

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** March 20, 2012

**To:** The Commission  
(Meeting of March 22, 2012)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 2118 (Butler) – Household goods carriers.**  
**As introduced: February 23, 2012**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT AS SPONSOR**

**SUMMARY OF BILL:**

The bill would improve the California Public Utilities Commission's (CPUC's) ability to address the significant problem of unlicensed household goods carriers offering their services to consumers on the Internet or through other advertising media. Specifically, it would facilitate the removal of Internet advertising and the termination of telephone service of unlicensed carriers, increase the criminal penalties for unlawful operations, and clarify that arranging household goods transportation as a broker requires a license and adherence to consumer protection rules and regulations. It would also require a carrier's Internet advertising to contain a link to a CPUC-hosted Web site and make it a violation to give false information about licensure, membership in an association or business location.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

The CPUC's licensing and regulation of household goods carriers provides consumers, the motoring public, and carrier employees with many valuable protections. These protections are undermined when carriers operate outside the law without a permit and in violation of consumer protection statutes and regulations. The bill would provide new and stronger enforcement tools to address this problem. Consumers who use the Internet to find a mover would benefit in particular from provisions of the bill that relate to this form of advertising.

**SUMMARY OF SUGGESTED AMENDMENTS:**

Section 5314.7 is added to the Code to provide a penalty of \$5,000 per day when a carrier falsifies licensure, membership in an association, or location. The section should

be clear about whether the CPUC is empowered to impose the penalty or if it must be collected through civil court action.

**DIVISION ANALYSIS (Consumer Protection and Safety Division):**

The transportation of used household goods within California requires a permit issued by the CPUC. The requirements to obtain a permit include filing evidence of automobile liability, cargo, and workers' compensation insurance coverage, establishing by written examination knowledge of the CPUC's Maximum Rate Tariff 4 (MAX 4), undergoing a criminal history background check through the California Department of Justice and the F.B.I., and demonstrating ability to operate and maintain vehicles in compliance with safety laws and regulations. Carriers are required to observe the maximum rates and consumer protection provisions contained in MAX 4, including rules and regulations relating to estimating practices and the issuance of a "not to exceed" price, shipment valuation and insurance, processing and settlement of loss and damage claims, delays in delivery, and the release of goods once the consumer has paid the agreed upon charge.

Some carriers conduct operations without a permit. While at one time carriers relied on the telephone Yellow Pages as a primary source of business, today prospective customers seek out carriers on the Internet, including the very popular Craigslist. In certain instances the party offering the services does not actually provide the transportation, but acts as an intermediary ("broker") to arrange the transportation, often with an unlicensed carrier. Unsuspecting consumers are frequently subjected to abusive practices by the unlicensed carrier or the broker who arranged the transportation. One of the most egregious forms of abuse is to refuse to deliver the goods until the consumer pays additional, unjustified charges, a practice commonly referred to as "holding goods hostage." If the carrier is unlicensed, or a third party is involved, the consumer may find the situation extremely difficult to resolve due to a lack of information about the business or its location.

Current law (Pub. Util. Code section 5133) provides that unless a carrier holds a permit, it shall not engage in, or attempt to engage in, the transportation of used household goods, including "advertising, soliciting, offering, or entering into an agreement" regarding the transportation. Some parties claim they are acting as a "broker" and therefore are not subject to licensing as a carrier. The bill would clarify that someone arranging transportation as a broker is subject to licensing as a household goods carrier. This will assure that the consumer is afforded all of the MAX 4 protections, starting with the initial contact when the consumer is required to receive an important informational booklet about moving within California.

Unlicensed carriers exploit the relative anonymity afforded by the Internet. At present there is no legal process in place for the CPUC to remove a carrier's Internet advertising, whether it be the carrier's own Web site or a posting on another Web site. The bill would empower the CPUC to order the Web site's provider or the source of the listing to remove the site or listing.

The CPUC is authorized to seek the termination of telephone service of an unlicensed carrier. (Pub. Util. Code section 5322.) This enforcement tool was more effective when the Yellow Page directory was the main source of business for carriers because once the listed number was terminated, the carrier had few other viable options for soliciting business. Termination of telephone service can still have some effect today regardless of where the number appears by at least temporarily impeding the carrier's business operations. However, there have been instances where a telephone company has refused to provide subscriber information to the CPUC without first receiving the subscriber's consent, based on the company's interpretation of Pub. Util. Code section 2891. The bill would resolve this problem.

