

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 224 (Daly) – As Amended March 26, 2021

NOTE: This bill contains an urgency clause.

SUBJECT: Department of Consumer Affairs: Bureau of Household Goods and Services: household movers.

SUMMARY: Exempts motor carriers that may transport used household goods but do not load or unload the containers from the Household Movers Act and exempts brokers that utilize exempted motor carriers if they do not otherwise advertise, solicit, offer, or arrange for the full service moving of used household goods by motor carrier for compensation.

EXISTING LAW:

- 1) Regulates the business of the transportation of used household goods under the Household Movers Act, and establishes requirements related to identifying symbols, liability protection, rates, reports, records, inspections, delivery and claims, subhauling agreements, estimates, fines, and penalties, among others. (Business and Professions Code (BPC) §§ 19225-19294)
- 2) Declares that the transportation of used household goods and personal effects in any truck or trailer for compensation over any public highway in this state is a highly specialized type of truck transportation and specifies that the act is enacted for the limited purpose of providing necessary regulation for this specialized type of truck transportation only, and is not to be construed for any purpose as a precedent for the extension of that regulation to any other type of truck transportation not currently restricted. (BPC § 19227)
- 3) Establishes the Bureau of Household Goods and Services (BHGS) within the Department of Consumer Affairs to administer and enforce the Electronic and Appliance Repair Dealer Registration Law, the Home Furnishings and Thermal Insulation Act, and the Household Movers Act, (BPC §§ 9810-9814.5, 19030-19034.5, 19225.5-19234.1)
- 4) Defines “broker” as a person engaged by others in the act of arranging, for compensation, the intrastate transportation of used household goods by a motor vehicle over the highways of this state for, or on behalf of, a shipper, a consignor, or a consignee. (BPC § 19225.5(a))
- 5) Defines “household mover” as every corporation or person, their lessees, trustee, receivers, or trustees appointed by any court whatsoever, engaged in the permitted or unpermitted transportation for compensation or hire as a business utilizing a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects over any public highway in this state. A broker, as defined, is considered a household mover. “Household mover” has the same meaning as “household goods carrier” in the former Section 5109 of the Public Utilities Code, as that section read on June 30, 2018. (BPC § 19225.5(h))

- 6) Prohibits a household mover from engaging in the business of transportation of used household goods and personal effects for compensation by motor vehicle over any public highway in this state, unless the mover has a permit or is otherwise authorized under the Household Movers Act. (BPC § 19235)
- 7) Regulates and licenses the business of transporting property using a commercial motor vehicle under the Motor Carriers of Property Permit Act, and establishes requirements related to vehicle maintenance, liability insurance, workers compensation insurance, controlled substance and alcohol testing, identification, fines, and penalties, among others. (Vehicle Code (VEH) §§ 34600-34672)
- 8) Defines “motor carrier of property” as any person who operates any commercial motor vehicle used to transport property for compensation, as defined. Provides that “motor carrier of property” does not include a household goods carrier, as defined. (VEH § 34601(a))

THIS BILL:

- 1) Exempts from the definition of a “household mover”:
 - a) A motor carrier that provides transportation of household goods in containers or trailers where the household goods are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.
 - b) A broker that utilizes the services of a motor carrier that meets the definition under this bill and does not otherwise advertise, solicit, offer, or arrange for the full service moving of used household goods by motor carrier for compensation.
- 2) Contains an urgency clause, declaring the necessity for the provisions to into effect immediately.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is co-sponsored by the *California Trucking Association* and the *Teamsters*. According to the author, “Self-moving services have grown over the decades to differ significantly from traditional full-service movers and target a different segment of the consumer market. The primary distinction between these two types of service involves whether service features are offered inside the residence (as is the case with traditional full-service moves) or whether the motor carrier is merely offering the availability of its equipment and transportation service. This bill provides needed clarification in current law to allow the self-moving service segment of the trucking industry to continue operating without unrelated regulatory requirements imposed on traditional full-service movers.”

