

M e m o r a n d u m

Date: April 27, 2009

To: The Commission
(Meeting of May 7, 2009)

From: Pamela Loomis, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 709 (Lieu and Swanson) Charter-party carriers of passengers: driver background checks. Amended April 22, 2009**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

The bill would require charter-party carriers that provide transportation to or from an airport to have their drivers undergo a criminal history background check for certain specified crimes. The bill would also require the Commission to issue a credential for those drivers once the background checks have been completed. Airports would be prohibited from requiring criminal background checks on charter-party carrier drivers.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- The Commission recognizes the authors' and sponsors' intent to improve security at airports and safety to passengers of charter-party carrier vehicles. However, as currently written, this bill falls short in that regard. At the same time, the bill prohibits airports from conducting their own, possibly more thorough, background checks of drivers operating vehicles at the airports. Giving charter-party carriers responsibility for issuing identification credentials to their drivers could seriously undermine the entire program.
- A better approach would be to coordinate with California's major airports on how to conduct a uniform standard for driver background checks.

SUMMARY OF SUGGESTED AMENDMENTS:

- This bill should be amended to address several concerns, which are explained in detail below.

DIVISION ANALYSIS (Consumer Protection & Safety Division):

- The Commission is responsible for licensing charter-party carriers of passengers under the Passenger Charter-Party Carriers' Act. Charter-party carriers furnish limousines-for-hire or passenger charter transportation service in motor vehicles. Charter-party carriers do not include vehicles on a set schedule or between fixed termini, taxi cabs, car rentals, or a city bus. Further, charter-party carriers typically provide different sized vehicles to take a scheduled group of people to another location and/or back. The group would usually reserve the vehicle as a group, and would not reserve a "seat" individually.
- The requirements for obtaining a charter-party carrier permit or certificate include filing evidence of automobile liability and workers' compensation insurance, undergoing a California Highway Patrol (CHP) safety inspection (for vehicles seating more than 10), participating in the Commission's drug and alcohol testing program for drivers, and enrolling drivers in the Department of Motor Vehicles (DMV) Pull-Notice System (a program for monitoring the driving records of employee drivers).

This bill would expand the Commission's responsibilities by requiring the Commission to establish a fingerprint-based criminal background investigation process to be employed by charter-party carriers for their drivers. As a condition for being issued a charter-party carrier permit or certificate, an applicant would have to certify that its drivers have successfully completed a criminal history background check and have been issued an identification credential.

- The Commission has an investigative staff responsible for the enforcement of laws and regulations applicable to charter-party carriers. Carriers found to have committed violations are subject to administrative fines imposed by the Commission as well as criminal and civil penalties levied by the courts. The Commission's investigative staff includes five positions authorized in the 2007-08 Budget to be used specifically for passenger carrier enforcement activities at the state's airports.
- This bill would require Commission staff investigators assigned to airport enforcement to assist airport police to ensure that only "qualified" drivers operate at the airports. Carriers that employ drivers who have not completed a background check would be subject to a penalty up to \$2,000 per violation, or suspension or revocation of operating authority for repeated violations. If a driver fails to produce the identifying credential at the request of law enforcement officers at the airport, the driver and the carrier would be subject to a penalty of up to \$250 per incident.

