

AMENDED IN SENATE AUGUST 19, 2014  
AMENDED IN SENATE JULY 2, 2014  
AMENDED IN SENATE JUNE 19, 2014  
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**

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**Introduced by Assembly Member Nazarian  
(Coauthor: Assembly Member Hernández)**

February 20, 2013

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An act to amend Section 5374 of the Public Utilities Code, *and to amend Section 1808.1 of the Vehicle Code*, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Nazarian. Charter-party carriers of passengers: permit requirements: drivers.

The

(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, subject to various requirements. 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.

This bill would prohibit the commission from issuing or renewing a permit or certificate to a charter-party carrier of passengers unless the applicant, in addition to existing requirements, participates in the Department of Motor Vehicles ~~Employer Pull Notice Program~~ *pull-notice system* and provides for mandatory Department of Justice background checks of every driver, *except as specified*, who is either employed by or under contract to the ~~applicant~~, *as specified applicant*.

The bill would require a driver of a charter-party carrier to submit to the Department of Justice fingerprint images and related information for the purpose of obtaining information as to the existence and content of state convictions and state arrests, as specified. The bill would require the department to charge a fee sufficient to cover the cost of processing the request described in these provisions.

The bill would provide that its provisions apply to all charter-party carriers regardless of class or category created by the commission.

*The bill would require that drivers hired or initially retained on or after January 1, 2015, be subject to background checks and mandatory drug and alcohol testing prior to employment or retention and that drivers hired or initially retained before January 1, 2015, complete a background check and drug and alcohol test before 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. It is the intent of the Legislature to give direction~~  
2     ~~to the Public Utilities Commission, as it establishes rules and~~  
3     ~~regulations for all charter-party carriers, to investigate and~~  
4     ~~implement proper identifying decals and trade dress for~~  
5     ~~charter-party carriers in order to assist law enforcement in enforcing~~

1 ~~those regulations and the law established under the Passenger~~  
2 ~~Charter-party Carriers' Act.~~

3 ~~SEC. 2.~~

4 *SECTION 1.* Section 5374 of the Public Utilities Code is  
5 amended to read:

6 5374. (a) (1) Before a permit or certificate is issued or  
7 renewed, the commission shall require the applicant to establish  
8 reasonable fitness and financial responsibility to initiate and  
9 conduct or continue to conduct the proposed or existing  
10 transportation services. The commission shall not issue or renew  
11 a permit or certificate pursuant to this chapter unless the applicant  
12 meets all of the following requirements:

13 (A) It is financially and organizationally capable of conducting  
14 an operation that complies with the rules and regulations of the  
15 Department of the California Highway Patrol governing highway  
16 safety.

17 (B) It is committed to observing the hours of service regulations  
18 of state and, where applicable, federal law, for all persons, whether  
19 employees or subcarriers, operating vehicles in transportation for  
20 compensation under the certificate.

21 (C) It has a preventive maintenance program in effect for its  
22 vehicles used in transportation for compensation that conforms to  
23 regulations of the Department of the California Highway Patrol  
24 in Title 13 of the California Code of Regulations.

25 (D) It participates in the ~~Department of Motor Vehicle's~~  
26 ~~Employer Pull Notice Program~~ *pull-notice system pursuant to*  
27 *Section 1808.1 of the Vehicle Code* to regularly check the driving  
28 records of all persons, whether employees or subcarriers, operating  
29 vehicles used in transportation for compensation.

30 (E) It has a safety education and training program in effect for  
31 all employees or subcarriers operating vehicles used in  
32 transportation for compensation.

33 (F) It will maintain its vehicles used in transportation for  
34 compensation in a safe operating condition and in compliance with  
35 the Vehicle Code and with regulations contained in Title 13 of the  
36 California Code of Regulations relative to motor vehicle safety.

37 (G) It has filed with the commission the certificate of workers'  
38 compensation insurance coverage or statement required by Section  
39 5378.1.

