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An act to add Section 2810.4 to the Labor Code, relating to employment.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The port drayage industry is a vital part of California's goods movement economy and employs an estimated 25,000 drivers who move freight between California's ports and distribution centers.

(b) California's port drayage drivers are the last American sharecroppers, held in debt servitude and working dangerously long hours for little pay.

(c) An investigation by USA Today found that "port trucking companies in Southern California have spent the past decade forcing drivers to finance their own trucks by taking on debt they could not afford." The investigation found instances where drivers "end up owing money to their employers – essentially working for free."

(d) A common practice is for a company that owns port drayage trucks to enter into a sublease agreement with drivers, with the promise that they will own the truck someday. Drivers can be terminated at any time and lose the money they thought they were paying toward the truck. Companies deduct money from driver paychecks for business expenses that lead to poverty wages or to the driver owing the company money.

(e) Port drayage drivers are a largely immigrant workforce and particularly vulnerable to labor exploitation.

(f) Drayage drivers at California ports are routinely misclassified as independent contractors when they in fact work as employees under California and federal labor laws. A recent report finds that two-thirds of California port drayage drivers fall under this category, and rampant misclassification of drivers contributes to wage theft and leaves drivers in a cycle of poverty.

(g) Companies can violate labor laws and misclassify employees when they control the manner and means of the work, sets wages and hours, and in other ways acts as an employer.

(h) The California Labor Commissioner's Office, Division of Labor Standards Enforcement, has awarded in excess of \$45 million in unlawful deductions from wages and out-of-pocket expenses to more than 400 drivers. No court has overturned these awards on appeal.

(i) Drivers have seen little of those awards while misclassification remains endemic, as companies that commit violations go out of business and are replaced by others that repeat the pattern.

(j) The mistreatment of port drayage drivers has been known for more than a decade, and the Ports of Los Angeles and Long Beach attempted to address misclassification of drayage drivers in 2008 through their Clean Air Action Plan by requiring drivers to be classified as employees. The 9th Circuit Court struck down that requirement.

(k) State and federal courts have consistently upheld the Labor Commissioner's authority to adjudicate port drayage driver claims and found that federal law does not preempt the state's interest in enforcing labor laws meant to protect drivers from wage theft.

(l) Independent studies have found that misclassifying employees undercuts fair competition by legitimate employers and creates an economic incentive for others to break the rules.



(m) Nationwide, according to the National Employment Law Project, in a paper titled, "The Big Rig Overhaul: Restoring Middle-Class Jobs at America's Ports Through Labor Law Enforcement" (2014), as much as \$485 million in worker's compensation premiums and \$60 million in federal taxes go unpaid in the drayage industry.

(n) More than 40 percent of United States shipping-container traffic flows through the Ports of Los Angeles and Long Beach. Port drivers are a critical link in the global supply chain; and they need to share the benefits of this economic engine.

(o) Customers of port drayage are some of the world's largest retail and manufacturing companies. After more than a decade of rulings, media stories, and independent reports, they should be aware of the widespread labor violations in the drayage industry.

(p) The California Legislature established, with the enactment of AB 1897 in 2014, that business entities that are provided workers from subcontractors can be jointly liable for the nonpayment of wages and failure to provide unemployment insurance by the subcontractor.

(q) Holding customers of trucking companies jointly liable for future labor law violations by port drayage motor carriers who they engage, where the customer has received advance notice of their record of unsatisfied judgments for labor law violations, will exert pressure across the supply chain to protect drayage drivers from further exploitation.

(r) The California Supreme Court's ruling in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 established a test for whether employers are manipulating independent contractor rules. Port drayage customers can apply the Borello test to ensure that trucking companies they hire are not engaging in exploitative labor practices and misclassification of workers.

(s) Customers have the market power to exert meaningful change in the port drayage industry that has eluded California drivers for more than a decade.

SEC. 2. Section 2810.4 is added to the Labor Code, to read:

2810.4. (a) As used in this section:

(1) "Commercial driver" means a person who holds a valid commercial driver's license who is hired or contracted to provide port drayage services either as a misclassified independent contractor or an employee driver.

(2) (A) "Customer" means a business entity, regardless of its form, that enters into an agreement, either directly or through an agent, with a port drayage motor carrier to transport freight containers or cargo to or from a port.

(B) "Customer" does not include any of the following:

(i) A business entity with a workforce of fewer than 25 workers, including those hired directly by the customer or through a temporary employer or labor contractor.

(ii) The state or any political subdivision of the state, including any city, county, city and county, or special district.

(3) "Labor" has the same meaning provided by Section 200.

(4) "Port drayage motor carrier" means an individual or entity that hires or engages commercial drivers in the port drayage industry.

(5) "Port drayage motor carrier" also means a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as defined in subdivision (b) of Section 15210 of the Vehicle Code, that operates or directs the operation of a commercial motor



vehicle by a commercial driver on a for-hire or not-for-hire basis to perform port drayage services in the port drayage industry.

(6) "Port" means any sea or river port located in this state.

(7) "Port drayage industry," "port trucking industry," or "port drayage services" means the movement within California of freight containers or cargo by a commercial motor vehicle to or from a port.

(8) "Wages" has the same meaning provided by Section 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.

