

SENATE BILL REPORT

SB 5362

As Reported by Senate Committee On:
Commerce, Labor & Sports, February 15, 2017

Title: An act relating to an exemption from unemployment compensation for certain providers of commercial transportation services.

Brief Description: Providing an exemption from unemployment compensation for certain providers of commercial transportation services.

Sponsors: Senators Braun, Mullet, Baumgartner, Lias and Rossi.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/02/17, 2/15/17 [DPS, DNP].

Brief Summary of Substitute Bill

- Creates an exemption under unemployment insurance for services performed by a driver providing commercial transportation services, except in limited circumstances.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: That Substitute Senate Bill No. 5362 be substituted therefor, and the substitute bill do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King, Rossi and Wilson.

Minority Report: Do not pass.

Signed by Senators Keiser, Ranking Minority Member; Conway, Hasegawa and Saldaña.

Staff: Susan Jones (786-7404)

Background: Persons are eligible to receive certain employment-related benefits and employers are obligated to pay certain employment-related taxes depending on whether the employment is covered or excluded from coverage.

Workers' Compensation. The workers' compensation laws are liberally construed to include most types of employment. There are a number of exemptions. A driver providing

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commercial transportation services is exempt from the mandatory coverage under workers' compensation.

Commercial Transportation Services - Defined. Commercial transportation services means all times the driver is logged in to a commercial transportation services provider's digital network or software application or until the passenger has left the personal vehicle, whichever is later. Commercial transportation services provider driver means an individual who uses a personal vehicle to provide services for passengers matched through a commercial transportation services provider's digital network or software application.

Unemployment Insurance. Unemployment benefits are payable to unemployed workers who meet certain eligibility requirements. Unemployment contributions are paid by employers based, in part, on wages paid in covered employment. Most employment is covered for purposes of unemployment insurance. Employment generally means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, expressed or implied. There are a number of exemptions.

Summary of Bill (First Substitute): For purposes of unemployment insurance, employment does not include services performed by a driver providing commercial transportation services.

EFFECT OF CHANGES MADE BY COMMERCE, LABOR & SPORTS COMMITTEE (First Substitute):

- Requires that drivers providing commercial transportation services for tribes, nonprofits, and government entities must be covered for unemployment insurance under state law in order to conform with federal law.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Uber had developed and maintains an app which enables drivers to connect with riders who are seeking transportation. Drivers are able to choose when, where, and how to drive. This is a simple, common sense bill that will align the current status for workers' compensation with unemployment insurance. This will eliminate an uncertainty not only for the Employment Security Department, for companies like Uber that do business in Washington State, but also for current and potential drivers. This will help drivers who have other employment where there is now lack of clarity as to whether their choice to make a little bit of extra money driving may jeopardize the current benefits they have in that other position. There are real world examples, including

one in which an employee got terminated and drove for Uber. ESD determined that Uber was an intervening employment and disallowed UI. A judge at OAH on appeal decided in favor of the driver. ESD had taken a different position that this is employment.

CON: This is unnecessary just to help a company avoid litigation that is not settled in states. In California, New York, and Massachusetts, there is a lawsuit regarding compensation. Flexibility regarding hours is not enough. This harms the workers when they are most vulnerable. There are rules. There is concern about providing special circumstances. This should be played out. There is a concern for the safety net of the workers.

OTHER: An employment is covered for unemployment insurance unless the Legislature provides an exemption.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; Caleb Weaver, Uber/Public Affairs; Doug Smith, Littler Mendelson, Shareholder.

CON: Brenda Wiest, App Based Drivers Association, WWTCOA, Teamsters 117; Joe Kendo, Washington State Labor Council, AFL-CIO.

OTHER: Neil Gorrell, Employment Security Department.

Persons Signed In To Testify But Not Testifying: No one.