1 (H) It has provided the commission an address of an office or  
2 terminal where documents supporting the factual matters specified  
3 in the showing required by this subdivision may be inspected by  
4 the commission and the Department of the California Highway  
5 Patrol.

6 (I) It provides for a mandatory controlled substance and alcohol  
7 testing certification program as adopted by the commission  
8 pursuant to Section 1032.1.

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

13 (K) It provides for mandatory Department of Justice criminal  
14 background checks to check the criminal history of any driver who  
15 is either under contract to, or employed by, the applicant to operate  
16 a vehicle used in transportation for compensation pursuant to the  
17 following:

18 (i) A driver, as defined in Section 305 of the Vehicle Code, of  
19 a charter-party carrier, as defined in Section 5360, shall submit to  
20 the Department of Justice fingerprint images and related  
21 information required by the department for the purpose of obtaining  
22 information as to the existence and content of state convictions  
23 and state arrests and also information as to the existence and  
24 content of a record of a state arrest for which the department  
25 establishes that the person is free on bail or on his or her  
26 recognizance pending trial or appeal.

27 (ii) The department shall provide a state response to the  
28 charter-party carrier pursuant to paragraph (1) of subdivision (p)  
29 of Section 11105 of the Penal Code.

30 (iii) The charter-party carrier shall request from the Department  
31 of Justice subsequent notification service, as provided pursuant to  
32 Section 11105.2 of the Penal Code, for persons described in clause  
33 (i).

34 (iv) The department shall charge a fee sufficient to cover the  
35 cost of processing the request described in this subparagraph.

36 (v) A driver shall be denied employment or have his or her  
37 contract voided if he or she is required by any law to register as a  
38 sex offender or has been convicted of any felony, *within a*  
39 *seven-year period from the date of his or her application*, involving  
40 any type of sexual offense; the manufacture, possession for sale,

1 transportation, or distribution of narcotics, controlled substances,  
2 or addictive or dangerous drugs; force, violence, threat, or  
3 intimidation against persons; kidnapping; forgery, fraud, larceny,  
4 extortion, burglary, robbery, or theft; credit card fraud; possession  
5 of a firearm or dangerous weapon; resisting or obstructing a peace  
6 officer, public officer, or emergency medical technician; or use of  
7 another vehicle for hire in the commission of a felony. Equivalent  
8 out-of-state violations shall be considered.

9 (L) Subparagraphs (D), (I), and (K) apply to all charter-party  
10 carriers regardless of class or category created by the commission.

11 (M) *Subparagraph (K) shall not apply with respect to a driver*  
12 *who is required to undergo a criminal background check pursuant*  
13 *to Section 33192 of the Education Code, while the driver remains*  
14 *employed by the employer for whom the criminal background*  
15 *check was performed.*

16 (2) *Drivers hired or initially retained by a charter-party carrier*  
17 *on or after January 1, 2015, shall be subject to background checks*  
18 *and mandatory drug and alcohol testing prior to employment or*  
19 *retention. Drivers hired or initially retained before January 1,*  
20 *2015, shall complete a background check and drug and alcohol*  
21 *test before January 1, 2016.*

22 ~~(2)~~

23 (3) With respect to subparagraphs (B) and (F) of paragraph (1),  
24 the commission may base a finding on a certification by the  
25 commission that an applicant has filed, with the commission, a  
26 sworn declaration of ability to comply and intent to comply.

27 ~~(3)~~

28 (4) The commission may require, as a precondition to the  
29 issuance of a permit or certificate, the procurement of a  
30 performance bond sufficient to facilitate the collection of fines,  
31 penalties, and restitution related to enforcement actions that can  
32 be taken against the applicant.

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

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

1     *SEC. 2. Section 1808.1 of the Vehicle Code is amended to read:*

2     1808.1. (a) The prospective employer of a driver who drives  
3 a vehicle specified in subdivision (k) shall obtain a report showing  
4 the driver's current public record as recorded by the department.  
5 For purposes of this subdivision, a report is current if it was issued  
6 less than 30 days prior to the date the employer employs the driver.  
7 The report shall be reviewed, signed, and dated by the employer  
8 and maintained at the employer's place of business until receipt  
9 of the pull-notice system report pursuant to subdivisions (b) and  
10 (c). These reports shall be presented upon request to an authorized  
11 representative of the Department of the California Highway Patrol  
12 during regular business hours.

