Date of Hearing: July 15, 2025

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
SB 809 (Durazo) – As Amended July 10, 2025

SENATE VOTE: 28-10

SUBJECT: EMPLOYEES AND INDEPENDENT CONTRACTORS: CONSTRUCTION TRUCKING

KEY ISSUE: SHOULD THE LEGISLATURE ESTABLISH THE CONSTRUCTION TRUCKING EMPLOYER AMNESTY PROGRAM?

SYNOPSIS

Misclassification of a worker as an independent contractor, rather than an employee, can prevent the worker from legal protections, including minimum wage requirements, meal and rest breaks, and overtime pay. Additionally, employers are required to maintain certain workplace safety standards and unemployment insurance coverage for direct employees that are not required for independent contractors, and are subject to payroll taxes that help fund unemployment insurance, among other public programs. Since 2018, whether a worker is an independent contractor or an employee has generally been determined by the ABC-test, codified from the California Supreme Court's decision in Dynamex *by AB 5 (Gonzalez, Chap. 296, Stats. 2019). The construction industry has enjoyed a carve-out from AB 5 that applied a different standard, but that carve out, by its terms, sunset on January 1, 2025.*

In light of the sunset, this bill proposes to address potential misclassification in the construction trucking industry in particular through two avenues. First, it proposes the Construction Trucking Employer Amnesty Program which would allow eligible contractors to enter into settlement agreements with the Labor Commissioner and avoid liability for penalties resulting from misclassification. Second, it would implement a "two-check" system to ensure drivers are reimbursed for the cost of the use of their vehicles.

This bill is co-sponsored by the California Teamsters Public Affairs Council and the State Building and Construction Trades Council of California (SBCTC). It is additionally supported by the California Federation of Labor Unions. It is opposed by the Western States Trucking Association (WSTA). This measure was previously heard by the Assembly Committee on Labor and Employment, where it was approved on a vote of 6-0.

SUMMARY: Establishes the Construction Trucking Employer Amnesty Program and implements a "two-check" system for construction trucking. Specifically, **this bill**:

1) Requires the Labor Commissioner and the Employment Development Department to administer the Construction Trucking Employer Amnesty Program pursuant to which an eligible construction contractor is relieved of liability for statutory or civil penalties associated with the misclassification of construction drivers as independent contractors, as provided by this program, if the eligible construction contractor executes a settlement agreement negotiated with, or approved by, the Labor Commissioner whereby the eligible

construction contractor agrees to, among other things, properly classify all drivers performing construction work on its behalf as employees.

2) Defines various relevant terms for purposes of this program, including:

   a) "Construction contract" means a contract, whether on a lump sum, time and material, plus cost, or other basis, to do any of the specified work.

   b) "Construction contract" does not include either of the following :

      i) A contract for the sale, or for the sale and installation, of tangible personal property, including machinery and equipment;

      ii) The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

   c) "Construction contractor" means a person who agrees to perform and does perform a construction contract. Construction contractor includes subcontractors and specialty contractors and those engaged in building trades. Construction contractor includes any person required to be licensed under the Contractors' State License Law and any person contracting with the federal government to perform a construction contract.

   d) "Construction driver" means a person who operates a motor vehicle to perform construction work on behalf of a construction contractor, utilizing a vehicle owned by the driver or a vehicle supplied by the construction contractor.

   e) "Eligible construction contractor" means a construction contractor that does not have either of the following on the date they apply to participate in the program:

      i) A civil lawsuit that was filed on or before December 31, 2025, pending against it in a state or federal court that alleges or involved misclassification of a construction driver;

      ii) A penalty assessed by the department pursuant to Section 1128 of the Unemployment Insurance Code that is final imposition of that penalty.

3) Requires a construction contractor to participate in the program by doing both of the following:

   a) Submitting an application to the Labor Commissioner, on a form provided by the Labor Commissioner. Requires the application, at a minimum, to require the construction contractor to establish they qualify as an eligible construction contractor;

   b) Reporting on the results of a self-audit in accordance with the guidelines provided by the Labor Commissioner.

