

ASSEMBLY THIRD READING

AB 224 (Daly)

As Amended April 8, 2021

2/3 vote. Urgency

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.

Major Provisions

- 1) Exempts from the definition of a "household mover":
 - a) A motor carrier, as defined, including a motor carrier registered under the federal Unified Carrier Registration Act, that meets both of the following:
 - i) The motor carrier only provides transportation of household goods in containers or trailers when the household goods are entirely loaded and unloaded by an individual who is not an employee or agent of the motor carrier.
 - ii) The motor carrier does not otherwise advertise as a permitted household mover in compliance existing law, except the motor carrier may still advertise or offer the services authorized above.
 - b) A broker, as defined under federal law, that meets both of the following:
 - i) The broker, pursuant to a broker registration issued by the United States Department of Transportation, only utilizes the services of a motor carrier that meets the requirements of the exemption under this bill.
 - ii) The broker does not otherwise advertise as a permitted household mover in compliance with existing law, except the broker may still advertise or offer the services authorized above.
- 2) Contains an urgency clause, declaring the necessity for the provisions to into effect immediately.

COMMENTS

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, Business and Professions Code (BPC) Section 19227 specifies that the transportation of used household goods and personal effects "is a highly specialized type of truck transportation." BPC Section 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, 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.

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 BEARHFTI to 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 United States Code Section (U.S.C.) 14501(c)(2)(B)).

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."

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.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Estimated ongoing annual costs of \$583,000 (special funds) to the Bureau of Household Goods and Services (Bureau) for additional staff to investigate consumer complaints regarding unlicensed activity.

The Bureau believes this exemption will encourage other noncompliant entities, such as interstate moving companies, to contract with storage container delivery companies so the noncompliant entities are not required to become licensed themselves. This would result in an increase of unlicensed household mover activity in the state, and therefore an increase in enforcement actions needed to be taken by the Bureau by an estimated 33%.

- 2) Anticipated revenue loss of \$286,000 to \$541,000 (special fund) annually to the Bureau due to storage delivery companies no longer needing to be permitted as well as a decrease in citations issued to unlicensed movers.

VOTES

ASM BUSINESS AND PROFESSIONS: 18-0-1

YES: Low, Flora, Arambula, Berman, Bloom, Chen, Chiu, Valladares, Megan Dahle, Fong, Gipson, Grayson, Holden, Irwin, McCarty, Medina, Salas, Ting

ABS, ABST OR NV: Mullin

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

UPDATED

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