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SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 8
DATE 1/11/05
BILL NO. SB 108

January 11, 2005

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capital Station
Helena, MT 59620

Re: PROPONENT SB 108

Dear Senator Cocchiarella,

I serve as the President of Whitewood Transportation, a specialized motor carrier in the size and weight transport business. Our offices are located both in Billings and Missoula, MT. We currently employ twelve office staff, all whom are members of the Montana State Fund, we also contract the services of thirty-five independent owner operators.

The transportation service we provide is unique and complicated, requiring extremely specialized drivers and equipment. It is unlikely that we could offer the services that we provide today without the services of these independent contractors. It is critical to their survival and to ours as a company that they maintain the independent contract status that they have in the past, as recognized by the Internal Revenue Service.

Senate Bill 108 will help distinguish an independent contractor through a formalized exemption certification process. The fact that our owner operators own their equipment, pay for all of their fuel, maintenance, taxes, licenses and insurance, does not seem to be enough.

I would note that there is an element of control related to safety practices that we must maintain over our owner operators that is imposed upon us by the Federal Motor Carrier Safety Administration. FMCSA does not differentiate between a truck driver and an owner operator and we must abide by those regulations. I believe this should not be considered as the type of control mentioned in section 1, (4,a) of this bill.

In closing, as a proponent of SB 108, I respectfully request your support.

Sincerely,

Michael P. Wilson

Quality Transportation, Inc.

P.O. BOX 1530

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1/11/05

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capitol Station
Helena, MT 59620

RE: SB 108

Dear Senator Cocchiarella:

I am part owner of Quality Transportation, Inc. a Montana based trucking company. I have been in trucking for 32 years. Over the years I have seen many ups and downs in the trucking industry in Montana, but the crisis we face today will affect all Montana Motor Carriers that lease owner/operators equipment. Many of the trucking companies in Montana lease owner/operators. Those owner/operators that meet all other Independent Contractor requirements need the ability to qualify for the exemption by allowing them to be exclusively leased under limited control as mandated by the Department of Transportation.

I would like to speak in support of SB 108, as I believe that the effect of SB 108 will help define the line between the Independent Contractor and the employer. The provisions for education of both parties in this bill will allow the parties to better define their roles in the contract and the carrier will know up front whether or not his contract meets DOL requirements for the IC status.

The Department of Transportation and the Interstate Commerce Commission support leasing trucks from Owner/Operators for numerous reasons. When a truck is leased to a specific carrier, the carrier is required to carry Liability Insurance on all the units, thus protecting the general public from owners that aren't insured or under insured. The carrier is responsible for background checks, training and various records keeping. All of this insures the general public and the Federal & State safety departments that owner/operators meet certain criteria. It is easier for the D.O.T. to go to one location and check 10 to 100 drivers or more for compliance, rather than individual owner/operators.

The owner/operator is still independent. He has to adhere to the Government regulations, but the carrier has responsibility to be knowledgeable of all the regulations and make sure the Owner/Operator is following the rules and regulations. The owner/operator owns his equipment, is free to set his delivery times, determines his own work schedule, the loads he carries, and purchases fuel & repairs his equipment when & where he chooses. The carrier is a necessary player in the transportation of goods and services. We are there to insure that all of our leased Owner/Operators are in compliance with Federal and State Legislation. If Owner/Operators are not allowed to be Independent Contractors, the safety of the industry would definitely drop as it would be impossible for the D.O.T. to do inspections on the Independent Owner/Operators on an individual basis.

Thanks for taking time to read my letter and your willingness to serve Montanan's in such a difficult situation.

Sincerely,





DIVERSIFIED TRANSFER & STORAGE, INC.

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January 11, 2005

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capitol Station
Helena, MT 59620

Senator Cocchiarella,

Please accept my comments as a proponent for SB108. As a Montana employer, it is vital a distinction is established for independent contractors versus employees. Diversified Transfer & Storage is a Montana corporation, primarily providing transportation and storage of food products for delivery throughout the United States and western Canada. We hire drivers that are company employees and contract with independent contractors.

Unfortunately the distinction of an independent contractor/owner operator versus a driver employee is fuzzy. SB108 will provide a means to qualify an owner operator/independent contractor through the independent contractor exemption certificate, eliminating confusion.

Thank you,

Jay Foley, President



**MOTOR CARRIER
MEMBER**



International
Association
of Refrigerated
Warehouses



An Association of Logistics Professionals

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Industrial Transfer & Storage Co., Inc.

