

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 886

Introduced by Assembly Member Chau

February 26, 2015

An act to amend ~~Section~~ *Sections 5431 and 5437* of, ~~and to add Section 5437.5 to,~~ the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 886, as amended, Chau. Transportation service network provider: passenger privacy.

The Passenger Charter-Party Carriers' Act prohibits a transportation network company from disclosing personally identifiable information of a passenger, ~~except as provided~~ *with certain exceptions, including when the passenger knowingly consents or pursuant to a legal obligation*. A violation of the act is a crime.

~~This bill would prohibit a transportation service network provider, as defined, from requesting or requiring personally identifiable data, as defined, of a passenger unless the information is used for certain purposes, including establishing, maintaining, and updating a customer's account. The bill would require the transportation service network provider to provide an accountholder with an opportunity to cancel or terminate an account. The bill would require a transportation service network provider to destroy or dispose of all personally identifiable data in a secure manner when the information is no longer needed for the purposes for which it was collected or when an accountholder cancels or terminates his or her account. Because a violation of these~~

~~provisions would be a crime, this bill would impose a state-mandated local program.~~

This bill would modify the knowing consent exception to the prohibition against disclosure of personally identifiable information by requiring the affirmative consent of a passenger through an opt-in selection that is separate from and not conditioned on various other transactions between the passenger and the transportation network company. The bill would modify the legal obligation exception to the prohibition against disclosure of personally identifiable information by instead providing for disclosure pursuant to law, regulation, or court order. The bill would define personally identifiable information. By changing the definition of a crime, this bill would impose a state-mandated local program.

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

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

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 5431 of the Public Utilities Code is
- 2 amended to read:
- 3 5431. (a) As used in this article, a “transportation network
- 4 company” is an organization, including, but not limited to, a
- 5 corporation, limited liability company, partnership, sole proprietor,
- 6 or any other entity, operating in California that provides
- 7 prearranged transportation services for compensation using an
- 8 online-enabled application or platform to connect passengers with
- 9 drivers using a personal vehicle.
- 10 (b) As used in this article, “participating driver” or “driver” is
- 11 any person who uses a vehicle in connection with a transportation
- 12 network company’s online-enabled application or platform to
- 13 connect with passengers.
- 14 (c) As used in this article, “transportation network company
- 15 insurance” is a liability insurance policy that specifically covers
- 16 liabilities arising from a driver’s use of a vehicle in connection

with a transportation network company's online-enabled application or platform.

(d) As used in this article, "personally identifiable information," with respect to a transportation network company passenger, shall include electronic communication information, as defined by subdivision (d) of Section 1546 of the Penal Code, electronic device information, as defined by subdivision (g) of Section 1546 of the Penal Code, and subscriber information, as defined by subdivision (l) of Section 1546 of the Penal Code, and the social security number, physical characteristics, or financial information of the passenger.

SECTION 1.

SEC. 2. Section 5437 of the Public Utilities Code is amended to read:

5437. (a) A transportation network company shall not disclose to a third party any personally identifiable information of a transportation network company passenger unless one of the following applies:

~~(1) The customer knowingly consents.~~ *passenger affirmatively consents through an opt-in selection. Consent shall be distinct from any transaction or service provided, and shall be acquired in a format that is separate from the financial transaction for services. Consent shall not be required by the transportation network company as a condition of accepting or processing a transaction, as a condition of creating a user account, if a user account is required by the transportation network company, or as a condition of downloading or installing a mobile application.*

~~(2) Pursuant to a legal obligation.~~ *law, regulation, or court order.*

~~(3) The disclosure is to the commission in order to investigate a complaint filed with the commission against a transportation network company or a participating driver and the commission treats the information under confidentiality protections.~~

~~(b) This section does not apply to personally identifiable information of a transportation network passenger collected pursuant to Section 5437.5.~~

(b) Nothing in this section shall prohibit a transportation network company from sharing any personally identifiable information of a transportation network company passenger for the detection, investigation, or prevention of fraud, theft, identity

1 *theft, or other criminal activity if the personally identifiable*
2 *information is used solely for those purposes by recipients of the*
3 *personally identifiable information.*

4 SEC. 2. Section 5437.5 is added to the Public Utilities Code,
5 to read:

6 5437.5. (a) For purposes of this section, the following terms
7 mean the following:

8 (1) “Personally identifiable data” means any of the following:

9 (A) Information that identifies, relates to, describes, or is capable
10 of being associated with, a particular individual, including, but not
11 limited to, his or her name, signature, social security number,
12 physical characteristics, address, email address, telephone number,
13 bank account number, credit card number, debit card number, or
14 any other financial information.

