
**Labor & Workplace Standards
Committee**

ESB 5765

Brief Description: Clarifying responsibilities for mandatory industrial insurance coverage for persons transporting freight.

Sponsors: Senators Kuderer, Warnick, King, Fortunato, Walsh, Keiser and Hobbs.

Brief Summary of Engrossed Bill

- Provides that a freight broker or forwarder is not an employer of certain drivers for purposes of industrial insurance.

Hearing Date: 3/21/19

Staff: Lily Smith (786-7175).

Background:

Industrial Insurance.

Under the state's industrial insurance laws, a worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to certain benefits. Depending on the injury or disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities.

An employer or worker may not contract away the obligations or benefits of the industrial insurance laws.

Potential Exemptions from Coverage in Transportation Services.

There are various exceptions to the application of industrial insurance obligations and benefits. The exceptions may apply to the type of employment, to whether the individual performing services is considered a worker, or to whether an employer-worker relationship exists with respect to a particular employer.

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.

Certain employments categorically exempted from mandatory coverage include a driver providing commercial transportation services and taxi operators who own or lease the vehicle. In addition, an individual is not a worker when operating a truck which the person owns and which is leased to a common or contract carrier.

For employments and workers not categorically excluded, a fact-specific independent contractor test determines whether a particular employment relationship exists. Under the test, except in the construction industry, an entity is not an employer and an individual is not a worker if the following six elements are met:

- the individual has been and will be free from direction and control, both under the contract and in fact;
- the individual's services are outside the usual course of business for which the service is performed, or outside all the places of business, or the individual must pay the costs of the principal place of business where the services are performed;
- the individual has an independently established business, or a principal place of business that qualifies for an Internal Revenue Service (IRS) deduction;
- the individual is responsible for filing a schedule of expenses with the IRS;
- the individual has an active and valid registration with the Department of Revenue, has a Unified Business Identifier number, and has any other required state accounts for the payment of taxes; and
- the individual has a separate set of books and records that reflect all items of income and expenses.

Summary of Bill:

For purposes of industrial insurance, a freight broker or freight forwarder that enters into an agreement with a licensed common or contract carrier for the transportation of freight on behalf of the broker or forwarder is not the employer of the drivers engaged by the carrier to operate commercial vehicles owned or operated by the carrier, unless the carrier is also the driver.

Any individual excluded from industrial insurance coverage under the provisions may elect coverage.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.