

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 5, 2006

To: The Commission
(Meeting of April 13, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2220 (Vargas) – Household Goods Carriers**
As Introduced February 22, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support.

SUMMARY OF BILL: In order to protect consumers from unscrupulous movers, this bill would amend and add provisions to the Household Goods Carriers Act, including tightening the screening process for those seeking to obtain a household goods carrier permit, facilitating the suspension or revocation of permits when the owners or officers are convicted of certain crimes, clarifying the law requiring permit holders to produce their records for inspection, and increasing the maximum fine the Commission may assess for violations of the Act. Further, in cases where household goods are being “held hostage” by a licensed mover after the consumer has paid the originally agreed to freight charges, or when the goods are being held by an unlicensed mover, any peace officer would be authorized to take custody of the goods and release them to the consumer. Another provision would prohibit movers from estimating or collecting charges based on the cubic feet or other volumetric measurement of the shipment.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill, sponsored by the Attorney General’s Office, would help protect consumers from the abusive practices of some household goods carriers.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

None.

DIVISION ANALYSIS (CPSD Division):

The bill addresses two consumer abuses. One is the practice of movers “holding goods hostage.” It occurs when a mover refuses to release the shipper’s goods as a means of extracting additional freight charges. Prior legislation (AB 845 - Statutes of 2003, Chapter 646), and the Commission’s implementation of that legislation (Resolution TL-19040, dated July 8, 2004), sought to deal with this problem. AB 2220 would enhance those protections by authorizing any peace officer (which does not include Commission investigators) to take custody of the goods and return them to the shipper in cases where (1) the shipper has paid a licensed mover the full charges originally agreed to or (2) the mover is unlicensed.

The other abuse concerns movers overcharging shippers by charging rates based on cubic feet rather than on certified actual weight. The Commission’s Maximum Rate Tariff 4 (MAX 4) requires that charges for long distance shipments (those moving over 100 miles) be estimated and collected based on the weight of the shipment. MAX 4 prescribes a method of determining the estimated weight using cubic feet for each item to be moved (e.g., 10 cubic feet for an arm chair x 7 pounds per cubic foot = 70 pounds). Some carriers, however, are collecting charges from the shipper based on shipment volume (which is not verifiable) rather than having the shipment weighed by a certified weighmaster as required by MAX 4. This has led to shippers being subjected to excessive charges. To comport MAX 4 with the bill requirements, the Commission would probably need to prescribe a different method of determining the estimated weight on long distance shipments.

Currently, applicants for a household goods carrier permit are required by law (§ 5135(d)) to submit their fingerprints to the Commission for the purpose of undergoing a criminal background check through the state Department of Justice and the FBI. There may be cases, however, where an applicant is prohibited by law or court order from operating as a household goods carrier, which would not come to light through the criminal background check. (An example of a prohibition under law would be a person in the United States on an immigration visa that prohibits the operation of a business.) The bill would strengthen the application screening process by requiring applicants to attest that they are not barred from acting as a household goods carrier. It would also authorize the Commission to suspend or revoke the permit of a household goods carrier for providing false or misleading information on a permit application.

The Commission is empowered to suspend or revoke the permit of a carrier who is convicted of misdemeanor violations of the Household Goods Carriers Act or of a felony, limited to robbery, burglary, larceny, fraud, or intentional dishonesty for personal gain (§ 5285(d)). So that swift action may be taken to protect consumers, the Commission has delegated to the staff the authority to suspend and revoke permits under these circumstances (Resolution No. L-318, dated June 16, 2005). The bill revises the list of prescribed felonies under § 5285(d) to: robbery, burglary, any form of theft, any form of fraud, extortion, embezzlement, money laundering, forgery, false statements, computer crimes, including violations of Section 502 of the Penal Code, an

attempt to commit any of the offenses described in this subdivision, aiding and abetting or conspiring to commit any of the offenses described in this subdivision, or intentional dishonesty for personal gain. The bill specifies that a felony conviction means a plea of guilty or a conviction following a plea of *nolo contendere* for any of the prescribed felonies involving a transaction for the transportation of used household goods. Further, it provides for automatic permit revocation if the carrier is convicted of a prescribed felony and for automatic permit suspension for five years if an officer, director, or managing agent of the carrier is convicted. (The Commission could lift the suspension if it determines that the carrier did not know of, aid in, or benefit from the conduct.) Any carrier officer, director, managing agent, or employee convicted of a prescribed felony could not be employed in any capacity by any carrier.

