

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 16 , 2007

To: The Commission
(Meeting of May 24, 2007)

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

Subject: **AB 1310 (Leno) Charter-party carriers.**
As Amended: May 14, 2007

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would require the California Public Utilities Commission (CPUC) to investigate limousine-for-hire and passenger charter transportation businesses upon complaint from consumers, licensed charter-party carriers, and law enforcement agencies. This bill would codify the Commission's authority to order the disconnection of any telephone number used in advertisements by unlicensed charter-party carriers and to issue citations that require violators to cease and desist from unlawful advertising.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill would codify, and arguably strengthen, the CPUC's authority to enforce state and local laws protecting the public from unlicensed charter-party operators.

SUMMARY OF SUGGESTED AMENDMENTS:

The May 14, 2007 version of the bill reflects the Commission's requested amendments.

DIVISION ANALYSIS (OGA/CPSD Division):

This bill, as currently drafted, conforms to the Commission's current practice of investigating those businesses reported to the CPUC through consumer complaints, licensed industry complaints, and law enforcement requests.

As staff resources permit, the Commission will examine "static" forms of advertising (e.g., annual yellow page directories) and conduct ongoing surveillance of advertising

that changes on a continuous basis (e.g., Internet ads) in addition to investigating reported offenders.

The Commission will also investigate businesses that fail to come into compliance with the law after being informed to do so and gather evidence and prepare reports to support civil or criminal prosecution of such businesses.

While the Commission already has regulatory authority to request the court to disconnect the telephone numbers listed in illegal advertisements of unlicensed charter-party carriers, codification of this authority would provide for greater administrative ease before the courts. Judges naturally look to statute for guidance, and this bill would codify the statutory process for household goods movers, which has withstood legal challenge.

PROGRAM BACKGROUND:

Currently, the Commission is required to investigate every business that advertises in yellow page directories to (1) determine which of the businesses is required to hold a charter-party carrier permit or certificate, but does not hold such authority, (2) inform any business not holding the required permit or certificate that it is in violation of law, and (3) institute civil or criminal proceedings against any business that continues to be in noncompliance. The Commission does not have sufficient staff to fulfill this mandate.

The Commission does, though, have an ongoing, viable enforcement program in place to investigate and act against unlicensed limousine and other charter transportation businesses that are identified through means other than review of advertising. The majority of the investigations are commenced upon receipt of a complaint, usually from a consumer, a legitimate transportation business, or another regulatory or law enforcement agency. These complaints often provide considerably more information about the offending business than can be obtained through review of advertising. This increases the likelihood of identifying the business and bringing it into compliance, or if necessary, prosecuting the business. The Commission also gathers information through other means of investigation, such as conducting inspections at airports and other locations where limousines typically operate.

LEGISLATIVE HISTORY:

Unknown at this time.

FISCAL IMPACT:

Implementation of this bill would require the assignment of one additional investigator (Assoc. Transportation Representative) and one additional support staff (Program Technician III) on an ongoing basis at an annual cost of \$144,770, which would require an increase in fees for passenger vehicle operators.

STATUS:

This bill will be heard by the Assembly Appropriations Committee on May 16, 2007.

SUPPORT/OPPOSITION:

Support: Greater California Livery Association (sponsor).

Oppose: None on file.

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Date completed: May 16, 2007

BILL LANGUAGE:

BILL NUMBER: AB 1310 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 14, 2007
AMENDED IN ASSEMBLY APRIL 11, 2007

INTRODUCED BY Assembly Member Leno

FEBRUARY 23, 2007

An act to amend Sections 5371.5, 5386, and 5413.5 of, to add Section 5371.6 to, and to repeal Section 5386.1 of, the Public Utilities Code, relating to charter-party carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as amended, Leno. Charter-party carriers.

(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. The act requires the commission to investigate every business listed in every classified directory of telephone subscribers as furnishing limousine-for-hire or passenger charter transportation service for compensation in motor vehicles to determine compliance with the certificate or permit requirements and for the purpose of instituting specified civil or criminal proceedings in the event of noncompliance.

This bill, instead, would require the commission, upon receipt of a complaint from a consumer or interested party, or upon the request of a peace officer or transportation inspector, as specified, to take those investigative and enforcement actions with regard to ~~every~~ any business that advertises, as defined, limousine-for-hire or passenger charter transportation service for compensation in motor vehicles.

(2) The act generally requires every charter-party carrier of passengers to state the number of its permit or a specified identifying symbol in every written or oral advertisement of the services it offers. The act requires every charter-party carrier operating a limousine to state the number of its permit or license plate number in every written or oral advertisement of the services it offers. The commission is authorized to impose a fine of not more than \$5,000 for each violation if it finds, after hearing, that any person or corporation is operating as a charter-party carrier of passengers without a valid certificate or permit, or fails to include in any public advertisement the number of the permit or specified identifying symbol.