4) Requires a construction contractor that voluntarily or as a result of a final disposition in a civil proceeding reclassified its construction drivers as employees on or before September 1, 2028 to, in addition to other information requested by the Labor Commissioner, also submit with its application all of the following:

a) Documentation demonstrating that the construction contractor reclassified their construction drivers as employees, including the commencement period applicable to the reclassification;

b) The identification of each construction driver reclassified in the documents provided, the amounts paid to each construction driver to compensate for the previous misclassification, and the time period applicable to the amount paid to each construction driver prior to reclassification;

c) A report of a self-audit for all construction drivers reclassified by the construction contractor identified, and also include a separate self-audit report for any construction driver who is subject to reclassification but is not identified.

5) Prohibits a proceeding or action against a construction contractor pursuant to the Private Attorneys General Act (PAGA) from being initiated after the construction contractor has submitted an application for participation in the program, but may be initiated if the construction contractor's application is denied.

6) Prevents the denial by the Labor Commissioner of a construction contractor's application to participate in the program from being considered an acknowledgment or admission by the construction contractor that they misclassified their construction drivers as independent contractors, and the application or its submission from being construed in any way to support an evidentiary inference that the construction contractor failed to properly classify their construction drivers as employees.

7) Requires the Labor Commissioner to analyze the information provided pursuant to the construction contractor's application for the purpose of evaluating the scope of a prior reclassification of an eligible construction contractor's construction drivers to employees and grants the Labor Commissioner discretionary authority to determine whether the scope was sufficient to afford relief to the misclassified construction drivers.

8) Authorizes the Labor Commissioner, with the cooperation and consent of the department, before January 1, 2029 to negotiate and execute a settlement agreement with an eligible construction contractor that applied to participate in the program. Prohibits the Labor Commissioner from executing a settlement agreement on or after January 1, 2029.

9) Authorizes, before January 1, 2029, an eligible construction contractor to negotiate a settlement agreement with a labor union representing its drivers, or with any city attorney, and requires them to submit that settlement agreement to the Labor Commissioner to review and approve that settlement agreement under the program. Prohibits the Labor Commissioner from approving a settlement agreement on or after January 1, 2029.

10) Requires an eligible construction contractor to file their contribution returns and report unreported wages and taxes for the time period the construction contractor seeks relief under the settlement agreement before the Labor Commissioner executes or approves a settlement agreement.

11) Requires a settlement agreement executed or approved by the Labor Commissioner involving an eligible construction contractor pursuant to the program to require an eligible construction contractor to do all of the following:

a) Pay all wages, benefits, and taxes owed, if any, to or in relation to all of its construction drivers reclassified from independent contractors to employees for the period of time from the first date of misclassification to the date the settlement agreement is executed, but not exceeding the applicable statute of limitations;

b) Maintain any converted construction driver positions as employee positions;

c) Consent that any future construction drivers hired to perform the same or similar duties as those employees converted pursuant to the settlement agreement are presumed to have employee status and that the eligible construction contractor has the burden to prove by clear and convincing evidence that they are not employees in any administrative or judicial proceeding in which their employment status is an issue;

d) Immediately after the execution of the settlement agreement, secure the workers' compensation coverage that is legally required for the construction drivers who were reclassified as employees, effective on or before the date the settlement agreement is executed;

e) Provide the Labor Commissioner and the department with proof of workers' compensation insurance coverage within 5 days of securing the coverage;

f) Pay the costs authorized if required;

g) Perform any other requirements or provisions the Labor Commissioner and the department deem necessary to carry out the intent of this Act, the program, or to enforce the settlement agreement.

12) Provides that a settlement agreement may require an eligible construction contractor to pay the reasonable, actual costs of the Labor Commissioner and the department for their respective review, approval, and compliance monitoring of the settlement agreement. Requires these costs to be deposited into the Labor Enforcement and Compliance Fund. Requires the portion of the costs attributable to the department to be transferred to the department upon appropriation by the Legislature.

