

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: July 31, 2012

To: The Commission
(Meeting of August 2, 2012)

From: Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 838 (Hill) – Public Utilities Commission: public safety**
As amended: June 15, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH TECHNICAL AMENDMENTS

SUMMARY OF BILL:

This bill would allow charter-party carriers to maintain waybills in either electronic or hardcopy format. Electronic format is not currently an option.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The bill would enable charter-party carriers to operate more efficiently by allowing them to take full advantage of existing communication technologies when arranging and providing transportation services to their customers. Minor clarifications would strengthen the bill's provisions.

SUMMARY OF SUGGESTED AMENDMENTS:

- The bill provides that a waybill “may be kept in electronic or hardcopy format,” and when requested by a public safety official, the waybill “may be provided in either electronic or hardcopy format.” It appears the author’s intent is to allow a driver to produce the waybill in electronic format at an on-the-scene inspection. However, it could be argued that in the event of an inspection of documents by a Commission representative in the carrier’s office, with this language, the carrier need only produce waybills in electronic format. To remove any uncertainty, there should be a specific requirement that the carrier produce a hardcopy of a waybill in its office when requested by a Commission representative. Possible language as follows could be added to § 5381.5:

The carrier shall produce in its office a hardcopy of any waybill when requested by the Commission or one of its authorized representatives in accordance with Section 5389.

- The bill refers to the inspection of a waybill by a “public safety official.” G.O. 157, Part 3.01 provides that a driver shall show the waybill to “any Commission or airport enforcement officer, or to any official of a city, county, or city and county authorized to inspect waybills pursuant to Public Utilities Code Section 5371.4(h).” Under the proposed language, a carrier could raise an objection, for example, to producing the waybill for a San Francisco Taxicab Inspector, claiming the person is not a “public safety official.” A broader term would be preferable to ensure access to waybills by all officials who are currently authorized to inspect them.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

The CPUC issues permits and certificates authorizing charter-party carriers to conduct passenger transportation services. Charter-party carriers are required to operate on a prearranged basis. (§ 5360.5. and G.O. 157-D, Part 3.01.) Carriers are required by §5381.5 and G.O. 157-D, Part 3.01 to possess a waybill for each transportation service containing the following information:

1. Name of carrier and TCP number.
2. Vehicle license plate number.
3. Driver’s name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter arranged.
6. Whether the transportation was arranged by telephone or written contract.
7. Number of persons in the charter group.
8. Name of at least one passenger in the traveling party, or identifying information of the traveling party’s affiliation.
9. Points of origination and destination.

The waybill shall be produced for inspection upon the request of a Commission representative, an airport enforcement officer, or authorized city or county official. (§ 5371.4(h) and G.O. 157-D, Part 3.01.) Every carrier is required to maintain a set of records, including waybills, and maintain the records for a minimum period of three years. (G.O. 157-D, Part 6.01.) Commission representatives are authorized to inspect and copy the accounts, books, papers, and documents of the carrier. (§ 5389 and G.O. 157-D, Part 6.02.)

Increasingly, carriers are transmitting information to their drivers about a passenger transportation service via electronic means. Limousine and bus industry representatives wish to have the option of producing an electronic version of a waybill (as opposed to a hardcopy) for inspection by an authorized Commission, airport, or local official. They contend this flexibility would allow them to operate more efficiently, including being able to update drivers about changes in passenger travel plans.

PROGRAM BACKGROUND:

The requirement for the driver to have a waybill in the vehicle was established by the Commission in 1989 (Decision 89-10-028 in R.88-03-012). At the time, solicitation of passengers by charter-party carriers at airports was a significant problem. The waybill was designed to address this problem by providing an on-the-spot means of establishing that a transportation service was prearranged. 2004 legislation (AB 2591) made minor changes to the waybill and authorized cities and counties to impose reasonable rules for the inspection of waybills for purposes of verifying valid prearranged travel. Neither statute nor regulation prescribes a time limit for prearrangement—the service simply needs to be arranged in advance.

