

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

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 951 (Lieu) - Lieu. Charter-party carriers.
Amended April 21, 2009**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would increase the levels of fines and penalties provided in various sections of the Passenger Charter-Party Carriers' Act.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The bill could improve public safety and consumer protection by increasing the levels of fines and penalties that may be levied by the Commission and the courts against charter-party carriers and others that violate the law.

SUMMARY OF SUGGESTED AMENDMENTS:

Among the amendments, it would now require the bill to increase the reinstatement fee from \$250 to \$1,000. Under Public Utilities Section 5378.5, when the Commission's suspends a carrier at the recommendation of the California Highway Patrol (CHP), the carrier may request a reinspection of its terminal and vehicles by submitting a written request to the Commission with a reinstatement fee of \$125. The application filing fee for a new permit is in most cases \$500 (which may be considered too low). Thus, with this new amendment, there is now a fee to reinstate a suspended permit that is twice the amount it costs to file for a new permit. To be consistent with the bill's intent, increasing the fee for a new license from \$500 to \$1000 should be considered. Or alternatively, lowering the reinstatement fee to \$500.

DIVISION ANALYSIS (Consumer Protection & Safety Division):

- This bill was introduced in response to a serious bus accident in which 10 passengers (including the bus company owner who was riding as a passenger) were killed. Investigation by the CHP disclosed that the driver did not hold the proper driver's license to operate a bus. The company held an active charter-party carrier certificate from the Commission at the time of the accident. The vehicle involved, however, was not listed on the carrier's equipment statement on file with the Commission (in violation of General Order 157-D).
- The Public Utilities Code provides for administrative, civil, and criminal penalties for those who violate provisions of the Passenger Charter-Party Carriers' Act or Commission regulations. The Commission is empowered to levy fines against unlicensed carriers, and as an alternative to suspension or revocation of a permit or certificate, against licensed carriers. The Commission may also seek penalties through civil court action, or refer matters to local prosecutors for criminal action.
- Some fines and penalties prescribed in the various sections of the Passenger Charter-Party Carriers' Act have not been increased in 20-25 years. The current fine limits are listed in Attachment A. Increasing the levels of fines and penalties that may be imposed on violators will have a positive impact on public safety.

PROGRAM BACKGROUND:

- 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.
- Most Commission-imposed fines are levied by the staff through the informal citation procedure. The current fine limits (whether administrative, civil, or criminal) have not been a particular impediment to enforcement. Nonetheless, the ability to impose higher fines in the most egregious cases has merit.

LEGISLATIVE HISTORY:

None

STATUS:

AB 951 is scheduled to be heard in the Assembly Utilities and Commerce Committee on April 27, 2009.

SUPPORT/OPPOSITION:

Support: California Bus Association

Opposition: None on file.

STAFF CONTACTS:

Michael Poe, Legislative Liaison, OGA (916) 327-7788 mdp@cpuc.ca.gov

Date: April 27, 2009

Attachment A

Section	Description	Current (\$)	Year of Current	Proposed (\$)
5378(b)	Commission-imposed fine as an alternative to suspension or revocation of operating authority	5,000	1984	7,500
5378.5(b)	Fee to reinstate authority suspended at the recommendation of the CHP	125	1988	1,000
5378.5(e)(2)	Commission-imposed fine for operating during CHP suspension	Min1,000 / Max 5,000	1991	Min1,500 / Max 7,500
5411	Criminal penalty for any violation by a carrier and every officer, director, agent or employee of a carrier	1,000	1983	Min 1,000 / Max 5,000
5411.3	Criminal penalty for vehicle identification violations	1,000	1983	2,500
5412	Criminal penalty for violations by a corporation or person other than a carrier	1,000	1983	2,000
5412.2	Additional criminal penalty for operating as a charter-party carrier or taxicab without a permit	2,500 for 1 st / 5,000 for subsequent	2004	10,000 for 1 st / Max 25,000 for subsequent
5413	Civil penalty for any violation by a carrier and every officer, director, agent or employee of a carrier	1,000	1984	2,000
5413.5(a)	Commission-imposed fine for operating or advertising as a charter-party carrier without authority	5,000	1986	7,500
5413.5(b)	Commission-imposed fine for a charter-party carrier operating as a taxicab	5,000	2004	5,000
5414	Civil penalty for violations by a corporation or person other than a carrier	1,000	1984	2,000

BILL NUMBER: AB 951 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 21, 2009

INTRODUCED BY Assembly Member Lieu

FEBRUARY 26, 2009

An act to amend Sections 5378, 5378.5, 5411, 5411.3, 5412, 5412.2, 5413, 5413.5, and 5414 of the Public Utilities Code, relating to charter-party carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 951, as amended, Lieu. Charter-party carriers.

