

June 11, 2024

Honorable Michael Rodrigues, Chair
Senate Committee on Ways and Means
State House, Room 212
Boston, Massachusetts 02133

Dear Chair Rodrigues:

On behalf of the Trucking Association of Massachusetts (TAM), I am writing in strong opposition to House Bill 4697, An Act Relative to a Model Carrier Reporting Requirement, as drafted. Notwithstanding potential issues of federal preemption, the legislation presents significant compliance problems that will essentially obviate the ability for motor carriers to legally ship alcohol into the Commonwealth.

As you know, the Commonwealth, through the Alcohol Beverage Control Commission (ABCC), regulates the sale and transportation of alcohol products throughout the state. Under current law and regulations, the ABCC is the sole issuing authority of liquor transportation permits for express or trucking companies, ships, railroads, caterers, and airlines. To further expand the ABCC's authority, House Bill 4697 would require "every railroad company, express company, common carrier, contract carrier, firm or corporation that brings, carries or transports wines, malt beverages or distilled spirits into the commonwealth" to file a monthly report "of the quantity of wine, malt beverages or distilled spirits" so transported into the Commonwealth. (*emphasis added*).

As drafted, HB4697 presents significant legal and practical problems. Under 49 U.S. Code § 1450(c)(1), a state or its political subdivision "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... with respect to the transportation of property". In Rowe v. New Hampshire Motor Transp. Assn., 552 U.S. 364 (2008), the United States Supreme Court reiterated its previous rulings that:

"(1) [s]tate enforcement actions *having a connection with, or reference to*" carrier " 'rates, routes, or services' are pre-empted; (2) that such pre-emption may occur even if a state law's effect on rates, routes or services "is only indirect,"; (3) that, in respect to pre-emption, it makes no difference whether a state law is "consistent" or "inconsistent" with federal regulation, and (4) that pre-emption occurs at least where state laws have a "significant impact" related to Congress' deregulatory and pre-emption-related objectives".

In Rowe, the United States Supreme Court held that a State of Maine law requiring transporters to "know whether and how much tobacco" was in each package regulated a significant aspect of the motor carrier's package pick-up and delivery service. In striking down the Maine law, the court found that "Maine law imposes civil liability upon the carrier, not simply for its knowing transport of (unlicensed) tobacco, but for the carrier's *failure sufficiently to examine every package.*".

In a similar manner, HB4697's proposed requirement for reporting on the "quantity" and "type" of wine, malt beverages or distilled spirits" is a direct impact on a motor carrier's service which, in turn, will also impact its price. There is little way for a motor carrier to know what the exact quantity of the items in a box – apart from packing a box or container itself - an act would easily impact the motor

carrier's service. Further, a motor carrier cannot report on the brand, type of alcohol shipped, or number of bottles; the motor carrier relies on a shipping label and report from the entity initiating the shipping process. Again, to verify a sender's shipping label to the exact contents of a package invites a host of legal and practical problems. (On a separate note, HB4697, as written, would also seem to implicate interstate commerce concerns for motor carriers who simply travel through Massachusetts, but have no deliveries within the state. This not only likely violates 49 U.S. Code § 1450(c)(1), but additional constitutional and legal protections governing interstate commerce under the Commerce Clause.)

Simply put, motor carriers cannot open up a package and verify its contents. TAM's members rely on what the shipper reports as being in a package in broad categories and verifies the weight of the same. To institute a procedure where the motor carrier verifies the contents of a package, for purposes of determining the exact quantity and type of wine, malt beverages or distilled spirits - would literally be opening up Pandora's box – creating additional legal hurdles, increased costs and logistical nightmares.

Accordingly, as HB4697's reporting requirement, as currently contemplated, would essentially act as a *de facto* barrier to any motor carrier from delivering alcohol into the Commonwealth, this legislation should not be advanced from your Committee.

I appreciate your consideration of this matter. If you have any questions or concerns, please do not hesitate to let me know.

Sincerely,

Kevin Weeks
Executive Director

Cc:

Honorable John Cronin, Senate Chair
Joint Committee on Consumer Protection
& Professional Licensure