Other provisions of the bill would (1) increase the maximum fine the Commission may levy against a licensed carrier from \$20,000 to \$50,000 and (2) clarify that carriers are not exempt from prosecution simply because they voluntarily comply with a request to produce records for inspection by the Commission.

PROGRAM BACKGROUND:

For several years the Commission and the staff have been working diligently to deal with an increasing number of cases of abuse and fraud perpetrated against shippers by household goods carriers, both licensed and unlicensed. Commission actions have included permit suspensions and revocations and the imposition of fines. The Commission has also pursued temporary restraining orders, injunctions, and orders to disconnect telephone service through the courts. The staff has worked closely with the Attorney General's Office and local prosecutors (particularly the Los Angeles City Attorney's Office) to prosecute carriers that violate the law and victimize consumers through their unscrupulous, fraudulent practices. In recognition of the need for action in this area, the Legislature and the Governor last year authorized the addition of 5.5 positions to the Commission's budget to be used for household goods carrier enforcement (which the industry is paying for through an increased regulatory fee).

LEGISLATIVE HISTORY:

AB 845 (Statutes of 2003, Chapter 646) was also sponsored by the Attorney General's Office. Its primary focus was the problem of household goods carriers holding shippers' goods hostage. Parts of AB 2220 strengthen those provisions of AB 845.

Recent federal legislation (Household Goods Movers Oversight Enforcement and Reform Act of 2005) addresses the "hold hostage" issue on interstate shipments and gives the states some power to deal with the problem through civil court action.

FISCAL IMPACT ON THE CPUC:

Minor and absorbable costs. This bill would not involve a new program or require any specific action by the Commission. Some staff time would be involved, however, in revising certain of our procedures. These would be minimal and would not entail expenditure of additional funds. They would include revising Maximum Rate Tariff 4 to adopt a different method of estimating long distance shipments of used household goods, drafting a revised resolution for suspending and revoking carriers convicted of certain crimes, and making a minor revision to the household goods carrier permit application. These tasks would be completed primarily by CPSD staff, although Legal and ALJ Divisions would probably have to be involved to some degree.

STATUS: This bill is set to be heard by the Assembly Transportation Committee on Monday, April 17, 2006.

SUPPORT/OPPOSITION: (as of 3/29/06)

Support: Office of the Attorney General, Bill Lockyer (Sponsor);
California Moving and Storage Association

Opposition: None

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Date: April 5, 2006

BILL LANGUAGE:

BILL NUMBER: AB 2220 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Vargas

FEBRUARY 22, 2006

An act to amend Sections 5133, 5134, 5142, 5258, and 5285 of, and to add Section 5192 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2220, as introduced, Vargas Household goods carriers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Household goods carriers are subject to the jurisdiction and control of the commission under the Household Goods Carriers Act. 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.

Except as specified, a household goods carrier in compliance with this act has a lien on used household goods and personal effects to secure payment of an amount, determined as specified, for transportation and additional services ordered by the consignor, as defined. The act requires 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 the household goods carrier has been tendered that amount, to release the household goods and personal effects upon the request of the consignor or consignee.

This bill would also impose a similar release requirement on 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 that permit or valid operating authority requirement. The bill would, with respect to both release requirements, authorize a peace officer, as defined, if the person fails to release the household goods and personal effects, to take custody of the household goods and personal effects and release them to the consignor or consignee.

(2) The act requires an application for a transportation permit to be in writing, verified under oath, and to be in a form, contain information, and be accompanied by proof of service upon those

interested parties, as required by the commission.

