

SENATE BILL REPORT

SHB 2395

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 23, 2012

Title: An act relating to drayage truck operators.

Brief Description: Regulating drayage truck operators.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Sells, Reykdal, Upthegrove, Ryu, Moscoso, Ormsby, Hasegawa, Fitzgibbon, Hudgins, Darneille, Cody, Kenney, Santos, Roberts, Green, Miloscia, Pettigrew, Dickerson, Moeller, Appleton, Liias, Jinkins, Dunshee, Van De Wege, Goodman, Orwall, Hunt, Wylie, Billig and Probst).

Brief History: Passed House: 2/11/12, 52-43.

Committee Activity: Labor, Commerce & Consumer Protection: 2/20/12, 2/23/12 [DP, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.

Signed by Senator Holmquist Newbry, Ranking Minority Member.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Assistant Ranking Minority Member; Hewitt.

Staff: Edith Rice (786-7444)

Background: Employment standards generally apply only if there is an employer-employee relationship rather than an independent contractor relationship. The laws for which status as an employee is required for the standards to apply include the Minimum Wage Act, the Industrial Welfare Act, the Wage Payment Act, the Washington Law Against Discrimination, and the Washington Industrial Safety and Health Act. For purposes of unemployment insurance laws, services must be in employment.

The Minimum Wage Act establishes standards for employee minimum wage, overtime compensation, and recordkeeping. The Industrial Welfare Act is the authority for the

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employee meal and rest break standards adopted by the Department of Labor and Industries (L&I) and also covers such employment standards as use of paid leave for care of family members. Under the Wage Payment Act, L&I investigates wage complaints and may order payment of wages owed.

The Washington Industrial Safety and Health Act gives L&I authority to adopt safety and health standards governing conditions of employment.

Under the Washington Law Against Discrimination, the Human Rights Commission may investigate claims of discrimination by employers based on any of several prohibited reasons.

For purposes of unemployment insurance, a person receiving remuneration for services is covered, and contributions (taxes) by employers due, unless exception tests are met establishing that services are not in employment.

The term drayage trucks typically refers to trucks doing short-haul transporting of goods.

Summary of Bill: Legislative intent states that, under applicable legal standards, drayage truck workers are covered workers for purposes of various employment protections. The Legislature finds misclassification of drayage drivers as independent contractors results in drivers working in unsafe conditions and without employment protections. Misclassification is unfair to law-abiding businesses and results in lost revenue to the state. The Legislature does not intend to exclude drayage drivers from the protection of other employment standards.

Drayage truck operators are defined to be employees for purposes of the Industrial Welfare Act, the Minimum Wage Act, the Wage Payment Act, the Washington Industrial Safety and Health Act, and the Washington Law Against Discrimination. The motor carrier that directly engages the services of the driver is an employer. Services performed by a drayage truck operator are similarly defined to be services in employment for purposes of unemployment compensation, and the exception tests do not apply.

A drayage truck operator is the driver of any in-use, on-road vehicle with a gross vehicle weight rating greater than 33,000 pounds operating on or transgressing through a port that handles in excess of 1,000,020 foot equivalent units of containerized cargo or operating on an intermodal rail yard property within 50 miles of such a port for the purpose of loading, unloading, or transporting containerized cargo.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: These drivers deserve protections provided under this bill because they are employees, not independent contractors. They are not

allowed to work for others, and are told what to do. Equipment is unsafe and drivers have had workers compensation claims denied. The Port of Seattle has significant environmental issues that should be addressed. Drivers have stopped work at the Port to protest being treated unfairly. There are safety issues with truck inspections and problems with road safety. Drivers put their careers in jeopardy when they question safety issues. Although it might be costly to address this problem, it is already costly by not addressing it. This is a growing national problem and has been challenged in a 9th Circuit Court of Appeals case involving the City of Los Angeles. We don't believe federal law preempts states taking similar action. We should avoid piecemeal litigation.

CON: Drivers like being independent contractors because they can refuse jobs they don't want to take, set their own hours, work the jobs they are comfortable with. It would be cost prohibitive to replace the current fleet of trucks. Truck drivers must budget for expenses just like any other business. Because of the 9th Circuit Court of Appeals case, preemption applies here and someone will likely file a lawsuit which would be costly. Shippers base port selection on cost and will look to other less costly ports to use if the cost increases. It will mean increased yearly costs for grocers. This would be burdensome for shipping of farm and agricultural products. It could impact the state's ability to export agricultural commodities.

Persons Testifying: PRO: Representative Sells, prime sponsor, Zekarias Abebe, Abdul Ahmed, Azad Mahil, Drivers Assn.; Rob Holland, Commissioner, Port of Seattle; Mike O'Brien, Council Member, City of Seattle; Rebecca Smith, National Employment Law Project.

CON: Steve Stivela, MacMillan-Piper; Lloyd Williams, Zenith Drayage; Phil Talmadge, Washington Trucking Assn.; Scott Hazelgrove, Pacific Merchant Shipping Assn.; Holly Chisa, Northwest Grocers Assn.; Scott Dilley, Farm Bureau.