

AMENDED IN SENATE JUNE 19, 2014

AMENDED IN SENATE JUNE 10, 2014

AMENDED IN SENATE MAY 29, 2014

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Nazarian
(Coauthor: Assembly Member Hernández)

February 20, 2013

An act to amend Section 5374 of, to add Sections 5374.3 and 5374.4 to, and to repeal Sections 5385.5 and 5391 of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Nazarian. Charter-party carriers of passengers: ~~online-enabled application or platform. permit requirements: drivers.~~

~~(1) The~~

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, ~~and imposes subject to various other requirements. Existing law imposes certain penalties for violation of the act.~~ The act defines a charter-party carrier of passengers as every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state and includes any person, corporation, or other

entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver.

This bill would prohibit the commission from issuing or renewing a permit or certificate to a charter-party carrier of passengers unless the applicant, in addition to existing requirements, participates in the Department of Motor Vehicles Employer Pull Notice Program and provides for mandatory Department of Justice background checks of every driver who is either employed by or under contract to the applicant, as specified.

~~Pursuant to existing law, the commission has adopted rules and regulations relating to public safety risks in the operation of transportation network companies. Those rules and regulations define a transportation network company as an organization that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using their personal vehicles.~~

~~This bill would establish specified requirements applicable to a charter-party carrier of passengers and any carrier that utilizes an online-enabled application or platform to connect passengers with drivers. The bill would require a charter-party carrier of passengers to participate in the Department of Motor Vehicle's Employer Pull Notice Program. The~~

The bill would also require any driver who is either under contract to, or employed by, the carrier to operate a vehicle used in transportation for compensation under the act to furnish to the Department of Justice 2 classifiable fingerprint cards which the carrier would be required to forward to the Department of Justice to conduct a criminal history background check, as specified and would prohibit the carrier from employing or contracting with a driver who fails that check, as specified.

~~The bill would require assurances of protection against liability applicable to charter-party carriers under existing law to be primary and carried by the permit or certificate holder. The bill would require the commission to develop a standard disclosure agreement with respect to drivers who make themselves available for services with carriers that utilize an online-enabled application or platform to connect passengers with drivers.~~

~~The bill would make expressly applicable to carriers that use an online-enabled application or platform to connect passengers with drivers certain provisions relating to the issuance of decals.~~

The bill would require that drivers employed or initially retained after January 1, 2015, be subject to background checks and mandatory drug and alcohol testing prior to employment or retention and that employees hired before January 1, 2015, complete a background check and drug and alcohol test prior to January 1, 2016.

(2) Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(3) 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:

1 SECTION 1. Section 5374 of the Public Utilities Code is
2 amended to read:

3 5374. (a) (1) Before a permit or certificate is issued or
4 renewed, the commission shall require the applicant to establish
5 reasonable fitness and financial responsibility to initiate and
6 conduct or continue to conduct the proposed or existing
7 transportation services. The commission shall not issue or renew
8 a permit or certificate pursuant to this chapter unless the applicant
9 meets all of the following requirements:

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

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

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

22 (D) It participates in ~~a program~~ *the Department of Motor*
23 *Vehicle's Employer Pull Notice Program* to regularly check the

1 driving records of all persons, whether employees or subcarriers,
 2 operating vehicles used in transportation for compensation.

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

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

10 (G) It has filed with the commission the certificate of workers'
 11 compensation insurance coverage or statement required by Section
 12 5378.1.

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

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

21 (J) Subparagraphs (C), (F), and (H) do not apply to a
 22 charter-party carrier of passengers engaged in the provision of a
 23 hired driver service when a rented motor vehicle is being operated
 24 by the hired driver.

25 (K) *It provides for mandatory Department of Justice criminal*
 26 *background checks to check the criminal history of any driver who*
 27 *is either under contract to, or employed by, the applicant to operate*
 28 *a vehicle used in transportation for compensation pursuant to the*
 29 *following:*

30 (i) *Upon accepting employment by or entering into a contract*
 31 *with a carrier, a driver shall obtain two classifiable fingerprint*
 32 *cards for submission to the Department of Justice. The driver shall*
 33 *submit to the carrier the fingerprint cards and a processing fee*
 34 *payable to the department. The carrier shall forward the*
 35 *classifiable fingerprint cards and the fee to the Department of*
 36 *Justice. The department shall forward one classifiable fingerprint*
 37 *card to the Federal Bureau of Investigation for purposes of a*
 38 *background check. The processing fee shall be in an amount to*
 39 *cover the actual costs to the department.*

1 (ii) *In lieu of classifiable fingerprint cards provided for in this*
2 *section, the carrier may authorize drivers to submit their*
3 *fingerprints into an electronic fingerprinting system administered*
4 *by the Department of Justice. Drivers who submit their fingerprints*
5 *by electronic means shall have their fingerprints entered into the*
6 *system through a terminal operated by a law enforcement agency*
7 *or other facility authorized by the Department of Justice to conduct*
8 *electronic fingerprinting. The enforcement agency responsible for*
9 *operating the terminal may charge a fee sufficient to reimburse it*
10 *for the costs incurred in providing this service.*