While airports still look to the waybill as an important enforcement tool, local taxicab regulators are also using it to deal with the problem of charter-party carriers operating like taxicabs. Charter-party carriers are prohibited by statute and Commission regulation from operating or advertising as a taxicab service. Because of the prearrangement requirement, they may not respond to passenger “hails” or solicit passengers for service. Nonetheless, some carriers (particularly operators of black Town Car sedans) will park or circulate around hotels, tourist destination spots, and areas of nightlife in search of fares. Failure of a driver to have a completed waybill in the vehicle could support a charge that the charter-party carrier is acting as a taxicab without a taxicab permit issued by local authorities. Violations may result in impoundment of the vehicle (§ 5411.5) and the imposition of substantial fines (§§ 5412.2(a) and 5413.5(b)).

Commission staff investigators sometimes conduct joint agency checks of charter-party vehicles with airport and local officials. Waybills are routinely inspected in the course of these checks. Carriers that are observed operating without waybills or with incomplete waybills may be cited for the violation. A law enforcement officer issuing a citation for an incomplete waybill might confiscate the waybill as evidence of the violation. It is not known what an officer would do if an incomplete waybill were to be displayed on an electronic device.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

AB 838 is on the Senate Floor.

SUPPORT/OPPOSITION:

Support: Greater California Livery Association

Opposition: None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 838 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 15, 2012
AMENDED IN ASSEMBLY JANUARY 4, 2012
AMENDED IN ASSEMBLY SEPTEMBER 7, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011

INTRODUCED BY Assembly Member Hill

FEBRUARY 17, 2011

An act to amend Section ~~308~~ 5381.5
of the Public Utilities Code, relating to ~~the Public
Utilities Commission~~ charter-party carriers of
passengers .

LEGISLATIVE COUNSEL'S DIGEST

AB 838, as amended, Hill. ~~Public Utilities Commission;
public safety.~~ Charter-party carriers of passengers:
reports.

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. Existing law requires the commission to ensure that every charter-party carrier of passengers includes on a waybill or trip report certain information, including the name of at least one passenger in the traveling party.

This bill would state that a waybill or trip report may be kept in electronic or hardcopy format and when requested by a public safety official, the waybill or trip report may be provided in either electronic or hardcopy format.

~~—The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Existing law requires the commission to appoint an executive director to hold office at the pleasure of the commission. Existing law requires the executive director to be responsible for the commission's executive and administrative duties, as specified.~~

~~—This bill would require the commission to appoint an assistant executive director for public safety to hold office at the pleasure of the commission. The bill would require the assistant executive director for public safety to coordinate all actions of all divisions~~

~~of the commission to ensure public safety is a primary goal in all proceedings held by the commission. The bill would require the assistant executive director for public safety to advise the commission and each commissioner, when requested, in regard to all matters that may affect public safety.~~

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5381.5 of the Public Utilities Code is amended to read:

5381.5. (a) The commission shall, by rule or other appropriate procedure, ensure that every charter-party carrier of passengers operates on a prearranged basis within the state, consistent with Section 5360.5. The commission shall require every charter-party carrier of passengers to include on a waybill or trip report at least all of the following:

~~—(a)~~

(1) The name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation, along with the point of origin and destination of the passenger or traveling party.

~~—(b)~~

(2) Information as to whether the transportation was arranged by telephone or written contract.

(b) A waybill or trip report may be kept in electronic or hardcopy format. When requested by a public safety official, the waybill or trip report may be provided in either electronic or hardcopy format.

~~—SECTION 1.— Section 308 of the Public Utilities Code is amended to read:~~

~~—308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.~~

~~—(b) (1) The executive director shall keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. The president may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.~~

~~—(2) The commission shall appoint an assistant executive director for public safety, who shall hold office at the pleasure of the commission. The assistant executive director for public safety shall coordinate all actions of all divisions of the commission to ensure public safety is a primary goal in all proceedings held by the commission. The assistant executive director for public safety shall advise the commission and each commissioner, when requested, in regard to all matters that may affect public safety.~~

~~—(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county~~

~~of this state.~~