13) Authorizes a settlement agreement to include provisions for an eligible construction contractor to make installment payments of amounts due in lieu of a full payment. Requires an installment payment agreement to be included within the settlement agreement and charge interest on the outstanding amounts due at the rates prescribed in Sections 1113 and 1129 of the Unemployment Insurance Code. Requires interest on amounts due to be charged from the day after the date the settlement agreement is executed. Requires the settlement agreement to contain a provision that if a construction contractor fails, without good cause, to fully comply with the terms of the settlement agreement authorizing installment payments, the settlement agreement is null and void and the total amount of tax, interest, and penalties for the time period covered by the settlement agreement is immediately due and payable.

14) Requires the Labor Commissioner and the department to share any information necessary to carry out the program. Establishes that sharing information pursuant to this subdivision does not constitute a waiver of any applicable confidentiality requirements and the party receiving the information is subject to any existing confidentiality requirements for that information.

15) Excuses an eligible construction contractor that executed and performed its obligations pursuant to a settlement agreement from liability, and prohibits the Labor Commissioner or the department form enforcing, any civil or statutory penalties under the Labor Code or the Unemployment Insurance Code resulting from the misclassification of employees, including, but not limited to, remedies available under subdivision (e) of Section 226, that might have become due and payable for the time period covered by the settlement agreement, except for the following penalties:

    a) A penalty charged under Section 1128 of the Unemployment Insurance Code that is final on the date of the settlement agreement is executed, unless the penalty is reversed by the California Unemployment Insurance Appeals Board;

    b) A penalty for an amount an eligible construction contractor admitted was based on fraud or made with the intent to evade the reporting requirements set forth in this division or authorized regulations;

    c) A penalty based on a violation of this division or Division 6 of the Unemployment Insurance Code and either of the following:

        i) The eligible construction contractor was on notice of a criminal investigation due to a complaint having been filed or by written notice having been mailed to the eligible construction contractor informing the construction contractor that they are under criminal investigation;

        ii) A criminal court proceeding has already been initiated against the eligible construction contractor.

16) Excuses an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement from liability, and prohibits the Labor Commissioner or department from enforcing, any unpaid penalties or interest owed on unpaid penalties for which an eligible construction contractor may have been liable but that were not yet assessed by the department or by a court of competent jurisdiction on or before the date the settlement agreement was executed, pursuant to Sections 1112.5, 1126, and 1127 of the Unemployment Insurance Code for the tax reporting periods for which the settlement agreement is applicable, that may be owed as a result of the nonpayment of tax liabilities due to misclassification of one or more construction drivers as independent contractors and the reclassification of these construction drivers as employees. Any penalties, and interest owed on penalties, established as a result of an assessment issued by the department or by a court of competent jurisdiction before the date the settlement agreement was executed shall not be waived pursuant to the program.

17) Prevents state personal income taxes required to be withheld by Section 13020 of the Unemployment Insurance Code and owed by the construction contractor pursuant to Section 13070 of the Unemployment Insurance Code from being collected, if the eligible construction contractor issued an information return pursuant to Section 6041A of the Internal Revenue Coe reporting payment or if the construction driver certifies that the state personal tax has been paid or that the construction driver has reported to the Franchise Tax Board the payment against which the state personal income tax would have been imposed.

18) Prohibits a refund or credit for any penalty or interest paid prior to the date an eligible construction contractor applied to participate in the program from being granted.

19) Prohibits the department from bringing a criminal action for failing to report tax liabilities against an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement for the tax reporting periods subject to the settlement agreement, except as specified.

20) Tolls the statute of limitations on any claim or liability that might have been asserted against a construction contractor based on the construction contractor having misclassified a construction driver as an independent contractor from the date a construction contractor applies for participation in the program through the date the Labor Commissioner either denies the construction contractor participation in the program or the construction contractor, as an eligible construction contractor, has failed to perform an obligation under the settlement agreement, whichever is later.

21) Requires the recovery obtained by the Labor Commissioner on behalf of a reclassified construction driver pursuant to a settlement agreement to be tendered to the construction driver on the condition that the construction driver executes a release of all claims covered by the settlement agreement that the construction driver may have against the eligible construction contractor based on the eligible construction contractor's failure to reclassify the construction driver as an employee.

22) Establishes that a construction driver is not under any obligation to accept the terms of a settlement agreement.

