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**SUBSTITUTE HOUSE BILL 2395**

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**State of Washington****62nd Legislature****2012 Regular Session**

**By** House Labor & Workforce Development (originally sponsored by Representatives Sells, Reykdal, Upthegrove, Ryu, Moscoso, Ormsby, Hasegawa, Fitzgibbon, Hudgins, Darneille, Cody, Kenney, Santos, Roberts, Green, Miloscia, Pettigrew, Dickerson, Moeller, Appleton, Llias, Jinkins, Dunshee, Van De Wege, Goodman, Orwall, Hunt, Wylie, Billig, and Probst)

READ FIRST TIME 01/31/12.

1       AN ACT Relating to drayage truck operators; adding a new section to  
2 chapter 49.12 RCW; adding a new section to chapter 49.17 RCW; adding a  
3 new section to chapter 49.46 RCW; adding a new section to chapter 49.48  
4 RCW; adding a new section to chapter 49.60 RCW; adding a new section to  
5 chapter 50.04 RCW; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7       NEW SECTION. **Sec. 1.** The legislature finds that under applicable  
8 legal standards, drayage truck operators are covered workers for  
9 purposes of various employment protections. The legislature also finds  
10 that employers of drayage truck operators nonetheless classify drayage  
11 truck operators as uncovered independent contractors. In addition to  
12 violating the law, this misclassification results in operators working  
13 in unsafe conditions and without the benefit of such protections as  
14 overtime wages and unemployment benefits. Misclassification is also  
15 unfair to law-abiding businesses and results in lost revenue to the  
16 state. The legislature further finds that current enforcement  
17 mechanisms have proved inadequate and that most drayage truck operators  
18 remain improperly classified. By defining drayage drivers as statutory  
19 covered employees, the legislature intends to enforce current law,

1 avoid litigation, increase safety to drivers and the public, insure  
2 drivers receive employment protections to which they are entitled, and  
3 facilitate collection of taxes. The legislature intends that the  
4 statutory inclusion of drayage drivers under the employment standards  
5 in this act is not evidence of legislative intent to exclude drayage  
6 drivers from the protection of other employment standards.

7       **NEW SECTION.**   **Sec. 2.** A new section is added to chapter 49.12 RCW  
8 to read as follows:

9       A drayage truck operator is an employee and the motor carrier that  
10 directly engages the services of the drayage truck operator is the  
11 employer for purposes of this chapter. For purposes of this section,  
12 "drayage truck operator" means the driver of any in-use on-road vehicle  
13 with a gross vehicle weight rating greater than thirty-three thousand  
14 pounds operating on or transgressing through a port that handles in  
15 excess of one million twenty foot equivalent units of containerized  
16 cargo or an intermodal rail yard property within fifty miles of such a  
17 port, for the purpose of loading, unloading, or transporting  
18 containerized cargo.

19       **NEW SECTION.**   **Sec. 3.** A new section is added to chapter 49.17 RCW  
20 to read as follows:

21       A drayage truck operator is an employee and the motor carrier that  
22 directly engages the services of the drayage truck operator is the  
23 employer for purposes of this chapter. For purposes of this section,  
24 "drayage truck operator" means the driver of any in-use on-road vehicle  
25 with a gross vehicle weight rating greater than thirty-three thousand  
26 pounds operating on or transgressing through a port that handles in  
27 excess of one million twenty foot equivalent units of containerized  
28 cargo or an intermodal rail yard property within fifty miles of such a  
29 port, for the purpose of loading, unloading, or transporting  
30 containerized cargo.

31       **NEW SECTION.**   **Sec. 4.** A new section is added to chapter 49.46 RCW  
32 to read as follows:

33       A drayage truck operator is an employee and the motor carrier that  
34 directly engages the services of the drayage truck operator is the  
35 employer for purposes of this chapter. For purposes of this section,

1        "drayage truck operator" means the driver of any in-use on-road vehicle  
2        with a gross vehicle weight rating greater than thirty-three thousand  
3        pounds operating on or transgressing through a port that handles in  
4        excess of one million twenty foot equivalent units of containerized  
5        cargo or an intermodal rail yard property within fifty miles of such a  
6        port, for the purpose of loading, unloading, or transporting  
7        containerized cargo.

8            NEW SECTION. **Sec. 5.** A new section is added to chapter 49.48 RCW  
9        to read as follows:

10          A drayage truck operator is an employee and the motor carrier that  
11        directly engages the services of the drayage truck operator is the  
12        employer for purposes of this chapter. For purposes of this section,  
13        "drayage truck operator" means the driver of any in-use on-road vehicle  
14        with a gross vehicle weight rating greater than thirty-three thousand  
15        pounds operating on or transgressing through a port that handles in  
16        excess of one million twenty foot equivalent units of containerized  
17        cargo or an intermodal rail yard property within fifty miles of such a  
18        port, for the purpose of loading, unloading, or transporting  
19        containerized cargo.

20            NEW SECTION. **Sec. 6.** A new section is added to chapter 49.60 RCW  
21        to read as follows:

22          A drayage truck operator is an employee and the motor carrier that  
23        directly engages the services of the drayage truck operator is the  
24        employer for purposes of this chapter. For purposes of this section,  
25        "drayage truck operator" means the driver of any in-use on-road vehicle  
26        with a gross vehicle weight rating greater than thirty-three thousand  
27        pounds operating on or transgressing through a port that handles in  
28        excess of one million twenty foot equivalent units of containerized  
29        cargo or an intermodal rail yard property within fifty miles of such a  
30        port, for the purpose of loading, unloading, or transporting  
31        containerized cargo.

32            NEW SECTION. **Sec. 7.** A new section is added to chapter 50.04 RCW  
33        to read as follows:

34          Services performed by a drayage truck operator are considered  
35        services in employment, not subject to RCW 50.04.140. For purposes of

1       this section, "drayage truck operator" means the driver of any in-use  
2       on-road vehicle with a gross vehicle weight rating greater than thirty-  
3       three thousand pounds operating on or transgressing through a port that  
4       handles in excess of one million twenty foot equivalent units of  
5       containerized cargo or an intermodal rail yard property within fifty  
6       miles of such a port, for the purpose of loading, unloading, or  
7       transporting containerized cargo.

8            NEW SECTION.    **Sec. 8.**   If any provision of this act or its  
9       application to any person or circumstance is held invalid, the  
10      remainder of the act or the application of the provision to other  
11      persons or circumstances is not affected.

12          NEW SECTION.    **Sec. 9.**   If any part of this act is found to be in  
13       conflict with federal requirements that are a prescribed condition to  
14       the allocation of federal funds to the state, the conflicting part of  
15       this act is inoperative solely to the extent of the conflict and with  
16       respect to the agencies directly affected, and this finding does not  
17       affect the operation of the remainder of this act in its application to  
18       the agencies concerned. Rules adopted under this act must meet federal  
19       requirements that are a necessary condition to the receipt of federal  
20       funds by the state.

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