15 (B) Information describing or concerning the duration of the
16 transportation service provided, the location and route of the service
17 provided, and the monetary exchange associated with the service
18 provided.

19 (C) Information relating to the mobile device or computer used
20 to arrange transportation related services, including Internet
21 protocol address (MAC), media access control address, device
22 applications, and geolocational information.

23 (2) “Transportation service network provider” means any
24 corporation, limited liability company, partnership, sole proprietor,
25 or any other entity, operating in California, including,
26 notwithstanding Section 5353, any entity that provides taxicab
27 transportation services, that provides prearranged transportation
28 service for compensation using an online-enabled application or
29 platform to connect to passengers.

30 (b) (1) When rendering transportation services, a transportation
31 service network provider shall not request or require any personally
32 identifiable data of a passenger or accountholder unless the
33 information is required to complete a transaction for the
34 transportation service being provided or for the detection,
35 investigation, or prevention of fraud, identity and other theft, or
36 other criminal activity, and the personally identifiable data is used
37 solely for those purposes.

38 (2) The transportation service network provider shall not disclose
39 any personally identifiable data collected pursuant to this
40 subdivision to any other person, firm, partnership, association, or

1 corporation unless it is required to do so by state or federal law,
2 or is contractually obligated to share the information with a
3 financial entity to complete the transaction, or for the detection,
4 investigation, or prevention of fraud, identity or other theft, or
5 other criminal activity.

6 (e) (1) A transportation service network provider may request
7 or require a consumer to establish an account as a condition of the
8 transportation service and may require a customer to provide
9 personally identifiable data to establish, maintain, and update the
10 account if the information collected is used solely for those
11 purposes.

12 (2) A transportation service network provider shall provide an
13 accountholder with an opportunity to cancel or terminate the
14 account at which time the transportation service network provider
15 shall destroy or dispose of all personally identifiable data it required
16 for the account in a secure manner.

17 (d) A transportation service network provider shall destroy or
18 dispose of all personally identifiable data it acquires pursuant to
19 this section in a secure manner after the information is no longer
20 needed for the purposes authorized under this section.

21 (e) (1) A transportation service network provider that violates
22 this section shall be subject to a civil penalty not to exceed two
23 hundred fifty dollars (\$250) for the first violation and one thousand
24 dollars (\$1,000) for each subsequent violation.

25 (2) The civil penalty shall be assessed and collected in a civil
26 action brought by any aggrieved person, the Attorney General, or
27 by a district attorney or city attorney of the jurisdiction in which
28 an aggrieved person resides.

29 (3) The court shall direct the recovery of full costs, including
30 attorneys' fees, to the prevailing party.

31 (f) (1) The Attorney General, or district attorney or city attorney
32 with appropriate jurisdiction, may bring an action in the superior
33 court in the name of the People of the State of California to enjoin
34 a violation of this section.

35 (2) Upon notice of not less than five days to a transportation
36 service network provider, the Attorney General, district attorney,
37 or city attorney may seek to temporarily restrain and preliminary
38 enjoin a violation of this section.

39 (3) If the court determines that the transportation service network
40 provider has violated this section, the court may restrain or enjoin

1 the violation without requiring proof that any person has been
2 damaged by the violation.

3 ~~(4) In an action brought pursuant to this subdivision, if the court~~
4 ~~finds that a transportation service network provider has violated~~
5 ~~this section, the court may direct the transportation service network~~
6 ~~provider to pay the costs incurred by the Attorney General, district~~
7 ~~attorney, or city attorney.~~

8 ~~(g) The court may consolidate an action for the assessment and~~
9 ~~collection of civil penalties with an action for injunctive relief~~
10 ~~brought pursuant to subdivision (f).~~

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.