

## SENATE THIRD READING

SB 809 (Durazo)

As Amended

Majority vote

**SUMMARY**

Establishes the Construction Trucking Employer Amnesty Program (program) to relieve an eligible construction contractor of liability for statutory or civil penalties associated with the misclassification of construction drivers as independent contractors if the contractor executes a settlement agreement negotiated with, or approved by, the Labor Commissioner (LC) agreeing to properly classify all drivers as employees.

**Major Provisions***Program requirements*

- 1) 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 January 1, 2029, to, in addition to other information requested by the LC, submit with its application all of the following:
  - a) Documentation demonstrating that the construction contractor reclassified their construction drivers as employees, as specified, and information on the compensation paid for the misclassification.
  - b) A report of a self-audit for all construction drivers reclassified by the construction contractor in a) above and include a separate self-audit report for any construction driver who is subject to reclassification, but is not covered in a) above.
- 2) Prohibits the initiation of a proceeding or action against a construction contractor under the Private Attorneys General Act (PAGA) after the construction contractor has submitted an application for participation in the program, but permits it if the construction contractor's application is denied.
- 3) Provides that if a construction contractor's application to participate in the program is denied by the LC, the application or its submission shall not be considered an acknowledgment or admission by the construction contractor that they misclassified their construction drivers.

*The Settlement Agreement*

- 4) Authorizes the LC, before January 1, 2029, with the cooperation and consent of the EDD, to negotiate and execute a settlement agreement with an eligible construction contractor that applied to participate in the program.
  - a) Prior to the LC executing or approving a settlement agreement, an eligible construction contractor shall file their contribution returns and report unreported wages and taxes to the EDD for the time period the construction contractor seeks relief under the settlement agreement.
- 5) Authorizes an eligible construction contractor, before January 1, 2029, to negotiate a settlement agreement with a labor union representing its drivers, or with any city attorney, and to submit that settlement agreement to the LC, who shall review and may approve that settlement agreement under the program.
- 6) States that a settlement agreement executed or approved by the LC involving an eligible construction contractor shall 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.
  - 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 shall be presumed to have employee status, as prescribed.
  - d) 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 and provide proof of the coverage, as specified.
  - e) Pay the costs authorized by 7) below, if required.
- 7) Provides that a settlement agreement may require an eligible construction contractor to pay the reasonable, actual costs of the LC and EDD for their respective review, approval, and compliance monitoring of the settlement agreement. The costs shall be deposited into the Labor Enforcement and Compliance Fund.
- 8) Provides that the settlement agreement may include provisions for an eligible construction contractor to make installment payments of amounts due pursuant to 6) a) and 6) e) above in lieu of a full payment. The period of installment payments shall not exceed 24 months from the date the settlement agreement is signed.

#### *Contractor Liability*

- 9) States that an eligible construction contractor that executed and performed its obligations pursuant to a settlement agreement shall not be liable, and the LC or the EDD shall not enforce, any civil or statutory penalties, as specified, that might have become due and payable for the time period covered by the settlement agreement, except for certain penalties or criminal charges related to matters covered by the Unemployment Insurance Code.
- 10) Provides that an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement shall not be liable, and the LC or the EDD shall not enforce, any unpaid penalties, and interest owed on unpaid penalties, on or before the date the settlement agreement was executed, related to employer obligations to make employer and worker contributions for the tax reporting periods for which the settlement agreement is applicable, as specified.
- 11) Provides for the tolling of the statute of limitations on any claim or liability that might have been asserted against a construction contractor based on misclassification during an unsuccessful program application process.
- 12) States that a construction driver shall not be under any obligation to accept the terms of a settlement agreement. If a construction driver declines to accept the terms of a settlement agreement, the construction driver shall not be bound by the settlement agreement, except that the eligible construction contractor shall still reclassify the construction driver as an employee and that construction driver shall be precluded from pursuing a claim for civil penalties or statutory penalties covered by the period of time covered by the settlement agreement.

