

FROM: Larry Pursley, Executive Vice President, Washington Trucking Associations
John McLaurin, President, Pacific Merchant Shipping Association

RE: SHB 2395 Relating To Drayage Services

DATE: February 15, 2012

Dear Senator :

We represent a broad spectrum of businesses vitally concerned about shipments through Washington ports. We are writing to you to express our strong opposition to SHB 2395. This legislation proposes to transform anyone who contracts with a trucking carrier to perform drayage services by fiat into an employee of that carrier, regardless of the actual facts of the relationship between the driver and the carrier. How this can occur is unclear. For example, if Carrier A contracts with Carrier B to perform certain services, does the employee driver of Carrier B become an employee of Carrier A because of the contract?

Drayage services have historically involved the hauling of goods to and from a port for trans-shipment. These drayage services are often performed by owner/operators, independent contractors who have their own separate businesses. Trucking carriers lease the truck. Owner/operators make a substantial investment in a truck or trucks, and other equipment. They like being independent businesses rather than employees of any trucking carrier. In fact, the OOIDA, the organization representing owner/operators, *opposes* this legislation.

In the present economy, it simply makes no sense for the Washington Legislature to enact this legislation that would impair the flexibility of trucking, maritime, and rail carriers, and the retailers depending on their services. Needs for transportation services vary and owner/operators are used to flexibly address varying transportation demands in the market. Trucking carriers would either employ too few or too many drivers, depending on market conditions. The purchase of trucking equipment for such drivers is expensive. If carriers are required to treat every owner/operator as an employee, trucking carriers will necessarily avoid making the expensive commitment to purchasing additional equipment, assuming that financing for such expensive trucks and trailers is even readily available to such trucking carriers.

In sum, from a practical standpoint alone, SHB 2395 is impractical and disruptive. If there is a problem with trucking carriers misclassifying owner/operators as employees that is a matter for enforcement by the applicable state regulatory agencies.

Additionally, efforts to transform owner/operators into employees of trucking carriers have resulted in litigation preventing that from occurring. In California, the Port of Los Angeles and the Port of Long Beach attempted to bar owner/operators from providing drayage services in those Ports. The United States Court of Appeals for the Ninth Circuit in *American Trucking Assns, Inc. v. City of Los Angeles*, 660 F.3d 384 (9th Cir. 2011) recently re-affirmed the proposition that 49 U.S.C. § 14501(c)(1) preempted any effort by the Port of Los Angeles or the Port of Long Beach because the

prohibition on owner/operators in the Ports' concession agreements related to a prices, routes, or services and was preempted by that federal law.

The passage of SHB 2395 will guarantee further litigation in which the trucking industry and others would be compelled to raise the federal preemption question yet again. After the *ATA* case, it is clear that legislation such as SHB 2395 is federally preempted. Passage of this legislation will simply assure unnecessary litigation at a cost to Washington's taxpayers at a time when this State is faced with a severe budget crisis.

We urge you to reject SHB 2395.

Sent on behalf of:

American Apparel and Footwear Association
American Import Shippers Association
American Trucking Associations
Bridge Terminal Transport Inc
BNSF Railway
Damco Distribution Services Inc
Fashion Accessories Shippers Association
Intermodal Association of North America
Intermodal Motor Carriers Conference
International Warehouse Logistics Association
Maersk Inc
National Association of Waterfront Employers
National Customs Brokers and Forwarders Association of America
National Retail Federation
Owner-Operator Independent Drivers Association
Pacific Merchant Shipping Association
Retail Industry leaders Association
The Waterfront Coalition
Travel Goods Association
Union Pacific Railroad
Washington Cattle Feeders Association
Washington Farm Bureau
WA Forest Protection Assn
Washington Growers Clearing House Association
Washington Retail Association
Washington State Hay Growers Association
Washington State Horticultural Association
Washington State Potato Commission
Wenatchee Valley Traffic Association
Yakima Valley Growers-Shippers Association