



Senate Fiscal Agency  
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BILL



ANALYSIS

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Senate Bill 1012 (as introduced 3-8-12)  
Sponsor: Senator Jim Marleau  
Committee: Economic Development

Date Completed: 5-2-12

### **CONTENT**

**The bill would amend the Worker's Disability Compensation Act to include in the definition of "employee" an individual in the trucking and messenger courier industries who was the operator of a vehicle or vessel, unless he or she owned or leased it, agreed with the contracting entity that he or she would be an independent contractor, and met other conditions.**

The Act defines "employee" for purposes of determining workers' compensation benefits. Among others, the term includes every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to the service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to the Act. The bill would refer to not maintaining a "separately registered" business.

In addition, the Act specifies that on and after January 1, 2013, services are employment if they are performed by an individual whom the Michigan Administrative Hearing System determines to be in an employer-employee relationship using a 20-factor Internal Revenue Service test. The bill would limit this provision to services performed by an individual who was not in the trucking and messenger courier industries.

Under the bill, in the trucking and messenger courier industries, an individual who was not excluded from the definition of "employee" because of maintaining a separately registered business and who was the operator of a vehicle or vessel, would be an employee unless all of the following applied:

- He or she owned the vehicle or vessel or held it under a bona fide lease arrangement that was not through an arrangement, loan, or loan guarantee with the contracting entity or any affiliate of the contracting entity.
- He or she was responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment, including maintenance, fuel, repairs, supplies, vehicle insurance, and personal expenses.
- He or she was responsible for supplying the necessary services to operate the vehicle or vessel and equipment.
- His or her compensation was based on factors related to the work performed, such as a mileage-based rate or a percentage of any schedule of rates, and was not solely based on hours or time spent.
- He or she substantially controlled the means and manner of performing services in conformance with regulatory requirements and specifications of a shipper.

- The contracting entity and the individual signed and dated an agreement stating that the individual substantially met the five requirements above and that he or she agreed to be an independent contractor and not an employee.

The agreement would have to be produced on the demand of the Director of Worker's Compensation Agency.

The first condition listed above would not apply to temporary replacement lease agreements.

If the contracting entity paid the individual only the carrier's fuel surcharge and incidental costs, such as tolls, permits, or lump sum fees, the individual would meet the requirements of the second condition listed above.

MCL 418.161

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.