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TO: Senator Mike Petersen, Chairman
Senator J.R. Claeys, Vice-Chairman
Senator Tom Hawk, Ranking Minority Member
Members of the Senate Committee on Transportation

FROM: Blake A. Shuart, Hutton & Hutton Law Firm, L.L.C., Wichita
Individually and on behalf of the firm

DATE: February 1, 2022

RE: SB 379: AN ACT concerning motor vehicles; relating to autonomous motor vehicles;
providing for the use and regulation thereof. (**OPPOSE**)

Dear Chairman Petersen, Vice-Chairman Claeys, Ranking Minority Member Hawk and the Members of the Senate Committee on Transportation:

I am an attorney with the Hutton & Hutton Law Firm, L.L.C., based in Wichita, and am also a member of the Kansas Trial Lawyers Association (KTLA). I have represented hundreds of injured Kansans in auto & semi negligence cases and have defended many such cases for insurers. I am thus familiar with and attuned to the risk that commercial motor vehicles engaged in intrastate commerce pose to other Kansans who travel our state highways, even when those vehicles are operated by trained and licensed human drivers. I believe SB 379 – which will allow semis to traverse our highways with no human being in the cab – generates far more concerns than solutions. I thus urge this Committee not to pass this legislation. This written testimony is intended as a supplement to my WebEx testimony on Wednesday, February 2.

Breaking down the bill by sections, the first questions and concerns arise out of the gate in § 1. Subsection (h) defines “Owner” as a person who (1) holds legal title of a vehicle; (2) has the legal right of possession of a vehicle; or (3) has the legal right of control of a vehicle. This is a simple set of definitions when viewed in the context of the physical vehicle itself – in this case, the 10,000+ pound machine blazing across our state highways. The only problem is that this legislation is about the automated driving systems which control every move of those 10,000+ pound machines (the “operational” and “tactical” aspects). The “owner” of the physical vehicle has no control over these driving tasks – the installed hardware and software do.

This distinction becomes extremely important when the definition of “owner” is used again later in the legislation, at § 4(b)(1): “The owner of the automated driving system is considered the operator of the autonomous motor vehicle solely for the purpose of assessing compliance with applicable traffic laws regardless of whether the person is physically present in the vehicle while the vehicle is operating *** (emphasis added). The problem, again, is that the owner actually has no

involvement in the operational aspects of the vehicle. The true “operator” is the individual or organization charged with creation and implementation of the hardware and software which comprise the “automated driving system.”

Under this legislation, the individual or organization who creates, tests, maintains, implements and exercises exclusive discretion over the operational aspects of the autonomous vehicle has no legal responsibility for its failures. If an unmanned semi hauling thousands of pounds of toxic product experiences a software failure and causes a multi-fatality accident, this legislation will not hold the creator legally responsible or liable. This is a problem that needs fixing. The other downstream consequences also bear mention: the “Owner” may be a foreign citizen and thus difficult to hold accountable in our courts and may be judgment-proof or dramatically underinsured.

If the businesses that design and operate computerized equipment allowing 10,001+ pound machines to travel our state highways unmanned want to do business in Kansas, Kansans need to be able to hold them accountable – and in Kansas. Another aspect to accountability is insurance, and the current legislation only requires these unmanned commercial vehicles to have the “financial security required pursuant to K.S.A. 40-3104” (*see* § 3(b)(4)) which equates to \$25,000 per person / \$50,000 total per occurrence under K.S.A. 40-3107.

Another aspect of safety and oversight is registration, inspection and approval. Quite notably, the current legislation does not require that operators of autonomous commercial vehicles notify the State of Kansas prior to first operation and does not require any type of advance testing/inspection or special registration by the State of Kansas. Under this legislation, anyone who has created autonomous commercial motor vehicle operation hardware and/or software can install it in a 10,001+ pound commercial vehicle and begin traversing Kansas highways without any advanced warning, registration, testing, inspection or oversight. This is a scary proposition indeed. If Kansas is going to become a leader in the autonomous commercial motor vehicle sector, it must proceed carefully and with the safety of Kansans in mind, given the high risks involved. Further work is needed to ensure that autonomous commercial motor vehicles abide by both federal and Kansas standards.

Although the “middle mile” refers in this legislation to “the intrastate commercial movement of goods, in a business-to-business capacity, between two or more fixed points on fixed, repeatable routes,” this is far from narrow legislation. The “middle mile” could well comprise large portions of our highway system once these “repeatable routes” are established, impacting the safety of millions of Kansans every year.

Yet another aspect of safety and oversight is accident investigation and reporting. This legislation contains no requirements or directives in this area. A human-operated commercial vehicle must remain at the scene with its driver when an accident has occurred, and an autonomous commercial vehicle must be required to do so as well. With no driver present, there must be contact with a company designee as part of law enforcement’s investigative process. These are minimal standards that are not covered at all in this legislation.

Any prior states that have passed autonomous commercial motor vehicle legislation have ensured that any laws passed address governance, operations and liability. All three are incomplete in SB 379 and significant work is required. Supply chain concerns, however long they may last, do not trump the safety and well-being of Kansas families. I respectfully urge the Committee not to pass SB 379. I thank the Members of the Committee for your time and consideration.