Background. The transportation of goods over state highways is regulated in several ways. The Department of Motor Vehicles regulates most types of transport, including the transport of property using commercial vehicles under the Motor Carriers of Property Permit Act. The

Bureau of Household Goods and Services regulates moving companies, which transport used household goods and personal effects under the Householder Movers Act

The reason for the distinction is that household goods and personal effects reside within a household and may tend to have higher personal and sentimental value than other types of goods. For example, they may include family heirlooms, antique furniture, or funeral urns. As a result, they may be more fragile, unique, or less replaceable and therefore may require specialized services, such as entry into the home or the use of specific equipment. They may also be more susceptible to theft or targeted for use in scams, such as holding items hostage for ransom.

To that end, BPC § 19227 specifies that the transportation of used household goods and personal effects “is a highly specialized type of truck transportation.” BPC § 19229.1 also specifies that the purpose of the Household Movers Act is to preserve the highways and prevent predatory and fraudulent practices by businesses that offer to move household goods. Specifically, the purpose includes:

- 1) Preserving for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon those highways.
- 2) Securing reasonable and nondiscriminatory rates for transportation by household movers operating upon the highways.
- 3) Securing the full and unrestricted flow of traffic by motor carriers over the highways that will adequately meet reasonable public demands by providing for the regulation of rates of all household movers so that adequate and dependable service by all necessary household movers is maintained and the full use of the highways is preserved to the public.
- 4) Promoting fair dealing and ethical conduct in the rendition of services involving or incident to the transportation of household goods and personal effects.

As a result, state law places higher burdens on businesses that offer to provide moving and transportation services to consumers looking to move their household goods. The culmination of these requirements is known as the Maximum Rate Tariff 4,¹ which includes regulations surrounding estimates, notices to consumers, maximum rates, method of charges, collections, claims, and valuation, and numerous other requirements and forms.

The Household Movers Act also specifies that the limited purpose of the act is the “necessary regulation for this specialized type of truck transportation only, and is not to be construed for any purpose as a precedent for the extension of that regulation to any other type of truck transportation not presently so restricted.”

This bill seeks to exempt companies that offer transportation services that may include household goods but do not include any of the specialized services, such as packing, loading, binding, or other services traditionally associated with a full-service mover.

¹ Bureau of Household Goods and Movers, *Maximum Rates and Rules For The Transportation of Used Property, Namely: Household Goods and Personal Effects Over the Public Highways Within the State of California By Household Movers*, February 15, 2019.

Administration of the Household Movers Act. The Household Movers Act is administered and enforced by the BHGS within the Department of Consumer Affairs (DCA), which was previously known as the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (BEARHFTI).

The act was previously administered by the Public Utilities Commission (PUC). However, due to ongoing issues with the PUC's ability to complete its regulatory functions, SB 541 (Hill), Chapter 718, Statutes of 2015, required the PUC to hire an independent entity to, in consultation with trade carrier associations for the industries under the jurisdiction of the PUC, assess the PUC's capabilities to carry out its various programs, such as the transportation of passengers and property by transportation companies and report to the Legislature no later than January 1, 2017.

The report found that the PUC has had difficulty implementing many of the provisions of the prior Household Goods Carrier's Act. As a result, SB 19 (Hill), Chapter 421, Statutes of 2017, required that BEARHFTI would assume licensing and enforcement of the Household Movers Act as of July 1, 2018.

Federal Regulation of Household Movers. The federal Safe, Accountable, Flexible, Efficient Transportation Equity Act established, among other things, regulation for the interstate transport of household goods. While similar to the state requirements discussed under this bill, it provides a limited services exemption, which excludes motor carriers that do not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier). The goal of this exemption is to exclude companies that offer containers and transport of goods but do not provide any moving services related to that transport.

While the federal law contains some federal preemption provisions, it specifically exempts from preemption state regulation of "the intrastate transportation of household goods" (49 U.S. Code §14501(c)(2)(B)).

Prior Related Legislation. AB 2460 (Daly) of 2020 would have created the same exemptions to the Household Movers Act proposed under this bill. AB 2460 died pending hearing in the Senate Committee on Business, Professions, and Economic Development.