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 imposes a maximum fine of not more than \$1,000 in its general penalty provision for any violation or failure to comply with the act, an order or other requirement of the commission, or an operating permit or certificate, or aiding and abetting such a violation. The act also imposes maximum fines, and in certain cases, minimum fines for specific violations of the act, including, for *conviction of* operating a charter-party carrier of passengers or a taxicab without a valid certificate or permit, a maximum mandatory fine of \$2,500 for a first conviction, or \$5,000 for a subsequent conviction.

This bill would revise that general penalty to set a minimum fine of \$1,000 and a maximum fine of \$5,000. The bill, for *conviction of* operating a charter-party carrier of passengers or a taxicab without a valid certificate, would ~~set a minimum fine of \$1,500 and a maximum fine of \$5,000 for a first conviction, or \$1000,000 for a subsequent conviction~~ *increase mandatory fines for charter-party carriers of passengers, subjecting them to a maximum fine of \$10,000 for a first conviction and \$25,000 for a subsequent conviction*. The bill would also increase a number of other existing *fees, fines, and* penalties for specific violations of the act.

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

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

SECTION 1. Section 5378 of the Public Utilities Code is amended to read:

5378. (a) The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds:

(1) The violation of any of the provisions of this chapter, or of

any operating permit or certificate issued thereunder.

(2) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.

(3) The conviction of the charter-party carrier of passengers of any misdemeanor under this chapter while holding operating authority issued by the commission or the conviction of the carrier or its officers of a felony while holding operating authority issued by the commission, limited to robbery, burglary, larceny, fraud, or intentional dishonesty for personal gain.

(4) The rendition of a judgment against the charter-party carrier of passengers for any penalty imposed under this chapter.

(5) The failure of a charter-party carrier of passengers to pay any fee imposed upon the carrier within the time required by law.

(6) On request of the holder of the permit or certificate.

(7) Failure of a permit or certificate holder to operate and perform reasonable service. That failure may include repeated violations of the Vehicle Code or of regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety, by employees of the permitholder or certificate holder, that support an inference of unsafe operation or willful neglect of the public safety by the permitholder or certificate holder.

(8) Consistent failure of the charter-party carrier of passengers to maintain its vehicles 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, as shown by the records of the commission, the Department of Motor Vehicles, the Department of the California Highway Patrol, or the carrier.

(9) The knowing and willful filing of a false report that understates revenues and fees.

(b) The commission may levy a civil penalty of up to ~~one hundred thousand dollars (\$100,000)~~ *seven thousand five hundred dollars (\$7,500)* upon the holder of an operating permit or certificate issued pursuant to this chapter, for any of the grounds specified in subdivision (a), as an alternative to canceling, revoking, or suspending the permit or certificate. The commission may also levy interest upon the civil penalty, which shall be calculated as of the date on which the civil penalty is unpaid and delinquent. The commission shall deposit at least monthly all civil penalties and interest collected pursuant to this section into the General Fund.

SEC. 2. Section 5378.5 of the Public Utilities Code is amended to read:

5378.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate or permit of a charter-party carrier be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's certificate or permit. The written recommendation shall specifically indicate compliance with

subdivision (c).

(b) A carrier whose certificate or permit is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee ~~of two hundred fifty dollars (\$250)~~ of one thousand dollars (\$1,000) . The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Public Utilities Commission Transportation Reimbursement Account. The commission shall then forward a request for reinspection to the department which shall then perform a reinspection within a reasonable time. The commission shall reinstate a carrier's certificate or permit suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the certificate or permit is suspended for another reason, or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the charter-party carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in suspension or revocation of the carrier's certificate or permit by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the certificate or permit of any charter-party carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other penalty provided in this chapter, terminate the suspension, continue the suspension in effect, or revoke the certificate or permit. The commission may revoke the certificate or permit of any carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

(e) If the commission, after a hearing, finds that a charter-party carrier has continued to operate as such a carrier after its certificate or permit has been suspended pursuant to subdivision (a), the commission shall do one of the following:

(1) Revoke the operating certificate or permit of the carrier.

(2) Impose upon the holder of the certificate or permit a civil penalty of not less than one thousand five hundred dollars (\$1,500) nor more than seven thousand ~~dollars (\$7,000)~~ five hundred dollars (\$7,500) for each day of unlawful

operations.