- The proposed criminal background checks would apparently improve security at the airports. The seven crimes for which a driver could be disqualified relate very specifically to airport operations or aircraft:
 - Unlawful transportation of a hazardous material.
 - Carrying a weapon or explosive aboard an aircraft.
 - Unlawful entry into an aircraft or airport area that serves air carrier or foreign air carriers contrary to established security requirements.
 - Destruction of an aircraft or aircraft facility.
 - Violence at international airports.
 - Unlawful possession, use, sale, distribution, or manufacture of an explosive, incendiary device, or assault weapon.
 - Felony arson.
- Some airports reportedly are considering establishing their own programs for conducting criminal background checks of charter-party carrier drivers. While drivers do not have access to non-public airport areas, the airports nonetheless believe the drivers should be checked and carry an identification credential in the interest of homeland security. Presently, some carriers serve several airports. The limousine industry does not want carrier drivers to be subject to multiple airport background checks. It would rather have the Commission, as the state licensing agency for charter-party carriers, carry out this function.
- However, there are several areas where the bill falls short or requires clarification or correction:
 - 1) An applicant for a charter-party carrier permit or certificate that will operate at airports would be required to certify that its drivers have successfully completed a criminal history background check and have been issued an identification credential (which must include the carrier's Commission-issued license number). An applicant is not authorized to commence operations until a permit or certificate is issued. Therefore, there is a time gap between getting a permit and getting credentialed.
 - 2) A significant number of existing charter-party carriers, and the majority of new applicants for authority, have only one vehicle, which they drive themselves. The bill is not clear how these carriers would fit into the new background check scheme. It refers to drivers, or prospective drivers, employed by a charter-party carrier. Are charter-party carrier owner-drivers supposed to submit their fingerprints to Department of Justice (DOJ) for the purpose of conducting a background check on themselves? Will they be issuing themselves an identification credential?
 - 3) Passenger stage corporations (PSCs) are not included in the bill. The majority of the 200+ licensed PSCs operate at airports, most conducting door-to-door shuttle service (such as SuperShuttle).

- 4) The bill provides that a person who is disqualified to be employed as a carrier driver may request a hearing by the Commission to challenge the accuracy of the criminal history background investigation. The accuracy of criminal history information is a matter the affected person would have to resolve with DOJ (which has a process in place for challenging criminal history information), not the Commission.
 - 5) The list of disqualifying crimes is very narrow. In all likelihood, very few drivers will be found to have violated any of these crimes. In this regard, the checks will provide little in the way of true public protection. A driver could have been convicted of such serious crimes as murder, robbery, burglary, rape, or assault, and not face disqualification under terms of the bill.
- An alternative means of addressing the issue would be for the airports to conduct the driver background checks, to issue a credential, and (importantly) to accept one another's credential as valid driver identification. Airports are already equipped to conduct criminal history checks and issue identification credentials. This is a much more secure method of ensuring that drivers undergo a background check. The security process under this bill could be undermined if charter-party carriers issue credentials to drivers that have not completed a background check. While those carriers would be penalized if caught, they may take the risk rather than go through the time and expense of checking each driver before employing them for airport service. (The checks cost about \$70 - \$80 each, of which part goes to the DOJ and the other part goes to the Live Scan Provider, which allows fingerprints to be electronically transmitted to the DOJ in a matter of seconds.)

PROGRAM BACKGROUND:

- Criminal background checks of drivers has been a topic of discussion between the limousine industry and airports for several years. It is actually part of a larger ongoing dispute between the industry and some of the major airports about the degree to which the airports can regulate limousine services that operate on airport property. Public Utilities Code Section 5374 addresses this issue, but the statute is not entirely clear on the limits of the airports' authority. The industry wants to put the issue of criminal background checks to rest by placing responsibility for a program squarely with the Commission as the state licensing authority for charter-party carriers.

LEGISLATIVE HISTORY:

- AB 2858 (Ridley-Thomas, 2004) would have required that drivers and key employees of passenger stage corporations and charter-party carriers to obtain security clearances and provide uniformity in credentialing among charter-party carriers. The bill failed in the Senate Public Safety Committee.

- AB 1645 (Ridley-Thomas, 2003) would have established a process at the Commission to ensure greater security is exercised when companies hire and employ key employees and drivers to operate vehicles carrying paying passengers to and from airports. The bill died in the Assembly Appropriations Committee.

STATUS:

AB 709 is scheduled to be heard in the Assembly Utilities and Commerce Committee on April 27, 2009.

