

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner, Chair

AB 2780 (McKinnor) – As Amended March 13, 2024

SUBJECT: Charter-party carriers

SUMMARY: This bill would require certain charter-party carriers of passengers (TCPs), as specified, to notify and coordinate with local jurisdictions regarding the disembarkation of 10 or more passengers who are likely to seek emergency shelter. This bill also requires TCPs to obtain additional insurance and makes the carriers liable for violating the provisions of this bill, as specified.

Specifically, **this bill:**

- 1) Provides that this bill shall only apply to TCPs who know or reasonably should know that their motor vehicle will be transporting 10 or more passengers who are likely to seek emergency shelter and other immediate services upon disembarkation.
- 2) Provides that there is a presumption that passengers who have arrived in the United States within 30 days of embarkation are likely to seek emergency shelter and other immediate services upon disembarkation.
- 3) Requires at least 24-hours before embarkation of a covered trip, a TCP shall provide a written notice to the governing body of the city, county, or city and county with jurisdiction at the geographic location of disembarkation that contains the following:
 - a. The anticipated date and time of arrival of passengers at the geographic location of disembarkation.
 - b. The waybill or trip report required pursuant to Section 5381.5.
 - c. The number of passengers who arrived in the United states within 30 days of embarkation, and if available, the number of these passengers that are likely to seek emergency shelter and other immediate services upon disembarkation.
 - d. A description of the motor vehicle, including the color, license plate number, and any logo or other information printed on the exterior of the vehicle to assist local official in identifying the vehicle.
- 4) Authorizes the governing body of the city, county, or city and county with jurisdiction at the geographic location of disembarkation to determine the exact location of disembarkation.
- 5) Specifies that disembarkation shall only occur between the hours of 8:00 a.m. and 5:00 p.m., Monday to Friday inclusive, unless prior approval has been requested and obtained from the governing body of the specified local jurisdiction.
- 6) Requires that the time and location of disembarkation, including the city and county, shall be made known to, and agreed to, by each passenger before disembarkation.

- 7) Requires that the TCP shall maintain additional insurance as follows:
- a. Umbrella liability, with minimum coverage of twenty-five million dollars (\$25,000,000) per occurrence, and twenty-five million dollars (\$25,000,000) in aggregate.
 - b. Liability for civil rights violations, with minimum coverage of twenty-five million dollars (\$25,000,000) per occurrence, and twenty-five million dollars (\$25,000,000) in aggregate.
 - c. Provides that if there is reasonable cause to believe that a TCP violated the provisions of this bill, any of the following parties may bring a civil action seeking preventative relief.
 - i. The Attorney General, a district attorney, or a city attorney.
 - ii. A passenger who was transported in violation of this section.
 - iii. A homeless service provider or shelter, a health care service provider, or a nonprofit social service provider that suffered a direct violation of this section.
- 8) Provides that a TCP that violates this bill, or who employee violates this section, may be assessed a civil penalty of up to ten-thousand dollars (\$10,000) for each act of transporting a person that resulted in one or more violations of this section.
- 9) Provides that this bill does not preempt the adoption of any local ordinance, as specified, except only to the extent that the local ordinance is inconsistent with this bill.
- 10) Exempts application of the provisions of this bill to transportation services rendered wholly within California, or rendered from California to an out-of-state location where passengers are discharged.
- 11) Provides that no reimbursement is required by this act pursuant to the California Constitution.
- 12) Provides that this act applies to all cities, including charter cities.

EXISTING LAW:

- 1) Provides the US Congress with the power to regulate commerce among several states, and restricts states from impairing interstate commerce. (Article I, Section 8 of the US Constitution).
- 2) Establishes the "Passenger Charter-Party Carriers' Act" to, in part, promote carrier and public safety through safety enforcement regulations. (Public Utilities Code §5351 et. seq.)
- 3) Provides various specified exemptions to the applicability of the Passenger Charter-Party Carriers' Act such as for public transit, transportation of pupils pursuant to the Education Code, common carriers, noncommercial vehicles, taxis, hotel vehicles, etc. (Public Utilities Code §5353)
- 4) Defines a charter-party carrier of passengers as every person engaged in the transportation of persons by motor vehicle for compensation over any public highway in this state. A charter-

party carrier of passengers 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. (Public Utilities Code §5360)