23) Relieves a construction driver from being bound by the settlement agreement if the driver declines to accept the terms of the agreement, except that the eligible construction contractor must still reclassify the driver as an employee and that construction driver is precluded from pursuant a claim for civil penalties or statutory penalties under the Private Attorneys General Act for a claim arising during the period of time covered by the settlement agreement.

24) Excuses the construction contractor from performing their requirement under the settlement agreement to pay the amount acknowledged in the settlement agreement to be due to a construction driver if that construction driver does not accept the terms of a settlement agreement.

25) Authorizes the Labor Commissioner to file a civil action to enforce a settlement agreement if the Labor Commissioner determines an eligible construction contractor violated or failed to perform any of their obligations under that settlement agreement.

26) Authorizes the Labor Commissioner to obtain judicial enforcement by filing a petition for entry of judgment for the liabilities due and remaining pursuant to the settlement agreement, if the Labor Commissioner files a civil action seeking only recovery of the amounts due to construction drivers under the settlement agreement.

27) Following filing a petition for entry of judgment, authorizes the Labor Commissioner to file an application for an order to show cause and serve it on the eligible construction contractor. Requires the court to hold a hearing and enter a judgment within 60 days of the date the Labor Commissioner filed the order to show cause. Requires the judgment to be in amounts

which are due and owing to construction drivers pursuant to the settlement agreement with credits, if any, for applicable payments the eligible construction contractor made under the settlement agreement. A judgment entered pursuant to this paragraph shall not preclude subsequent action to recover civil penalties or statutory penalties by the Labor Commissioner, or by an employee pursuant to the Private Attorneys General Act.

28) Requires the court to award the Labor Commissioner costs and reasonable attorney's fees if the court determines in any action filed by the Labor Commissioner that a construction contractor has violated or otherwise failed to perform any of their obligations under a settlement agreement.

29) Establishes that mere ownership of a vehicle, including a personal vehicle or a commercial vehicle, used by a person in providing labor or services for remuneration does not make that person an independent contractor. A person who owns a vehicle they use to provide labor or services, either as an individual or through a business entity they own, may be either an employee or an independent contractor depending on whether the specified conditions are satisfied. If the conditions are not satisfied and the owner of the vehicle is an employee, the employee shall be reimbursed for use of the vehicle as specified.

30) Applies Labor Code Section 2802 to the use of a vehicle, including a personal vehicle or commercial vehicle, owned by an employee and used by that employee in the discharge of their duties.

31) Entitles a commercial motor vehicle driver who owns the truck, tractor, trailer, or other commercial vehicle they use in the discharge of their duties as an employee working for an employer to be reimbursement for the use, upkeep, and depreciation of that truck, tractor, trailer, or other commercial vehicle. This applies whether the vehicle is owned by the driver as an individual or whether the vehicle is owned by the driver through a corporate entity.

32) Requires the amount to be reimbursed for the use of the truck, tractor, or trailer to be negotiated either by the driver and the employer, or by a labor union representing that driver and the employer. Requires the amount to be negotiated to be either a flat rate reimbursement or a per-mile reimbursement, but in no case shall the amount negotiated be less than the actual amount expended by the driver or less than the standard mileage reimbursement set by the Internal Revenue Service for the time the services were provided.

33) Authorizes an amount owed to a driver pursuant to 29) – 32) to be paid directly to the driver in the driver's name, or to be paid to a corporate entity owned and controlled by the driver if the truck, tractor, or trailer is owned by the corporate entity rather than by the driver directly.

EXISTING LAW:

1) Establishes the Employment Development Department (EDD) and grants it the powers and duties necessary to administer the reporting, collection, refunding to the employer, and enforcement of taxes required to be withheld by employers, as specified. (Unemployment Insurance Code Section 301 *et seq*.)

2) Establishes the Office of the Labor Commissioner (LC) within the Department of Industrial Relations (DIR), to enforce, among other things, wage and hour law, anti-retaliation

provisions, and employer notice requirements. (Labor Code Section 79 *et seq*. All further statutory references are to the Labor Code unless otherwise noted.)