This bill, instead, would require every charter-party carrier of passengers, including a charter-party carrier operating a limousine, to include the number of its certificate or permit in every written or oral advertisement of the services it offers. The bill would

define "advertisement" for the purpose of this requirement. The bill would authorize the commission to impose that fine if it finds, after hearing, that any person or corporation is operating as a charter-party carrier of passengers, including a charter-party carrier operating a limousine, without a valid certificate or permit, or fails to include, the number of the certificate or permit in any written or oral advertisement.

~~— The bill would authorize the commission to impose the fine by citation. The bill would authorize the commission, if the commission has probable cause to believe that a person or entity has advertised without including the required certificate or permit number, to issue a citation that requires the violator to cease and desist from the unlawful advertising and that requires the telephone corporation furnishing telephone service to the violator to terminate the telephone service for any telephone number contained in the unlawful advertisement.~~

(3) *The existing Household Goods Carrier Act provides for the termination of telephone service by a telephone corporation or telegraph corporation to unlicensed household goods carriers and places enforcement of this prohibition with the commission.*

This bill would provide for the termination of telephone service by a telephone corporation or telegraph corporation to a charter-party carrier of passengers without a valid certificate or permit and places enforcement of this prohibition with the commission.

~~—(3) A~~

(4) *Under existing law, a violation of the ~~act~~ Passenger Charter-Party Carriers Act, or a violation of an order or direction of the commission issued pursuant to the act, is a crime.*

Because the provisions of this bill would be a part of the act and because a violation of those provisions or of an order or decision of the commission implementing those provisions would be a crime, the bill would impose a state-mandated local program by creating new crimes.

~~—(4)~~

(5) *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 5371.5 of the Public Utilities Code is amended to read:

5371.5. (a) ~~The commission shall immediately investigate every~~ *Upon receipt of a complaint from a consumer or interested party, or upon the request of a person designated as a peace officer pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or upon the request of a transportation inspector authorized to impound a vehicle pursuant to*

Section 53075.61 of the Government Code, the commission shall investigate any business that advertises limousine-for-hire or passenger charter transportation service for compensation in motor vehicles. Pursuant to this investigation, the commission shall do all of the following:

(1) Determine which businesses, if any, are required to have in effect a passenger charter-party carrier certificate or permit pursuant to Section 5371 but do not have the required certificate or permit.

(2) Inform any business not having a required certificate or permit that it is in violation of law.

(3) Within 60 days of informing the business pursuant to paragraph (2), institute civil or criminal proceedings, or both, pursuant to Article 6 (commencing with Section 5411) or any other applicable law.

(b) For the purposes of this section, "advertises" includes the undertaking of any action described in subdivision (b) of Section 5386.

SEC. 2. Section 5371.6 is added to the Public Utilities Code , to read:

5371.6. (a) The Legislature finds and declares that advertising and use of telephone service is essential for charter-party carriers of passengers to obtain business and to conduct intrastate passenger transportation services. Unlawful advertisements by unlicensed charter-party carriers of passengers has resulted in properly licensed and regulated charter-party carriers of passengers competing with unlicensed charter-party carriers of passengers using unfair business practices. Unlicensed charter-party carriers of passengers have also exposed citizens of the state to unscrupulous persons who portray themselves as properly licensed, qualified, and insured charter-party carriers of passengers. Many of these unlicensed charter-party carriers of passengers have been found to have operated their vehicles without insurance or in an unsafe manner, placing the citizens of the state at risk.

*(b) (1) The Legislature finds and declares that the termination of telephone service utilized by unlicensed charter-party carriers of passengers is essential to ensure the public safety and welfare. Therefore, the commission should take enforcement action as specified in this section to disconnect telephone service of unlicensed charter-party carriers of passengers who unlawfully advertise passenger transportation services in yellow page directories and other publications. The enforcement actions provided for by this section are consistent with the decision of the California Supreme Court in *Goldin v. Public Utilities Commission* (1979) 23 Cal.3d 638.*

(2) For purposes of this section, a telephone corporation or telegraph corporation, or a corporation that holds a controlling interest in the telephone or telegraph corporation, or any business that is a subsidiary or affiliate of the telephone or telegraph corporation, that has the name and address of the subscriber to a telephone number being used by an unlicensed charter-party carrier of passengers shall provide the commission, or an authorized officer or employee of the commission, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order, for the purposes of this subdivision, if the magistrate has made the findings required by subdivision (c).

(c) A telephone or telegraph corporation shall refuse telephone service to a new subscriber and shall disconnect telephone service of

an existing subscriber only after it is shown that other available enforcement remedies of the commission have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized officer or employee of the commission of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the subscriber is advertising or holding out to the public to perform, or is performing, charter-party carrier of passengers transportation services without having in force a permit or certificate issued by the commission authorizing those services, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the laws requiring a charter-party carrier of passengers permit or certificate. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been or are to be used in the commission or facilitation of holding out to the public to perform, or in performing, charter-party carrier of passengers transportation services without having in force a permit or certificate issued by the commission authorizing those services, and that, absent immediate and summary action, a danger to public welfare or safety will result.