- 5) Authorizes the California Public Utilities Commission (CPUC) to supervise and regulate every charter-party carrier of passengers. (Public Utilities Code §5381)
- 6) Requires each charter party carrier of passengers to demonstrate its ability and financial capacity to provide transportation services before the CPUC can issue or renew a license to operate. Existing law prohibits the CPUC from issuing a license to any entity that fails to demonstrate that it meets licensure requirements. Existing law also specifies various criteria companies must meet prior to licensure, including, but not limited to, providing proof of insurance as required by the CPUC. (Public Utilities Code §5372)
- 7) Establishes minimum accident liability insurance requirements for charter-party-carriers and specifies that this insurance must provide adequate protection against liability for property damage, bodily injury, and death resulting from an accident. Existing law authorizes differing insurance requirements for differing seating capacities and it specifies that the insurance requirements for charter-party-carriers may not be less than those set for passenger stage corporations. Existing law specifies that charter-party-carriers holding a “C” certificate for providing transportation incidental to commercial balloon operations, commercial river rafting, or skiing must carry at least \$750,000 per accident in liability insurance. (Public Utilities Code § 5391 et. seq.)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Author’s statement.* According to the author “Over three dozen busloads of asylum seekers and other recent immigrants have been dumped in Los Angeles alone. Busloads of vulnerable persons have also been dumped in San Diego, San Jose and Sacramento. No prior notice is provided to local authorities or nonprofit groups before discharging vulnerable passengers, thereby endangering the passengers and overwhelming local supportive services. Therefore, AB 2780 is looking to protect immigrants that are being sent from other states to the state of California, and that are in need of supportive services. The impact of the bill would result in a more organized and effective way in which local governments can provide assistance to immigrants being bussed to California.”
- 2) *Defining the problem and intent of this bill to address it.* In response to a perceived crisis at the southern United States border and an influx of undocumented immigrants entering the country in recent years, anti-immigrant Republican Governors have instituted policies to transport migrants from their states to cities with Democrat leaders, including in California. For example, in June 2022, Governor Ron DeSantis of Florida signed a budget that set aside \$12 million to create a program for transporting unauthorized migrants out of Florida. In April 2022, Governor Gregg Abott of Texas directed the Texas Division of Emergency Management to charter buses to transport migrants from Texas to Washington, D.C. Governor Abott later expanded the order to include other locations, including cities in California. When the first busload of migrants from Texas arrived in Los Angeles, Governor Abbott went as far as releasing a press release to take responsibility for the move and share

his reasoning. He wrote, in part, “Los Angeles is a major city that migrants seek to go to, particularly now that its city leaders approved its self-declared sanctuary city status.”

The decision to move migrants from Republican-led states like Florida and Texas to Democrat-led cities and states like Los Angeles, San Diego, Washington, DC, and New York City is openly politically-motivated and intended to draw a contrast between those state’s harsh anti-immigrant policies alongside more welcoming policies in Democrat-led jurisdiction. Although there are clear differences in public policy and approach to dealing with immigration, the decision to bus vulnerable immigrants between locations dehumanizes these recent immigrants as pawns in a political game among states. This bill is intended to curb the negative impact to the vulnerable migrants by requiring the carriers transporting the migrants coordinate with local governments, in order ensure the arrivals have an opportunity to be connected to services. This bill also increases the insurance requirements for the carriers transporting the migrants, and makes the companies civilly liable for damages if they violate the provisions of this bill.

- 3) *Understanding the applicability of this bill.* The provisions of this bill, although broad and sweeping, are potentially narrow and inadequate in their application to address the problem that clearly exists. To begin, this bill as currently drafted does not apply to charter-party carriers broadly, but only when those carriers are engaged in a specific type of ride described in this bill. Specifically, this bill applies when the carrier is operating a motor vehicle who knows or reasonably should know that the motor vehicle will be transporting, from an origin outside of California, 10 or more passengers who are likely to seek emergency shelter and other immediate services upon disembarkation. This bill explicitly exempts from its application transportation services rendered wholly within California, or rendered from within California to an out-of-state location where passengers are discharged. As a result, if a local jurisdiction or any individual within California chose to imitate the policies of Governor Desantis and Governor Abbot by bussing migrants from one location in California to another as a political stunt, those rides would explicitly not be covered by the provisions of this bill. Given the author’s stated purpose with introducing this bill, the author may wish to consider if the exemptions in this bill could be more closely aligned with this bill’s intent.

Another form of transportation that would, by definition, be excluded from this bill are transportation services rendered by a passenger stage corporations, such as Greyhound. While news reports documenting the transport of migrants by bus into California from other states have almost exclusively mentioned the use of charter buses, it is also plausible that some migrants may be being transported into California on non-charter buses. Again, the author may wish to consider whether a more broad application of this bill is better aligned with her intent.