11 (iii) *Upon receipt of a driver's electronic or hard card*
12 *fingerprints as provided in this section, the Department of Justice*
13 *shall disseminate the following information to the carrier:*

14 (I) *Every conviction rendered against the driver.*

15 (II) *Every arrest for an offense for which the driver is presently*
16 *awaiting trial, whether the driver is incarcerated or has been*
17 *released on bail or on his or her own recognizance pending trial.*

18 (iv) *The carrier shall request from the Department of Justice*
19 *subsequent notification service, as provided pursuant to Section*
20 *11105.2 of the Penal Code.*

21 (v) *A driver shall be denied employment or have his or her*
22 *contract voided if he or she is required by any law to register as*
23 *a sex offender or has been convicted of any felony involving any*
24 *type of sexual offense; the manufacture, possession for sale,*
25 *transportation, or distribution of narcotics, controlled substances,*
26 *or addictive or dangerous drugs; force, violence, threat or*
27 *intimidation against persons; kidnapping; forgery, fraud, larceny,*
28 *extortion, burglary, robbery, or theft; credit card fraud; possession*
29 *of a firearm or dangerous weapon; resisting or obstructing a peace*
30 *officer, public officer, or emergency medical technician; or use of*
31 *another vehicle for hire in the commission of a felony. Equivalent*
32 *out-of-state violations shall be considered.*

33 (vi) *As used in this section, "driver" has the same meaning as*
34 *defined in Section 305 of the Vehicle Code.*

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

39 (3) *The commission may require, as a precondition to the*
40 *issuance of a permit or certificate, the procurement of a*

1 performance bond sufficient to facilitate the collection of fines,
 2 penalties, and restitution related to enforcement actions that can
 3 be taken against the applicant.

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

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

12 ~~SECTION 1. Section 5374 of the Public Utilities Code is~~
 13 ~~amended to read:~~

14 ~~5374. (a) (1) Before a permit or certificate is issued or~~
 15 ~~renewed, the commission shall require the applicant to establish~~
 16 ~~reasonable fitness and financial responsibility to initiate and~~
 17 ~~conduct or continue to conduct the proposed or existing~~
 18 ~~transportation services. The commission shall not issue or renew~~
 19 ~~a permit or certificate pursuant to this chapter unless the applicant~~
 20 ~~meets all of the following requirements:~~

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

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

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

33 ~~(D) It has a safety education and training program in effect for~~
 34 ~~all employees or subcarriers operating vehicles used in~~
 35 ~~transportation for compensation.~~

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

1 ~~(F) It has filed with the commission the certificate of workers'~~
2 ~~compensation insurance coverage or statement required by Section~~
3 ~~5378.1.~~

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

9 ~~(H) Subparagraphs (C), (E), and (G), do not apply to a~~
10 ~~charter-party carrier of passengers engaged in the provision of a~~
11 ~~hired driver service when a rented motor vehicle is being operated~~
12 ~~by the hired driver.~~

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

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

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

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

30 ~~SEC. 2.— Section 5374.3 is added to the Public Utilities Code,~~
31 ~~to read:~~

32 ~~5374.3. The commission shall develop a standard disclosure~~
33 ~~agreement with respect to drivers who make themselves available~~
34 ~~for services with charter-party carriers of passengers that utilize~~
35 ~~an online-enabled application or platform to connect passengers~~
36 ~~with drivers. The standard disclosure agreement shall be part of a~~
37 ~~written agreement between the driver and the charter-party carrier~~
38 ~~of passengers, and shall provide information to the driver about~~
39 ~~insurance coverage and limits of liability coverage and advise the~~
40 ~~driver that their personal automobile insurance policy may not~~

1 provide coverage when they are operating a vehicle as part of that
2 charter-party carrier of passengers operation. The standard
3 disclosure agreement shall be in writing and shall be signed by
4 each driver participating in this type of arrangement with a
5 charter-party carrier of passengers. Standard disclosure agreement
6 records of charter-party carriers of passengers shall be subject to
7 review and audit by the commission at its discretion.

8 SEC. 3. Section 5374.4 is added to the Public Utilities Code,
9 to read:

10 5374.4. (a) Notwithstanding Section 5374, the following
11 requirements shall apply to a charter party carrier of passengers,
12 including any carrier that utilizes an online-enabled application or
13 platform to connect passengers with drivers:

14 (1) It participates in the Department of Motor Vehicle's
15 Employer Pull Notice Program to regularly check the driving
16 record of any driver who is either under contract to, or employed
17 by, the carrier to operate a vehicle used in transportation for
18 compensation.

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

22 (3) It provides for mandatory Department of Justice criminal
23 background checks to check the criminal history of any driver who
24 is either under contract to, or employed by, the carrier to operate
25 a vehicle used in transportation for compensation pursuant to the
26 following:

27 (A) Upon accepting employment by a charter-party carrier of
28 passengers or entering into a contract with a carrier that utilizes
29 an online-enabled application or platform to connect passengers
30 with drivers, a driver shall obtain two classifiable fingerprint cards
31 for submission to the Department of Justice. The driver shall submit
32 the fingerprint cards and a processing fee payable to the department
33 to the carrier. The carrier shall forward the classifiable fingerprint
34 cards and the fee to the Department of Justice. The department
35 shall forward one classifiable fingerprint card to the Federal Bureau
36 of Investigation for purposes of a background check. The
37 processing fee shall be in an amount to cover the actual costs of
38 the department.

