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Study Committee on Receivership Laws

**Tim Schaffer**  
**State Representative, 77<sup>th</sup> House District**

**House Concurrent Resolution 8—Sponsor Testimony**  
**House Transportation and Public Safety Committee**  
**Tuesday, March 19, 2019**

Chairman Green, Vice Chair McClain, Ranking Member Sheehy, and members of the House Transportation and Public Safety Committee, thank you for the opportunity to present sponsor testimony on House Concurrent Resolution 8.

House Concurrent Resolution 8 addresses an important issue that is affecting innocent drivers, specifically those in the commercial trucking industry, like my constituent, Eric McCoy, who actually brought this issue to my attention.

This resolution will simply urge Congress to encourage the Administrator at the Federal Motor Carrier Safety Administration (FMCSA) to change the crash indicator, which is one of the Behavior Analysis and Safety Improvement Categories (BASIC), regulation standards to only consider crashes in which the driver is at fault for a crash.

The FMCSA is the governing body for the entire trucking industry. Its office of Compliance, Safety and Accountability has created the Safety Measurement System (SMS) that attempts to assess a driver's performance in a series of seven Behavior Analysis and Safety Improvement Categories (BASIC). These seven categories are:

- Unsafe driving
- Crash Indicator
- Vehicle Maintenance
- Controlled Substance/Alcohol
- Hours-of-Service Compliance
- Driver Fitness
- Hazardous Material Compliance

House Concurrent Resolution 8 is specifically targeting the Crash Indicator BASIC. According to the FMCSA, this BASIC is defined as:

“Historical pattern of crash involvement, including frequency and severity. This BASIC is based on information from State-reported crashes that meet reportable crash standards. **All reportable crashes are used regardless of the carrier's or driver's role in the crash.** [Emphasis added] This BASIC uses crash history that is not specifically a behavior but instead the consequences of a behavior or a set of behaviors.”

This standard allows drivers to be penalized for “wrong place, wrong time” accidents for which they hold no responsibility or liability. This is precisely the situation my constituent, Mr. McCoy finds himself in.

According to Mr. McCoy, records of accidents he has been involved in, but not responsible for nor cited for, are somehow kept on his permanent driving record. These have become a penalizing factor for him as he has been denied driving jobs in the trucking industry. Ultimately, it has cost him the opportunity to advance his career, even though he has not committed any actions that would indicate he is an unsafe driver.

The good news is, as of August 2017, the FMCSA has started a pilot program called the Crash Preventability Demonstration Program. This program was created to find an answer to the many concerns regarding the crash indicator BASIC. With this program, the FMCSA allows motor carriers or drivers involved in certain crash types, outlined by the program, to submit a request to review whether the accident was not preventable. If it was found to not be preventable, the FMCSA will display on their profiles the crash indicator BASIC percentile with and without the crashes. Although this is a great first step to helping people, like my constituent, to get and retain jobs, this program is only expected to last a minimum of 24 months. It is not a permanent solution.

House Concurrent Resolution 8 will urge Congress to take some action on this important issue. The pilot program is a great first acknowledgement from the FMCSA that there is a problem. However, an acknowledgement is not enough. It is time that real change take place so that constituents, like my constituent and I am sure yours at home, do not lose any more valuable work.

Last General Assembly, this legislation passed out of committee and out of the House unanimously.

Thank you once again, Chairman Green and the members of the committee, for the opportunity to present this issue to you today. I will be glad to answer any questions at this time.