

AMENDED IN SENATE JUNE 10, 2014

AMENDED IN SENATE MAY 29, 2014

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Nazarian

February 20, 2013

An act to amend ~~Sections 5360, Section 5374, 5385.5, 5385.6, and 5391~~ of, and to add ~~Section~~ *Sections 5374.3 and 5374.4* to, and to repeal *Sections 5385.5 and 5391* of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Nazarian. Charter-party carriers of passengers: online-enabled application or platform.

(1) 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, and imposes various other requirements. Existing law imposes certain penalties for violation of the act. The act defines a charter-party carrier of passengers as 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 and 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.

Pursuant to existing law, the commission has adopted rules and regulations relating to public safety risks in the operation of transportation network companies. Those rules and regulations define a transportation network company as an organization that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using their personal vehicles.

This bill would ~~define~~ *establish specified requirements applicable to a charter-party carrier of passengers to include a person that uses and any carrier that utilizes* an online-enabled application or platform to connect passengers with drivers. The bill would require a charter-party carrier of passengers to participate in the Department of Motor Vehicle's Employer Pull Notice Program. The bill would require ~~persons operating vehicles any driver who is either under contract to, or employed by, the carrier to operate a vehicle used in transportation for compensation under the act to furnish to the Department of Justice a full set of fingerprints 2 classifiable fingerprint cards to conduct a criminal history record checks and to cause the results to be reported to the Public Utilities Commission~~ *background check, as specified.*

The bill would require assurances of protection against liability applicable to charter-party carriers under existing law to be primary and carried by the permit or certificate holder. The bill would require the commission to develop a standard disclosure agreement with respect to drivers who make themselves available for services with ~~charter-party carriers of passengers~~ *carriers* that utilize an online-enabled application or platform to connect passengers with drivers.

The bill would make expressly applicable to carriers that use an online-enabled application or platform to connect passengers with drivers certain provisions relating to the issuance of ~~decals and special license plates~~ *decals*.

The bill would require that drivers employed or initially retained after January 1, 2015, be subject to background checks and mandatory drug and alcohol testing prior to employment or retention and that employees hired before January 1, 2015, complete a background check and drug and alcohol test prior to January 1, 2016.

(2) Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(3) 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. Section 5360 of the Public Utilities Code is~~
2 ~~amended to read:~~

3 ~~5360. Subject to the exclusions of Section 5353, “charter-party~~
4 ~~carrier of passengers” means every person engaged in the~~
5 ~~transportation of persons by motor vehicle for compensation,~~
6 ~~whether in common or contract carriage, over any public highway~~
7 ~~in this state, and includes any person that uses an online-enabled~~
8 ~~application or platform to connect passengers with drivers.~~
9 ~~“Charter-party carrier of passengers” includes any person,~~
10 ~~corporation, or other entity engaged in the provision of a hired~~
11 ~~driver service when a rented motor vehicle is being operated by a~~
12 ~~hired driver.~~

13 ~~SEC. 2.~~

14 ~~SECTION 1.~~ Section 5374 of the Public Utilities Code is
15 ~~amended to read:~~

16 ~~5374. (a) (1) Before a permit or certificate is issued or~~
17 ~~renewed, the commission shall require the applicant to establish~~
18 ~~reasonable fitness and financial responsibility to initiate and~~
19 ~~conduct or continue to conduct the proposed or existing~~
20 ~~transportation services. The commission shall not issue or renew~~
21 ~~a permit or certificate pursuant to this chapter unless the applicant~~
22 ~~meets all of the following requirements:~~

23 ~~(A) It is financially and organizationally capable of conducting~~
24 ~~an operation that complies with the rules and regulations of the~~
25 ~~Department of the California Highway Patrol governing highway~~
26 ~~safety.~~

27 ~~(B) It is committed to observing the hours of service regulations~~
28 ~~of state and, where applicable, federal law, for all persons, whether~~
29 ~~employees or subcarriers, operating vehicles in transportation for~~
30 ~~compensation under the certificate.~~

31 ~~(C) It has a preventive maintenance program in effect for its~~
32 ~~vehicles used in transportation for compensation that conforms to~~

1 regulations of the Department of the California Highway Patrol
2 in Title 13 of the California Code of Regulations.

