

February 26, 2021

The Honorable Patty Murray
Chair, Senate Committee on Health, Education, Labor, and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Richard Burr
Ranking Member, Senate Committee on Health, Education, Labor, and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Subject: Opposition to the Protecting the Right to Organize (PRO) Act

Dear Chair Murray and Ranking Member Burr:

On behalf of the Intermodal Association of North America (IANA), a leading transportation trade association representing the combined interests of the intermodal freight industry, I am writing to express our strong opposition to the Protecting the Right to Organize (PRO) Act, S. 420 and H.R. 842.

IANA's membership roster of over 1,000 corporate members includes not only intermodal and over-the-road motor carriers but also railroads (Class I, short-line, and regional), water carriers and stacktrain operators, port authorities, intermodal marketing and logistics companies, and suppliers to the industry such as equipment manufacturers, leasing companies, and technology firms. 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.

First, the legislation undermines vital operations of the intermodal industry by abolishing the independent contractor model that has served both the industry and drivers well for decades. Intermodal transportation is inherently symbiotic. When one participant in the intermodal market (such as a motor carrier, railroad, or steamship line) is subject to operational inefficiencies, it ripples across the supply chain causing other participants to suffer. Motor carriers are crucial participants in the nation's intermodal network. For over 35 years, the prevailing business model for motor carriers supporting intermodal freight movements by water and rail has involved the use of independent contractors. In short, the independent contractor business model is indispensable to the intermodal industry, offering operational and financial flexibility to intermodal motor carriers, allowing them to adapt and respond to natural volatility in the intermodal transportation market. Destroying that model will have a massive, adverse effect not only on the intermodal industry, but the entire supply chain.

Second, the PRO Act wrongfully eliminates important liberties enjoyed by individual intermodal drivers. As proud, independent business owners, drayage drivers have the ability to 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 certain cases, independent contractors also operate under their own U.S. Department of Transportation-approved operating authority and develop a wide customer base.

Owner-operators 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 as to their 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 if dissatisfied with current working arrangements. The PRO Act eliminates this important freedom that so many drivers 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 its implementation on a national level. Presently, AB 5, originally scheduled to take effect January 1, 2020, is the subject of ongoing federal litigation and the U.S. District Court for the Southern District of California has granted a preliminary injunction to enjoin the enforcement of AB 5 for motor carriers and owner-operators, pending a final decision in the case. If the PRO Act proceeds without first scrupulously 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.

In summary, IANA strongly opposes the PRO Act as currently drafted. The proposed law uses an axe to achieve what a scalpel could better accomplish. The legislation essentially eliminates the independent contractor model for motor carriers involved in intermodal drayage. Disruption caused by this wholesale destruction of the independent contractor model will have a dramatic adverse effect upon the entire intermodal supply chain, injuring not only motor carriers, but also rail and steamship operators and the customers they serve. Further, the legislation wrongfully eliminates the freedom of individual intermodal drivers 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. IANA strongly urges you to reject this harmful legislation.

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