

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 21, 2011, 2011

To: The Commission
(Meeting of March 24, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 45 (Hill) Charter-party carriers of passengers: alcoholic beverages: open containers.**
As introduced: December 6, 2010

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH TECHNICAL AMENDMENTS

SUMMARY OF BILL:

The bill extends to all charter-party carrier vehicles the protections against underage drinking of alcoholic beverages that currently apply only to limousines. It also makes a third or subsequent offense by a driver or carrier official of the prohibition against carrying an open container of alcoholic beverage in a vehicle when a minor is on board a misdemeanor.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The bill addresses the problem of underage drinking in charter-party vehicles by extending current statutory safeguards that apply only to limousines to all charter-party vehicles, including those being promoted by carriers as “party buses.”

SUMMARY OF SUGGESTED AMENDMENTS:

To maintain consistency between the Public Utilities Code and the Vehicle Code, revise Vehicle Code Section 23229.1(a) and (b) by changing “limousine” to “vehicle used in the transportation of passengers.”

Revise Section 5384.5(c) to refer to the “carrier’s *certificate or permit*” since the carrier could be operating under either type of charter-party authority.

Also note that while the focus of the author's concern seems to be party buses, charter-party buses used for other purposes would be subject to the same requirements, for example:

- buses chartered by a public or private school to transport pupils on field trips, to sports games, etc. (faculty or other school staff usually accompany the pupils on these trips)
- school buses used to transport pupils to and from private schools (school buses operated under contract with a public school district appear to fall under the exemption in Section 5384(c) because they are not subject to regulation as charter-party carriers)
- buses used to conduct round-trip sightseeing services when minor passengers are on board (who usually are in the company of a parent)

To comply with the law as proposed, the driver will need to read the statement required by Section 5384.1 and have each student or other minor passenger sign the statement. If it is not the author's intention that Section 5384.1 apply in these cases, the bill should be amended accordingly.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

The California Public Utilities Commission (CPUC) issues permits and certificates authorizing charter-party carriers to conduct passenger transportation services. Charter-party carriers use various types of vehicles in their operations, such as luxury sedans and limousines, vans, and buses. Public Utilities Code Section 5384.1 was enacted by 1988 legislation in an effort to prevent the consumption of alcoholic beverages by minors while riding in a limousine, a problem that arises most often at high school prom season. In summary, the statute requires the driver of a limousine operated by a charter-party carrier to:

- ascertain whether any passenger is under the age of 21;
- if any passenger is under 21, read a statement that carrying and drinking alcoholic beverages in the vehicle is prohibited and that consumption in the vehicle will result in termination of the service and return of the passengers to the point of origin; and
- after reading the statement, have every minor passenger sign the statement.

At the same time, Section 5384.5 was enacted to provide that if a limousine driver or a carrier officer, director, agent, or employee is convicted of having an open container of alcoholic beverage in the vehicle when a minor passenger is being transported (violation of Vehicle Code Sections 23225/23229.1(a)), the Commission may fine the carrier up to \$2,000 for a first offense, assess a fine of up to \$2,000 or suspend the carrier's operating authority for a second offense, and shall revoke the authority for a third offense. Vehicle Code Section 23229.1(c) requires the courts to notify the Commission of any such conviction.

In recent years some carriers have started using larger vehicles that have seating arrangements and amenities (e.g., video and music systems, disco lights, dance poles, food and beverage service capabilities) that make them suitable for parties and entertainment. Carriers promote the use of “party buses” for services such as nightclub tours, bachelor(ette) parties, and birthday celebrations. While used primarily to carry adult passengers, some carriers will use party buses to transport groups of minors or minors in the company of adults. In either case, the problem of underage drinking can arise. The staff has received reports that some carriers and their drivers are not being vigilant in preventing underage drinking or are simply ignoring it when it occurs. Specific incidents of underage drinking prompted the author to introduce the bill.

Extending the safeguards currently in place to prevent underage drinking in limousines to all charter-party vehicles would give the Commission’s staff and local law enforcement agencies an enforcement tool that is not currently available for dealing with underage drinking on party buses.

PROGRAM BACKGROUND:

The Commission’s transportation enforcement staff has authority to issue administrative citations with a fine of up to \$20,000 against charter-party carriers for violations of the law or Commission rules and regulations. The staff has not (at least in recent years) received any notices from the courts of a violation of Vehicle Code Section 5384.5 by a limousine driver or a company official.

The staff has been participating in vehicle inspections (including vehicles operated as party buses) with other law enforcement agencies at locations where underage drinking or other alcohol-related problems occur. These include inspections conducted periodically by the “Hollywood Strike Force” in Hollywood and surrounding areas and by the San Diego Area Law Enforcement Task Force in the Pacific Beach and Mission Beach areas of San Diego, where large numbers of university students are attracted to the lively nightlife. Any violations by a charter-party carrier (e.g., operations during suspension or failure to properly identify vehicles) that are observed by the staff are dealt with subsequently by the issuance of a citation or warning notice. If Section 5384.1 is revised to cover all charter-party vehicles, the staff will check compliance with the statute’s requirements when conducting these types of inspections. Additionally, the staff is prepared to issue an administrative citation whenever it receives a notice of violation from the courts pursuant to Section 5384.5. These tasks can be accomplished with existing staff at no additional cost to the Commission.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

AB 45 (Hill) is scheduled to be heard before the Assembly Utilities and Commerce Committee on April 4th, 2011.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: AB 45 INTRODUCED
 BILL TEXT

INTRODUCED BY Assembly Member Hill

DECEMBER 6, 2010

An act to amend Sections 5384.1 and 5384.5 of the Public Utilities Code, and to add Section 40000.20 to the Vehicle Code, relating to charter-party carriers of passengers.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as introduced, Hill. Charter-party carriers of passengers: alcoholic beverages: open containers.

