

June 20, 2023

The Honorable Bernie Sanders
Chair
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
Washington, DC, 20510

The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
Washington, DC, 20510

Dear Chair Sanders and Ranking Member Cassidy:

I am writing on behalf of the Intermodal Association of North America (IANA), a leading transportation trade association representing the combined interests of the intermodal freight industry. Ahead of the Senate Committee on Health, Education, Labor, and Pensions June 21 executive session to consider the Richard L. Trumka Protecting the Right to Organize (PRO) Act, S. 567, I am sharing IANA's opposition to the proposal. Enclosed in this letter, I have outlined the various negative impacts it stands to have on the intermodal supply chain.

As the only transportation trade association that represents the combined interests of intermodal freight providers and customers, IANA represents more than 1,000 corporate members, including railroads, ocean carriers, ports, intermodal truckers and over-the-road highway carriers, intermodal marketing and logistic companies, and suppliers to the industry. IANA's associate (non-voting) members include shippers (defined as the beneficial owners of the freight to be shipped), academic institutions, government entities, and non-profit trade associations. This diverse and broad-based group of stakeholders opposes the PRO Act for a number of reasons, which are outlined below.

Motor carriers are crucial participants in the nation's international and domestic intermodal network. For decades, the prevailing business model for intermodal trucking companies that transport freight, prior and subsequent to movements by water and rail, has involved the use of independent contractors. The independent contractor business model is indispensable to the intermodal industry, offering operational and financial flexibility to motor carriers, allowing them to adapt and respond to natural elasticity and volatility in the cargo transportation market. The PRO Act would adversely impact this business model and will have a negative effect not only on the intermodal industry, but the entire supply chain.

Second, the PRO Act wrongfully eliminates important liberties enjoyed by owner-operators, many of which are small, minority-owned businesses. As proud, independent business owners, independent contractors can express their freedom of choice by personally investing in, and operating, their own company. These small business owners earn a Commercial Driver's License, invest in a tractor, and bear the associated operating costs attributable to registration, licensing, insurance, and fuel. They also invest a significant amount of time developing their knowledge of and complying with Federal and state safety regulations. In many cases, independent contractors also operate under their own U.S. Department of Transportation-approved operating authority and develop a wide customer base.

Owner-operators currently can determine the number of motor carriers they choose to work with and freely enter into multiple contractual arrangements. This permits the individual to make daily operating decisions based on his/her availability to perform drayage services. Each owner-operator makes a conscious choice to remain an independent contractor, but also has the ability to secure full-time employment in the trucking industry. The PRO Act eliminates this important freedom that so many individuals find personally fulfilling.

Finally, Congress should carefully evaluate the real-world, economic consequences of California's analogous legislation, known as Assembly Bill 5 (AB 5), before considering enacting similar provisions on a national level. Presently, AB 5 is the subject of ongoing federal litigation. If the PRO Act proceeds without first consciously exploring whether exemptions should be included for motor carriers and owner-operators and before reviewing the outcomes of current litigation, the legislation would likely face numerous legal challenges in courts across the nation. Attached to this letter is a white paper that discusses the independent contractor issue in more detail.

In summary, IANA strongly opposes the PRO Act as it is currently drafted. The legislation essentially eliminates the independent contractor model for motor carriers involved in intermodal drayage. Disruption caused by this wholesale destruction of this existing business model will have an adverse effect upon the entire intermodal supply chain, injuring not only motor carriers, but also rail and ocean carriers, third-party logistics companies, and the customers they serve. Further, the legislation wrongfully eliminates the freedom of individuals to operate as small business owners, a pursuit that so many find fulfilling. Finally, valuable lessons can be learned by examining the effects of similar statewide legislation in California as well as the results of associated litigation. These impacts should be thoroughly assessed prior to implementing such significant changes at the Federal level.

Thank you for allowing IANA to share its views on the PRO Act. Please let me know if you or your staff would like to discuss our position in further detail.

Sincerely,



Joanne F. Casey
President and
CEO
Intermodal Association of North America

Attachment