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ROBERT L. COWLES

Wisconsin State Senator
2nd Senate District

Testimony on 2021 Senate Bill 703
Senator Robert Cowles
Senate Committee on Transportation and Local Government
January 19, 2022

Thank you, Chairman Petrowski and Committee Members, for allowing me to testify on 2021 Senate Bill 703. This bill helps to protect the preferred status of independent contract motor vehicle operators from being miscategorized as employees of a motor vehicle carrier, while also ensuring that necessary safety equipment is being utilized on the road.

Next generation safety equipment, technologies, and operational practices are becoming the industry standard and are becoming serious considerations for many motor carriers which look to reduce accidents and improve their overall safety performance. Many safety devices, performance monitoring, and driver safety training is a required practice for motor carriers with employee drivers.

However, under current law for motor carriers with independent contractors, these types of safety requirements are blurring the lines between the relationships that independent contract drivers have with the carriers whom they are contracting with and creating unintended challenges for drivers and carriers alike with state programs like worker's compensation and unemployment insurance.

While it may be construed that requiring these types of safety measures is exercising employer-like control over independent contractors, it is worthy of note that independent contractor drivers chose to be independent as it offers a higher level of flexibility in scheduling and hours. In addition, these safety measures are becoming common practice across the industry.

It is well documented that these types of safety practices result in safer roads and fewer accidents. When looking at different technologies being deployed such as lane departure warning systems, automatic emergency braking systems, and air disc brakes, it's possible to say that these improvements have prevented tens of thousands of accidents.

Senate Bill 703 aims to solve the unintended result from attempting to improve road safety and allows motor carriers to continue to advance safety technologies and practices and avoid misclassifying drivers resulting in timely and costly regulatory challenges which benefit no one. I'm pleased to have the support of Schneider National, one of my major local employers in support of this legislation.



JOHN SPIROS

State Representative • 86th Assembly District

Testimony on Senate Bill 703 Senate Committee on Transportation and Local Government Wednesday, January 19, 2022

Hello, and thank you Chairman Petrowski and members of the Senate Committee on Transportation and Local Government for allowing me to testify on SB 703, relating to the classification of motor vehicle operators as independent contractors or employees.

As safety is a topmost priority for motor carriers, the use of technologies and safety trainings is becoming more of an industry standard to reduce accidents and improve the overall safety of semis on the road. Requiring safety devices in vehicles, monitoring driver safety performance, and coaching drivers on safe practices is a regular and encouraged practice, but for those with drivers classified as independent contractors, this kind of involvement can be misinterpreted as employer-like control, potentially forcing those drivers to classify as employees, not independent contractors. As motor carriers are generally liable for the actions of their independent contractors, including accidents and traffic violations, it is in everyone's best interest to implement these safety practices across the board.

SB 703 looks to solve the unfortunate conundrum that arises, and eliminates the consideration of a motor carrier's use of safety improvements in determining a driver's classification as an independent contractor or an employee under state law. This would allow motor carriers to proceed with the use of safety technologies and not face the unappealing choice between enhancing the safety and protections for drivers or misclassifying drivers as employees thus creating unintended consequences.

This bill does not change any test for determining a worker's status under state law, nor does it preclude application of any such test. Rather, SB 703 simply states that a carrier's pursuit of safety improvements is not considered as part of any such test.

Thank you again for allowing me the opportunity to share testimony in support of this bill, and I welcome any questions you might have.

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STEVEN F. STANASZAK
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January 17, 2022

Letter in Support of SB 703
Before the Senate Committee on Transportation and Local Government

Dear Chairman Petrowski and Members of the Committee:

As a transportation attorney based in Milwaukee representing numerous trucking companies across the state of Wisconsin and as a motorist using the roads of Wisconsin, I write in support of SB 703 and urge the Committee to favorably report the bill. SB 703 is an important safety initiative that would free up motor carriers to pursue safety initiatives with owner-operators¹ – improving safety of the motor carrier, the owner-operator/driver, and the motoring public – without fear that those same safety initiatives would contribute to an owner-operator being reclassified as an employee.

