

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 2118

SPONSOR: Senator Atwater

SUBJECT: Workers' Compensation

DATE: April 25, 2005 REVISED: 4/27/05 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	Favorable
2.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	Fav/1 amendment
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill loosens the requirements that must be met in order for an owner-operator of a motor vehicle to be excluded from workers' compensation coverage as an employee of a motor carrier. These changes make it less likely that an owner-operator would be considered an employee who is required to be covered by the workers' compensation of the motor carrier. The changes in criteria for an owner-operator to be excluded from the definition of "employee" are as follows:

- Requires the owner-operator to furnish the motor vehicle equipment "identified in the written contract" between the motor carrier and the owner-operator, rather than furnishing the "necessary equipment" as currently required;
- Requires the owner-operator to furnish the "principal costs" rather than "all costs" incidental to the contract between the motor carrier and the owner-operator;
- Allows the motor carrier to advance costs to the owner-operator as long as the written contract between the motor carrier and the owner-operator requires the owner-operator to reimburse the advanced costs;
- Deletes the requirement that the owner-operator must be paid on commission (but retains the prohibition on being paid by the hour or other time-measured basis).

If a person meets the preceding criteria as well as the other aspects of the definition of "owner-operator," provided under s. 440.02, F.S., he or she would be excluded from the definition of

“employee” and the motor carrier would not be required to provide workers’ compensation benefits for work-related injuries.

This bill substantially amends the following sections of the Florida Statutes: 440.02.

II. Present Situation:

Only “employees,” as defined in s. 440.02(15), F.S., are entitled to workers’ compensation benefits,¹ if the employee suffers an accidental compensable injury arising out of work performed in the course and scope of employment.² Under current law, owner-operators of motor vehicles, typically tractor-trailers, are employees for workers’ compensation purposes unless they meet criteria of an owner-operator contained in s. 440.02(15)(d)4., F.S. If a person meets the criteria of an owner-operator, he or she is not an “employee” and the motor carrier is not required to provide workers’ compensation benefit to such owner-operators.

The statute requires an owner-operator to have a written contract that evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract. Second, the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help. Lastly, the owner-operator must be paid a commission for transportation service rather than by the hour or on some other time-measured basis.

In some cases, the judges of compensation claims have found owner-operators are “employees” for workers’ compensation purposes even though the owner-operators may not have intended to be considered “employees” for workers’ compensation purposes.³ In these cases, the judge of compensation claim’s decision was based, in part, on the failure of the employer to demonstrate that the claimant/employee met all of the criteria found in the statute, although they may have met a majority of the criteria.⁴ For example, the law requires an owner-operator to pay all costs incidental to the performance of the contract; however, in one case, the employer/carrier paid for a trailer and certain costs related to loading and unloading the truck, thereby, the employer was not adhering to the mandates of the law. The court also noted that the employer maintained sufficient control over the claimant such that an employer-employee relationship existed.

III. Effect of Proposed Changes:

Section 1 amends s. 440.02, F.S., to revise the criteria an owner-operator of a motor vehicle must meet in order to not be considered an employee of the motor carrier for workers’ compensation purposes, and thus not entitled to workers’ compensation benefits if injured while working. The bill provides the following changes in the criteria that must be met for an owner-operator to be excluded from the definition of “employee”:

¹ Workers’ compensation benefits include payment for lost wages, medical treatment, and funeral and death expenses.

² s. 440.09(1), F.S. (2004).

³ *Muoio v. Land Span, Inc.*, 02-008731LKL; 02-008660LKL – decisions by Judge of Compensation Claims Mark H. Hofstad in the Lakeland District of the Division of Administrative Hearings, Office of the Judge of Compensation Claims.

⁴ *Id.*

- The owner-operator must furnish the motor vehicle equipment “identified in the written contract” between the motor carrier and the owner-operator. Currently, the owner-operator is required to furnish the “necessary equipment.”
- Requires the owner-operator to furnish the “principal costs,” rather than “all costs” incidental to the contract between the motor carrier and the owner-operator. The bill also deletes the requirement that the owner-operator pay for the licenses and taxes, but retains the requirement that the owner-operator pay for the fuel and repairs.
- The bill allows the motor carrier to advance costs to an owner-operator as long as the written contract between the motor carrier (principal) and the owner-operator requires the owner-operator to reimburse the advanced costs.
- The bill deletes the statutory requirement that an owner-operator must be paid on a commission basis, but retains the prohibition against the owner’ operator being paid by the hour or on some other time-measured basis.

If a person meets the preceding criteria as well as the other aspects of the definition of “owner-operator,” provided under s. 440.02, F.S., he or she would be excluded from the definition of “employee” and the motor carrier would not be required to provide workers’ compensation benefits for work-related injuries.

Section 2 provides that this act will take effect on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If an owner-operator of a motor vehicle meets the revised criteria provided in this bill, as well as the other existing requirements of the definition of “owner-operator” in s. 440.02,

F.S., he or she would no longer be considered an employee for purposes of workers' compensation coverage, thereby ineligible to receive workers' compensation if injured on the job. The owner-operator would not be required to maintain his or her own coverage or obtain an exemption from coverage unless their job classification is within the "construction industry."

Motor carriers who are proponents of the bill contend that the changes in the definition of "owner-operator" would make the criteria better align with how the motor-carrier (tractor-trailer) industry operates.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 155586 by Judiciary:

Provides that a service company that is a subsidiary of a mutual insurance holding company that was in existence on or before January 1, 2000, may allocate the salary of each service company employee to the companies for which the employee performs services. The allocation is prorated among companies for employees that service multiple companies based on the amount of time devoted to each respective company.

For fiscal year 2005-06, the Revenue Estimating Conference has estimated that this amendment will result in a \$(2.4) million fiscal impact on General Revenue on an annualized basis.

The amendment does not revise the title of the bill, which is an act relating to “worker’s compensation.” The amendment relates to premium tax under s. 624.509, F.S., and applies to any mutual insurance holding company that meets the prescribed criteria. It is estimated that only one company would satisfy the criteria.

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