(b) (1) The Division of Labor Standards Enforcement shall post on its Internet Web site the names, addresses, and essential information for any port drayage motor carrier with any unsatisfied final court judgment, assessment of the Employment Development Department, or any order, decision or award pursuant to Section 98.1 finding that a port drayage motor carrier has engaged in illegal conduct including, but not limited to, failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, failure to provide workers' compensation insurance, or misclassification of employees as independent contractors with regard to a port drayage commercial driver. Where an administrative determination has been appealed to superior court pursuant to Section 98.2, the Division of Labor Standards Enforcement shall not place the information on the Internet Web site until the superior court has rendered its judgment.

(2) Every port drayage motor carrier who enters into an agreement to provide port drayage services to a customer, prior to executing an agreement to provide transportation services, shall furnish notice, on a form approved by the Division of Labor Standards Enforcement, to the customer concerning the website established pursuant to paragraph (1) and the potential for joint and several liability established pursuant to paragraph (3).

(3) A customer that, as part of its business, obtains, either directly or indirectly, port drayage services with a port drayage motor carrier on the list established pursuant to paragraph (1) shall be jointly and severally liable with the motor carrier for future unpaid wages, unreimbursed expenses, damages and penalties, including applicable interest, which are found due to any and all commercial drivers provided, directed, or used by the motor carrier to perform port drayage services for the customer, or that are found due as civil penalties to the state for all of the following:

(A) Minimum, regular, or premium wages that are unpaid by the motor carrier, including any wages that are found due under Section 226.7.

(B) Unlawful deductions by the motor carrier from wages pursuant to Section 2802.

(C) Out-of-pocket business expenses incurred by the commercial driver that are not reimbursed by the motor carrier as required pursuant to Section 2802.

(D) Civil penalties for the failure to secure valid workers' compensation coverage as required by Section 3700.

(E) Damages or penalties as provided for by law that are due to the commercial driver or the state based upon the failure of the motor carrier to pay wages owed, including those set forth under Sections 203, 226, 226.8, 558, 1194.2, and 1197.1.

(F) Applicable interest due for any sum described above.

(4) Pursuant to paragraph (3), each and every customer that receives port drayage services from a motor carrier in a given workweek shall be jointly and severally liable



with the motor carrier for the full amount of all wages, expenses, damages, and penalties which are found owed by the motor carrier for that workweek.

(c) A customer's liability under this section shall be determined by either one of the following:

(1) The Labor Commissioner, in an administrative proceeding pursuant to Section 98, de novo appeal under Section 98.2, or pursuant to the Labor Commissioner's citation authority under this code.

(2) By a court in a civil action brought by the Labor Commissioner, or by a commercial driver or his or her representative, where at least 30 days prior to filing the civil action, the Labor Commissioner, or commercial driver or representative, notifies the customer of its potential joint and several liability for any of the wages, expenses, damages, or penalties listed in paragraph (3) of subdivision (b). No civil action for a violation or enforcement of this section shall be brought pursuant to Part 13 (commencing with Section 2698) of Division 2.

(d) The joint and several liability provided by this section shall not apply to employees covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, working conditions, a process to resolve disputes concerning nonpayment of wages, expenses, damages, and penalties listed in paragraph (3) of subdivision (b), including applicable interest, and a waiver of the joint and several liability provided by this section.

(e) A port drayage motor carrier that provides port drayage services to a customer in the port drayage industry shall, prior to providing these services to the customer, furnish written notice to the customer of any unsatisfied final judgments against the motor carrier for unpaid wages, damages, expenses and penalties, including applicable interest. The notice shall also provide the text of this section. The failure of the motor carrier to provide notice under this subdivision shall not be a defense to the joint and several liability provided by this section.

(f) A port drayage motor carrier that provides port drayage services to a customer in the port drayage industry shall provide, within 30 days of entry of the judgment, written notice of any unsatisfied final judgments against the motor carrier for unpaid wages, damages, expenses and penalties, including applicable interest, to any customer to which the motor carrier is presently providing port drayage services in the port drayage industry. The failure of the motor carrier to provide notice under this subdivision shall not be a defense to the joint and several liability provided by this section.

(g) A customer or port drayage motor carrier shall not take any adverse action against any commercial driver for providing notification of violations or filing a claim or civil action pertaining to unpaid wages, unreimbursed expenses, or the recovery of damages and penalties, including applicable interest.

(h) The remedies provided by this section are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.

(i) Two or more parties who are held jointly and severally liable under this section after a final judgment is rendered by the court shall not be prohibited from establishing, exercising, or enforcing by contract or otherwise, any lawful or equitable remedies, including, but not limited to, a right of contribution and indemnity against each other for liability created by acts of a port drayage motor carrier.



(j) Pursuant to the Labor Commissioner's citation authority, a customer or a port drayage motor carrier shall provide to the Labor Commissioner any information within its possession, custody, or control required to verify compliance with applicable state laws. Upon request, the records that contain this information shall be made available promptly for inspection, and the Labor Commissioner shall be permitted to copy them.

(k) The Labor Commissioner may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (j) that are under his or her jurisdiction.

(l) The Employment Development Department may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivision (b) that are under its jurisdiction.

(m) A waiver of this section is contrary to public policy, and is void and unenforceable.

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