It is a misdemeanor to conduct operations as a household goods carrier without a permit or to otherwise violate provisions of the Household Goods Carriers Act, punishable by a fine of not more than \$1,000 or imprisonment in the county jail for not more than three months. (Pub. Util. Code section 5311.) If the violation is willful, the penalties are \$10,000 or one year imprisonment. As a deterrent to unlicensed carrier operations, the bill would increase the maximum penalty (for a non-willful violation) from \$1,000 to \$5,000.

The CPUC has much useful information available to consumers about household goods moving on its Web site. Requiring carriers to provide a link to the CPUC's site would assist consumers who are not already familiar with the CPUC's regulation of household goods carriers and the many protections the regulations afford. Consumers would also benefit from the prohibition against making false statements about membership in an association (such as the California Moving & Storage Association), holding a license from the CPUC, or a business location.

#### **PROGRAM BACKGROUND:**

Consumers who engage an unlicensed carrier (either knowingly or unwittingly) potentially subject themselves to excessive charges, uninsured losses, and other service difficulties. Unlicensed carriers have an unfair cost advantage over licensed carriers by possibly not having the same level of automobile liability insurance as licensed carriers, and usually operating without cargo insurance to cover loss or damage to a consumer's goods or workers' compensation insurance in the event of injury or death to an employee. (Because of the high risk of injury to workers, household goods movers pay among the highest premiums for workers' compensation insurance coverage.) As a consequence, licensed companies lose business to unlicensed operators, and the revenue loss may make it more difficult for them to fully comply with insurance, regulatory, and vehicle safety standards.

The CPUC's transportation enforcement staff receives many complaints about unlicensed carriers, many directly from licensed carriers or from the California Moving & Storage Association. Staff endeavors to investigate the complaints and to take enforcement action if possible. It encounters many impediments in doing so, however.

Often the staff is unable to obtain enough information about the defendant carrier or to secure adequate evidence of operations to support either a criminal prosecution (assuming a local prosecutor would even be willing to pursue a case) or issuance of an administrative citation. When appropriate, the staff does act to disconnect telephone service (10 cases in 2011), but carriers may find it easy to obtain a new number and resume their Internet or other form of advertising. Ultimately, the most resource-efficient means of curtailing an unlicensed carrier's operation may be the cessation of its Internet advertising, something the bill seeks to accomplish.

**LEGISLATIVE HISTORY:**

None.

**FISCAL IMPACT:**

None.

**STATUS:**

AB 2118 is pending hearing in the Assembly Utilities and Commerce Committee.

**SUPPORT/OPPOSITION:**

None on file.

**STAFF CONTACTS:**

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**BILL LANGUAGE:**

BILL NUMBER: AB 2118 INTRODUCED  
BILL TEXT

INTRODUCED BY Assembly Member Butler

FEBRUARY 23, 2012

An act to amend Sections 5133, 5311, and 5322 of, and to add Sections 5144, 5314.7, and 5323 to, the Public Utilities Code, relating to household goods carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2118, as introduced, Butler. Household goods carriers.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Under existing law, the Household Goods Carriers Act, household goods carriers are subject to the jurisdiction and control of the commission. 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. The act declares that it is not to be construed as a regulation of interstate or foreign commerce, except as permitted under the United States Constitution and the acts of Congress.

This bill would additionally prohibit a household goods carrier from arranging as a broker, as defined, for the transportation of used household goods and personal effects. This bill would permit the commission to order an Internet Web site provider or the source of a posting on the Internet Web site offering service requiring a license to order that the provider or the source of the listing remove the Internet Web site or listing offering unlicensed service, as prescribed. This bill would require a household goods carrier with an Internet Web site to add a link to that site that directs consumers to an Internet Web site hosted by the commission that promotes consumer rights and protection.

Existing law requires telephone companies and related entities, as specified, upon demand and the order of a magistrate, to provide the commission, or an authorized official of the commission, access to the name and address of the subscriber to a telephone number being use by an unlicensed household goods carrier. Existing law prescribes the circumstances under which telephone corporations may release information regarding residential subscribers without their written consent.

This bill would require telephone companies, as prescribed, to provide this access to the commission as specified above, without the written consent of the subscriber.

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, and if the violation is not willful, is punishable by fine of not more than \$1,000 or by imprisonment in the county jail as prescribed, or both.

This bill would provide that the fine for this misdemeanor is instead not more than \$5,000.

This bill would also provide that a household goods carrier that falsifies licensure, membership in an association, or location is liable for a civil penalty of not more than \$5,000 per day of violation.