13     (b) The employer of a driver who drives a vehicle specified in  
14 subdivision (k) shall participate in a pull-notice system, which is  
15 a process for the purpose of providing the employer with a report  
16 showing the driver's current public record as recorded by the  
17 department, and any subsequent convictions, failures to appear,  
18 accidents, driver's license suspensions, driver's license revocations,  
19 or any other actions taken against the driving privilege or  
20 certificate, added to the driver's record while the employer's  
21 notification request remains valid and uncanceled. As used in this  
22 section, participation in the pull-notice system means obtaining a  
23 requester code and enrolling all employed drivers who drive a  
24 vehicle specified in subdivision (k) under that requester code.

25     (c) The employer of a driver of a vehicle specified in subdivision  
26 (k) shall, additionally, obtain a periodic report from the department  
27 at least every 12 months. The employer shall verify that each  
28 employee's driver's license has not been suspended or revoked,  
29 the employee's traffic violation point count, and whether the  
30 employee has been convicted of a violation of Section 23152 or  
31 23153. The report shall be signed and dated by the employer and  
32 maintained at the employer's principal place of business. The  
33 report shall be presented upon demand to an authorized  
34 representative of the Department of the California Highway Patrol  
35 during regular business hours.

36     (d) Upon the termination of a driver's employment, the employer  
37 shall notify the department to discontinue the driver's enrollment  
38 in the pull-notice system.

39     (e) For the purposes of the pull-notice system and periodic report  
40 process required by subdivisions (b) and (c), an owner, other than

1 an owner-operator as defined in Section 34624, and an employer  
2 who drives a vehicle described in subdivision (k) shall be enrolled  
3 as if he or she were an employee. A family member and a volunteer  
4 driver who drives a vehicle described in subdivision (k) shall also  
5 be enrolled as if he or she were an employee.

6 (f) An employer who, after receiving a driving record pursuant  
7 to this section, employs or continues to employ as a driver a person  
8 against whom a disqualifying action has been taken regarding his  
9 or her driving privilege or required driver's certificate, is guilty of  
10 a public offense, and upon conviction thereof, shall be punished  
11 by confinement in a county jail for not more than six months, by  
12 a fine of not more than one thousand dollars (\$1,000), or by both  
13 that confinement and fine.

14 (g) As part of its inspection of bus maintenance facilities and  
15 terminals required at least once every 13 months pursuant to  
16 subdivision (c) of Section 34501, the Department of the California  
17 Highway Patrol shall determine whether each transit operator, as  
18 defined in Section 99210 of the Public Utilities Code, is then in  
19 compliance with this section and Section 12804.6, and shall certify  
20 each operator found to be in compliance. Funds shall not be  
21 allocated pursuant to Chapter 4 (commencing with Section 99200)  
22 of Part 11 of Division 10 of the Public Utilities Code to a transit  
23 operator that the Department of the California Highway Patrol has  
24 not certified pursuant to this section.

25 (h) (1) A request to participate in the pull-notice system  
26 established by this section shall be accompanied by a fee  
27 determined by the department to be sufficient to defray the entire  
28 actual cost to the department for the notification service. For the  
29 receipt of subsequent reports, the employer shall also be charged  
30 a fee established by the department pursuant to Section 1811. An  
31 employer who qualifies pursuant to Section 1812 shall be exempt  
32 from any fee required pursuant to this section. Failure to pay the  
33 fee shall result in automatic cancellation of the employer's  
34 participation in the notification services.

35 (2) A regularly organized fire department, having official  
36 recognition of the city, county, city and county, or district in which  
37 the department is located, shall participate in the pull-notice  
38 program and shall not be subject to the fee established pursuant  
39 to this subdivision.