SB 19 (Hill), Chapter 421, Statutes of 2017 made numerous changes to the PUC, including moving the household movers program to the BHGS (then called the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal insulation).

SB 541 (Hill), Chapter 718, Statutes of 2015, required the CPUC to hire an independent entity to, in consultation with trade carrier associations for the industries under the jurisdiction of the commission, assess the commission's Transportation Enforcement Branch capabilities to carry out specified activities and report to the Legislature.

ARGUMENTS IN SUPPORT:

The *California Trucking Association* (co-sponsor) writes in support:

[This bill] would harmonize the state and federal definition of “household goods mover.” This measure will update California’s outdated definition of “household goods mover” to recognize the intent of Congress to exclude motor carriers operating under a “limited services exclusion” (LSE) from that definition.

California has never required motor carriers who fall under this exclusion to obtain household goods permits and operate as household goods movers; however, recently, the Bureau has notified our members that they must obtain these permits. In doing so, the clear conflict between State and Federal statute has come to light....

One exception provided by [federal law] is for the intrastate transportation of household goods... and allows states to exercise jurisdiction over intrastate household goods movers; however, considering that the legislative intent behind this exception must be understood consistent with the household goods definition (and the LSE exclusion contained within it), the Bureau does not have jurisdiction over LSE operations since those are categorically excluded from household goods motor carrier operations.

Furthermore, in light of the nation’s ongoing COVID-19 pandemic, the self-moving industry allows for moves which involve little to no face to face interaction, allowing for social distancing and reducing the likelihood of transmittal from an asymptomatic carrier.

The *Teamsters* (co-sponsor) writes in support:

[This bill] would align California and federal law by ensuring that the limited service exclusion for motor carriers applies here to trucking companies that move household goods for self-movers. This clarification is necessary to prevent California's extensive regulatory scheme for moving companies from being applied unnecessarily to motor carriers who are simply moving a load of goods from point A to point B.

The Teamsters have thousands of members throughout the country and throughout the state who perform the work that this bill contemplates. They drive trucks that may have consumer self-loaded containers of household goods on one day and may haul a container of packaged goods going to a retailer on another day. It would be unfair and burdensome to regulate their work as household movers. That's not what they do. They don't go into homes and move furniture. They don't touch the household goods that they haul. The limited service exclusion makes good policy sense and should be applied here in California as well. We certainly support vigorous consumer protection, but it should be aimed with some precision.

ARGUMENTS IN OPPOSITION:

The *California Moving & Storage Association (CMSA)* writes in opposition:

[This bill] seeks to weaken BHGS' oversight, increase state enforcement costs, subject consumers to mistreatment & fraud, and create a path for unregulated movers to operate in California.

In their reasoning for seeking an exemption, the bill's sponsors state that California has never required motor carriers who fall under the limited services exclusion to obtain permits and that federal law clearly preempts motor carriers from needing a BHGS permits to limit state enactment & enforcement of laws & regulations affecting prices, routes, and services provided by motor carriers.

In 2018, pursuant to SB 19 (Hill), Chapter 421, Statutes of 2017, jurisdiction for the oversight and enforcement of household movers, as well as the transport and storage of household goods, was transferred from the California Public Utilities Commission (CPUC) to BHGS. CMSA strongly supported SB 19 because it relieved the CPUC of certain regulatory functions related to the industry and recognized that the CPUC's enforcement had been lacking for decades. It was understood that, when BHGS absorbed the moving and storage industry, oversight and enforcement would improve. Since transitioning to BHGS, we have seen an increase in activities against unlicensed, illegal movers, including several actions against businesses that this bill would exempt. Essentially, we knew the additional oversight was coming and the opportunity to discuss role & responsibility of BHGS presented itself very recently in SB 19.

Federal law does provide a very limited exemption from the definition of a household goods motor carrier – for motor carriers that provide transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier. However, federal law recognizes that states are free to further regulate the transport of household goods within their borders. Per federal law (49 U.S.C. 14501(c)(2)(B)), federal preemption "does not apply to the intrastate transportation of household goods." As such, we do not agree with the assertion that federal law preempts states from enacting and enforcing laws affecting prices, routes, and services by motor carriers of household goods.