As stated, I am a partner in the Milwaukee office of Scopelitis, Garvin, Light, Hanson & Feary, a national law firm focused solely on transportation clients, including many Wisconsin-based clients. My primary practice involves defense of accident claims, but my colleagues also advise on how to maintain the independent contractor status of owner-operators leased to motor carriers and operating under the motor carrier's authority. Over the years, the trucking industry has made great strides in advancing safety and dramatically reducing accidents and deaths. The evolution and deployment of safety technologies and safety training has played no small part in contributing to this trend. However, my firm must caution clients seeking to implement safety measures that have proven effective with their employee drivers that applying those same measures to owner-operators could

¹ Owner-operators are generally individuals or entities that furnish a truck and driving services – often but not necessarily by the owner – to a motor carrier under what's known as a federally-required lease agreement.

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contribute to the driver being deemed an employee instead of an independent contractor under Wisconsin law. SB 703 would clear this unnecessary impediment to further safety measures.

The problem is particularly acute in trucking. The use of independent contractors in the trucking industry is widespread, has a history as long as trucking itself, and is essential to serving the ups and downs of customers' shipping needs. The dilemma is heightened, because federal law uniquely makes motor carriers responsible for the driving of owner-operators leased to them, including regulatory violations and accidents.

As you know, Wisconsin law generally considers the right to control the manner and means of performance in determining whether an individual is an employee or independent contractor. An example I frequently come across illustrates the Hobson's choice motor carriers face under current law. A motor carrier deploys video-based onboard safety monitoring and institutes a driver monitoring and coaching program based on driver behaviors (such as following too closely, speeding, hard braking) that results in improved driver safety performance.² If that same program -- with the monitoring and coaching that researchers have found essential to maximizing safety benefits -- is applied to owner-operators, plaintiffs' attorneys would point to that and courts and regulators could view that as the motor carrier exerting employer-like control. That carrier with independent contractors is left with the unappealing choice of improving safety and running the risk of reclassification or avoiding coaching and monitoring but potentially foregoing the ability to improve safety.

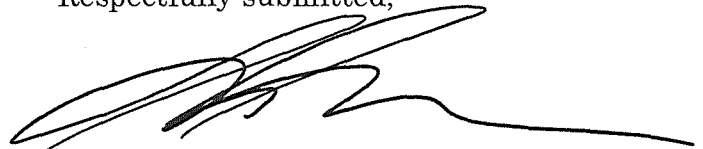
SB 703 is a narrowly targeted, common-sense solution to that dilemma. It simply establishes that the use of safety improvements does not get considered when evaluating the status of a driver as an independent contractor or employee under the state's labor or worker classification laws. The bill does not change any of the

² A 2017 American Automobile Association Foundation study found that video-based onboard safety monitoring could prevent 63,000 crashes, 17,733 injuries, and 293 deaths each year. Another study by the Virginia Tech Transportation Institute found that two carriers using video systems with feedback and coaching reduced their safety-related events/mile traveled by 37 percent and 52 percent, respectively

state's tests for determining whether a worker is an independent contractor or an employee, and it does not tip the scale one way or the other. Instead, it simply provides that the pursuit of safety improvements which benefit the driver, the motor carrier, and the motoring public should not be weighed.

While there may be disagreement on whether other facets of the commercial relationship should make a driver an independent contractor or an employee, I think we can all agree that that the pursuit of safety should not suffer as a result of courts trying to determine whether a safety improvement is impermissible control. I urge you to pass this legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Steven F. Stanaszak', with a long horizontal flourish extending to the right.

Steven F. Stanaszak



January 19, 2022

Wisconsin State Senate
Senate Committee on Transportation and Local Government
Wisconsin State Capitol
2 East Main Street
Room 201 Southeast
Madison, WI 53703

Schneider National Carriers, Inc. Comments in Support of Senate Bill 703 Relating to the Classification of Motor Vehicle Operators as Independent Contractors

Dear Chairman Petrowski and Members of the Committee:

My name is Daniel Drella, and I am the Director of Safety and Training for the Schneider organization. I am here to testify, on the organization's behalf, in support of the passage of Senate Bill 703.