3 ~~(D) It participates in the Department of Motor Vehicle's~~
4 ~~Employer Pull Notice Program to regularly check the driving~~
5 ~~records of all persons, whether employees or subcarriers, operating~~
6 ~~vehicles used in transportation for compensation.~~

7 ~~(E)~~

8 (D) It has a safety education and training program in effect for
9 all employees or subcarriers operating vehicles used in
10 transportation for compensation.

11 ~~(F)~~

12 (E) It will maintain its vehicles used in transportation for
13 compensation in a safe operating condition and in compliance with
14 the Vehicle Code and with regulations contained in Title 13 of the
15 California Code of Regulations relative to motor vehicle safety.

16 ~~(G)~~

17 (F) It has filed with the commission the certificate of workers'
18 compensation insurance coverage or statement required by Section
19 5378.1.

20 ~~(H)~~

21 (G) It has provided the commission an address of an office or
22 terminal where documents supporting the factual matters specified
23 in the showing required by this subdivision may be inspected by
24 the commission and the Department of the California Highway
25 Patrol.

26 ~~(I) It provides for a mandatory controlled substance and alcohol~~
27 ~~testing certification program as adopted by the commission~~
28 ~~pursuant to Section 1032.1.~~

29 ~~(J)~~

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

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

38 (3) The commission may require, as a precondition to the
39 issuance of a permit or certificate, the procurement of a
40 performance bond sufficient to facilitate the collection of fines,

1 penalties, and restitution related to enforcement actions that can
2 be taken against the applicant.

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

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

11 *SEC. 2. Section 5374.3 is added to the Public Utilities Code,*
12 *to read:*

13 *5374.3. The commission shall develop a standard disclosure*
14 *agreement with respect to drivers who make themselves available*
15 *for services with charter-party carriers of passengers that utilize*
16 *an online-enabled application or platform to connect passengers*
17 *with drivers. The standard disclosure agreement shall be part of*
18 *a written agreement between the driver and the charter-party*
19 *carrier of passengers, and shall provide information to the driver*
20 *about insurance coverage and limits of liability coverage and*
21 *advise the driver that their personal automobile insurance policy*
22 *may not provide coverage when they are operating a vehicle as*
23 *part of that charter-party carrier of passengers operation. The*
24 *standard disclosure agreement shall be in writing and shall be*
25 *signed by each driver participating in this type of arrangement*
26 *with a charter-party carrier of passengers. Standard disclosure*
27 *agreement records of charter-party carriers of passengers shall*
28 *be subject to review and audit by the commission at its discretion.*

29 *SEC. 3. Section 5374.4 is added to the Public Utilities Code,*
30 *to read:*

31 *5374.4. (a) Notwithstanding Section 5374, the following*
32 *requirements shall apply to a charter party carrier of passengers,*
33 *including any carrier that utilizes an online-enabled application*
34 *or platform to connect passengers with drivers:*

35 *(1) It participates in the Department of Motor Vehicle's*
36 *Employer Pull Notice Program to regularly check the driving*
37 *record of any driver who is either under contract to, or employed*
38 *by, the carrier to operate a vehicle used in transportation for*
39 *compensation.*

1 (2) *It provides for a mandatory controlled substance and alcohol*
2 *testing certification program as adopted by the commission*
3 *pursuant to Section 1032.1.*

4 (3) *It provides for mandatory Department of Justice criminal*
5 *background checks to check the criminal history of any driver who*
6 *is either under contract to, or employed by, the carrier to operate*
7 *a vehicle used in transportation for compensation pursuant to the*
8 *following:*