January 10, 2005

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capitol Station
Helena, MT 59620

Dear Senator Cocchiarella;

I am writing this letter today to comment on SB 108. I would like to point out in this correspondence the importance of Independent Contractors to the Motor Carrier Industry in the State of Montana.

Virtually every trucking company that is in operation today in the State of Montana, started as a single truck Independent Contractor. Many as Independent Contractors leased to motor carriers in compliance with Federal Motor Carrier Leasing Rules and Federal Motor Carrier Safety Administration (FMCSA) Safety Rules. As their knowledge of the Motor Carrier Industry grew through their Contractor Status with an existing motor carrier many chose to expand from a one truck operation and find their own niche in the industry. In the High Tech Industry this would be termed an "Incubator" for business and to the motor carrier industry in Montana that is very true and thus has been very beneficial to the total economy of the State of Montana.

There have been and still are many Independent Contractors that are satisfied with their situation as being an independent business person while still on long term lease to an established motor carrier and working within the Federal Motor Carrier Leasing Rules and the FMSCA Safety Rules as administered by the Motor Carrier. These people are important to the Motor Carrier Industry in Montana. The Motor Carrier Industry is a capitol intense industry and the Owner-Operator/Independent Contractor can help the motor carrier expand his business by having ownership of the most expensive piece of equipment in the business, that being the truck itself. This also spreads the economic base and benefits in the state as the Owner-Operator/Independent Contractor purchases his equipment, fuel, accessories and service from the vendor of his choosing, not just from the vendors of the motor carrier. Thus more vendors and or economic areas are impacted by spreading the purchasing power.

The Owner Operator/Independent Contractor impacts the Montana Motor Carrier Industry in another very positive way. The utilization of Owner-Operators/Independent Contractors provides for a shared responsibility for safety and efficiency of the Motor Carrier's operation. The Owner-Operator/Independent Contractor will have an investment of anywhere from \$20,000 to \$160,000 in his equipment, depending on the segment of the industry he is participating in and thus he strives to maintain his investment to extremely high standards resulting in safer equipment as well as safer operation of the equipment. The Owner-Operator/Independent Contractors equipment IS HIS BUSINESS, and he cannot afford unscheduled breakdowns or accidents that impair his ability to conduct HIS BUSINESS.

Our company Industrial Transfer & Storage Co, Inc. has utilized the services of Owner Operators/Independent Contractors since 1988. As a direct result of our utilization of the Owner-Operators/Independent Contractors our Company has posted a fleet safety record that is enviable of many in the Industry. Our Owner-Operators/Independent Contractors maintain their equipment to very strict safety standards and operate their equipment to the same exacting standards thus increasing the efficiency of our company while providing themselves a healthy bottom line in their business venture. The contribution to the states economy is significant as well. We currently have on contract Owner-Opertors/Independent Contractors that have replaced their truck tractors 4 or 5 times since contracting with us with the price of their equipment investment ranging from \$80,000 to \$118,000 each. This is not to mention the fuel, tires, accessories and service that they have purchased from vendors throughout the state of Montana. Our company and that if the various vendors could not have flourished without the services and spending power of these Owner-Operators/Independent Contractors.

As my final statement to the Committee, Madam Chairman, I would like to impress upon you and the other committee members that the Owner-Operator/Independent Contractor in the Motor Carrier Industry must be viewed and treated differently than Independent Contractors in any other industry. This difference is mandated by the previously referred to Federal Motor Carrier Leasing Rules (formerly administered by the ICC and now by the STB –Surface Transportation Board) and the FMCSA Safety Rules. These rules require a specific amount of control over the Owner-Operator/Independent Contractor in the furtherance of Public Safety and Environmental Safety for the State of Montana as well as the entire nation. Thus when considering the Independent Contractor Exemptions in SB 108 I respectfully request that a specific exemption and wording to such be stipulated in the language of the bill. This language should address the controls mandated by Federal as well as Montana State Law in regards to Motor Carrier operations.

These Owner-Operators/Independent Contractors must be exempted from employee status if the system and its economic and safety benefits to the State of Montana are to survive.

I apologize for not being able to be present for today's hearing but I have our annual insurance safety audit that was scheduled for today. It may be noted, that a percentage of the insurance premiums, which our Owner-Operators/Independent Contractors pay on their business equipment goes to our local insurance agent, Gould Agency in Great Falls to further that business and its employees.

Thank you for your consideration of this issue.

Ben E. Ives
President
Industrial Transfer & Storage Co, Inc.