

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 423 CS

Worker's Compensation

SPONSOR(S): Ross

TIED BILLS:

IDEN./SIM. BILLS: SB 2118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	15 Y, 0 N, w/CS	Callaway	Cooper
2) Transportation Committee		Thompson	Miller
3) Commerce Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill amends the criteria an owner-operator of a motor vehicle must meet in order to be excluded from workers' compensation coverage. The changes in criteria for the definition of "owner-operator" provided by the bill are:

- The bill allows an owner-operator to furnish only the motor vehicle equipment identified in the written contract between the motor carrier and the owner-operator, as opposed to the necessary equipment as is currently required by law.
- The bill allows an owner-operator to furnish the principal costs incidental to the contract between the motor carrier and the owner-operator, as opposed to all costs, as is currently required by law.
- The bill allows a principal 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 has to be paid on commission.

If a person meets the preceding criteria as well as the other aspects of the definition of "owner-operator," he or she is excluded from workers' compensation and cannot receive workers' compensation if injured on the job.

The bill does not have a fiscal impact.

The bill is effective on July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

None implicated by the bill.

B. EFFECT OF PROPOSED CHANGES:

Background

Only “employees”, as defined in s. 440.02(15), Florida Statutes are entitled to workers’ compensation benefits¹ if the employee suffers an accidental compensable injury arising out of work performed in the course and scope of employment.² Under current law, owners-operators of motor vehicles, typically tractor-trailers, are employees for workers’ compensation purposes unless they meet each of the criteria of an “owner-operator” contained in the definition of owner-operator in s. 440.02(15)(d)4., Florida Statutes.

In some cases, trial courts 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 trial court’s decision was based, in part, on the failure of the evidence adduced at trial to establish the owner-operators met all of the criteria of such found in the statute, although they may have met a majority of the criteria.⁴

Proposed Changes

The bill amends the criteria owner-operators of a motor vehicle must meet in order to be excluded from workers’ compensation coverage (i.e. not be considered an employee for workers’ compensation purposes, thus not entitled to workers’ compensation benefits if injured while working). The criteria changes proposed by the bill should make the criteria better align with how the motor-carrier industry operates, especially the tractor-trailer industry.

The changes proposed by the bill are:

- The bill allows an owner-operator to furnish only the motor vehicle equipment identified in the written contract between the motor carrier and the owner-operator, as opposed to the necessary equipment as is currently required by law.
- The bill allows an owner-operator to furnish the principal costs incidental to the contract between the motor carrier and the owner-operator, as opposed to all costs, as is currently required by law.
- The bill allows a principal 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 has to be paid on commission.

If a person meets the preceding criteria as well as the other aspects of the definition of “owner-operator,” he or she is excluded from workers’ compensation and cannot receive workers’ compensation if injured on the job.

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 See 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.

C. SECTION DIRECTORY:

Section 1: Amends s. 440.02, F.S.; amends the definition of "owner-operator."

Section 2: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The definition change of "owner-operator" contained in the bill may exclude more people from the definition of "employee." If excluded, the owner-operators will not be able to obtain workers' compensation benefits if injured while working.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 17, 2005, the Insurance Committee adopted one amendment and reported the bill favorably with a CS. The amendment narrowed the title of the bill from “an act relating to worker’s compensation” to “an act relating to the definition of employee for the purposes of worker’s compensation” to better describe the text and narrow focus of the bill.

The staff analysis was updated to reflect the amendment.