

Testimony of

The Connecticut Messenger Courier Association

By Kevin B. Maloney

Re: HB 6560 An Act Concerning Owner Operators of Certain Vehicles

Before the Legislature's Transportation Committee

Good Morning. My name is Kevin Maloney. I own and operate a transportation company in Windsor Locks called Northeast Express Transportation, Inc. and I am the President of the Connecticut Messenger Courier Association (CMCA). CMCA represents the independent messenger courier companies in Connecticut. Our members generally are small businesses, but we play a crucial role in Connecticut's economy.

*CMCA supports the intent of HB 6560, "An Act Concerning Owner Operators of Certain Vehicles" and to request that you amend the bill. I have attached amending language to my testimony.*

CMCA messenger courier companies, and my own company, have used the owner-operator business model for decades. This model has been the dominant one in our unique primarily on demand industry for the past eighty years. Our entire pool of drivers are owner operator independent contractors.

As an industry we have worked successfully with the Department of Labor ("DOL") for the last 20 years to play by the rules. Unfortunately, the Department can no longer help us and we need legislative relief.

HB 6560 is intended to provide desperately needed help to owner operator motor carriers in Connecticut. Unfortunately, the changes to the bill from that which you considered last year, fail to provide the same protections to the Connecticut's messenger courier industry which is a critical portion of the motor carrier industry in our state. By applying the bill to vehicles over 10,000 lbs, the independent CMCA owner operators would be excluded. Our drivers provide their own vehicles. We do not lease them vehicles. Their vehicles are almost exclusively less than 10,000 lbs.

Over my fifty year career in the transportation business, I've found that companies using the owner-operator model are incubators for entrepreneurs. This is particularly true of immigrants who come to this country wishing to live the American dream. The cost of entry is affordable for most of them, simply the cost of a vehicle, and there aren't a whole lot of technical skills involved. It is an industry in which hard work still pays off. There are at least a half a dozen companies throughout Connecticut run by individuals who began as owner-operators for my firm. If nothing else, that certainly creates a more competitive marketplace.

The messenger courier business model has allowed me to grow my business and serve my customers more effectively, both from a pricing and operational perspective. My ability to

mirror the fluctuation in my customers' demand for service with a similar fluctuation in the size of my work force means that I don't have a lot of capital resources lying dormant during slow periods and my customers are not incurring the cost of those unused resources when they do not need them. Conversely, it also allows me to engage additional short term resources when the customers' expanded needs warrant them. And just as I am free to expand and contract the number of owner-operators I utilize, they are in turn free to come and go at will, work when they want to and only when they want to. Indeed, some of our owner-operators take a month or more off at a time.

I mentioned that this business model allows individuals to better themselves simply through hard work, and I'd like to share a story with you that will substantiate that comment. A couple of years ago, I drove to my office one Saturday morning and I noticed an ocean container staged at our dock. This caught my attention because we don't do any ocean container work. When I walked on our dock, I saw about a half dozen of our contractors loading the container with everything you could imagine; baby carriages, batteries, fishing gear, even a car. When I questioned them as to the reason for this, they explained that they were shipping all this stuff to their immediate and extended families in Ghana because, even if their families could afford these things (which they couldn't), they simply couldn't get them over there.

Just a couple of days later, I heard an interview with Ambassador Andrew Young, who was explaining how hundreds of millions of dollars in aid are flowing to countries on the African continent, not from official U.S. sources, but instead from ex-pats like the guys that work for me. Questioning them further, I discovered that more than a few of them are here without their families. The money that they earn as owner-operators for me allows them to send a substantial portion of it home, enabling their families to maintain a far better standard of living than they could otherwise afford, including private school education for their children. That's an extraordinary sacrifice for a father to make on behalf of his family, and it is personally gratifying to know that our company in some way aids in the betterment of their families. And it should be obvious that there would be no way these folks could do this if they were working some menial job at minimum wage.

You may recall that last year CMCA and the Motor Transport Association supported a similar owner operator motor carrier bill. Unfortunately, DOL opposed that bill in part because they felt it was too wide ranging, encompassing individuals who were not strictly involved in the transportation of freight, pizza delivery guys, for instance.

Although the 10,000 lb portion of this bill solves the "pizza delivery guy" problem, regrettably it excludes the hundreds of legitimate owner operator drivers that contract with CMCA members. Our amendment does not affect other freight motor carriers.

CMCA's proposed amendment fundamentally codifies the provisions of a Department of Labor Declaratory Ruling issued 1994 regarding messenger courier companies. Because of that Declaratory Ruling, there have very few misclassification issues with our industry. Connecticut has been a model of regulatory peace on this issue for the nation.

However, because of a State Supreme Court decision (not involving messenger couriers) the Department can no longer help us and we face significant exposure. Without relief, our industry cannot survive.

We have worked in recent years with DOL in an effort to develop a "Best Practices Agreement" and an "Affidavit of Independent Contractor Status" that enables our member companies to try and comply with both the letter and spirit of the ABC test. But the DOL can go no further without legislative assistance. We need your help.

Despite having played by the rules for nearly 20 years since the Declaratory Ruling, the evolution of case law regarding independent contractor status for our owner operator drivers has made it virtually impossible for companies like mine to comply with the law.

Therefore, we once again ask you for help. Please amend HB 6560 as we have requested so that we can continue to be responsible companies that contribute so much to Connecticut's economy.

This concludes my testimony. Thank you for your consideration.