Founded in 1935, and headquartered in Green Bay, Wisconsin, the Schneider organization has grown to become one of the largest transportation and logistics companies in the United States. Schneider National Carriers, Inc., along with its affiliated companies Schneider National Bulk Carriers, Inc. and Schneider Transport, Inc., constitute the interstate common and contract motor carrier and brokerage operations of the Schneider organization, and combined across all entities, operates approximately 9,000 company tractors, 56,000 trailers, containers, and tankers, and directly employs approximately 10,000 drivers.

Pertinently for Senate Bill 703, approximately 2,350 additional tractors moving freight under Schneider's operating authority are owned or leased, and operated by independent, small-business owners known in the industry by two interchangeable terms – "independent contractors" and "owner-operators". These small business owners furnish their trucks and driving services, including their own driver employees, to Schneider under a federally required lease agreement. Owner-operator driving capacity helps motor carriers furnish the transportation services necessary to place goods in stores, food on tables, and otherwise keep the flow of commerce actively moving for the citizens of Wisconsin. As a result of this dichotomy of operations between employees and independent contractors, Schneider is well positioned to provide comments on the importance of the passage of Senate Bill 703.

Since its inception, and throughout its development from a single-truck fleet to a publicly traded company, the Schneider organization has consistently – and aggressively – focused on the importance of safety in operations. In fact, Schneider's first and most important core value is "Safety First and Always." We know that as a motor carrier we have a unique ability and responsibility to affect, maintain, and promote a safe driving experience on Wisconsin's roadways. Over the course of the last 10 years,



Schneider has successfully implemented a number of measures that have reduced the risk and severity of crashes. As a non-exhaustive list of examples, Schneider has successfully implemented and is using vehicle technology and processes to manage and improve safety via various methods including:

- monitoring critical events, such as hard braking and stability control warnings;
- implementing a check speed program, and monitoring for maximum allowed speed;
- conducting post-accident reviews;
- using electronic logs and reviewing log violations and falsifications;
- actively monitoring Motor Vehicle Records and reviewing citations, suspensions, and other notices annually (or more frequently, as needed); and
- monitoring and reviewing roadside violations (CSA violations).

As owner-operators have refreshed their equipment over the last several years, some have added various types of safety technology to their tractors, such as forward-facing radar to reduce rear-end crashes, onboard cameras, and other systems. This has not happened on a consistent basis, however, and many owner-operators still have not added this type of technology to their tractors.

Despite the fact that certain owner-operators may be starting to add safety technology to their vehicles, the ultimate responsibility to maintain and promote a safe driving experience remains with the *motor carrier* and extends beyond ensuring that just *employee* drivers operate safely. In fact, in a regulatory situation that is fairly unique to the transportation industry, the Federal Motor Carrier Safety Administration regulations specifically require that motor carriers retain exclusive possession and control of, and ultimate responsibility for, the operation (including for any regulatory violations and any accidents) of *all* vehicles driving under the motor carrier's operating authority, including owner-operators.¹ As a result, each and every motor carrier that utilizes the services of owner-operators is federally obligated to ensure that those owner-operators drive safely. Despite the fact that owner-operator vehicles leased to a motor carrier are under the exclusive possession and control of the motor carrier, the FMCSA has made its position clear, in 49 C.F.R. § 376.12(c)(4), that the requirement of such exclusive possession and control is **not** "intended to affect whether the [owner-operator] or driver provided by the [owner-operator] is an independent contractor or an employee of the authorized carrier lessee." Unfortunately, and despite the foregoing, requiring that owner-operators implement certain proven safety measures (such as collision mitigation systems), or requiring that owner-operators go through remedial training in the event of a critical safety event, has been successfully utilized as a "sword" by the plaintiff's bar in an effort to reclassify owner-operators as employees by trying to establish that these measures amount to an exertion of employer-like control. As a result, this puts the motor carrier in the untenable position of having to make a choice of whether to improve safety, but face allegations of misclassification, or forego the ability to improve safety but lessen the risk of a misclassification action. When it comes to the safety of the Wisconsin population at large, such a choice should not be required.