#### *Enforcing the Settlement Agreement*

- 13) Authorizes, if the LC determines an eligible construction contractor violated or failed to perform their obligations under a settlement agreement, the LC to file a civil action to enforce the settlement agreement.

*Reimbursement For Vehicle Expenses*

- 14) States that the 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 person meets the ABC test for employment status. This is declaratory of existing law.
- 15) Provides that a commercial motor vehicle driver in construction trucking who owns the truck, tractor, trailer, or other commercial vehicle that they use in the discharge of their duties as an employee working for an employer is entitled to 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. This provision is declaratory of existing law.
- a) The amount to be reimbursed for the use of the truck, tractor, or trailer shall be:
- i) Negotiated either by the driver and the employer, or by a labor union representing that driver and the employer.
  - ii) 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 IRS standard mileage reimbursement rate.

**COMMENTS**

See the Committee's Policy Analysis.

**According to the Author**

According to the author, "SB 809 addresses the ongoing misclassification of truck-owner drivers in California's construction industry. For years, many of these drivers have been treated as independent contractors, excluding them from important employee protections such as overtime pay, benefits, and reimbursement for expenses.

When AB 5 in 2019 established the ABC test for worker classification, the construction trucking industry secured a temporary carve-out that expired at the end of 2024. Rather than use that time to adapt, many employers continued misclassifying drivers—prolonging harm and deepening inequality in the industry.

SB 809 provides a path forward. It allows employers to correct past misclassification by adopting the two-check system—compensating drivers with two checks, one for their labor and one for the use of their trucks. In return, employers may receive legal amnesty from certain penalties if they fulfill all wage, tax, and benefit obligations.

This bill promotes legal compliance, supports fair competition, and ensures that drivers are compensated properly for both their work and equipment."

**Arguments in Support**

The State Building and Construction Trades Council of California, co-sponsor of the bill, states "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."

### **Arguments in Opposition**

The Western States Trucking Association is opposed and states, "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."

### **FISCAL COMMENTS**

According to the Assembly Appropriations Committee,

- 1) Costs of approximately \$213,000 in the first year and \$201,000 annually thereafter to the LC to negotiate or approve settlement agreements and pursue related enforcement actions (Labor Enforcement and Compliance Fund). The LC may partially recover costs to review a settlement agreement if the contractor agrees to pay such costs as part of the settlement.
- 2) Minor and absorbable costs to EDD to help administer the Amnesty Program (General Fund (GF)). EDD notes that this bill may result in penalty and interest revenue loss of an unknown amount, but such losses may be offset by the recovery of unpaid taxes related to employee misclassification (special funds).

- 3) Annual cost pressures (GF or Trial Court Trust Fund (TCTF)) of an unknown, but potentially significant amount, to the courts in additional workload by allowing the LC to file a civil action to enforce a settlement agreement and requiring the court to follow certain procedures to adjudicate such actions. It is unclear how many additional civil actions may be filed statewide, but the estimated workload cost of one hour of court time is \$1,000. Although courts are not funded on the basis of workload, increased pressure on staff and the TCTF may create a demand for increased court funding from the GF to perform existing duties. The Budget Act of 2025 provides \$82 million ongoing GF to the TCTF for court operations.

## VOTES

### SENATE FLOOR: 28-10-2

**YES:** Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

**NO:** Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

**ABS, ABST OR NV:** Limón, Reyes

### ASM LABOR AND EMPLOYMENT: 6-0-1

**YES:** Ortega, Chen, Elhawary, Kalra, Lee, Ward

**ABS, ABST OR NV:** Flora

### ASM JUDICIARY: 9-3-0

**YES:** Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

**NO:** Dixon, Macedo, Sanchez

### ASM APPROPRIATIONS: 11-3-1

**YES:** Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache

**NO:** Sanchez, Dixon, Tangipa

**ABS, ABST OR NV:** Ta

## UPDATED

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