

July xx, 2022

The Honorable Gavin Newsom
Governor of California
1021 O St, Suite 9000

Sacramento, CA 95814

Dear Governor Newsom,

California's supply chain stands at the precipice. On June 30, 2022 the Supreme Court denied a petition for certiorari in *California Trucking Association v. Bonta*, which means the future of California's nearly 70,000 independent truckers are now in doubt.

Independent truckers service all parts of California's economy, including but not limited to, providing seasonal capacity to support agricultural harvests, specialized construction equipment and aggregate hauling, transportation of refrigerated food commodities, port and intermodal rail delivery, home deliveries and all points in between.

California is currently entering or in the midst of:

- Peak harvest season
- Peak construction season
- Peak holiday import season

The undersigned organizations urge the Administration to provide space for negotiation to avoid the calamitous effects of the Supreme Court's failure to review the application of AB 5 to truckers by:

- Providing a short term pause in enforcement via Executive Order
- Immediately calling labor and industry to the table to negotiate a path forward to preserve small business trucking in the State of California and prevent further disruptions to the supply chain.

Forgoing this narrow window of opportunity for compromise risks an economic and inflationary crisis that the State can ill afford and whose impact will not be unfelt by Californians.

Background

The independent “owner-operator” trucker has long been the backbone of the trucking industry. There are approximately 500,000 owner-operators nationwide, constituting about 15-20% of the entire driver workforce. The average owner-operator is an experienced driver who has been in trucking for 26 years.

Of the 73,023 trucking companies active in California in 2017:

- **71.30% or 52,064 of these companies ran just a single truck.**
- 10.27% or 7,501 of these companies ran just two trucks.
- 5.3% or 3,872 of these companies ran just three trucks.
- 3.09% or 2,257 of these companies ran just four trucks.
- 1.84% or 1347 of these companies ran just five trucks.

In total, 91.8% of all trucking companies in California operated five or fewer trucks in 2017.

In terms of total truck capacity, fleets of 3 or fewer represent 37.16% of all the California registered Class 7-8 trucks¹.

It is these small business truckers who will be most directly impacted by AB 5 as, under the “ABC” test, an individual providing a service within a business’ usual course will not generally be considered an independent contractor.² Because of the complexity of the goods movement system, freight is tendered through a host of channels and intermediaries, many of whom will likely face significant liability under the “ABC” test. Therefore, as these intermediaries look to mitigate the risks posed by enforcement of AB 5, opportunities for small business truckers to haul freight will contract significantly, if not completely disappear.

It is no secret that the trucking industry is enduring a historic driver shortage. In 2021, the American Trucking Associations (ATA) estimated that the trucking industry will need to hire 1,000,000 new truck drivers over the next ten years to replace retiring drivers and meet increasing demands.³ Experienced drivers, such as the typical owner-operator, are in high demand and could easily secure employment as company drivers. However, owner-operators are independent by choice for reasons related to freedom, flexibility and economic opportunity.

In fact, despite historic pay increases to attract company drivers⁴, entrepreneurial truckers continue to break off into independent entities with a record number⁵ of new operating authorities (about 70% to single truck operators) having been issued in the past two years.

¹ https://ww2.arb.ca.gov/sites/default/files/2021-06/2020_Annual_Enforcement_Report.pdf

² The business-to-business exception has a 12 or 13 part test that may be applicable to certain members of our industry. Given the restrictive nature of meeting every provision for a 12 or 13 point test in every single contractual relationship, that provision will likely require a fact specific inquiry in each case, and those relying on it will have to face the liability and legal fees for that determination in court most likely.

³ [ATA Driver Shortage Report 2021 Executive Summary.FINAL .pdf \(trucking.org\).](https://www.ata.org/ATA-Driver-Shortage-Report-2021-Executive-Summary-FINAL-.pdf)

⁴ <https://www.cnn.com/2021/05/29/economy/truck-driver-shortage-pay-hikes/index.html>

⁵ <https://www.transportdive.com/news/FMCSA-authority-approvals-2021-records/607784/>

Conclusion

We appreciate the Administration's continued recognition of ongoing supply chain disruptions. Failure to forge a reasonable compromise on this issue would be among the greatest threats the State's supply chain has faced to date.

Thank you for your attention to this important matter.

California Trucking Association

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cc: The Honorable Toni Atkins, Senate Pro Tempore
The Honorable Scott Wilk, Senate Republican Leader
The Honorable Anthony Rendon, Speaker of the Assembly
The Honorable James Gallagher, Assembly Republican Leader