3) Requires, for purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration to be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

   a) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

   b) The person performs work that is outside the usual course of the hiring entity's business.

   c) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. (Section 2775 (b)(1).)

   d) Specifies that, if a court rules that the ABC test described cannot be applied to a particular context outside of specified exceptions, the test that shall apply for determining employee or independent contractor status is the test provided in *S.G. Borello & Sons v. Dept. of Industrial Relations* (1989) 48 Cal. 3d 341. (Section 2775 (b)(3).)

4) Requires an employer to indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. (Section 2802.)

5) Establishes the Labor Code Private Attorneys General Act of 2004 and authorizes an aggrieved employee to recover a civil penalty through a civil action for a violation of the Labor Code that may be assessed and collected by the Labor and Workforce Development Agency. (Section 2698 *et seq*.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Misclassification of a worker as an independent contractor rather than an employee can prevent the worker from legal protections, including minimum wage requirements, meal and rest breaks, and overtime pay. Additionally, employers are required to maintain certain workplace safety standards and unemployment insurance coverage for direct employees that are not required for independent contractors, and are subject to payroll taxes that help fund unemployment insurance among other public programs. While workers can file claims with the Labor Commissioner to allege violations of labor law, independent contractors do not have access to the Labor Commissioner and must typically use traditionally contract enforcement remedies instead. Misclassification can significantly impact not just individual workers' economic outlook, but--given the loss of revenue from payroll taxes--the state's economy, as well.

A brief history of independent contractors in the trucking industry. Prior to 2018, a worker's status as an independent contractor or employee was determined through a multi-factor and fact-intensive test established in the California Supreme Court case *S.G. Borello & Suns v. Department of Industrial Relations* (1989) 48 Cal. 3d 341. The principal factor, referred to as the "control" test, reviewed "whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." (*Id.* at p. 350.) However, the court in *Borello* also noted numerous additional factors that would supplement the "control" test including: the kind of occupation including whether the work is done under supervision or independently; the skill required for the work; whether the worker provides their own tools; the method of payment; whether the work is part of the regular course of business; and whether the parties themselves believe they are creating the relationship of employee-employer. (*Id.* at p. 351.)

In 2018, the California Supreme Court revisited the question of independent contractors vs. employees and instead adopted the streamlined "ABC" test for purposes of workers under the scope of Wage Order Nine relating to the transportation industry. Under the ABC test a worker is presumed to be an employee and may be…

> classified as an independent contractor *only* if the hiring entity demonstrates a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. (*Dynamex Operations W. v. Superior Court* (2018) 4 Cal. 5th 903, 955-956.)

In 2019, AB 5 (Gonzalez, Chap. 296, Stats. 2019) codified the ABC test and applied it generally to all workers, with some exceptions. In 2020, AB 2257 (Gonzalez, Chap. 38, Stats. 2021) exempted a number of industries from the ABC test and (for some) applied individualized standards in order to allow those industries an opportunity to modify their business practices to ensure compliance with AB 5. One such exemption enacted via AB 2257 was for subcontractors in the construction industry. In order to qualify as an independent contractor, construction subcontractors had to satisfy *Borello* and meet a number of other criteria, including maintaining a license with the Contractors' State License Board, maintaining a business location separate from that of the contractor, and typically engaging in work of the same nature as that of the work performed. (Section 2781 (a) – (g).) Construction trucking specifically received additional exemptions, and did not need to be licensed with the CSLB if they met additional requirements. These provisions were originally set to sunset in 2023, but were extended until January 1, 2025.

According to the author:

> SB 809 provides legal amnesty to construction industry employers who have misclassified truck-owner drivers as independent contractors. The bill encourages these employers to reclassify drivers as employees and properly compensate them for their labor and the use of their equipment under the "two-check" system. This system ensures that drivers are paid for their work and reimbursed for expenses related to their trucks, such as fuel, maintenance, and insurance.

In light of the sunsetting of the construction trucking carve out in AB 5, ***this bill*** proposes to implement the "Construction Trucking Employer Amnesty Program." The program would

provide an avenue for a construction contractor to avoid liability for penalties resulting from misclassification of their construction drivers provided the contractor meets specified requirements. The bill is largely modeled after a similar program for port drayage truck operators enacted through AB 621 (Hernández, Chap. 741, Stats. 2015).