¹ 49 C.F.R. § 376.12(c)(1) specifically provides that "the lease [between the authorized carrier and the owner of the equipment] shall provide that the authorized carrier shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease."



As written, Senate Bill 703 strikes a legitimate, balanced, and well-thought through approach to improving safety on Wisconsin's roadways. The bill does not change existing state law with respect to the test for determination of worker classification. Rather, it merely provides that the implementation, deployment, and use of technologies and practices intended and primarily used for safety should not be considered when determining whether a worker is an employee or an independent contractor. From a public policy standpoint, each and every person in Wisconsin benefits from the promotion, advancement, and increased use of safety technology and measures, regardless of whether the person driving the commercial motor vehicle is an independent contractor or an employee. When a vehicle accident occurs, the injured party – and the injured party's family – does not care whether the driver was an independent contractor or an employee; rather, they simply ask if there was anything that could have been done to prevent their loss. The passage of Senate Bill 703 will help ensure that the pursuit of safety – and thus a corresponding reduction in the likelihood and severity of vehicle accidents – is not compromised by the threat of employment litigation.

In closing, the pursuit of safer roadways in Wisconsin is a concept that should be universally accepted and promoted. Barriers or impediments to that pursuit, such as the risk of reclassification, needlessly and unnecessarily increase the risk of injury for our husbands, wives, partners, sons, daughters, family, and friends. For all the foregoing reasons, Schneider wholeheartedly urges you to pass this important legislation.

Submitted by:

Daniel Drella
Director of Safety and Training
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January 19, 2022

To: State Senator, Jerry Petrowski
Chairman, Senate Committee on Transportation and Local Government

Re: Letter of Support for SB 703
Classification of motor vehicle operators as independent contractors or employees.

Dear Chairman Petrowski and Committee Members,

Safety is the cornerstone of the Wisconsin Motor Carriers Association and the trucking industry as a whole. Of concern to the industry is legislation being introduced in some states that would reclassify for-hire truck drivers, who are Owner Operator/Independent Contractors (OO/IC), as Company Drivers if a motor carrier company requires that their for-hire contractors must have certain safety equipment technologies in their trucks to reduce accident exposure. Due to the lack of clarity at the federal level, such legislation misinterprets these safety requirements as an exercise of "employer-like" control by the motor carrier company, which in turn would misclassify those drivers as employees and not independent contractors under state law.

SB 703 eliminates motor carriers having to choose between enhancing safety at the risk of worker misclassification. As a result, a carrier company with a mix of employees and ICs can deploy safety improvements across the board. OO/ICs will also be able to retain their autonomy over the services they offer regarding choosing their loads, the length of hauls, setting their own schedules and negotiating rates among other factors.

Furthermore, this legislation does not change any test for determining a worker's status under state law. It simply states that a motor carrier's pursuit of safety improvements, which are in the best interest of the truck driver and the motoring public, is not considered part of any such test.

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Wisconsin Movers Association * Wisconsin Milk Haulers Association * Wisconsin Motor Coach Association * Wisconsin Towing Association

Trucking is the backbone of the state and nation's economy. 77% of Wisconsin's communities depend exclusively on trucks to move their goods while 94.9% of manufactured goods are transported by a truck in Wisconsin. This common sense legislation will help prevent the misclassification of for-hire, independent owner-operator truck drivers, allow for their continued freedom of operation, improve safety and prevent exacerbating the already critical truck driver shortage.

The Wisconsin Motor Carriers Association asks for your support of SB 703 and strongly urges the eventual passage of this important legislation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Neal Kedzie". The signature is fluid and cursive, with the first name "Neal" being more prominent than the last name "Kedzie".

Neal Kedzie, President