(d) Any person aggrieved by any action taken pursuant to this section shall have the right to file a complaint with the commission and may include therein a request for interim relief. The commission shall schedule a public hearing on the complaint to be held within 21 calendar days of the filing and assignment of a docket number to the complaint. The remedy provided by this section shall be exclusive. No other action at law or in equity shall accrue against any telephone or telegraph corporation because of, or as a result of, any matter or thing done or threatened to be done pursuant to this section.

(e) At any hearing held on a complaint filed with the commission pursuant to subdivision (d), the commission staff shall have the right to participate, including the right to present evidence and argument and to present and cross-examine witnesses. The commission staff shall have both the burden of providing that the use made or to be made of the telephone service is to hold out to the public to perform, or to assist in performing, services as a charter-party carrier of passengers, or that the telephone service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the certification or permitting requirements applicable to charter-party carriers of passengers and that the character of the acts are such that, absent immediate and summary action, a danger to public welfare or safety will result, and the burden of persuading the commission that the telephone services should be refused or should not be restored.

(f) The telephone or telegraph corporation, immediately upon refusal or disconnection of service in accordance with subdivision (c), shall notify the subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of the commission and the writing of a magistrate, and shall include with the notice a copy of this section, a copy of the writing of the magistrate, and a statement that the customer or subscriber may request information from the commission at its San Francisco or Los Angeles office concerning any provision of this section and the manner in which a complaint may be filed.

(g) The provisions of this section are an implied term of every contract for telephone service. The provisions of this section are a part of any application for telephone service. Applicants for, and subscribers and customers of, telephone service have, as a matter of law, consented to the provisions of this section as a consideration for the furnishing of the telephone service.

(h) As used in this section, the terms "person," "customer," and "subscriber" include a subscriber to telephone service, any person using the telephone service of a subscriber, an applicant for telephone service, a corporation, as defined in Section 204, a "person" as defined in Section 205, a limited liability company, a partnership, an association, and includes their lessees and assigns.

(i) (1) As used in this section, "telephone corporation" means a "telephone corporation" as defined in Section 234.

(2) As used in this section, "telegraph corporation" means a "telegraph corporation" as defined in Section 236.

(j) As used in this section "authorized officer or employee of the commission" includes the executive director of the commission or any commission employee designated pursuant to paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code.

~~SEC. 2.~~ SEC. 3. Section 5386 of the Public Utilities Code is amended to read:

5386. (a) Every charter-party carrier of passengers, including a charter-party carrier that operates a limousine, shall include the number of its permit or certificate in every written or oral advertisement of the services it offers.

(b) For the purposes of this subdivision, "advertisement" includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing the placement of any sign or marking on or in any building or structure, or in any media form, including newspaper, magazine, radiowave, satellite signal, or any electronic transmission, or in any directory soliciting charter-party transportation services subject to this chapter.

~~SEC. 3.~~ SEC. 4. Section 5386.1 of the Public Utilities Code is repealed.

~~SEC. 4.~~ SEC. 5. Section 5413.5 of the Public Utilities Code is amended to read:

5413.5. (a) ~~(1)~~ - Whenever the commission, after hearing, finds that any person or corporation is operating as a charter-party carrier of passengers, including a charter-party carrier operating a limousine, without a valid certificate or permit, or fails to include in any written or oral advertisement the number of the certificate or permit required by Section 5386, the commission may impose a fine of not more than five thousand dollars (\$5,000) for each violation. The commission may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the commission. The commission may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

~~(2) The commission may impose by citation the fines, assessments, and interest described in subdivision (a). The commission shall adopt a general order describing the operation of any citation system and shall make that general order available on its Internet Web site.~~

~~—(3) If, upon investigation, the commission has probable cause to believe that a person or entity has violated Section 5386 by advertising without including the required certificate or permit number, the commission may issue a citation that requires the violator to cease and desist from the unlawful advertising and that requires the telephone corporation furnishing services to the violator to terminate the telephone service, without referral to any subsequently obtained telephone number, for any telephone number contained in the unlawful advertisement.~~

~~—(4) The good faith compliance by a telephone corporation with an order to terminate service pursuant to paragraph (3) constitutes a defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.~~

(b) Whenever the commission, after hearing, finds that any person or corporation is operating a charter-party carrier of passengers as a taxicab without a valid certificate or permit in violation of an ordinance or resolution of a city, county, or city and county, the commission may impose a fine of not more than five thousand dollars (\$5,000) for each violation. The commission may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the commission. The commission may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

~~SEC. 5.~~ SEC. 6. 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.