



“UPDATED”

August 3, 2021

TO: Members, Senate Appropriations Committee

**SUBJECT: AB 701 (GONZALEZ) WAREHOUSE DISTRIBUTION CENTERS
OPPOSE – AS AMENDED JULY 15, 2021
SCHEDULED FOR HEARING – AUGUST 16, 2021**

The California Chamber of Commerce and the organizations listed below are **OPPOSED** to **AB 701 (Gonzalez)**, as amended on July 15, 2021. **AB 701** had previously been labeled as a **JOB KILLER**. However, based upon recent amendments, the **JOB KILLER** tag has been **REMOVED**. We remain opposed primarily due to concerns with a duplicative Cal/OSHA regulation on repetitive motion injuries.

Recent amendments taken in Senate Judiciary Committee and Senate Labor Committee addressed several concerns, including: (1) clarifying the scope of laws and regulations enforceable under the bill; (2) clarifying the scope of potential PAGA litigation to be limited to quota enforcement; (3) clarifying the scope of available injunctive relief to applicable quotas; (4) limiting former employees’ ability to repeatedly request data; and (5) clarifying that employers are not required to collect workspeed information, among other amends. We appreciate these considerable improvements in the bill – but we must remain opposed at this time, due to the following remaining concerns:

- (1) **AB 701 Compels a New Regulation Aimed at the Unprecedented Goal of Controlling Exactly How Quickly a Warehouse May Function, and Will Conflict With an Existing Regulation.**

AB 701 requires Cal/OSHA staff to prepare and to propose a new regulatory standard specific to warehouses¹ by January 2023. **AB 701** requires the regulation to be “based on work activity levels,”

¹ Though the bill explicitly focuses on “warehouses,” **AB 701** applies beyond just the logistics industry into agriculture, retail, and other sectors where goods must be sorted and transported based on the included list of North American Industry Classification System (NAICS) codes.

measurement of production quotas, and safety data. In simple terms – **AB 701** is drafted to force Cal/OSHA to define production quotas for warehouse employers, which is unprecedented.

Agricultural supply chains provide a perfect example of why such workspeed-specific standards would be problematic. Unlike some non-perishable goods, crops *must* be harvested, packaged (potentially canned), and transported quickly – and the weather can change these timelines. An unexpected storm or heat wave can ruin a crop – which means that if unexpected weather arises ... the crop *must* move through the supply chain (or be canned). If a one-size-fits-all regulation on workspeed is compelled by **AB 701**, these situations would likely not be addressed and would generate potentially massive waste in perishable goods.

In addition, Cal/OSHA *already has* an applicable regulation that applies to the type of musculoskeletal injuries specified in **AB 701**.² Though we would acknowledge that the present regulation does not touch all issues raised by the bill, we see the overlap as considerable and therefore believe an amendment is a more reasonable and efficient solution. Amendment can be pursued at Cal/OSHA by submission of a simple letter submitted to the Cal/OSHA Standards Board.³

(2) As a New Proposed Section in the Labor Code, AB 701 Would be Covered by PAGA.

By including **AB 701** as a new section in the Labor Code, it automatically is covered by PAGA and allows an employee to file a representative action for any alleged violation. As PAGA is an enforcement mechanism that is prone to abuse and tends to over-reward plaintiffs' attorneys and under-reward plaintiffs and the state, we are concerned with adding new mandates that can be pursued under PAGA.

(3) AB 701 Includes a Presumption of Retaliation That Can Repeat Annually.

AB 701 includes a presumption of retaliation if an employer takes adverse action within 90 days of an employee "Initiating the employee's first request in a calendar year for . . . personal work speed data" or "[m]aking a complaint related to a quota ... [to an] agency or employer" (see Section 2105(a)&(b)). While we appreciate the recent amendment to prevent the presumption from being perpetual, a presumption nonetheless limits employers' ability to manage their workplace without potential litigation.

Productivity measures are not inherently punitive, and almost every industry utilizes workplace metrics in order to ensure long term goals are being met. Regardless of the industry, if an employer implements a quota or productivity measure that forces employees to flout existing health and safety laws or denies meal and rest breaks, they are *already in violation of California law*. California *already* requires all employers to provide a safe workplace, develop and update an Injury and Illness Prevention Program, inspect the workplace to correct any unsafe or hazardous conditions, and much more; warehouse employers are not exempt from such requirements. An employee who believes their employer is not following these long-established laws may report that violation and already has protections from retaliation for doing so.

For these reasons, we are **OPPOSED** to **AB 701 (Gonzalez)**.

Sincerely,



Robert Moutrie
Policy Advocate
California Chamber of Commerce
on behalf of

Auto Care Association
California Beer and Beverage Distributors
California Business Properties Association
California Chamber of Commerce

California Family Beer Distributors
California Farm Bureau
California Framing Contractors Association
California Grocers Association

² Specifically, Cal/OSHA's Repetitive Motion Injuries Standard – 8 CCR Section 5110, available at: <https://www.dir.ca.gov/title8/5110.html>

³ Petitions to update standards can be made at Cal/OSHA, with minimal formality required. See <https://www.dir.ca.gov/oshsb/petitions.html>. All that is required is a letter to the Board.

California Hispanic Chambers of Commerce
California League of Food Producers
California Manufacturers & Technology
Association
California Retailers Association
California Trucking Association
CAWA – Representing the Automotive Parts
Industry
Civil Justice Association of California
Family Business Association of California

Greater Riverside Chamber of Commerce
International Council of Shopping Centers
International Warehouse Logistics Association
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Moreno Valley Chamber of Commerce
NAIOP of California
Western Growers Association

cc: Legislative Affairs, Office of the Governor
Shubhangi Domokos, Office of Assemblymember Gonzalez
Robert Ingenito, Senate Appropriations Committee
Rebecca Hamilton, Senate Republican Caucus

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