Bottom line, we fear that removing motor carriers involved in transporting household goods, or brokers arranging for these services from BHGS permitting will adversely impact consumers and the regulated moving industry. For example, a company, like PODS (which advertises itself as a moving company, employing its own drivers in PODS-branded trucks and uniforms) delivers a large box (essentially a small shipping container) to a customer, the customer loads it (or hires a third party), and then PODS picks it up and moves it to the customer's desired location. Moreover, PODS can also act as a broker, arranging for "packers and loaders" to assist customers with their move. For all intents and purposes, this is a moving company. However, this bill would exempt companies like PODS from BHGS permitting and oversight and would create a significant marketplace for unregulated, unlicensed movers.

For traditional moving companies, consumer protection is enhanced by consistent contracts and forms set out in both the Business and Professions Code and the MAX 4 Tariff (which regulates household movers in California). This paperwork sets out, among many things, the estimated cost, a "not-to exceed" price, details the labor and equipment to be used, provides dates of service, provides for storage-in-transit charges at the customer's request, clearly explains the responsibilities of the mover, and is clear about payment for services. A company exempted by this bill, but still essentially providing or arranging moving services, would not be subject to any of these requirements. Finally, it is worth noting that the BHGS permit applies to the company, and not the individual employees. In the above example, PODS would hold the BHGS permit and it would cover all employees. The permit costs \$500, requires knowledge of the Max 4 Tariff, participation in the DMV Employer Pull-Notice System (if required), information to show that vehicles will be maintained and operated in safe condition, fingerprinting for a criminal background check and evidence of insurance coverage.

POLICY ISSUES FOR CONSIDERATION:

Household Mover Scope of Practice. While not established by this bill, the current scope of practice of household movers is any transportation of used household goods over a state highway for compensation. As a result, there is no basis to include or exclude the ancillary services associated with the transportation of household goods, such as packing, loading, providing estimates, or entry into a home.

Federal law, which applies to motor carriers who travel between states, is more easily able to distinguish between motor carriers of property that may transport household goods by excluding those that are not included within the federal scope of practice under 49 U.S. Code §13102(12):

(A) In general.—The term “household goods motor carrier” means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

- (i) Binding and nonbinding estimates.
- (ii) Inventorying.
- (iii) Protective packing and unpacking of individual items at personal residences.
- (iv) Loading and unloading at personal residences.

(B) Inclusion.—

The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

Many types of motor carriers may move household goods as a portion of their overall business model but not as their primary source of business. For example, a consumer shipping company that accepts a contract to ship, as part of an overall shipment that includes other consumer orders, a package that is identified as a funeral urn, could technically violate the Household Movers Act.

The sponsors of this bill argue that the household mover regulations are too onerous for companies that simply offer container services where a consumer loads and unloads a package or container on their own and the company simply moves the container from one point to another. Specifically, the sponsors raise that a trucking company that accepts contracts to haul freight, whether home goods or not, and was not involved in the packing or inventorying of goods would not pose as high of a risk as a company that advertised and offered to assist in the move of home goods.

For example, under one business model, a trucking company that hauls freight across state lines may, and therefore regulated under federal law, also offers to haul household goods by providing a portable container or trailer. The customer then loads their goods themselves or may hire someone to load it for them. Because the company does not load the container or trailer or offer any of the other services associated with a household move, federal law does not regulate the company as a household mover. The trucking company may point to loading services but would not otherwise have a business relationship with the loaders (to do so would violate the federal exemption).

Once a portable container is packed, it is loaded onto a truck and the rest of the truck is filled with commercial goods going in the same direction, which cuts transportation costs for the company. For trailers, the consumer is provided with a lockable dividing wall that is accessible only by the consumer, called a bulkhead, and the remainder of the trailer is also filled with commercial goods. The container or trailer is then driven by one or more commercial drivers that work for the company or a subcontracted company to the destination or stored at a distribution center along with other the other freight until the contracted for delivery time. Because the drivers work for the company or another company, drivers would have no opportunity to hold the freight hostage without risking their employment. The company itself must comply with its contract with the consumer.