SUPPORT/OPPOSITION:

Support: Greater California Livery Association (sponsor)

Opposition: None on file

STAFF CONTACTS:

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Date: April 27, 2009

BILL LANGUAGE:

BILL NUMBER: AB 709 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 22, 2009

INTRODUCED BY Assembly ~~Member~~ ~~Hill~~
Members Lieu and Swanson

FEBRUARY 26, 2009

An act to amend Sections 5371.4 and 5374 of, and add Section 5374.1 to, the Public Utilities Code, relating to charter-party carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 709, as amended, ~~Hill~~ Lieu .
Charter-party carriers of passengers: driver background checks.
The Transportation Security Administration of the United States Department of Transportation, administered by the Under Secretary of Transportation for Security, is responsible for carrying out measures to ensure aviation security, including hiring, training, and retention of personnel for the security screening of passengers and baggage and conducting background checks for individuals with access to secure areas of airports regularly serving an air carrier holding a certificate issued by the Secretary of Transportation. Individuals with specified criminal backgrounds or other factors as determined by the under secretary, are disqualified from employment with an air carrier or airport operator, where they will have access to secured areas. The under secretary is required to adopt measures to improve secured-area access control, including working with airport operators to strengthen access control points in secured areas, including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas.
The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Charter-party carriers of passengers are subject to the jurisdiction and control of the commission under the Passenger Charter-Party Carriers' Act. The act requires a charter-party carrier of passengers to obtain from the commission a certificate that public convenience and necessity require the operation or a permit issued by the commission, and to operate within the state on a prearranged basis, as defined. The act prohibits the commission from issuing or renewing a permit unless the applicant has met specified requirements, including the submission of specified filing fees. Existing law prohibits the governing body of any airport from imposing any vehicle safety, licensing, or insurance requirements on charter-party carriers operating limousines that are

more burdensome than those imposed by the commission, but authorizes the governing board to require a charter-party carrier operating limousines to obtain an airport permit for operating authority at the airport, and to adopt and enforce reasonable and nondiscriminatory local airport rules, regulations, and ordinances pertaining to access, use of streets and roads, parking, traffic control, passenger transfers, trip fees, and occupancy, and the use of buildings and facilities, that are applicable to charter-party carriers operating limousines on airport property.

This bill would require the commission to adopt rules for criminal history background checks of drivers, or applicants to be a driver, for a charter-party carrier of passengers that provides passenger transportation to and from any airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation (commercial airport) and would disqualify persons convicted of specified crimes from being drivers. ~~The bill would require the commission to develop and make available to charter party carriers of passengers a list of qualified vendors approved to investigate and certify the background of employees and candidates for employment as drivers.~~ The bill would

require that the rules adopted by the commission do the following:

(1) require that each driver, and each applicant who is offered employment as a driver, of a charter-party carrier providing passenger transportation to and from a commercial airport submit fingerprints and other pertinent information ~~to the approved vendor,~~ (2) ~~require the vendor to transmit the fingerprints to the Department of Justice,~~ (3) ~~require the Department of Justice to conduct the check, and forward a request for federal level criminal offender record information to the Federal Bureau of Investigation,~~ (4) ~~require the Department of Justice to provide specified information to the vendor,~~ (5) ~~require the vendor to review all information received from the Department of Justice and forward that information to the charter party carrier of passengers,~~ (6)

for the purpose of obtaining criminal history information, (2)

require that a charter-party carrier of passengers only employ as drivers those individuals that have successfully completed the criminal history background investigation, ~~-(7)-~~

(3) require the charter-party carrier of passengers provide an identification credential to each employee, or applicant that becomes an employee, that successfully completes the criminal background investigation process, and ~~-(8)-~~ (4)

require all drivers that are employed by a charter-party carrier of passengers to carry identification credentials at all times on airport property. The bill would require any applicant for certification or a permit to operate as a charter-party carrier of passengers to certify that its drivers have successfully completed a criminal history background check and have been issued an identification credential in accordance with the above-described requirements. The bill would prohibit the governing body of any airport from imposing requirements on charter-party carriers providing transportation to and from the airport regarding criminal background checks on drivers, but would authorize the governing body to request a list of all drivers to whom identification credentials have been issued.

Under existing law, a violation of the Passenger Charter-Party Carriers' Act or an order or direction of the commission pursuant to the act is a crime.