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, except as specified, requires the driver of any limousine for hire operated by a charter-party carrier of passengers (carrier) under a valid certificate or permit to comply with prescribed requirements relating to alcoholic beverages, including ascertaining whether any passenger is under the age of 21 years, reading to the passenger a statement that the consumption of any alcoholic beverage in the vehicle is unlawful, requiring such a passenger to sign the statement, and, if a minor passenger, after signing the statement, is found to be, or to have been, consuming any alcoholic beverage during the course of the ride, immediately terminating the contract of hire and returning the passenger to the point of origin. The act also subjects the carrier to specified civil penalties, based on the number of offenses, for conviction of a driver, or any officer, director, agent, or employee of the carrier, of a violation of the Vehicle Code that prohibits storage of an opened container of an alcoholic beverage in a motor vehicle.

This bill would expand the application of those alcoholic beverage provisions concerning passengers under the age of 21 years by applying those requirements to the driver of any vehicle used in the transportation of passengers for hire operated by a permitted or certificated carrier. The bill would make the 3rd or subsequent violation of the open container prohibition by a driver of any vehicle used in the transportation of passengers for hire operating under a valid certificate or permit, or any officer, director, agent, or employee of a carrier operating vehicles used in the transportation of passengers for hire under such a certificate or permit, a misdemeanor. The bill, by creating a new crime, would impose a state-mandated local program.

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

reimbursement.

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

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

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

SECTION 1. This act shall be known and may be cited as the Brett Studebaker Law.

SEC. 2. Section 5384.1 of the Public Utilities Code is amended to read:

5384.1. (a) The driver of any ~~limousine~~ vehicle used in the transportation of passengers for hire operated by a charter-party carrier of passengers under a valid certificate or permit shall do all of the following:

(1) The driver shall ascertain whether any passenger is under the age of 21 years.

(2) If any passenger is under the age of 21 years, the driver shall read to the passenger a statement that the consumption of any alcoholic beverage in the vehicle is unlawful, that no alcoholic beverage may be transported in the passenger compartment of the vehicle, that all alcoholic beverages are required to be carried in the vehicle trunk or other locked compartment, and that, if during the course of the ride any minor is found to be, or to have been, consuming any alcoholic beverage, the contract will be terminated and the customer will be brought back to the point of origin of the ride.

(3) After reading the statement described in paragraph (2) to every passenger under the age of 21 years, the driver shall require every passenger under the age of 21 years to sign the statement. The ~~limousine~~ operator of the vehicle shall retain the signed statement for the period required by the commission.

(4) If any minor passenger, after signing a statement pursuant to paragraph (3), is found to be, or to have been, consuming any alcoholic beverage during the course of any ride subject to this section, the driver shall immediately terminate the contract of hire and shall return the passengers to the point of origin of the ride.

(b) Any failure of a driver to comply with subdivision (a) that results in the conviction of the driver of a violation of Section 23225 of the Vehicle Code, shall be subject to the penalties prescribed in Section 5384.5.

(c) Notwithstanding any other provision of law, this section does not apply to the driver of any bus, taxicab, or van exempted from this chapter pursuant to Section 5353, and it does not prohibit a parent or legal guardian from consuming alcoholic beverages in a ~~limousine~~ vehicle used in the transportation of passengers for hire while accompanied by his or her minor children.

SEC. 3. Section 5384.5 of the Public Utilities Code is amended to read:

5384.5. If the driver of any ~~limousine~~ vehicle used in the transportation of passengers for hire operating under a valid certificate or permit, or any officer, director, agent, or employee of a charter-party carrier of passengers

operating ~~limousines~~ vehicles used in the transportation of passengers for hire under such a certificate or permit, is convicted of a violation of Section 23225 of the Vehicle Code, the commission, after a hearing, shall do the following:

(a) For a first offense, the commission may impose a civil penalty of not more than two thousand dollars (\$2,000) upon the carrier, as determined appropriate by the commission.

(b) For a second offense, the commission may impose a civil penalty of not more than two thousand dollars (\$2,000) upon the carrier or suspend the carrier's permit for not more than 30 days, or both, as determined appropriate by the commission.

(c) For a third offense, the commission shall revoke the carrier's permit. *A third or subsequent offense shall also be punishable pursuant to Section 40000.20 of the Vehicle Code.*

SEC. 4. Section 40000.20 is added to the Vehicle Code, to read:

40000.20. A third or subsequent violation of Section 23225, relating to storage of an opened container of an alcoholic beverage, by a driver of any vehicle used in the transportation of passengers for hire, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code), or by any officer, director, agent, or employee of a charter-party carrier of passengers operating vehicles used in the transportation of passengers for hire under such a certificate or permit, is a misdemeanor.

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.