

# SENATE BILL REPORT

## SB 5565

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As Reported by Senate Committee On:  
Commerce, Labor & Sports, February 16, 2017

**Title:** An act relating to employment laws regarding transportation contractors, including the definition of "truck".

**Brief Description:** Concerning employment laws regarding transportation contractors, including the definition of "truck."

**Sponsors:** Senator Warnick.

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 2/15/17, 2/16/17 [DPS, DNP].

**Brief Summary of Substitute Bill**

- Modifies the exemption for workers' compensation purposes for a transportation contractor to include a person operating a truck which the person owns and leases to a licensed motor carrier, or for which the person provides services as a licensed motor carrier to a licensed freight broker.
- Allows exempt transportation contractors to elect workers' compensation coverage.
- Becomes effective January 1, 2018.

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### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Majority Report:** That Substitute Senate Bill No. 5565 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)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** The state's industrial insurance laws, commonly referred to as the Workers' Compensation Act (Act), provides medical and other benefits to a worker who suffers a work-related injury or develops an occupational disease.

The Legislature has found that:

- there is a hazard in all employment;
- it is the purpose of the Act to embrace all employments which are within the legislative jurisdiction of the state; and
- the Act is to be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.

In return for the no-fault nature of industrial insurance, injured workers may not sue their employers or co-workers.

Worker means every person in this state who is engaged in the employment of an employer, whether by way of manual labor or otherwise in the course of the person's employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, which is generally for the person's personal labor for an employer. However, a person under an independent contract is not a worker if the person meets the following tests:

- the individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;
- the service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;
- the individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and
- on the effective date of the contract of service, the individual:
  - is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the Internal Revenue Service for the type of business the individual is conducting;
  - has established an account with the Department of Revenue, and other state agencies as required, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number; and
  - is maintaining a separate set of books or records reflecting the business' income and expenses.

There is a modified test with respect to contractors and electricians.

There are a number of exemptions. For example, there is an exemption for a transportation contractor which provides that a person is not a worker for the purpose of workers'

compensation with respect to the person's activities attendant to operating a truck, which the person owns, and is leased to a common or contract carrier.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** The exemption for workers' compensation purposes for a transportation contractor is modified to include a person operating a truck which the person owns and leases to a licensed motor carrier, or for which the person provides services as a licensed motor carrier to a licensed freight broker.

The term common or contract motor carrier is modified to motor carrier. Motor carrier includes common carrier, contract carrier, private carrier, and exempt carrier.

The term truck is now defined by reference to an existing statute to mean every motor vehicle designed, used, or maintained primarily for the transportation of property.

Transportation contractors who are exempt from mandatory coverage may elect coverage.

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

- Allows exempt transportation contractors to elect workers' compensation coverage.
- Becomes effective January 1, 2018.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill takes effect on January 1, 2018.

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill on the surface seems very simple but there is a need to clarify what a truck is for L&I. There are companies that are like the Uber for property deliveries. Delivery Express delivers freight, including life saving items, all over the state. Minor changes are needed to remedy an ambiguity. We want clarity over the word truck.

L&I has no regulation which defines truck. It is left to each auditor. This is fundamental due process for taxpayers. The definition in the bill includes a three axle, a pickup, or even a Prius if it is used primarily for property delivery. When a motor carrier chooses to have flexibility to let the contractor decide which vehicle to use, the carrier won't know until it is audited that it has a problem. This harmonizes the law with other laws.

An exempt person can opt in to coverage.

CON: A freight broker and a carrier are two different things. This is an unlevelled playing field. Freight brokers make the carrier a middle man.

OTHER: There is a presumption that a worker is covered unless there is a specific exemption. The White case from 1956, which L&I still uses today, discusses whether there is a significant investment in equipment. If the essence of the contract includes personal labor, then the person is a covered worker. L&I uses the common understanding or Webster's definition of a truck. The exempt person may not elect coverage unless specifically allowed.

**Persons Testifying:** PRO: Senator Judy Warnick, Prime Sponsor; Dave Hamilton, Delivery Express/President; Andrew Shafer, Delivery Express/Attorney; Mike Moraski, Delivery Express/CIO.

CON: Sheri Call, Washington Trucking Assn.

OTHER: Tammy Fellin, Labor & Industries.

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