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the county jail for not more than one year, or both. If the violation involves operating or holding one’s self out as a household goods carrier without a permit, the fine shall be not less than one thousand dollars (\$1,000).

(b) Any person who violates subdivision (a) of Section 5133, is guilty of a misdemeanor, and is punishable by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or both, for each violation.

SEC. 9. Section 5314.5 of the Public Utilities Code is amended to read:

5314.5. Every corporation or person who knowingly and willfully issues, publishes, or affixes, or causes or permits the issuance, publishing, or affixing, of any oral or written advertisement, broadcast, or other holding out to the public, or any portion thereof, that the corporation or person is in operation as a household goods carrier without having a valid permit issued under this chapter is guilty of a misdemeanor punishable by a fine of not more than two thousand five hundred dollars (\$2,500).

SEC. 10. Section 5314.7 is added to the Public Utilities Code, to read:

5314.7. Every household goods carrier that falsifies permit status, membership in an association, or location is subject to a penalty of not more than two thousand five hundred dollars (\$2,500) per day that the carrier is in violation of this section.

SEC. 11. Section 5315 of the Public Utilities Code is amended to read:

5315. Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any household goods carrier, any corporation, or any person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense.

SEC. 12. Section 5322 of the Public Utilities Code is amended to read:

5322. (a) The Legislature finds and declares that advertisement and use of telephone service are essential for household goods carriers to obtain business and conduct intrastate moving services. The unlawful advertisement by unpermitted household goods carriers has required properly permitted and regulated household goods carriers to compete with unpermitted household goods carriers using unfair business practices. Unpermitted household goods carriers have also exposed citizens of the State of California to unscrupulous persons who portray themselves as properly permitted, qualified, and insured household goods carriers. Many of these unpermitted household goods carriers have been found to have perpetrated acts of theft, fraud, and dishonesty upon unsuspecting citizens of the State of California.

(b) (1) The Legislature finds and declares that the termination of telephone service utilized by unpermitted household goods carriers is essential to ensure the public safety and welfare. Therefore, the commission should take enforcement action as specified in this section to disconnect telephone service of unpermitted household goods carriers who unlawfully advertise moving services in yellow page directories and other publications. The enforcement action provided for by this section is consistent with the decision of the Supreme Court of the State of California in *Goldin, et al. v. Public Utilities Commission et al.*, (1979) 23 Cal.3d 638.

(2) Notwithstanding Section 2891, for purposes of this section, a telephone utility, or a corporation that holds a controlling interest in the telephone utility, or any business that is a subsidiary or affiliate of the telephone utility, that has the name and address of the subscriber to a telephone number being used by an unpermitted household goods carrier shall provide the commission, or an authorized official of the commission, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order, for the purposes of this subdivision, when the magistrate has made the findings required by subdivision (c).

(c) Any telephone utility operating under the jurisdiction of the commission shall refuse telephone service to a new customer and shall disconnect telephone service of an existing customer only after it is shown that other available enforcement remedies of the commission have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized official of the commission of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal

Code, finding that probable cause exists to believe that the customer is advertising or holding out to the public to perform, or is performing, household goods carrier services without having in force a permit issued by the commission authorizing those services, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the laws requiring a household goods carrier permit. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been or are to be used in the commission or facilitation of holding out to the public to perform, or in performing, household goods carrier services without having in force a permit issued by the commission authorizing those services, and that, absent immediate and summary action, a danger to public welfare or safety will result.

(d) Any person aggrieved by any action taken pursuant to this section shall have the right to file a complaint with the commission and may include therein a request for interim relief. The commission shall schedule a public hearing on the complaint to be held within 21 calendar days of the filing and assignment of a docket number to the complaint. The remedy provided by this section shall be exclusive. No other action at law or in equity shall accrue against any telephone utility because of, or as a result of, any matter or thing done or threatened to be done pursuant to this section.

(e) At any hearing on complaint pursuant to subdivision (d), the commission staff shall have the right to participate, including the right to present evidence and argument and to present and cross-examine witnesses. The commission staff shall have both the burden of providing that the use made or to be made of the telephone service is to hold out to the public to perform, or to assist in performing, services as a household goods carrier, or that the telephone service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the licensing laws as applicable to household goods carriers and that the character of the acts is such that, absent immediate and summary action, a danger to public welfare or safety will result, and the burden of persuading the commission that the telephone services should be refused or should not be restored.

(f) The telephone utility, immediately upon refusal or disconnection of service in accordance with subdivision (c), shall notify the customer or subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of the commission and the writing of a magistrate, and shall include with the notice a copy of this section, a copy of the writing of the magistrate, and a statement that the customer or subscriber may request information from the commission at its San Francisco or Los Angeles office concerning any provision of this section and the manner in which a complaint may be filed.

(g) Each contract for telephone service, by operation of law, shall be deemed to contain the provisions of this section. The provisions shall be deemed to be a part of any application for telephone service. Applicants and customers for telephone service shall be deemed to have consented to

the provisions of this section as a consideration for the furnishing of the service.

(h) The terms “person,” “customer,” and “subscriber,” as used in this section, include a subscriber to telephone service, an applicant for that service, a corporation, a company, a partnership, an association, and an individual.

(i) The term “telephone utility,” as used in this section, includes a “telephone corporation” and a “telegraph corporation,” as defined in Division 1 (commencing with Section 201).

(j) The term “authorized official,” as used in this section, includes the Executive Director of the Public Utilities Commission or any commission employee designated pursuant to paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code.

SEC. 13. 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.