

1 HB716  
2 117106-2  
3 By Representative DeMarco  
4 RFD: Commerce  
5 First Read: 11-MAR-10

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8 SYNOPSIS: Currently, a common carrier by motor  
9 vehicle is not deemed the employer of a  
10 leased-operator or owner-operator of a motor  
11 vehicle under contract to the common carrier for  
12 purposes of workers' compensation laws.

13 This bill would define the term  
14 owner-operator for workers' compensation purposes.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 To amend Section 25-5-1, Code of Alabama 1975,  
21 relating to the definitions for workers' compensation laws, to  
22 define the term owner-operator for workers' compensation  
23 purposes.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 25-5-1, Code of Alabama 1975, is  
26 amended to read as follows:

27 "§25-5-1.

1           "Throughout this chapter, the following words and  
2 phrases as used therein shall be considered to have the  
3 following meanings, respectively, unless the context shall  
4 clearly indicate a different meaning in the connection used:

5           "(1) COMPENSATION. The money benefits to be paid on  
6 account of injury or death, as provided in Articles 3 and 4.  
7 The recovery which an employee may receive by action at law  
8 under Article 2 of this chapter is termed "recovery of civil  
9 damages," as provided for in Sections 25-5-31 and 25-5-34.

10 "Compensation" does not include medical and surgical treatment  
11 and attention, medicine, medical and surgical supplies, and  
12 crutches and apparatus furnished an employee on account of an  
13 injury.

14           "(2) CHILD or CHILDREN. The terms include posthumous  
15 children and all other children entitled by law to inherit as  
16 children of the deceased; stepchildren who were members of the  
17 family of the deceased, at the time of the accident, and were  
18 dependent upon him or her for support; a grandchild of the  
19 deceased employee, whose father is dead or is an invalid, and  
20 who was supported by and a member of the family of the  
21 deceased grandparent at the time of the accident.

22           "(3) DEPENDENT CHILD or ORPHAN. An unmarried child  
23 under the age of 18 years or one over that age who is  
24 physically or mentally incapacitated from earning.

25           "(4) EMPLOYER. Every person who employs another to  
26 perform a service for hire and pays wages directly to the  
27 person. The term shall include a service company for a

1 self-insurer or any person, corporation, copartnership, or  
2 association, or group thereof, and shall, if the employer is  
3 insured, include his or her insurer, the insurer being  
4 entitled to the employer's rights, immunities, and remedies  
5 under this chapter, as far as applicable. The inclusion of an  
6 employer's insurer within the term shall not provide the  
7 insurer with immunity from liability to an injured employee,  
8 or his or her dependent in the case of death to whom the  
9 insurer would otherwise be subject to liability under Section  
10 25-5-11. Notwithstanding the provisions of this chapter, in no  
11 event shall a common carrier by motor vehicle operating  
12 pursuant to a certificate of public convenience and necessity  
13 be deemed the "employer" of a leased-operator or  
14 owner-operator of a motor vehicle or vehicles under contract  
15 to the common carrier.

16 "(5) EMPLOYEE or WORKER. The terms are used  
17 interchangeably, have the same meaning throughout this  
18 chapter, and shall be construed to mean the same. The terms  
19 include the plural and all ages and both sexes. The terms  
20 include every person in the service of another under any  
21 contract of hire, express or implied, oral or written,  
22 including aliens and also including minors who are legally  
23 permitted to work under the laws of this state, and also  
24 including all employees of Tannehill Furnace and Foundry  
25 Commission. Any reference in this chapter to a "worker" or  
26 "employee" shall, if the worker or employee is dead, include

1 his or her dependent, as defined in this chapter, if the  
2 context so requires.

3 "(6) WAGES or WEEKLY WAGES. The terms shall in all  
4 cases be construed to mean "average weekly earnings", based on  
5 those earnings subject to federal income taxation and  
6 reportable on the Federal W-2 tax form which shall include  
7 voluntary contributions made by the employee to a  
8 tax-qualified retirement program, voluntary contributions to a  
9 Section 125 cafeteria program, and fringe benefits as defined  
10 herein. Average weekly earnings shall not include fringe  
11 benefits if and only if the employer continues the benefits  
12 during the period of time for which compensation is paid.  
13 "Fringe benefits" shall mean only the employer's portion of  
14 health, life, and disability insurance premiums.

15 "(7) ACCIDENT. The term, as used in the phrases  
16 "personal injuries due to accident" or "injuries or death  
17 caused by accident" shall be construed to mean an unexpected  
18 or unforeseen event, happening suddenly and violently, with or  
19 without human fault, and producing at the time injury to the  
20 physical structure of the body or damage to an artificial  
21 member of the body by accidental means.

22 "(8) INJURIES BY AN ACCIDENT ARISING OUT OF AND IN  
23 THE COURSE OF THE EMPLOYMENT. Without otherwise affecting  
24 either the meaning or interpretation of the clause, the clause  
25 does not cover workers except while engaged in or about the  
26 premises where their services are being performed or where  
27 their service requires their presence as a part of service at

1 the time of the accident and during the hours of service as  
2 workers.

