

Date of Hearing: April 6, 2015

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 869 (Cooper) – As Introduced February 26, 2015

SUBJECT: Public transportation agencies: fare evasion and prohibited conduct

SUMMARY: Authorizes a public transit district with a civil adjudication procedure for minor transit-related offenses committed by adults to instead pursue criminal penalties if a person fails to pay the administrative penalty or successfully complete the civil administrative process.

Specifically, **this bill:**

- 1) Prohibits a person who receives a notice of fare evasion or passenger conduct violation from a transit agency from being charged with an infraction or misdemeanor if the person pays the administrative penalty when due or successfully completes the civil administrative process.
- 2) Authorizes a person who fails to pay the administrative penalty when due or successfully complete the civil administrative process to be charged with an infraction or misdemeanor.
- 3) Requires a notice of fare evasion or passenger conduct violation to include a printed statement that the person may be charged with an infraction or misdemeanor if the administrative penalty is not paid when due or dismissed pursuant to the procedure for contesting the notice.

EXISTING LAW:

- 1) Makes it a criminal infraction for a person to engage in any of the following activities in a public transit vehicle or facility:
 - a) Fare evasion.
 - b) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.
 - c) Disturbing another person by loud or unreasonable noise.
 - d) Smoking, eating, or drinking where those activities are prohibited by the transit provider.
 - e) Expectorating.
 - f) Willfully disturbing others by engaging in boisterous or unruly behavior.
 - g) Carrying an explosive or acid, flammable liquid, or toxic or hazardous material.
 - h) Urinating or defecating except in a lavatory.
 - i) Willfully blocking the free movement of another person unless permitted by First Amendment rights.
 - j) Skateboarding, roller skating, bicycle riding, rollerblading, or operating a motorized scooter, except as necessary for utilization of the transit facility by a bicyclist.

- k) Unauthorized use of a discount ticket or failure to present acceptable proof of eligibility to use a discount ticket.
 - l) Selling goods or services if those activities are prohibited by the transit provider.
 - m) Willfully tampering with, removing, displacing, injuring, or destroying part of a transit vehicle or facility.
- 2) Authorizes transit agencies to adopt civil adjudication procedures and impose and enforce administrative penalties for any of the above-listed offenses that are committed by adults.
 - 3) Allows transit agencies to set their own administrative penalty amounts but prohibits the amounts from exceeding the maximum statutory criminal penalties for the same offenses.
 - 4) Prohibits a person who receives a notice of fare evasion or passenger conduct violation from a transit agency from also being cited for a criminal infraction for the same offense.

FISCAL EFFECT: Unknown

COMMENTS: Penal Code Section 640 makes it a criminal infraction for a person to engage in a variety of specified activities in a transit vehicle or facility. The standard process for enforcing these criminal infractions is for the transit officer citing the offense to give the alleged violator a citation with a court date, which the alleged violator signs promising to appear. The court later sends a notice to the alleged violator, reminding him or her of the court date, listing the bail amount, and stating that he or she must appear unless the bail is paid. On the day the case is set for a hearing in court, the defendant enters a plea. If the plea is “guilty” or “no contest,” the judge or magistrate fixes the penalty amount. If the plea is “not guilty,” the court generally assigns a later trial date. At the trial, the officer is subpoenaed and must appear. In some counties, the defendant may enter a plea with the court clerk or even online, instead of in court. In some counties, the plea hearing and trial may be held at the same time.

State law generally provides that these criminal offenses are punishable by a maximum base fine not to exceed \$250 (which becomes \$950 when mandatory assessments are added on) and 48 hours of community service for the first and second offense. The judges in each county, however, set the bail schedule annually. In Los Angeles County, the actual base fines range from \$25 for a first offense to \$100 for repeated offenses for most violations and from \$100 to \$250 for defecating/urinating and carrying explosives.

Rather than citing alleged violators under Penal Code Section 640, public transit agencies have the option to adopt and impose an administrative process for adjudicating offenses committed by adults that is similar to the process for issuing and enforcing parking tickets. The issuing officer serves the alleged violator with a “notice of fare evasion or passenger misconduct violation,” which includes the date, time, location, and nature of the violation; the administrative penalty amount; the date by which the penalty must be paid; and the process for contesting the citation. Transit agencies may set their own fines, which by law cannot exceed the maximum base fine established for the offense under Penal Code Section 640. Under an administrative process, transit agencies have the flexibility to establish diversion programs to address repeat offenders.

Under current law, a transit agency can cite an alleged violator either under its administrative process, if it has established one, or under Penal Code 640. This bill would allow transit

agencies to first cite an alleged violator under an administrative process but then switch to the criminal process under Penal Code Section 640 if the alleged violator fails to pay the fine or otherwise complete the administrative process. This bill requires the original notice of fare evasion or passenger conduct violation to include a printed statement that the person may be charged with an infraction or misdemeanor if he or she fails to pay the fine when due or complete the administrative process. An individual could not be cited under an administrative process and Penal Code Section 640 at the same time, but rather this bill would give the option of escalating to a Penal Code Section 640 citation if the administrative process fails to resolve the matter.

An administrative process for dealing with minor transit offenses can be beneficial to both individuals who receive citations and to the local courts. For cited individuals, the cost is far lower because an administrative fine does not include all of the additional fees and assessments that are added on to the base fine in a criminal proceeding. In addition, an administrative process may include diversion programs or other options for chronic violators who are unable to pay their fines. Removing these minor matters from the local court system saves money and frees up time and resources to address more serious offenses.

The sponsor of the bill, the Sacramento Regional Transit District (RT) would like to adopt an administrative process to address fare evasion and other minor offenses but feels that the existing statute needs this change in order to make the process work effectively. RT believes that there is likely to be greater compliance with the administrative process if individuals who receive citations are aware that their case could end up as a more costly criminal matter if they fail to pay the administrative fine or otherwise complete the administrative process. Greater compliance with an administrative process will greatly benefit the Sacramento County Superior Court, which is currently overburdened with fare evasion citations and other minor transit-related citations.

Proposed Amendments: In order to ensure that an individual cannot be subject to both administrative and criminal fines for the same offense and promote due process, the author may wish to amend the bill to:

- 1) Clarify that the administrative process must be closed (i.e. the transit agency can make no further attempts at collecting the fine) once an individual has been cited under Penal Code Section 640.
- 2) Clarify that the transit agency must provide proper notice to an individual that he or she is no longer subject to the administrative process and is now being cited for an infraction or a misdemeanor pursuant to Penal Code Section 640.

REGISTERED SUPPORT / OPPOSITION:

Support

Sacramento Regional Transit District
California Conference Board of the Amalgamated Transit Union

Opposition

None on file

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