The Construction Trucking Employer Amnesty Program. In order to participate in the program, which is administered by the Labor Commissioner, a construction contractor must be eligible, as specified including by not having a civil lawsuit that was filed on or before December 31, 2025 pending in either state or federal court that includes claims of misclassification of a construction driver. The contractor must then submit their application to the Labor Commissioner and complete a self-audit as directed.

Assuming the contractor meets these requirements, the Labor Commissioner would then be authorized to enter into a settlement agreement with the contractor, or with the labor union representing the drivers or any city attorney, addressing the contractor's legal obligations and protections. The settlement agreement is required to ensure the contractor pays all wages, benefits, and taxes owed, related to the drivers' reclassification and agree that any future construction driver hired to do the same or similar work is presumed to be a direct employee rather than an independent contractor in any judicial proceeding where the worker's status is at issue, among several additional requirements.

To incentivize contractors to participate in the program, a contractor who completes their obligations pursuant to the settlement agreement cannot held be liable for any civil or statutory penalties under either the Labor Code or Unemployment Insurance Code *related to the misclassification of their drivers*. It is important to note that this liability shield extends *only* to penalties resulting from misclassification. The contractor would continue to be liable for other penalties or any other available remedy resulting from violation of any other provisions of law. Contractors would also continue to be liable for a number of penalties specified under the bill, relating to intentional evasion of their legal obligations and specified criminal liability. Additionally, a construction contractor who complied with their obligations could avoid liability for any potential penalties that have not yet been assessed and that may have existed under specified provisions of the Unemployment Insurance Code related to tax liabilities. However, they would still be liable for any penalties that had been assessed, as of the date the settlement agreement was executed.

The recovery obtained by the Labor Commissioner through the settlement agreement would be directed to the affected drivers so long as the driver agrees to release all claims that they may have against the contractor that are covered by the settlement agreement. Importantly, a driver has the right to reject the settlement agreement. If the driver does so, the contractor is still obligated to reclassify the driver as an employee, and that driver is barred from initiating a claim under the Private Attorneys General Act for recovery of civil penalties. This bar applies only to claims arising during the time period covered by the settlement agreement. A driver who rejects the settlement agreement would still be able to pursue a PAGA claim for any violation occurring either before or after the period subject to the agreement.

Existing law imposes potentially significant penalties for misclassification of workers. Misclassification itself can give rise to a civil penalty of between $5,000 and $25,000 per violation, depending on the severity. (Labor Code Section 226.) Additionally, because a finding of misclassification necessarily implicates violations of other provisions of the Labor Code such

as wage and hour requirements, employers are likely to be hit with additional penalties pursuant to numerous other statutory provisions. The potential relief from liability may very well be sufficient to entice construction contractors to participate in the program and voluntarily reclassify their drivers as employees.

Finally, the bill authorizes the Labor Commissioner to bring a civil action to enforce the terms of the settlement agreement in the event it determines the contractor failed to adhere to its terms, and seek recovery of the amount due minus any amounts the contractor had already paid, plus costs and reasonable attorney's fees.

The "two-check" system. In addition to implementing the new program, SB 809 also proposes a new payment method to ensure contractors are adequately compensated. First the measure codifies a construction contractor's obligation to compensate drivers for the use of their personal vehicle, regardless of whether they own the vehicle as an individual or through a corporate entity. The bill then requires the contractor to provide the drivers' regular pay in one check, and the drivers' reimbursement for the use, upkeep, and depreciation of the vehicle in another, hence "two-check."

According to the sponsors, implementation of the "two-check" system will help ensure contractors do not, intentionally or otherwise, misclassify workers as independent contractors simply because they provide their own vehicle to complete assigned work.

