

2-28-2011

Jordan Estey  
Director of Legislative Affairs and Education  
National Conference of Insurance Legislators  
NCOIL Workers Compensation Insurance Committee

Re: Proposed Trucking and Messenger Courier Industries Worker's Compensation Model Act

Dear Mr. Estey,

The NAIC/IAIABC working group has reviewed the most recent draft of this act including revisions made on 1-21-2011. We have requested input from our members in teleconferences and through e-mail. Other than cleaning up some terminology wording our members appear to support revision made to section 3.1 through 3.4. However, we would like to re-state our support for the NAIC/IAIABC suggested wording for sections 3.5 and 3.6 originally presented in April 2010. We feel the wording we presented addresses the issues of "control" and "certification" better than any of the wording advanced by other interested parties.

We have attached excerpts from the letter sent to you by Greg Krohm of the IAIABC dated you April 23<sup>rd</sup>, 2010. This clearly outlines our reasoning for inclusion of the "control" and "certification" provisions. We have not changed our position on these key contract provisions and believe the wording we proposed in April 2010 is still the best way to address these issues.

If you have any question regarding our position as outlined above, please contact Dave Keleher of the National Association of Insurance Commissioners- ([dkeleher@naic.org](mailto:dkeleher@naic.org)) 816-783-8238.

Thank you for this opportunity to provide comments. We stand ready to share our thoughts and assist NCOIL in the development of this and other model acts.

Sincerely,



Merle Scheiber  
Director, South Dakota Division of Insurance  
Chair, NAIC Workers Compensation ( C ) Task Force



Greg Krohm,PHD  
Executive Director  
International Association of Industrial Accident Boards and Commissions

Excerpts from Greg Krohm's letter dated April 23rd, 2010

April 23, 2010

Jordan Estey

Director of Legislative Affairs and Education

National Conference of Insurance Legislators

NCOIL Workers' Compensation Insurance Committee

Re: March 5 "Proposed Trucking and Messenger Courier Industries Workers'  
Compensation Model Act"

In addition, we felt that the common law and statutory test found in most states should be recognized: that a true independent contractor should be independent of any one hiring entity for their survival as a business. Thus exclusive contracting relationships inherently violate true independence of the operator with hiring entity.

**"Control Issue" Section 3.5 in Most recent draft**

Sec.3 sub(6) -- Specifications of the hiring entity (called here "shipper") should not drift into the specific manner in which the work gets done. This honors a fundamental common law principle that an employer is one that exercises control over the work being done. Thus, outlawing passengers or other aspects of vehicle operation unrelated to safety or timely delivery should be banned. As a non-employee, the operator should be free to choose their hours and routes provided.

**"Certification Issue" Section 3.6 in Most recent draft**

Sec.3 sub(7) -- we rejected the general test of a contract because without more structure the contract would end up being a very hollow test. Operators could be misled into signing a document that did not truly and clearly lay out the relationship into which they and the hiring entity believed they are entering. It would be a better test if it was called a certification in which both parties understood that the conditions of independence in this law were in fact met. Finally, this certification should be readily producible to the state if it wanted to audit or enforce this law.

Thank you for the opportunity to comment. Please contact me if you have questions.

Gregory Krohm

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