

HOUSE BILL REPORT

ESB 5765

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to creating a new exclusion from mandatory industrial insurance coverage for persons transporting freight.

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

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

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/21/19, 4/2/19 [DPA].

Brief Summary of Engrossed Bill (As Amended by Committee)

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

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Gregerson, Hoff and Ormsby.

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.

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.

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.

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 Amended 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 may not be 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.

Amended Bill Compared to Engrossed Bill:

The exemption is modified to be that the freight broker or forwarder may not be considered the employer of drivers, rather than is not the employer of drivers, under the specified circumstances.

An intent section is added to specify that the purpose of the act is to clarify an employer exemption under industrial insurance in alignment with current law and practice.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This is a simple legislative solution that is needed to fix current confusion in the transportation industry. Freight brokers in the state work behind the scenes to connect shippers to common carriers, convey information, and handle payments. Carriers are responsible for the equipment and labor to actually move the loads and must meet substantial regulatory requirements. This bill would clarify which group is responsible for drivers' industrial insurance premiums, and it is logical for each group to be responsible for its own employees.

(Opposed) None.

(Other) The bill seeks to establish the settlement-carrier model, which seems to allow carriers to become brokers or freight forwarders and thereby shift financial and insurance responsibilities associated with having operating authority to small businesses. The traditional trucking model allows owner-operators to operate under a carrier's operating authority if they only want to drive. The model in the bill further insulates brokers and forwarders from responsibilities and could be used to the detriment of drivers and the trucking industry in general. The Department of Labor and Industries has not found drivers to be employees of freight forwarders, so the bill would codify current practices and settled law. It is not clear what the bill would accomplish, as it does not change the existing exemptions for coverage of workers in workers compensation.

Persons Testifying: (In support) Senator Kuderer, prime sponsor; and Dave Hamilton, Mike Moraski, and Don Bistline, Delivery Express.

(Other) Sheri Call, Washington Trucking Associations; and Tammy Fellin, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.