- 4) *The United States Constitution may further limit the application of this bill.* Interstate commerce means any work involving or related to the movement of persons or things across state lines or from foreign countries. This bill, which is squarely about the transport of persons across state lines into California, therefore concerns interstate commerce. Under existing law, namely the Commerce Clause of the United States Constitution, Congress has broad power to regulate interstate commerce and restricts states from impairing interstate commerce. Additionally, under the Supremacy Clause of the United State Constitution, states are prohibited from interfering with the federal government’s exercise of its constitutional powers. While neither the Commerce Clause nor the Supremacy Clause explicitly prohibit

states from passing laws that impact interstate commerce, on their own and especially in conjunction they do introduce an additional level of scrutiny to consider regarding this bill.

For example, regarding the supremacy clause, the foremost relevant fact to be mindful of is that Congress has passed laws concerning the transport of passengers across state lines, suggesting that those laws would have supremacy over a state law. In particular, Title 49 section 13501 of the United States Code provides for Federal jurisdiction over motor carriers engaged in interstate commerce. Unless subject to an exemption, all for-hire passenger carriers engaged in interstate commerce must obtain operating authority from the Federal Motor Carrier Safety Administration. Those carriers must also obtain and file minimum levels of financial responsibility insurance as follow: \$1.5 million for operating vehicles of 15 or fewer passengers including the driver; \$5 million for operating vehicles of 16 or more passengers including the driver. Given that this bill establishes different levels of insurance than those established by Congress, it is plausible those provisions might be found to be unconstitutional if challenged in a court of law, thus jeopardizing the entire bill.

Further, because Congress has established laws regarding the transport of passengers across states lines, it is questionable whether California's "Passenger Charter-party Carriers' Act" would apply to any ride engaged in interstate commerce; existing California law suggests that it might not. Specifically, California's "Interstate and Foreign Motor Carriers of Household Goods and Passengers Act" suggests that carriers engaged in any interstate transportation of passengers for compensation by motor vehicle would follow that Act. Under the provisions of that law, a carrier engaged in interstate transportation of passengers merely needs to file their federal authorization with the CPUC and the CPUC is required to grant their registration upon filing of their application. What this could mean in practice is that carriers registered outside of California would likely be exempt from this law if they operate consistent with federal law. In turn, under that interpretation, the only carriers covered by this bill would be carriers registered in California as charter-party carriers. Applying that interpretation to the root problem of this bill, no evidence has ever been provided that California companies have engaged in the type of transportation intended to be covered by this bill. Moving forward, the author may wish to consider whether the current drafting of this bill would sufficiently cover the types of trips and carriers that have caused the problem we are aware exists.

- 5) *Procedures coordination between operator and local jurisdiction.* This bill would require charter-party carriers to provide advance notice and specified information to local jurisdictions regarding disembarkation. Further, this bill would authorize the governing body with jurisdiction at the location of disembarkation to determine the exact location of disembarkation. However, some of the procedures established in this bill lack sufficient detail and may lead to poor coordination. For example, this bill does not specify to whom exactly the charter-party carrier should be providing their required notice. According to the sponsors of this bill, local departments of emergency management have been taking on the work already at the local level. However, not every city has such a department and further without a point of contact designated in advance it may lead to confusion between the two parties. The author may wish to consider revising this bill to require a local jurisdiction to specify a point-of-contact for coordination and receiving notices. Along the same lines, this bill gives the authority to a local government to designate a location for disembarkation. However, it does not specify how a city would go about making that designation.

- 6) *Expansion of civil liability for charter-party carriers.* Under the provisions of this bill, charter-party carriers that violate the provisions of this bill could be subject to legal action initiated by various entities including state and local law enforcement, a passenger that was transported, or certain nonprofit organizations. Additionally, this bill also makes violators subject to civil penalties up to \$10,000 for each act. All together this bill would greatly expand the legal liability of charter party carriers who reasonably should have known they were engaging in covered activities. In turn, these provisions of this bill may act as a deterrent to carrier engaging in this type of practice or doing so in a manner that does not include local coordination, at a very minimum.
- 7) *Double referral.* Under the current drafting, this bill will be referred to the Assembly Committee on Insurance should it pass this committee.
- 8) *Committee amendments.* The committee recommends the following amendments:
- a. Strike references to charter-party carriers, and instead replace with a new term “carrier of passengers”.
 - b. Specify that the required notice shall be provided to a designated point of contact.
 - c. Specify that a governing body may, by resolution adopted the governing body, designate a specific location of disembarkation within their jurisdiction.
 - d. Strike the insurance requirements.
 - e. Strike provisions of this bill exempting transportation services rendered wholly within California or rendered from California to an out of state location where passengers are discharged.

REGISTERED SUPPORT / OPPOSITION:**Support**

Coalition for Humane Immigrant Rights (CHIRLA)

Opposition

American Property Casualty Insurance Association

Analysis Prepared by: Emilio Perez / C. & C. / (916) 319-2637