This bill would require the commission to require the applicant to attest in the application to facts demonstrating that the applicant is not barred by law or court order from acting as a household goods carrier.

(3) The act requires the commission to establish or approve rates to be charged by household goods carriers for the transportation of used household goods and personal effects and for related services, as prescribed.

This bill would prohibit a household goods carrier from advertising, quoting, or charging a rate or an amount for the transportation of used household goods and personal effects that is based on the amount of cubic feet or other volumetric unit measurement of those household goods and effects. Under the bill, a household goods carrier that violates that prohibition would not be entitled to any compensation for the transportation of the household goods and effects and would be required to make restitution to the shipper of any compensation collected.

(4) The act authorizes the commission to amend or revoke, in whole or in part, the permit of any household goods, upon application of the permit holder, or to suspend, change, or revoke, in whole or in part, such a permit, upon complaint or on the commission's own initiative, after notice and opportunity to be heard, for failure to comply with the act, any order, rule, or regulation of the commission, or any term, condition, or limitation of the permit. The act authorizes the commission to cancel, suspend, or revoke the permit of any carrier upon the conviction of the carrier for any misdemeanor or for listed felonies.

This bill would authorize permit suspension, change, or revocation for providing false or misleading information on a permit application, and would expand the listed felonies. Under the bill, if a carrier is convicted of a prescribed felony, as defined, the permit of the carrier would be deemed automatically revoked, and if an officer, director, or managing agent is so convicted, the permit would be deemed automatically suspended for five years. The bill would authorize the commission, in the case of automatic suspension, to reinstate the permit, extend the suspension, or revoke the permit, as prescribed. The bill would prohibit an officer, director, managing agency, or employee of the carrier convicted of a prescribed felony from serving in any other capacity with a carrier.

(5) 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, punishable as prescribed.

This bill would make it a violation of the act to hire, retain, or otherwise allow a person who has been convicted of a prescribed offense to serve in any capacity with the carrier.

(6) By establishing new violations of the act, which would be a misdemeanor, this bill would create new crimes, thereby imposing a state-mandated local program.

(7) The act authorizes the commission, as an alternative to the cancellation, revocation, or suspension of an operating permit, to impose a fine not to exceed \$20,000.

This bill would raise the authorized fine limit to \$50,000.

(8) 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:

SECTION 1. 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 advertising, soliciting, offering, or entering into an agreement regarding the transportation of used household goods and personal effects, unless the following is 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. 2. Section 5134 of the Public Utilities Code is amended to read:

5134. Application for ~~permits~~ a permit shall be in writing, verified under oath, and shall be in ~~such~~ a form, contain ~~such~~ information, and be accompanied by proof of service upon ~~such~~ those interested parties, as required by the commission ~~requires~~. The commission shall require the applicant to attest in the application to facts demonstrating that the applicant is not barred by law or court order from acting as a household goods carrier.

SEC. 3. 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. No lien attaches 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) 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.

(e) Nothing in this section affects 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.

(f) 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.

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

(h) 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.

(i) 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.

SEC. 4. Section 5192 is added to the Public Utilities Code, to read:

5192. A household goods carrier shall not advertise, quote, or charge a rate or an amount for the transportation of used household goods and personal effects that is based on the amount of cubic feet or other volumetric unit measurement of those household goods and effects. In addition to any other remedy, a household goods carrier that violates this section shall not be entitled to any compensation for the transportation of the household goods and effects and shall make restitution to the shipper of any compensation collected.

SEC. 5. Section 5258 of the Public Utilities Code is amended to read:

5258. No person shall be excused from attending and testifying or from producing any book, document, paper, or account in any investigation or inquiry by or hearing before the commission or any commissioner or examiner, or in obedience to the ~~subpena~~ subpoena of the commission, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of this chapter, when ordered to do so, upon the ground ~~that the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which, under oath, he has testified or produced~~

~~documentary evidence before the commission, or in obedience to its subpoena, or in any such cause or proceeding~~ of that person's privilege against self-incrimination, but if the privilege applies and the person claiming the privilege has properly asserted it, no information disclosed or any evidence derived from that information shall be used against that person in any criminal proceeding . No person so testifying shall be exempt from prosecution or punishment for any perjury committed by ~~him~~ that person in his or her testimony.