9 (A) *Upon accepting employment by a charter-party carrier of*
10 *passengers or entering into a contract with a carrier that utilizes*
11 *an online-enable application or platform to connect passengers*
12 *with drivers, a driver shall obtain two classifiable fingerprint cards*
13 *for submission to the Department of Justice. The driver shall submit*
14 *the fingerprint cards and a processing fee payable to the*
15 *department to the carrier. The carrier shall forward the classifiable*
16 *fingerprint cards and the fee to the Department of Justice. The*
17 *department shall forward one classifiable fingerprint card to the*
18 *Federal Bureau of Investigation for purposes of a background*
19 *check. The processing fee shall be in an amount to cover the actual*
20 *costs of the department.*

21 (B) *In lieu of classifiable fingerprint cards provided for in this*
22 *section, the carrier may authorize drivers to submit their*
23 *fingerprints into an electronic fingerprinting system administered*
24 *by the Department of Justice. Drivers who submit their fingerprints*
25 *by electronic means shall have their fingerprints entered into the*
26 *system through a terminal operated by a law enforcement agency*
27 *or other facility authorized by the Department of Justice to conduct*
28 *electronic fingerprinting. The enforcement agency responsible for*
29 *operating the terminal may charge a fee sufficient to reimburse it*
30 *for the costs incurred in providing this service.*

31 (C) *Upon receipt of a driver's electronic or hard card*
32 *fingerprints as provided in this section, the Department of Justice*
33 *shall disseminate the following information to the carrier:*

34 (i) *Every conviction rendered against the driver.*

35 (ii) *Every arrest for an offense for which the driver is presently*
36 *awaiting trial, whether the driver is incarcerated or has been*
37 *released on bail or on his or her own recognizance pending trial.*

38 (D) *The carrier shall request from the Department of Justice*
39 *subsequent notification service, as provided pursuant to Section*
40 *11105.2 of the Penal Code.*

1 (E) A driver shall be denied employment or have his or her
2 contract voided if he or she is required by any law to register as
3 a sex offender or has been convicted of any felony involving: any
4 type of sexual offense; the manufacture, possession for sale,
5 transportation, or distribution of narcotics, controlled substances,
6 or addictive or dangerous drugs; force, violence, threat or
7 intimidation against persons; kidnaping; forgery, fraud, larceny,
8 extortion, burglary, robbery, or theft; credit card fraud; possession
9 of a firearm or dangerous weapon; resisting or obstructing a peace
10 officer, public officer, or emergency medical technician; or use of
11 another vehicle for hire in the commission of a felony. Equivalent
12 out-of-state violations shall be considered.

13 (F) As used in this section, “driver” has the same meaning as
14 defined in Section 305 of the Vehicle Code.

15 (4) It provides decals to be applied to all vehicles used in
16 transportation for compensation. For motor vehicles designed to
17 carry not more than eight passengers, including the driver, the
18 commission shall issue a suitable decal for purposes of Section
19 5385, for each vehicle (A) registered with the commission and
20 operated by a charter-party carrier of passengers holding a valid
21 permit or certificate of public convenience and necessity or (B)
22 used by a driver under contract to any carrier that uses an
23 online-enabled application or platform to connect passengers with
24 drivers. Carriers using an online-enabled application or platform
25 shall register any vehicle used in the transportation of passengers
26 for compensation with the commission and that vehicle shall
27 display the commission-issued identifying symbol. The decal with
28 an identifying symbol shall be a minimum size of two and one-half
29 inches by six inches, and shall be affixed to the lower right hand
30 corner of the rear bumper of the vehicle.

