

SENATE BILL REPORT

SB 5103

As of February 2, 2021

Title: An act relating to clarifying responsibilities for mandatory industrial insurance coverage for persons transporting freight.

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

Sponsors: Senators Stanford, King, Hobbs, Kuderer, Warnick and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 2/04/21.

Brief Summary of Bill

- Provides that, for industrial insurance coverage, a freight broker or forwarder with an agreement with a licensed common or contract carrier to transport freight is not the employer of the carrier's drivers operating the commercial vehicles owned or operated by the carrier, unless the carrier is the driver.
- Permits an excluded individual to elect industrial insurance coverage.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Susan Jones (786-7404)

Background: Industrial Insurance/Workers' Compensation. Under the state's industrial insurance laws, workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to 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.

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

Worker Definition for Industrial Insurance. Worker means every person in this state who is engaged in the employment of an employer under this title, 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, the essence of which is the person's personal labor for an employer under the Industrial Insurance Act, whether by way of manual labor or otherwise, in the course of the person's employment, or as an exception to the definition of worker, a person is not a worker if the person meets the six-part independent contractor test below. A person is not a worker with respect to the person's activities attendant to operating a truck which the person owns, and which is leased to a common or contract carrier.

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.

Six-Part Independent Contractor Test. As an exception to the definition of employer and the definition of worker, services performed by an individual for remuneration do not constitute employment if it is shown that:

- 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 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 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;
- the individual 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 of the business.

Summary of Bill: Solely for purposes of the Industrial Insurance Act, 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.

This must not be construed as relieving the owner or lessee of a commercial vehicle from

treating the individual operating the vehicle as a worker under the Industrial Insurance Act unless the individuals are not workers within the general worker definition or are excluded from coverage under the six-part independent contractor test.

If an individual is excluded from coverage under the Industrial Insurance Act, the individual may elect industrial insurance coverage.

Appropriation: None.

Fiscal Note: Requested on February 2, 2021.

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

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