3 "(9) INJURY. "Injury and personal injury" shall mean  
4 only injury by accident arising out of and in the course of  
5 the employment, and shall not include a disease in any form,  
6 except for an occupational disease or where it results  
7 naturally and unavoidably from the accident. Injury shall  
8 include physical injury caused either by carpal tunnel  
9 syndrome disorder or by other cumulative trauma disorder if  
10 either disorder arises out of and in the course of the  
11 employment, and breakage or damage to eyeglasses, hearing  
12 aids, dentures, or other prosthetic devices which function as  
13 part of the body, when injury to them is incidental to an  
14 on-the-job injury to the body. Injury does not include an  
15 injury caused by the act of a third person or fellow employee  
16 intended to injure the employee because of reasons personal to  
17 him or her and not directed against him or her as an employee  
18 or because of his or her employment. Injury does not include a  
19 mental disorder or mental injury that has neither been  
20 produced nor been proximately caused by some physical injury  
21 to the body.

22 "(10) SINGULAR and PLURAL. Wherever the singular is  
23 used, the plural shall be included.

24 "(11) GENDER. Where the masculine gender is used,  
25 the feminine and neuter shall be included.

26 "(12) LOSS OF HAND OR FOOT. Amputation between the  
27 elbow and wrist shall be considered as the equivalent to the

1 loss of a hand, and the amputation between the knee and ankle  
2 shall be considered as the equivalent of the loss of a foot.

3 "(13) PROVIDERS. A medical clinic, pharmacist,  
4 dentist, chiropractor, psychologist, podiatrist, physical  
5 therapist, pharmaceutical supply company, rehabilitation  
6 service, or other person or entity providing treatment,  
7 service, or equipment, or person or entity providing  
8 facilities at which the employee receives treatment.

9 "(14) MEDICAL. All services, treatment, or equipment  
10 provided by a provider.

11 "(15) PREVAILING. The most commonly occurring  
12 reimbursements for health services, other than those provided  
13 by federal and state programs for the elderly (Medicare) and  
14 economically disadvantaged (Medicaid). "Prevailing" shall  
15 include not only amounts per procedure code, but also commonly  
16 used adjudication rules as applied to multiple procedures,  
17 global procedures, use of assistant surgeons, and others as  
18 appropriate. For hospitals, "prevailing" rate of reimbursement  
19 or payment shall be established by the method contained in  
20 Section 25-5-77.

21 "(16) PARTICIPATING AND NONPARTICIPATING HOSPITALS.  
22 Those hospitals that have a negotiated rate of reimbursement  
23 or payment with the Department of Industrial Relations.  
24 "Nonparticipating hospitals" means those hospitals that have  
25 not negotiated a rate of reimbursement or payment with the  
26 Department of Industrial Relations.

1           "(17) HOSPITAL. A hospital, ambulatory surgical  
2 center, outpatient rehabilitation center licensed by the State  
3 of Alabama, and diagnostic facilities accredited by the  
4 Commission on Accreditation of Rehabilitation Facilities.

5           "(18) THE COURT. The circuit court that would have  
6 jurisdiction in an ordinary civil action involving a claim for  
7 the injuries or death in question, and "the judge" means a  
8 judge of that court.

9           "(19) UTILIZATION REVIEW. The determination of  
10 medical necessity for medical and surgical in-hospital,  
11 out-patient, and alternative settings treatments for acute and  
12 rehabilitation care. It includes precertification for elective  
13 treatments. Concurrent review and, if necessary, retrospective  
14 review are required for emergency cases.

15           "(20) BILL SCREENING. The evaluation and  
16 adjudication of provider bills for appropriateness of  
17 reimbursement relative to medical necessity and prevailing  
18 rates of reimbursement, duplicate charges, unbundling of  
19 charges, relativeness of services to injury or illness,  
20 necessity of assistant surgeons, adjudication of multiple  
21 procedures, number of modalities, global procedures, and any  
22 other prevailing adjudication issues that may apply.

23           "(21) ADJUDICATION. The review of claims to apply  
24 prevailing rules that adjust reimbursements for the amount of  
25 work required when multiple procedures are performed at the  
26 same time, when assisting surgeons are present, to eliminate  
27 duplicate billing from the unbundling of global fees, and to



1 adjust for the most commonly occurring method adopted for  
2 total reimbursement.

3 "(22) OMBUDSMAN. An individual who assists injured  
4 or disabled employees, persons claiming death benefits,  
5 employers, and other persons in protecting their rights and  
6 obtaining information available under the workers'  
7 compensation law.

8 "(23) OWNER-OPERATOR. An equipment lessor who  
9 provides vehicular equipment with a driver to transport  
10 passengers or property under contract with a common carrier.  
11 The owner-operator and its driver are not considered employees  
12 of the common carrier for purposes of workers' compensation  
13 coverage or benefits."

14 Section 2. This act shall become effective  
15 immediately following its passage and approval by the  
16 Governor, or its otherwise becoming law.