1 (3) The Board of Pilot Commissioners for Monterey Bay and  
2 the Bays of San Francisco, San Pablo, and Suisun, and its port  
3 agent shall participate in the pull-notice system established by this  
4 section, subject to Section 1178.5 of the Harbors and Navigation  
5 Code, and shall not be subject to the fees established pursuant to  
6 this subdivision.

7 (i) The department, as soon as feasible, may establish an  
8 automatic procedure to provide the periodic reports to an employer  
9 by mail or via an electronic delivery method, as required by  
10 subdivision (c), on a regular basis without the need for individual  
11 requests.

12 (j) (1) The employer of a driver who is employed as a casual  
13 driver is not required to enter that driver's name in the pull-notice  
14 system, as otherwise required by subdivision (a). However, the  
15 employer of a casual driver shall be in possession of a report of  
16 the driver's current public record as recorded by the department,  
17 prior to allowing a casual driver to drive a vehicle specified in  
18 subdivision (k). A report is current if it was issued less than six  
19 months prior to the date the employer employs the driver.

20 (2) For the purposes of this subdivision, a driver is employed  
21 as a casual driver when the employer has employed the driver less  
22 than 30 days during the preceding six months. "Casual driver"  
23 does not include a driver who operates a vehicle that requires a  
24 passenger transportation endorsement.

25 (k) This section applies to a vehicle for the operation of which  
26 the driver is required to have a class A or class B driver's license,  
27 a class C license with a hazardous materials endorsement, a class  
28 C license issued pursuant to Section 12814.7, or a certificate issued  
29 pursuant to Section 12517, 12519, 12520, 12523, 12523.5, or  
30 12527, ~~or~~ a passenger vehicle having a seating capacity of not  
31 more than 10 persons, including the driver, operated for  
32 compensation by a ~~charter-party carrier of passengers or passenger~~  
33 ~~stage corporation pursuant to a certificate of public convenience~~  
34 ~~and necessity or a permit issued by the Public Utilities~~  
35 ~~Commission, or a vehicle operated by a charter-party carrier of~~  
36 ~~passengers whose permit or certificate, including any renewal of~~  
37 ~~that permit or certificate, is subject to the requirements of Section~~  
38 ~~5374 of the Public Utilities Code.~~

39 (l) ~~This~~ (1) For purposes of this section, the term "employer"  
40 or "prospective employer" includes a charter-party carrier of

1 *passengers whose permit or certificate, including any renewal of*  
2 *that permit or certificate, is subject to the requirements of Section*  
3 *5374 of the Public Utilities Code.*

4 (2) *This section shall not be construed to change the definition*  
5 *of “employer,” “employee,” or “independent contractor” for any*  
6 *other purpose.*

7 (m) *A motor carrier who contracts with a person to drive a*  
8 *vehicle described in subdivision (k) that is owned by, or leased to,*  
9 *that motor carrier, shall be subject to subdivisions (a), (b), (c), (d),*  
10 *(f), (j), (k), and (l) and the employer obligations in those*  
11 *subdivisions.*

12 (n) *Reports issued pursuant to this section, but only those for a*  
13 *driver of a taxicab engaged in transportation services as described*  
14 *in subdivision (a) of Section 53075.5 of the Government Code,*  
15 *shall be presented upon request, during regular business hours, to*  
16 *an authorized representative of the administrative agency*  
17 *responsible for issuing permits to taxicab transportation services*  
18 *pursuant to Section 53075.5 of the Government Code.*

19 SEC. 3. *No reimbursement is required by this act pursuant to*  
20 *Section 6 of Article XIII B of the California Constitution because*  
21 *the only costs that may be incurred by a local agency or school*  
22 *district will be incurred because this act creates a new crime or*  
23 *infraction, eliminates a crime or infraction, or changes the penalty*  
24 *for a crime or infraction, within the meaning of Section 17556 of*  
25 *the Government Code, or changes the definition of a crime within*  
26 *the meaning of Section 6 of Article XIII B of the California*  
27 *Constitution.*