39 (B) In lieu of classifiable fingerprint cards provided for in this
40 section, the carrier may authorize drivers to submit their

1 fingerprints into an electronic fingerprinting system administered
2 by the Department of Justice. Drivers who submit their fingerprints
3 by electronic means shall have their fingerprints entered into the
4 system through a terminal operated by a law enforcement agency
5 or other facility authorized by the Department of Justice to conduct
6 electronic fingerprinting. The enforcement agency responsible for
7 operating the terminal may charge a fee sufficient to reimburse it
8 for the costs incurred in providing this service.

9 (C) Upon receipt of a driver's electronic or hard card fingerprints
10 as provided in this section, the Department of Justice shall
11 disseminate the following information to the carrier:

12 (i) Every conviction rendered against the driver.

13 (ii) Every arrest for an offense for which the driver is presently
14 awaiting trial, whether the driver is incarcerated or has been
15 released on bail or on his or her own recognizance pending trial.

16 (D) The carrier shall request from the Department of Justice
17 subsequent notification service, as provided pursuant to Section
18 11105.2 of the Penal Code.

19 (E) A driver shall be denied employment or have his or her
20 contract voided if he or she is required by any law to register as a
21 sex offender or has been convicted of any felony involving: any
22 type of sexual offense; the manufacture, possession for sale,
23 transportation, or distribution of narcotics, controlled substances,
24 or addictive or dangerous drugs; force, violence, threat or
25 intimidation against persons; kidnaping; forgery, fraud, larceny,
26 extortion, burglary, robbery, or theft; credit card fraud; possession
27 of a firearm or dangerous weapon; resisting or obstructing a peace
28 officer, public officer, or emergency medical technician; or use of
29 another vehicle for hire in the commission of a felony. Equivalent
30 out-of-state violations shall be considered.

31 (F) As used in this section, "driver" has the same meaning as
32 defined in Section 305 of the Vehicle Code.

33 (4) It provides decals to be applied to all vehicles used in
34 transportation for compensation. For motor vehicles designed to
35 carry not more than eight passengers, including the driver, the
36 commission shall issue a suitable decal for purposes of Section
37 5385, for each vehicle (A) registered with the commission and
38 operated by a charter-party carrier of passengers holding a valid
39 permit or certificate of public convenience and necessity or (B)
40 used by a driver under contract to any carrier that uses an

1 online-enabled application or platform to connect passengers with
2 drivers. Carriers using an online-enabled application or platform
3 shall register any vehicle used in the transportation of passengers
4 for compensation with the commission and that vehicle shall
5 display the commission-issued identifying symbol. The decal with
6 an identifying symbol shall be a minimum size of two and one-half
7 inches by six inches, and shall be affixed to the lower right hand
8 corner of the rear bumper of the vehicle.

9 (5) ~~The carrier's commercial auto liability insurance is primary.~~
10 ~~The commission shall, in granting permits or a certificate pursuant~~
11 ~~to this chapter, require the charter-party carrier of passengers to~~
12 ~~procure, and to continue in effect during the life of the permit or~~
13 ~~certificate, adequate protection against liability imposed by law~~
14 ~~upon the charter-party carrier of passengers for the payment of~~
15 ~~damages for personal bodily injuries, including death resulting~~
16 ~~therefrom, protection against a total liability of the charter-party~~
17 ~~carrier of passengers on account of bodily injuries to, or death of,~~
18 ~~more than one person as a result of any one accident, and protection~~
19 ~~against damage or destruction of property. The requirements for~~
20 ~~these assurances of protection against liability shall be primary~~
21 ~~and shall be carried by the permit or certificate holder. The~~
22 ~~minimum requirements for these assurances of protection against~~
23 ~~liability shall not be less than the requirements that are applicable~~
24 ~~to operations conducted under certificates of public convenience~~
25 ~~and necessity issued pursuant to the provisions of Article 2~~
26 ~~(commencing with Section 1031) of Chapter 5 of Part 1 of Division~~
27 ~~1, and the rules and regulations prescribed pursuant thereto shall~~
28 ~~apply to charter-party carriers of passengers.~~

29 (b) ~~Drivers employed or initially retained after January 1, 2015,~~
30 ~~shall be subject to background checks and mandatory drug testing~~
31 ~~employment or retention. Employees hired before January 1, 2015,~~
32 ~~shall complete a background check and drug test before January~~
33 ~~1, 2016.~~

34 ~~SEC. 4. Section 5385.5 of the Public Utilities Code is repealed.~~

35 ~~SEC. 5. Section 5391 of the Public Utilities Code is repealed.~~

36 ~~SEC. 6.~~

37 *SEC. 2.* No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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