31 (5) The carrier’s commercial auto liability insurance is primary.
32 The commission shall, in granting permits or a certificate pursuant
33 to this chapter, require the charter-party carrier of passengers to
34 procure, and to continue in effect during the life of the permit or
35 certificate, adequate protection against liability imposed by law
36 upon the charter-party carrier of passengers for the payment of
37 damages for personal bodily injuries, including death resulting
38 therefrom, protection against a total liability of the charter-party
39 carrier of passengers on account of bodily injuries to, or death of,
40 more than one person as a result of any one accident, and

1 protection against damage or destruction of property. The
2 requirements for these assurances of protection against liability
3 shall be primary and shall be carried by the permit or certificate
4 holder. The minimum requirements for these assurances of
5 protection against liability shall not be less than the requirements
6 that are applicable to operations conducted under certificates of
7 public convenience and necessity issued pursuant to the provisions
8 of Article 2 (commencing with Section 1031) of Chapter 5 of Part
9 1 of Division 1, and the rules and regulations prescribed pursuant
10 thereto shall apply to charter-party carriers of passengers.

11 (b) Drivers employed or initially retained after January 1, 2015,
12 shall be subject to background checks and mandatory drug testing
13 employment or retention. Employees hired before January 1, 2015,
14 shall complete a background check and drug test before January
15 1, 2016.

16 SEC. 4. Section 5385.5 of the Public Utilities Code is repealed.

17 ~~5385.5. For motor vehicles designed to carry not more than~~
18 ~~eight passengers, including the driver, the commission shall issue~~
19 ~~a suitable decal for purposes of Section 5385, for each vehicle~~
20 ~~registered with the commission and operated by a charter-party~~
21 ~~carrier of passengers holding a valid permit or certificate of public~~
22 ~~convenience and necessity. The decal with an identifying symbol~~
23 ~~shall be a minimum size of two and one-half inches by six inches,~~
24 ~~and shall be affixed to the lower right hand corner of the rear~~
25 ~~bumper of the vehicle.~~

26 SEC. 5. Section 5391 of the Public Utilities Code is repealed.

27 ~~5391. The commission shall, in granting permits or a certificate~~
28 ~~pursuant to this chapter, require the charter-party carrier of~~
29 ~~passengers to procure, and to continue in effect during the life of~~
30 ~~the permit or certificate, adequate protection against liability~~
31 ~~imposed by law upon the charter-party carrier of passengers for~~
32 ~~the payment of damages for personal bodily injuries, including~~
33 ~~death resulting therefrom, protection against a total liability of the~~
34 ~~charter-party carrier of passengers on account of bodily injuries~~
35 ~~to, or death of, more than one person as a result of any one accident,~~
36 ~~and protection against damage or destruction of property. The~~
37 ~~minimum requirements for such assurances of protection against~~
38 ~~liability shall not be less than the requirements which are applicable~~
39 ~~to operations conducted under certificates of public convenience~~
40 ~~and necessity issued pursuant to the provisions of Article 2~~

1 (~~commencing with Section 1031~~), Chapter 5, Part 1, Division 1,
2 of this code, and the rules and regulations prescribed pursuant
3 thereto shall apply to charter-party carriers of passengers.

4 SEC. 3. ~~Section 5374.4 is added to the Public Utilities Code,~~
5 ~~to read:~~

6 ~~5374.4. Notwithstanding any other law, the commission shall~~
7 ~~require all persons, whether employees or subcarriers, operating~~
8 ~~vehicles used in transportation for compensation under this chapter~~
9 ~~to furnish to the Department of Justice a full set of fingerprints for~~
10 ~~purposes of conducting criminal history record checks, and to~~
11 ~~cause the results of those record checks to be reported to the~~
12 ~~commission.~~

13 SEC. 4. ~~Section 5385.5 of the Public Utilities Code is amended~~
14 ~~to read:~~

15 ~~5385.5. For motor vehicles designed to carry not more than~~
16 ~~eight passengers, including the driver, the commission shall issue~~
17 ~~a suitable decal for purposes of Section 5385, for each vehicle~~
18 ~~registered with the commission and operated by a charter-party~~
19 ~~carrier of passengers holding a valid permit or certificate of public~~
20 ~~convenience and necessity, including any carrier that uses an~~
21 ~~online-enabled application or platform to connect passengers with~~
22 ~~drivers. The decal with an identifying symbol shall be a minimum~~
23 ~~size of two and one-half inches by six inches, and shall be affixed~~
24 ~~to the lower right hand corner of the rear bumper of the vehicle.~~

