April 15, 2024

The Honorable Ash Kalra, Chair
Assembly Committee on Judiciary
1021 0 St. Room 4610
Sacramento, CA 95814

RE: AB 2754 (Rendon) Employment contracts and agreements: sufficient funds: liability – OPPOSE

Dear Assemblymember Kalra,

The undersigned organizations representing a broad cross-section of California and the nation's businesses who rely on the supply chain must respectfully **OPPOSE** AB 2754.

AB 2754 would unwind previously agreed-to amendments in AB 1897 (Hernandez – 2014) to exempt motor carriers from provisions of the bill targeting "contingent" or "permatemp" work.

As drafted, AB 2754 instead implicates nearly every customer and transportation service provider in the supply chain as jointly liable for payment of wages, worker's compensation and reimbursement of business expenses where a worker receives, picks up, or delivers containerized freight at the shipper or consignee's premises, facility or worksite. Additionally, the legislation uses an impossibly broad definition of motor carrier, defining it to be any entity that utilizes commercial drivers to move containerized freight. Taken as a whole, the legislation seeks to place joint and several liability on any entity that pays for the movement of or accepts freight and does not attempt to acknowledge that most of the implicated entities will have no visibility into the arrangement of that transportation or the cost of the same.

The transportation of containerized freight simply does not equate to the use of contingent and permatemp staff in other industries identified by the legislation.

AB 2754 Goes Even Further Than AB 5

The proposed changes in definition to “client employer” and “labor contractor” cast a wide net and are far afield of the original intent of AB 1897 and exceeds even AB 5 in its attack on small business trucking.

In response to AB 5 and subsequent case law[1], California’s remaining owner-operators have obtained their own operating authorities, wholly own their own truck and pay for their own insurance coverage. Others chose to leave California entirely[2].

AB 2754 would deal the final blow to these truckers by changing the rules yet again, redefining “usual course of business” to mean simply picking up delivering containerized freight to a client employer’s facility or premises.

AB 2754 Goes Far Beyond Contingent Work

The sponsors of AB 2754 exempted trucking from AB 1897 in recognition that motor carriers provide specialized transportation services which is a distinct function from the “contingent” or “permatemp” provisioning of labor targeted by AB 1897. As drafted, the legislation targets all relationships in which a third party delivers containerized freight, which is far afield from the contingent or permatemp labor contemplated in the initial legislation. Industries as diverse as healthcare, agriculture, manufacturing, retail, grocers, energy, and construction rely upon trucking and will be pulled into the joint liability created by the proposed language simply for arranging with a third party to deliver containerized goods that are critical to the daily functioning of our economy.

AB 2754’s Contracting Provisions Are Likely Federally Preempted

The Federal Aviation Administration Authorization Act preempts States from enacting or enforcing “a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier…with respect to the transportation of property.”[3]

[1] *People v. Superior Court*, 57 Cal.App.5th 619, 271 Cal. Rptr. 3d 570 (Cal. Ct. App. 2020) “*Motor carriers — not the motor carriers’ customers — could contract with owner-operators (or other business entities meeting the requirements of the business-to-business exemption), direct their actions, and pay them. Services would be provided by the owner-operators directly to the motor carriers, notwithstanding that those services would include moving freight belonging to the motor carrier's customers.*

Moreover, defendants offered no evidence demonstrating it would be impossible to meet the requirements of the business-to-business exemption…Those trucking companies, referred to as "outside carriers" or "outside brokers," are legally organized business entities and appear to be among the kinds of businesses contemplated by the business-to-business exemption.”

[2] https://www.foxnews.com/opinion/female-minority-truck-driver-california-ab5-forced-me-leave-state

[3] 49 USC 14501(c)(2)

The proposed amendments to Labor Code Section 2810 clearly violate the FAAAA by regulating motor carrier rates. For instance, after delivering a shipment, truckers may accept a load at or below cost on what's known as the "backhaul" to its home base to avoid traveling back without a trailer (known as "deadheading"). A carrier may incorporate the ready availability of backhaul freight into an inbound rate quote knowing that it may recoup some of the costs of the return trip through the use of this backhaul. Such rate negotiation tactics are clearly contemplated by the preemptive provisions of the FAAAA.

The United States Supreme Court has interpreted the FAAAA to forbid laws that would require motor carriers to provide services (and by extension, to enter into commercial terms) that the market would otherwise provide[4].

Federal Law Provides Protections for Independent Drivers

Finally, owner-operators providing equipment that will be operated pursuant to a motor-carrier's operating authority are protected by the requirements of the Federal Truth in Leasing Regulations, 49 C.F.R. § 376.12 ("FLR"). The FLRs (also adopted by California for intrastate operations) set forth specific requirements of items that must be contained in any agreement between an independent truck driver and the motor carrier. These terms include disclosures on the part of the carrier with regard to payment terms, timelines for payment, insurance obligations and purchases from the carrier as well as specific requirements relating how a carrier must inform a driver of items that may be deducted from compensation. These items are much more tailored to the special needs of the trucking industry and permit independent truck drivers to evaluate the contractual payments they will receive from the carrier.

Conclusion

For the above reasons, we must respectfully oppose AB 2754.

Thank You,

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[4] *Rowe v. New Hampshire Motor Transp. Assn.*, 552 U.S. 364 (2008)

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CC: Assemblymember Liz Ortega, Assembly Labor and Employment Committee, Chair
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