Because a violation of the act or an order of the commission is a crime, this bill would impose a state-mandated local program by expanding the scope of a 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. 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, *arranging as a broker*, or entering into an agreement regarding the transportation of used household goods and personal effects, unless both of the following are 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.

(e) *For the purposes of this section, "broker" means a person engaged for others in the act of arranging, for compensation, the transportation of used household goods by a motor vehicle over the highways of this state for or on behalf of a shipper, consignor, or a consignee.*

SEC. 2. Section 5144 is added to the Public Utilities Code, to read:

5144. Every household goods carrier shall add a link to the household goods carrier's Internet Web site, if any, that directs all consumers to an Internet Web site hosted by the commission that promotes consumer rights and protection.

SEC. 3. Section 5311 of the Public Utilities Code is amended to read:

5311. (a) 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 any provision of this chapter, 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, and is punishable by

fine of not more than ~~one~~ five thousand dollars ~~(\$1,000)~~ (\$5,000) or by imprisonment in the county jail for not more than three months, or both. If a violation is willful, each willful violation is punishable by fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the county jail for not more than one year, or both.

(b) Any person who violates subdivision (a) of Section 5133, is guilty of a misdemeanor, and is punishable by fine of not more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or both, for each violation.

SEC. 4. Section 5314.7 is added to the Public Utilities Code, to read:

5314.7. Every household goods carrier that falsifies licensure, membership in an association, or location is subject to a penalty of not more than five thousand dollars (\$5,000) per day that the carrier is in violation of this section.

SEC. 5. Section 5322 of the Public Utilities Code is amended to read:

5322. (a) The Legislature finds and declares that advertisement and use of telephone service is essential for household goods carriers to obtain business and conduct intrastate moving services. The unlawful advertisement by unlicensed household goods carriers has required properly licensed and regulated household goods carriers to compete with unlicensed household goods carriers using unfair business practices. Unlicensed household goods carriers have also exposed citizens of the State of California to unscrupulous persons who portray themselves as properly licensed, qualified, and insured household goods carriers. Many of these unlicensed household goods carriers have been found to have perpetrated acts of theft, fraud, and dishonesty upon unsuspecting citizens of the State of California.

(b) (1) The Legislature finds and declares that the termination of telephone service utilized by unlicensed household goods carriers 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 household goods carriers who unlawfully advertise moving services in yellow page directories and other publications. The enforcement action provided for by this section is consistent with the decision of the Supreme Court of the State of California in *Goldin, et al. v. Public Utilities Commission et al.*, (1979) 23 Cal. 3d 638.

(2) ~~For~~ *Notwithstanding Section 2891*, for purposes of this section, a telephone utility, or a corporation that holds a controlling interest in the telephone utility, or any business that is a subsidiary or affiliate of the telephone utility, that has the name and address of the subscriber to a telephone number being used by an unlicensed household goods carrier shall provide the commission, or an authorized official 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, when the magistrate has made the findings required by subdivision (c).

(c) Any telephone utility operating under the jurisdiction of the commission shall refuse telephone service to a new customer and shall disconnect telephone service of an existing customer 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 official 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 customer is advertising or holding out to the public to perform, or is performing, household goods carrier services without having in force a permit 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 household goods carrier permit. 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, household goods carrier services without having in force a permit 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 utility 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 on complaint 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 household goods carrier, 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 licensing laws as applicable to household goods carriers and that the character of the acts is 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 utility, immediately upon refusal or disconnection of service in accordance with subdivision (c), shall notify the customer or 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) Each contract for telephone service, by operation of law, shall be deemed to contain the provisions of this section. The provisions shall be deemed to be a part of any application for telephone service. Applicants and customers for telephone service shall be deemed to have consented to the provisions of this section as a consideration for the furnishing of the service.

(h) The terms "person," "customer," and "subscriber," as used in

this section, include a subscriber to telephone service, an applicant for that service, a corporation, a company, a partnership, an association, and an individual.

(i) The term "telephone utility," as used in this section, includes a "telephone corporation" and a "telegraph corporation," as defined in Division 1 (commencing with Section 201).

(j) The term "authorized official," as used in this section, includes the Executive Director of the Public Utilities Commission or any commission employee designated pursuant to paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code.

SEC. 6. Section 5323 is added to the Public Utilities Code, to read:

5323. If the commission determines after an investigation that an unlicensed household goods carrier has an Internet Web site or other posting on an Internet Web site offering service requiring a license, the commission may order the Internet Web site's provider or the source of the listing, if under the jurisdiction of the state, to remove the Internet Web site or the listing offering the unlicensed service.

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.