SEC. 3. Section 5411 of the Public Utilities Code is amended to read:

5411. Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers 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 or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or by imprisonment in the county jail for not more than three months, or both.

SEC. 4. Section 5411.3 of the Public Utilities Code is amended to read:

5411.3. Every charter-party carrier of passengers, and every officer, director, agent, or employee of a charter-party carrier of passengers, who displays on any vehicle any identifying symbol other than one prescribed by the commission pursuant to Section 5385, or who fails to remove an identifying symbol when required by the commission, is guilty of a misdemeanor and is punishable by a fine of not more than ~~five thousand dollars (\$5,000)~~ *two thousand five hundred dollars (\$2,500)*, by imprisonment in the county jail for not more than one year, or by both.

SEC. 5. Section 5412 of the Public Utilities Code is amended to read:

5412. Every corporation or person other than a charter-party carrier of passengers, who knowingly and willfully, either individually, or acting as an officer, agent, or employee of a corporation, copartnership, or any other person other than a charter-party carrier of passengers, violates any provision of this chapter or fails to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or who procures, aids, or abets any charter-party carrier of passengers in its violation of this chapter, or in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, or requirement, is guilty of a misdemeanor, and is punishable by a fine of not more than ~~five thousand dollars (\$5,000)~~ *two thousand dollars (\$2,000)* or by imprisonment in the county jail for not more than three months, or both.

SEC. 6. Section 5412.2 of the Public Utilities Code is amended to read:

~~5412.2. (a) When a person is convicted of the offense of operating a charter party carrier of passengers or a taxicab without a valid certificate or permit, in addition to any other penalties provided by law, if the court determines the operator has the ability to pay, the court shall impose a mandatory fine not less than one thousand five hundred dollars (\$1,500) nor more than five thousand dollars (\$5,000) for a first conviction or one hundred thousand dollars (\$100,000) for a subsequent conviction.~~

5412.2. (a) When a person is convicted of the offense of operating a taxicab without a valid certificate or permit, in addition to any other penalties provided by law, if the court determines the operator has the ability to pay, the court shall impose a mandatory fine not exceeding two thousand five hundred dollars (\$2,500) for a first conviction or five thousand dollars (\$5,000) for a subsequent conviction.

(b) When a person is convicted of the offense of operating a charter-party carrier of passengers without a valid certificate or permit, in addition to any other penalties provided by law, if the court determines the operator has the ability to pay, the court shall impose a mandatory fine not exceeding ten thousand dollars (\$10,000) for a first conviction or twenty-five thousand dollars (\$25,000) for a subsequent conviction.

—(b)

(c) As used in this section, "taxicab" means a passenger vehicle designed for carrying not more than eight persons, excluding the driver, and used to carry passengers for hire. "Taxicab" shall not include a charter-party carrier of passengers within the meaning ~~of the Passenger Charter Party Carriers' Act, Chapter 8 (commencing with Section 5351).~~ of this chapter.

SEC. 7. Section 5413 of the Public Utilities Code is amended to read:

5413. Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets, any violation by any charter-party carrier of passengers 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 or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, or certificate, is subject to a penalty of not more than two thousand dollars (\$2,000) for each offense.

SEC. 8. Section 5413.5 of the Public Utilities Code is amended to read:

5413.5. (a) Whenever the commission, after hearing, finds that any person or corporation is operating as a charter-party carrier of passengers, including a charter-party carrier operating a limousine, without a valid certificate or permit, or fails to include in any written or oral advertisement the number of the certificate or permit required by Section 5386, the commission may impose a fine of not more than seven thousand five hundred dollars (\$7,500) for each violation. The commission may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the commission. The commission may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

(b) Whenever the commission, after hearing, finds that any person or corporation is operating a charter-party carrier of passengers as a taxicab without a valid certificate or permit in violation of an

ordinance or resolution of a city, county, or city and county, the commission may impose a fine of not more than ~~seven thousand five hundred dollars (\$7,500)~~ *five thousand dollars (\$5,000)* for each violation. The commission may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the commission. The commission may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

SEC. 9. Section 5414 of the Public Utilities Code is amended to read:

5414. Every corporation or person other than a charter-party carrier of passengers who knowingly and willfully, either individually, or acting as an officer, agent, or employee of a corporation, copartnership, or any other person other than a charter-party carrier of passengers, violates any provision of this chapter or fails to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or who procures, aids, or abets any charter-party carrier of passengers in its violation of this chapter, or in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, or requirement, is subject to a penalty of not more than two thousand dollars (\$2,000) for each offense.