SEC. 6. Section 5285 of the Public Utilities Code is amended to read:

5285. (a) The *commission may suspend the permit* of any household goods carrier ~~may be suspended~~ after notice and an opportunity to be heard , if the carrier knowingly and willfully files a false report ~~which~~ that understates revenues and fees.

(b) The *commission may amend or revoke, in whole or in part,* the permit of any household goods carrier ~~may~~ , upon application of the permit holder thereof, ~~be amended or revoked, in whole or in part,~~ or may *suspend, change, or revoke, in whole or in part, such a permit* , upon complaint or on the commission's own initiative, after notice and opportunity to be heard ~~, be suspended, changed, or revoked, in whole or in part,~~ for *providing false or misleading information on an application for a permit or for failure to comply with any provision* of this chapter or with any order, rule, or regulation of the commission or with any term, condition, or limitation of the permit. A household goods carrier ~~which~~ that requests a hearing within 30 days after the date of receiving the notice and opportunity to be heard shall be granted a hearing. The *commission may suspend the right to operate under any household goods carrier permit* ~~may be suspended by the commission~~ , upon reasonable notice of not less than 15 days to the holder without hearing or other proceedings, for failure to comply, and until compliance, with Section 5161 or with any order, rule, or regulation of the commission.

(c) As an alternative to the cancellation, revocation, or suspension of an operating permit or permits, the commission may impose upon the holder of the permit or permits a fine of not more than ~~twenty~~ *fifty* thousand dollars ~~—(\$20,000)—~~ *(\$50,000)* . All fines collected shall be deposited at least once each month in the State Treasury to the credit of the General Fund.

(d) The commission may cancel, suspend, or revoke the permit of any carrier upon the conviction of the carrier of any misdemeanor under this chapter while holding operating authority issued by the commission, or the conviction of the carrier or any of its officers of a felony while holding operating authority issued by the commission, limited to robbery, burglary, ~~larceny~~ *any form of theft* , *any form of fraud, extortion, embezzlement, money laundering, forgery, false statements, computer crimes, including violations of Section 502 of the Penal Code, an attempt to commit any of the offenses described in this subdivision, aiding and abetting or conspiring to commit any of*

the offenses described in this subdivision, or intentional dishonesty for personal gain.

(e) (1) As used in this subdivision, "convicted of a prescribed felony" means a plea or verdict of guilty or a conviction following a plea of nolo contendere for any felony described in subdivision (d) in connection with or arising from a transaction for the transportation of used household goods or personal effects, or for an attempt, aiding and abetting, or conspiring to commit any of those felonies.

(2) If a carrier is convicted of a prescribed felony, the permit of the carrier shall be deemed automatically revoked.

(3) If an officer, director, or managing agent of the carrier is convicted of a prescribed felony, the permit of the carrier shall be deemed automatically suspended for a period of five years. If the commission determines that the carrier did not have knowledge of, participate in, direct, aid and abet, authorize, or ratify the conduct of the person convicted and did not in any manner benefit from that conduct, the commission may reinstate the permit on terms the commission determines to be appropriate in the interest of justice and to ensure the protection of the public. The commission may also extend the suspension or revoke the permit as provided in subdivision (d).

(4) If an officer, director, managing agent, or employee of the carrier is convicted of a prescribed felony, the person may not be an officer, director, managing agent, or employee or serve in any other capacity with a carrier.

(5) It is a violation of this chapter for a carrier that knows or has reason to know that a person has been convicted of a prescribed felony to hire, retain, or otherwise allow that person to serve as an officer, director, managing agent, or employee or in any other capacity with the carrier.

SEC. 7. 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.

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