ARGUMENTS IN SUPPORT*:* This bill is co-sponsored by the California Teamsters Public Affairs Council and the State Building and Construction Trades Council of California (SBCTC). It is additionally supported by the California Federation of Labor Unions. In support of the measure SBCTC submits:

> The two-check system is a payment model in the trucking industry that ensures truck drivers are properly classified as employees rather than independent contractors. Under this system, trucking companies pay drivers with two separate checks: one check for their labor, and one check for the use of their commercial vehicle. This compensates drivers for their time, ensuring they receive at least minimum wage, overtime pay, and benefits, as well as expenses related to the truck, such as fuel, maintenance, and insurance.
>
> Trucking companies, trucking brokers, and contractors often misclassify drivers as independent contractors, forcing them to cover all operating expenses while depriving them of employee protections like overtime pay, workers' compensation, unemployment benefits, and the right to unionize. The two-check system corrects this by clearly separating wages from expenses, making it easier to establish that drivers are employees. At the same time, these drivers, who have often made enormous personal investments in purchasing their vehicles, are separately compensated for the use of their equipment.
>
> The two-check system challenges the exploitative "lease-to-own" or "owner-operator" models that leave many truckers in financial hardship. By making the distinction between wages and expenses transparent, it strengthens enforcement of labor laws, preventing companies from disguising employment relationships to cut costs at workers' expense. Put simply—this important bill will help eliminate the misclassification of drivers in the construction industry. AB 5 was a landmark California law enacted in 2019 to combat worker misclassification, particularly in industries like trucking, rideshare, and delivery services. The law codified the ABC test, a stricter standard for determining whether a worker

is an employee or an independent contractor. At the time of enactment, the construction industry was given a five-year sunset to come into compliance with AB 5. That exemption expired at the end of 2024, and construction employers are now obligated to fully comply with the law.

SB 809 allows construction employers to meet their legal obligations through the implementation of the twocheck system. In return, these employers would be granted legal amnesty for their prolonged, and sometimes systemic misclassification of drivers. This will save employers in the construction industry tens to hundreds of millions of dollars in potential liability stemming from unpaid overtime, meal and rest break violations, failure to provide reimbursements and health benefits, and more. For these reasons, we believe that SB 809 will provide meaningful protection to construction businesses while offering workers all the benefits they are entitled to under the law.

***ARGUMENTS IN OPPOSITION**:* This bill is opposed by the Western States Trucking Association (WSTA). They submit:

Independent contractor owner-operators have been the backbone of the trucking industry for more than 75 years and have dutifully served a critical role in the transportation of goods that Americans continue to utilize on a daily basis throughout the country. WSTA's owner-operators – small, emerging, largely minority-owned businesses – are fiercely protective of their independent contractor status, as the independent contractor model provides many unique advantages to them in the workforce, including increased entrepreneurial opportunities and earnings, as well as a more flexible work schedule. For a hiring entity, the ability to hire an owner-operator to provide specialized skills or fulfill an urgent demand on a short-term or emergency project that simply exceeds the abilities of its employee workforce, is critical. And for customers – both government or private – legitimate independent contractors play an invaluable role in delivering projects safely, on time, and on budget.

Unfortunately, California continues to enact laws and regulations that thwart the ability for independent contractor owner-operators to be utilized, including with AB 5 (2019) and now with SB 809. Recognizing that the rigid ABC test was ill-fitting for much of today's workforce, in particular owner-operator trucking companies working in the construction industry, the Legislature included within AB 5 a provision allowing subcontractors providing construction trucking services to instead continue to utilize the multi-factor approach found in the *Borello* test. While sensible in theory, this carveout proved too narrow and unworkable in practice, and was ultimately allowed to sunset on December 31, 2024.

In a state where the cost of building homes and projects continues to escalate, further jeopardizing affordability for Californians, the Legislature continues to drive these prices up by curtailing the use of independent contractor owner-operators within the construction industry. Instead of creating further obstacles to cost-effective construction, like with SB 809, the Legislature should focus its efforts on crafting a workable construction trucking carveout to the ABC test, which actually facilitates the use of legitimate owner-operators instead of abolishing them.

REGISTERED SUPPORT / OPPOSITION:

Support

California Teamsters Public Affairs Council (co-sponsor)
State Building & Construction Trades Council of California (co-sponsor)
California Federation of Labor Unions, AFL-CIO

Opposition

Western States Trucking Association

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334