

Date of Hearing: April 4, 2011

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE
Steven Bradford, Chair
AB 45 (Hill) – As Amended: March 29, 2011

SUBJECT: Charter-party carriers: alcoholic beverages: open containers.

SUMMARY: Expands the provisions concerning under-age drinking to apply to drivers of charter-party carriers, with certain exemptions. Specifically, this bill:

- 1) Expands the application of the alcoholic beverage provisions concerning passengers under the age of 21 years by applying those requirements to the driver of any vehicle used as a charter-party carrier.
- 2) Makes the third or subsequent violation of the open container prohibition a misdemeanor against the driver of any vehicle used as a charter-party carrier.

EXISTING LAW:

- 1) Article XII of the California Constitution:
 - a. Establishes private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, and common carriers, as public utilities subject to control by the Legislature.
 - b. Allows the California Public Utilities Commission (PUC) to fix rates and establish rules for the transportation of passengers and property by transportation companies.
- 2) The Public Utilities Code:
 - a. Requires the PUC to ensure that every charter-party carrier of passengers operates on a prearranged basis within the state.
 - b. Requires the driver of any limousine for hire operated by a charter-party carrier of passengers under a valid certificate or permit to comply with certain requirements relating to alcohol beverages, including:
 - i. ascertaining whether any passenger is under the age of 21 years,
 - ii. reading to the passenger a statement that the consumption of any alcoholic beverage in the vehicle is unlawful,
 - iii. requiring the minor passenger to sign the statement and if minor is found to be, or to have been, consuming any alcoholic beverage during the course of the ride, the driver shall immediately terminate the contract of hire and return passenger to the point of origin.

- c. Subjects the carrier to specified penalties, based on the number of offenses for conviction of a driver, or any officer, director, agent or employee of the carrier that prohibits storage of an opened container of an alcoholic beverage in a motor vehicle.

FISCAL EFFECT: Unknown.

COMMENTS: According to the author, it took the loss of Brett Studebaker, a 19-year old San Mateo resident to expose loopholes in state law regarding under-age drinking in the party bus industry.

On the evening of February 5, 2010, Brett Studebaker, a nineteen year old teenager boarded a charter bus to celebrate a friend's birthday. According to the lawsuit filed by his family, the charter bus dropped the passengers off at their cars at approximately 2:00 a.m. after several hours of heavy alcohol consumption. Unfortunately, Brett lost his life less than an hour later when he crashed his vehicle into a sound wall and another vehicle on Highway 101 near San Mateo. It was later determined by officials that Brett's blood alcohol level was more than three times the legal limit for an adult of drinking age.

1) Background: Charter-party carriers are rented as an entire vehicle and transport passengers on a prearranged basis. A charter-party carrier is also referred to as a party bus, charter bus and limousine.

Charter-party carriers are regulated by the CPUC pursuant to the Passenger Charter-Party Carriers' Act (Public Utilities Code Section 5351). Carriers operate under one or more of the various types of permits and certificates issued by the CPUC. There are three categories of certificates (designated Class A, B, and C) and three categories of permits (designated P, S, and Z). The certificates and permits authorize different kinds of transportation services or limit the size of the vehicle that may be operated. Approximately 5,600 carriers hold one or more certificates and permits.

2) Issue: Limousines were not regulated by the PUC until the proliferation of limousine companies in the late 1980s began to lead to serious drug and alcohol abuse on limousine rides by minor. Similar to limousines, charter buses are the new place for under-age teenagers to drink. Some of these buses have the reputation for promoting drinking parties on wheels, and there is no consistent set of regulations promulgated to ensure that drivers are checking the passenger's photo identification.

3) PUC enforcement authority: The PUC is the agency responsible for licensing limousine operators by issuing them a charter-party carrier permit or certificate. Limousine operators and other charter-party carriers are required to participate in the DMV Employer Pull Notice System, which is a program for the carrier-employer to monitor the driving records of its drivers. If a driver is pulled over by a California Highway Patrol officer (CHP) for violating the open container law, that information is supposed to be given to the PUC by the courts. This information sharing allows the PUC to issue administrative citations and with fines against charter-party carriers for violations of the law or PUC rules and regulations.

For instance, if a limousine driver is pulled over by a law enforcement officer and is found to have passengers under 21 years of age drinking inside of the vehicle, the driver can then be charged with an open container violation. The PUC does not have the authority to impose

penalties against the driver. The carrier (i.e. company) is held responsible for any violations committed by its drivers. For a first offense, the PUC may impose a civil penalty no greater than two thousand dollars (\$2,000) upon the carrier. For a second offense, the PUC may impose a civil penalty no greater than two thousand dollars upon the carrier or suspend the carrier's permit for not more than 30 days, or both. For a third offense, the PUC shall revoke the carrier's permit. These provisions and penalties also apply to a limousine driver or a carrier officer, director, agent or employee who is convicted of having an open container of an alcoholic beverage in the vehicle when a minor passenger is being transported.

According to the PUC, in recent years staff has not received any notices from the courts of a violation of the open container prohibition by a limousine driver or a company official.

4) Close the loophole: This bill extends to all charter-party carrier vehicles the protections against under-age drinking of alcoholic beverages that currently apply only to limousines. For a first offense, the PUC may impose a civil penalty no greater than two thousand dollars (\$2,000) upon the carrier. For a second offense, the PUC may impose a civil penalty no greater than two thousand dollars (\$2,000) upon the carrier, or suspend the carrier's permit for no more than 30 days, or both. On a third offense, the PUC shall revoke the carrier's permit. A third or subsequent offense would subject the driver to misdemeanor criminal charges which would be enforceable by the appropriate law enforcement agency.

5) Statistical data: While there is no statistical data available at this time, there is antidotal evidence that may substantiate the need for greater regulatory oversight. According to a news article published in the Los Angeles Times in March 2011, the Los Angeles Police Department formed a task force over the last year to address the growing problems with party buses. The task force has received cooperation from many of the club operators who turn away partiers who have engaged in excessive drinking or appear under-age.

Additionally, PUC staff has been participating in vehicle inspections, including vehicles operated as party buses, with other law enforcement agencies where under-age drinking or other alcohol related incidents occur. These include inspections conducted periodically by the Hollywood Strike Force 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 that are observed by the staff are dealt with subsequently by the issuance of a citation or warning notice.

6) Unintended consequences: While the focus of the author's concern seems to be party buses, charter-party buses that are used for other purposes would be subject to the same requirements. For example, buses chartered by a school to transport pupils on field trips when they are usually accompanied by faculty or other school staff, or school buses used to conduct round-trip sightseeing services when minor passengers are on board who usually are under the supervision of a parent would be impacted by the language in this bill. Therefore, the author and this committee may wish to amend the bill to allow an exemption for certain youth group bus activities.

7) Technical amendments: 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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Utilities Commission (CPUC)
Greater California Livery Association (GCLA) (as proposed to be amended)
Los Angeles County Sheriff's Department

Opposition

California Bus Association (CBA) (unless amended)

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