The opposition argues that the transportation of household goods, which are a unique type of goods, should always be subject to the Household Movers Act regulations. If this bill passes this committee, the author may wish to continue to work with the opposition and the BHGS to determine what types of business models may pose a high risk to consumers while skirting the regulations surround household movers.

Unlicensed Activity. Currently, there is a lack of clarity as to who is subject to regulation by the BHGS and who is not. Due to the insufficiency of the PUC's licensing and enforcement activities, it is unclear how many non-compliant household movers were in business. The following is the BHGS complaint data as of July 1, 2018:

Complaints:

- Total processed: 371
- Unlicensed mover: 244

- Percentage of unlicensed activity: 66%
- Involving Tariff disputes (overcharging, no contract, missing/damaged items, etc.): 245
- Involving inter-state movers: 136
- Involving unlicensed inter-state movers: 118
- Involving restoration companies: 5
- Involving unlicensed restoration companies: 5
- Complaints referred to Investigations Unit for field investigation: 252

Investigations:

- Total: 525 (these include 252 referrals from Complaint Unit, tips of unlicensed activity, and proactive enforcement)
- Unlicensed mover: 502
- Percentage of unlicensed activity: 96%
- Hold hostages: 85
- Hold hostage involving an unlicensed mover: 77
- Involving restoration companies: 8
- Involving unlicensed restoration companies: 8

As noted above, there is a significant number of “hold hostage” cases. These are cases related to goods that are being transported but are held hostage for ransom or additional fees from consumers beyond what was specified in the contract.

Lack of Definitions. This bill would exempt brokers that utilize motor carriers that meet the requirements under this bill but do not advertise for the “full service moving” of household goods. However, “full service moving” is not currently defined.

Because the BHGS has only had authority over the Household Movers Act since July 1, 2018, several code sections likely need regulations to clarify various terms and establish a system for the issuance of citations. The BHGS rulemaking proposal was submitted in July 2019 and is still going through the review process.

AMENDMENTS:

To further narrow the exemption to 1) motor carriers, including those operating under a federal Unified Carrier Registration, that only move freight that may contain household goods but are not advertising as permitted household movers and 2) federally regulated brokers that have federal registration separate from the state definition of a household goods broker and are not advertising as permitted household movers, the author should amend the bill as follows:

Between page 2, lines 29-31 and page 3, lines 1-3:

(2) “Household mover” does not include either of the following:

(A) A motor carrier of property, as ~~that term is~~ defined in Section 34601 of the *Vehicle Code*, including a motor carrier registered under Section 14504a of Title

*49 of the United States Code, the federal Unified Carrier Registration Act, ~~13102~~
of Title ~~49~~ of the United States Code,* that *meets both of the following:*

(1) The motor carrier only provides transportation of household goods in containers or trailers ~~where~~ *when* the household goods are entirely loaded and unloaded by an individual ~~other than~~ *who is not* an employee or agent of the motor carrier.

(2) The motor carrier does not otherwise advertise as a permitted household mover in compliance with Section 19279.3. This subparagraph shall not be construed to prohibit the advertisement or offer of the services described under subparagraph (1).

(B) A ~~broker~~ *broker, as defined under Section 13102(2) of Title 49 of the United States Code,* that *meets both of the following:*

(1) The broker only utilizes the services of a motor carrier ~~described in that meets the requirements of~~ *subparagraph (A) pursuant to a broker registration issued by the federal Department of Transportation.* ~~and does not otherwise advertise, solicit, offer, or arrange for the full service moving of used household goods by motor carrier for compensation.~~

(2) The broker does not otherwise advertise as a permitted household mover in compliance with Section 19279.3. This subparagraph shall not be construed to prohibit the advertisement or offer of the services described under subparagraph (1) of paragraph (A).

REGISTERED SUPPORT:

California Teamsters Public Affairs Council (co-sponsor)
California Trucking Association (co-sponsor)

REGISTERED OPPOSITION:

California Moving and Storage Association

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