

Georgia House Bill 758

Addition to Georgia Motor Carrier Act Furthers Safety and Compliance for Fleets Using Independent Contractors or Owner Operators

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On July 29, 2020, Georgia Governor Brian Kemp signed into law House Bill 758. The bill adds a provision to the Georgia Motor Carrier Act of 2012 that has implications concerning a motor carrier's safety improvement practices.

There has been a noticeable rise in technology used in commercial motor vehicles, including crash cameras (inward and outward facing), other cameras, collision avoidance, lane departure, and adaptive cruise control. This increased use of technology for fleet and driver management provides numerous benefits to motor carriers. Carriers are able to monitor their drivers, watching for potential issues in driving habits. Carriers are also able to use positive reinforcement with drivers – rewarding and encouraging drivers who demonstrate safe driving habits as reflected in the data received from these devices. Insurers are also able to better evaluate claims with data from these devices.

As a result, the trend is that jurors are expecting motor carriers, regardless of size, to have a certain level of “technology” in their trucks. If you are a large motor carrier with hundreds of vehicles, some plaintiffs’ attorneys have even begun to argue there is a presumption of negligence in the event of an accident if you do not have this technology. However, even smaller motor carriers feel pressure to implement this technology, either from insurers or attorneys in the context of casualty litigation.

Governor Kemp recently signed HB 758, adding a new Code section to the Georgia Motor Carrier Act of 2012, which provides as follows:

(a)For purposes of this Code section, the term ‘motor carrier safety improvement’ means any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate compliance with traffic safety or motor carrier safety laws, safety of a motor vehicle, safety of the operator of a motor vehicle, or safety of third-party uses of highways of this state.

(b)The development, implementation, or use of a motor carrier safety improvement by or as required by a motor carrier or its related entity, including by contract, shall not be considered when evaluating an individual’s status as an employee or independent contractor, or as a jointly employed employee, under any state law.

This new Code has several effects. First, HB 758 has no effect on whether a driver qualifies as a statutory employee under 49 C.F.R. § 390.5. For purposes of respondeat superior liability, HB 758 does not change that landscape.

Second, from an operations perspective, carriers can employ vehicle monitoring software, GPS tracking, and other technologies that could increase operational efficiency and reduce cost. Aside from the obvious safety benefits, motor carriers could actually see long-term savings from implementing

these technologies. For example, our firm has investigated many accidents that could have led to difficult fights over liability but that were instead resolved immediately by viewing available dash cam video. In some cases, the immediate availability of dash cam video even factored into whether law enforcement issued citations or assigned fault for an accident.

Third, it allows motor carriers to implement technology in the trucks of owner operators and independent contractors without fear that requiring such technology will be used against the motor carrier as proof that the driver is an employee. A common rationale behind these technologies is that they encourage safe driving practices and reduce the likelihood of accidents and claims. Therefore, the regulatory scheme should encourage motor carriers to use this technology for all vehicles under its operating authority.

Fourth, for motor carriers who have mixed fleets of independent contractors and company drivers, the bill allows carriers to treat both groups the same with regards to the implementation of safety programs. Carriers can hold joint safety meetings, issue the same safety bulletins to both groups, and provide the same training to both groups. If motor carriers choose to employ certain technologies in trucks used under their operating authority, they can employ the same technologies in all their vehicles regardless of the driver's role as a company driver or independent contractor.

Conversely, for motor carriers who primarily use independent contractors, HB 758 gives these carriers freedom to employ a variety of motor carrier safety improvement measures for their contractors. Carriers can install cameras, vehicle monitoring software, and other technologies in vehicles used by contractors.

Lastly, and most importantly, HB 758 gives motor carriers the ability to implement safety procedures for owner operators and independent contractors without fear that any such procedures will be seen as an element of control contributing to the designation of these operators as employees. This does not just apply to vehicle technology, but to any "procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate compliance with" safety laws. Driver training, safety courses, bulletins, and materials all fall in this category.

The reasoning behind the bill is sound. Everyone can agree that motor carriers should be incentivized to implement safety practices and procedures. HB 758 is a good tool that should have positive effects on motor carrier safety, compliance, efficiency, and the overall safety of motoring public.

The law will go into effect on January 1, 2021.