Because the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

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. It is the intent of the Legislature to reaffirm the state's commitment to homeland security with respect to charter-party carriers of passengers and their employees who transport passengers to and from airports served by commercial air carriers. The purpose of this act is to ensure that uniform procedures and rules are in place consistent with the airport security programs operated by well-run airports in this state, to assure the traveling public that drivers of charter-party carriers of passengers have been through security clearances.

SEC. 2. Section 5371.4 of the Public Utilities Code is amended to read:

5371.4. (a) The governing body of any city, county, or city and county may not impose a fee on charter-party carriers operating limousines. However, the governing body of any city, county, or city and county may impose a business license fee on, and may adopt and enforce any reasonable rules and regulations pertaining to operations within its boundaries for, any charter-party carrier domiciled or maintaining a business office within that city, county, or city and county.

(b) The governing body of any airport may not impose vehicle safety, vehicle licensing, or insurance requirements on charter-party carriers operating limousines that are more burdensome than those imposed by the commission. However, the governing board of any airport may require a charter-party carrier operating limousines to obtain an airport permit for operating authority at the airport.

(c) Notwithstanding subdivisions (a) and (b), the governing body of any airport may adopt and enforce reasonable and nondiscriminatory local airport rules, regulations, and ordinances pertaining to access, use of streets and roads, parking, traffic control, passenger transfers, trip fees, and occupancy, and the use of buildings and facilities, that are applicable to charter-party carriers operating limousines on airport property.

(d) This section does not apply to any agreement entered into pursuant to Sections 21690.5 to 21690.9, inclusive, between the governing body of an airport and charter-party carriers operating limousines.

(e) The commission shall conduct an audit and review of the annual gross revenues earned by charter-party carriers operating limousines for the purpose of ascertaining whether the imposition of additional fees based on a charter-party carrier's gross annual revenues would place an undue administrative or financial burden on the

charter-party carrier industry. The commission shall report its findings to the Legislature on or before June 30, 1992.

(f) The governing body of any airport shall not impose a fee based on gross receipts of charter-party carriers operating limousines.

(g) Notwithstanding subdivisions (a) to (f), inclusive, nothing in this section prohibits a city, county, city and county, or the governing body of any airport, from adopting and enforcing reasonable permit requirements, fees, rules, and regulations applicable to charter-party carriers of passengers other than those operating limousines.

(h) Notwithstanding subdivisions (a) to (f), inclusive, a city, county, or city and county may impose reasonable rules for the inspection of waybills of charter-party carriers of passengers operating within the jurisdiction of the city, county, or city and county, for purposes of verifying valid prearranged travel.

(i) For the purposes of this section, "limousine" includes any sedan or sport utility vehicle, of either standard or extended length, with a seating capacity of not more than 10 passengers including the driver, used in the transportation of passengers for hire on a prearranged basis within this state.

(j) The governing body of an airport may not require criminal history background checks on a driver for a charter-party carrier providing transportation to and from airports regarding criminal background checks on drivers, but may request a list of all drivers to whom identification credentials have been issued pursuant to Section 5374.1.

SEC. 3. Section 5374 of the Public Utilities Code is amended to read:

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

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

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

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

(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation.

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

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

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

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

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

(J) For any applicant providing transportation to and from any airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation, it certifies that its drivers have successfully completed a criminal history background check and have been issued an identification credential in accordance with Section 5374.1.

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

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

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

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

SEC. 4. Section 5374.1 is added to the Public Utilities Code, to read:

5374.1. (a) (1) The commission shall adopt rules requiring that a complete criminal history background check be conducted and an identification credential be issued for each employee, or applicant for employment, who is, or is applying to be, a driver for a charter-party carrier of passengers that provides passenger transportation to and from any airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation. The criminal history background check shall use criminal history information to determine whether employees and applicants for employment as drivers have a conviction for a crime that disqualify them from being drivers because they would be a threat to the safety of the public if employed as drivers of a charter-party carrier of passengers.

(2) The rules shall require that a fingerprint-based criminal history background investigation be used to determine past convictions for the following specified criminal acts that disqualify the employee or applicant for employment from serving as a driver of passengers to the airport:

(A) Unlawful transportation of a hazardous material (49 U.S.C. Sec. 46312).

