



SB 338 (Gonzalez) Protecting Port Truck Drivers

SUMMARY

SB 338 is critical to protecting essential supply-chain workers. SB 338 closes a loophole in existing law to prevent trucking companies from misclassifying their workers. Currently “bad actor” trucking companies with outstanding unpaid wage claims are added to a joint-liability list, wherein customers who contract with bad actors on this list are jointly liable for future violations. However, bad actor trucking companies can choose to go through a lengthy court process and settle out before ever being put on this joint-liability list and never fix their underlying bad business practices. To remedy this, SB-338 targets repeat offenders, adding them to the list more quickly with future citations for labor violations. SB 338 ensures that the law protects truck drivers from companies that systemically incorporate wage theft and deny worker protections as part of their business model.

EXISTING LAW

SB 1402 (Lara) required the CA Division of Labor Standards Enforcement (DLSE) to create and publicly post a list of ‘bad actor’ trucking companies, comprised of companies that have unpaid final judgments. Any company that contracts with a trucking company on this list is held jointly liable for new violations.

Joint liability of this kind is a critical tool to incentivize customers to hire good actors, and is commonly used in California law, especially in industries with widespread labor violations:

- Labor Code §2810 holds companies in six industries jointly liable for labor violations if they enter into financially insufficient contracts.
- Labor Code §2810.3 holds client employers jointly liable for labor violations by a temporary staffing company or labor contractor.
- Labor Code §1697.5 requires farm labor contractors to register and holds companies liable for contracting with an unlicensed farm labor contractor.
- Labor Code §§2673.1 and 2675 requires garment contractors to register and holds garment manufacturers liable for wages.

BACKGROUND/PROBLEM

Truck drivers in California may be either independent contractors or employees of trucking companies.

However, misclassification, where drivers are denied both the rights of employees and the freedoms of true contractors, is rampant in the port trucking industry. A 2014 National Employment Law Project report found that some 49,000 of the 75,000 port truck drivers in the United States are misclassified as independent contractors. This misclassification is unlawful and was estimated to cost California drivers about \$850 million a year.¹

Numerous court and agency rulings, including many high-profile cases, have confirmed that misclassification is common practice in this industry.

- Since 2012, the DLSE has issued nearly 500 decisions finding that port trucking companies had misclassified drivers, ordering them to pay over \$50 million. Every case that has been heard in court on appeal has been upheld.
- In 2015, the California Labor Commissioner’s Office ordered Fargo Trucking to pay nearly \$9 million in back wages to 50 misclassified drivers.²
- Between 2015 and 2017, the DLSE filed eight decisions as final judgments in CA Superior Court, all finding that Container Connection had misclassified its drivers and owed them almost \$800,000. Container Connection eventually paid after the Labor Commissioner issued Stop Work Orders to enforce the judgments, but has not changed its business model.

Misclassification of this kind always harms workers—whether through wage theft or denying health and workers compensation insurance. During a pandemic, misclassification and systemically denying workers disability benefits, PPE, and other worker health protections can be deadly. A Brookings Institute report found that the transportation sector is one of the highest-risk for COVID-19.³ⁱ

SOLUTION

SB 338 will close a loophole in existing law by adding prior offenders—those companies that have misclassified their workers-- to the “bad actor” list more readily when they have future violations, preventing them from using settlements as a means to avoid being put on the bad actor list without fixing the underlying issues. Moreover, SB-338 will strengthen existing law by requiring companies to certify to the Division of Labor Standards



and Enforcement (DLSE) that they have rectified the underlying problem before they can get off the “bad actor” list.

SUPPORT

California Teamsters Public Affairs Council (*Co-sponsor*)
Port Division, International Brotherhood of Teamsters (*Co-sponsor*)
Los Angeles Alliance for a New Economy (*Co-sponsor*)
AFSCME, AFL-CIO
Bet Tzedek
California Applicants’ Attorneys Association
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Employment Lawyers Association
California Faculty Association
California IATSE Council
California Labor Federation
California Professional Firefighters
California Rural Legal Assistance Foundation
California-Nevada Conference of Operating Engineers, International Union of Operating Engineers
Clergy and Laity United for Economic Justice
Coalition for Clean Air
Communications Workers of America, District 9
Consumer Attorneys of California
Earth Justice
East Area Progressive Democrats

Engineers and Scientists of California Local 20,
IFPTE AFL-CIO & CLC
Garment Worker Center
Instituto de Educacion Popular del Sur de California
Jobs to Move America
Latinos in Action
LAX Area Democratic Club
Long Beach Young Democrats
Los Angeles County Federation of Labor
National Employment Law Project
Northeast Democratic Club
NRDC
Partnerships for Working Families
Progressive Democratic Club
San Diego County Building & Construction Trades Council
Southern California Cosh
Stonewall Democratic Club
Strategic Action for a Just Economy
Teamsters Port Division
Unite Here International Union, AFL-CIO
United Food and Commercial Workers, Western States Council
Utility Workers Union of America, Local 132
Utility Workers Union of America, Local 483
Utility Workers Union of America, Local 522
Warehouse Worker Resource Center
Worksafe

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¹<https://justice4ladrivers.net/BigRigOverhaul2014Finalsm.pdf>

² <https://www.usatoday.com/pages/interactives/news/rigged-shell-games-how-trucking-companies-that-cheat-drivers-dodge-penalties/>

³ <https://www.brookings.edu/blog/the-avenue/2020/03/17/the-places-a-covid-19-recession-will-likely-hit-hardest/>