25 SEC. 5. ~~Section 5385.6 of the Public Utilities Code is amended~~
26 ~~to read:~~

27 ~~5385.6. (a) No charter-party carrier, including any carrier that~~
28 ~~uses an online-enabled application or platform to connect~~
29 ~~passengers with drivers, shall operate a limousine as defined by~~
30 ~~Section 5371.4 unless the limousine is equipped with the special~~
31 ~~license plates issued and distributed by the Department of Motor~~
32 ~~Vehicles pursuant to Section 5011.5 of the Vehicle Code.~~

33 ~~(b) The commission shall issue to each charter-party carrier~~
34 ~~operating limousines a permit or certificate for the number of~~
35 ~~vehicles verified by the carrier as employed in providing limousine~~
36 ~~service. The permit or certificate shall be submitted to the~~
37 ~~Department of Motor Vehicles, which will issue to each verified~~
38 ~~vehicle a set of unique, identifying license plates. The department~~
39 ~~shall maintain a record of each set of plates it issues and provide~~
40 ~~a copy of each record to the commission.~~

1 ~~(e) The commission shall recover from any carrier whose permit~~
2 ~~or certificate is cancelled, suspended, or revoked any and all plates~~
3 ~~issued pursuant to this section.~~

4 ~~(d) The special license plate shall be in lieu of the decal required~~
5 ~~to be issued and displayed pursuant to Section 5385.5.~~

6 ~~SEC. 6. Section 5391 of the Public Utilities Code is amended~~
7 ~~to read:~~

8 ~~5391. (a) The commission shall, in granting permits or a~~
9 ~~certificate pursuant to this chapter, require the charter-party carrier~~
10 ~~of passengers to procure, and to continue in effect during the life~~
11 ~~of the permit or certificate, adequate protection against liability~~
12 ~~imposed by law upon the charter-party carrier of passengers for~~
13 ~~the payment of damages for personal bodily injuries, including~~
14 ~~death resulting therefrom, protection against a total liability of the~~
15 ~~charter-party carrier of passengers on account of bodily injuries~~
16 ~~to, or death of, more than one person as a result of any one accident,~~
17 ~~and protection against damage or destruction of property. The~~
18 ~~requirements for these assurances of protection against liability~~
19 ~~shall be primary and shall be carried by the permit or certificate~~
20 ~~holder. The minimum requirements for these assurances of~~
21 ~~protection against liability shall not be less than the requirements~~
22 ~~that are applicable to operations conducted under certificates of~~
23 ~~public convenience and necessity issued pursuant to the provisions~~
24 ~~of Article 2 (commencing with Section 1031), Chapter 5, Part 1,~~
25 ~~Division 1, of this code, and the rules and regulations prescribed~~
26 ~~pursuant thereto shall apply to charter-party carriers of passengers.~~

27 ~~(b) The commission shall develop a standard disclosure~~
28 ~~agreement with respect to drivers who make themselves available~~
29 ~~for services with charter-party carriers of passengers that utilize~~
30 ~~an online-enabled application or platform to connect passengers~~
31 ~~with drivers. The standard disclosure agreement shall be part of a~~
32 ~~written agreement between the driver and the charter-party carrier~~
33 ~~of passengers, and shall provide information to the driver about~~
34 ~~insurance coverage and limits of liability coverage and advise the~~
35 ~~driver that their personal automobile insurance policy may not~~
36 ~~provide coverage when they are operating a vehicle as part of that~~
37 ~~charter-party carrier of passengers operation. The standard~~
38 ~~disclosure agreement shall be in writing and shall be signed by~~
39 ~~each driver participating in this type of arrangement with a~~
40 ~~charter-party carrier of passengers. Standard disclosure agreement~~

1 ~~records of charter-party carriers of passengers shall be subject to~~
2 ~~review and audit by the commission at its discretion.~~

3 ~~SEC. 7.~~

4 *SEC. 6.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.