(B) Carrying a weapon or explosive aboard an aircraft (49 U.S.C. Sec. 46505).

(C) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements (49 U.S.C. Sec. 46314).

(D) Destruction of an aircraft or aircraft facility (18 U.S.C. Sec. 32).

(E) Violence at international airports (18 U.S.C. Sec. 37).

(F) Unlawful possession, use, sale, distribution, or manufacture of an explosive, incendiary device, or assault weapon.

(G) Felony arson.

(3) Crimes where the conviction was obtained, or incarceration was completed, more than 10 years prior to the date of application or employment shall not be used or considered in making employment determinations.

(4) For purposes of this section, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

~~—(b) The commission shall develop and make available to charter party carriers of passengers a list of qualified vendors approved to investigate and certify the criminal history background of employees and candidates for employment as drivers for charter party carriers of passengers that provide passenger transportation to and from an airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation.~~

~~—(c)~~

(b) The rules shall require that a charter-party carrier of passengers shall only employ an individual as a driver of passengers to and from any airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation if that individual has successfully completed the criminal history background investigation. This requirement shall apply retroactively to drivers employed on or after January 1, 2009, and to all future applicants. Employment of individuals as drivers that have not successfully completed the criminal background investigation constitutes a violation of the rules and shall subject the charter-party carrier of passengers to civil penalties not to exceed two thousand dollars (\$2,000) per incident. Repeated violations of this subdivision shall be grounds for revocation of the charter-party carrier's certification or permit.

~~—(d)~~

(c) The rules shall require that a charter-party carrier of passengers require each driver, and each applicant who is offered employment as a driver, of passengers to and from any airport regularly serving an air carrier holding a certificate issued by the United States Secretary of Transportation, to submit fingerprints and other pertinent information, as required by the rules ~~— to the approved vendor selected by the charter party carrier of passengers,~~ for the purpose of obtaining criminal history background information.

~~—(e) The vendor shall transmit the fingerprints to the Department of Justice. The Department of Justice shall conduct the check, and forward a request for federal level criminal offender record information to the Federal Bureau of Investigation. The Department of Justice shall provide the following information to the vendor:~~

~~—(1) Every conviction rendered against the applicant.~~

~~—(2) Every arrest for an offense for which the Department of Justice has determined that the applicant is presently awaiting trial, or whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~—(3) Every warrant for the arrest of the applicant.~~

~~—(f) The vendor shall review all information received from the Department of Justice and forward that information to the charter party carrier of passengers. All~~

~~(d) All information received by the vendor and charter party carrier of passengers commission shall be held as confidential, except that if employment is terminated or denied based on criminal history information, the charter party carrier of passengers commission shall notify the employee or applicant of the disqualification, and provide a copy of the history response and an explanation of the termination to the employee, or the denial of employment to the applicant. Employees and agents of a charter-party carrier of passengers are prohibited from communicating to any other person any information related to the disqualification of a driver, or applicant for driver , except that upon request by law enforcement or an airport authority, the charter party carrier of passengers shall provide access to the criminal history background information . A person who is disqualified pursuant to this section may request a hearing by the commission to challenge the accuracy of the criminal history background investigation.~~

~~—(g)~~

(e) The charter-party carrier of passengers shall provide an identification credential to each employee, or applicant that becomes employee, that successfully completes the criminal history background investigation process. The identification credential shall include the person's legal name, a photograph of the person identified, the name of the charter-party carrier, and the appropriate license number issued by the commission.

~~—(h)~~

(f) The rules adopted by the commission shall provide that all drivers that are employed by a charter-party carrier of passengers shall carry identification credentials at all times on airport property, and shall produce the credentials for inspection upon the request of law enforcement officers at the airport property. Failure to produce the credential at the request of law enforcement officers at the airport is a violation of the rules and shall subject the driver and the charter-party carrier of passengers to civil penalties not to exceed two hundred and fifty dollars (\$250) per incident. Repeated violations of this subdivision shall be grounds for revocation of the charter-party carrier's certificate or permit.

SEC. 5. 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.

