



Ohio Legislative Service Commission

Bill Analysis

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H.B. 338

130th General Assembly
(As Introduced)

Reps. McGregor and Hottinger, Beck, R. Adams, Gonzales, Letson

BILL SUMMARY

- Exempts an individual who provides services for or on behalf of a motor transportation company transporting property from coverage under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, and Ohio's Overtime Law if specified conditions apply to the individual.

CONTENT AND OPERATION

Exemption from specified labor laws

The bill exempts an individual to whom all of the following conditions apply from coverage under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, and the portions of the Minimum Fair Wage Standards Law that govern the payment of overtime:

- The individual provides services for or on behalf of a motor transportation company transporting property (see **COMMENT**).
- The individual is an operator of a car, van, truck, tractor, or tractor that is licensed and registered under Ohio's Licensing of Motor Vehicles Law or a similar law of another state.
- All of the following "essential" factors apply to the individual:
 - The individual owns the vehicle used to provide the service or holds it under a bona fide lease arrangement.
 - The individual is responsible for the maintenance of the vehicle used to provide the service.

- The individual is responsible for supplying the necessary personal services to operate the vehicle used to provide the service.
- At least three of the following "nonessential" factors apply to the individual:
 - The compensation paid to the individual is based on factors related to work performed, including a percentage of any schedule of rates, and not on the basis of the hours or time expended.
 - The individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and the shipper's specifications.
 - The individual enters into a written contract that describes the relationship between the individual and the company for whom the individual is performing the service to be that of an independent contractor and not that of an employee.
 - The individual is responsible for the operating costs of the vehicle used to provide the service, including fuel, repairs, supplies, vehicle insurance, and personal expenses, except that the individual may be paid the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees (fees for unloading or handling cargo).¹
 - The individual makes the individual's services available to the general public or to the business community on a continuing basis.
 - The individual may realize a profit or suffer a loss in performing services for the motor transportation company.²

Prospective application

Currently, an individual who satisfies the requirements for the bill's exemption may be considered an "employee" under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, or the portions of the Minimum Fair Wage Standards Law that govern the payment of overtime, depending upon the

¹ See definition of "lumper," <http://dictionary.reference.com/browse/lumper?s=t> (accessed January 10, 2014).

² R.C. 4111.03(D) (with a conforming change in R.C. 119.14(C) and (G)), 4121.01(A) (with a conforming change in R.C. 1349.61(E)), 4123.01(A), and 4141.01(B)(2)(e) and (m).



circumstances involved. The bill's exemption does not apply, however, to any claim or cause of action pending under those laws on the bill's effective date.³

COMMENT

In what appears to be a drafting error, the bill refers to an individual transporting property for a "motor transportation company" as defined in R.C. 4921.02. That term was repealed by Am. Sub. H.B. 487 of the 129th General Assembly. It appears that the bill is referring to a "for-hire motor carrier," which largely replaced "motor transportation company." Both terms generally refer to a person engaged in the business of transporting persons or property by motor vehicle for hire or compensation. However, the terms differ in the exceptions to their definitions.⁴

HISTORY

ACTION	DATE
Introduced	11-06-13

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³ Section 3.

⁴ R.C. 4111.03(D), 4121.01(A), 4123.01(L), and 4141.01(EE), by reference to former R.C. 4921.02 and R.C. 4923.01, not in the bill.

