



# House of Representatives

General Assembly

**File No. 45**

February Session, 2008

House Bill No. 5110

*House of Representatives, March 18, 2008*

The Committee on Labor and Public Employees reported through REP. RYAN, K. of the 139th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT CONCERNING ESCORT CAR OPERATORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (5) of subsection (a) of section 31-222 of the  
2 general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective October 1, 2008*):

4 (5) No provision of this chapter, except section 31-254 of the 2008  
5 supplement to the general statutes, shall apply to any of the following  
6 types of service or employment, except when voluntarily assumed, as  
7 provided in section 31-223:

8 (A) Service performed by an individual in the employ of his son,  
9 daughter or spouse, and service performed by a child under the age of  
10 eighteen in the employ of his father or mother;

11 (B) Service performed in the employ of the United States  
12 government, any other state, any town or city of any other state, or any  
13 political subdivision or instrumentality of any of them; except that, to

14 the extent that the Congress of the United States permits states to  
15 require any instrumentalities of the United States to make  
16 contributions to an unemployment fund under a state unemployment  
17 compensation law, all of the provisions of this chapter shall be  
18 applicable to such instrumentalities and to services performed for such  
19 instrumentalities; provided, if this state is not certified for any year by  
20 the Secretary of Labor under Section 3304 of the Federal Internal  
21 Revenue Code, the contributions required of such instrumentalities  
22 with respect to such year shall be refunded by the administrator from  
23 the fund in the same manner and within the same period as is  
24 provided in sections 31-268, 31-269, 31-270 and 31-271 with respect to  
25 contributions erroneously collected;

26 (C) Service with respect to which unemployment compensation is  
27 payable under an unemployment compensation plan established by an  
28 Act of Congress, provided the administrator is authorized to enter into  
29 agreements with the proper agencies under such Act of Congress, to  
30 provide reciprocal treatment to individuals who have, after acquiring  
31 potential rights to benefits under this chapter, acquired rights to  
32 unemployment compensation under such Act of Congress, or who  
33 have, after acquiring potential rights to unemployment compensation  
34 under such Act of Congress, acquired rights to benefits under this  
35 chapter, and provided further, in computing benefits the administrator  
36 shall disregard all wages paid by employers who fall within the  
37 definition of "employer" in Section 1(a) of the Federal Railroad  
38 Unemployment Insurance Act;

39 (D) Service performed in this state or elsewhere with respect to  
40 which contributions are required and paid under an unemployment  
41 compensation law of any other state;

42 (E) Service not in the course of the employer's trade or business  
43 performed in any calendar quarter by an employee, unless the cash  
44 remuneration paid for such service is fifty dollars or more and such  
45 service is performed by an individual who is regularly employed by  
46 such employer to perform such service. For purposes of this

47 subparagraph, an individual shall be deemed to be regularly  
48 employed by an employer during a calendar quarter only if (i) on each  
49 of some twenty-four days during such quarter such individual  
50 performs for such employer for some portion of the day service not in  
51 the course of the employer's trade or business; or (ii) such individual  
52 was so employed by such employer in the performance of such service  
53 during the preceding calendar quarter;

54 (F) Service performed in any calendar quarter in the employ of any  
55 organization exempt from income tax under Section 501(a) of the  
56 Internal Revenue Code or under Section 521 of said code excluding  
57 any organization described in Section 401(a) of said code, if the  
58 remuneration for such service is less than fifty dollars;

59 (G) Service performed in the employ of a school, college, or  
60 university if such service is performed (i) by a student who is enrolled  
61 and is regularly attending classes at such school, college or university,  
62 or (ii) by the spouse of such a student, if such spouse is advised at the  
63 time such spouse commences to perform such service, that (I) the  
64 employment of such spouse to perform such service is provided under  
65 a program to provide financial assistance to such student by such  
66 school, college or university, and (II) such employment will not be  
67 covered by any program of unemployment insurance;

68 (H) Service performed as a student nurse in the employ of a hospital  
69 or a nurses' training school chartered pursuant to state law by an  
70 individual who is enrolled and is regularly attending classes in such  
71 nurses' training school, and service performed as an intern in the  
72 employ of a hospital by an individual who has completed a four years'  
73 course in a medical school chartered or approved pursuant to state  
74 law;

75 (I) Service performed by an individual under the age of eighteen in  
76 the delivery or distribution of newspapers or shopping news, not  
77 including delivery or distribution to any point for subsequent delivery  
78 or distribution;

79 (J) Service performed by an individual who is enrolled, at a  
80 nonprofit or public educational institution which normally maintains a  
81 regular faculty and curriculum and normally has a regularly organized  
82 body of students in attendance at the place where its educational  
83 activities are carried on, as a student in a full-time program, taken for  
84 credit at such institution, which combines academic instruction with  
85 work experience, if such service is an integral part of such program,  
86 and such institution has so certified to the employer, except that this  
87 subparagraph shall not apply to service performed in a program  
88 established for or on behalf of an employer or group of employers;

89 (K) Service performed by an individual as an insurance agent, other  
90 than an industrial life insurance agent, and service performed by an  
91 individual as a real estate salesperson, if all such service is performed  
92 for remuneration solely by way of commission;

93 (L) Service performed in the employ of a hospital, if such service is  
94 performed by a patient of the hospital, as defined in subsection (h) of  
95 this section;

96 (M) Service performed by an individual in the employ of any town,  
97 city or other political subdivision, provided such service is performed  
98 in lieu of payment of any delinquent tax payable to such town, city or  
99 other political subdivision; [and]

100 (N) Service performed by an individual as an outside sales  
101 representative of a for-profit travel agency if substantially all of such  
102 service is performed outside of any travel agency premises, and all  
103 such service is performed for remuneration solely by way of  
104 commission. For purposes of this subparagraph, an "outside sales  
105 representative" means an individual whose services to a for-profit  
106 travel agency are performed under such travel agency's Airlines  
107 Reporting Corporation accreditation, or the International Airlines  
108 Travel Agent Network endorsement; and

109 (O) Services performed by the operator of an escort motor vehicle,  
110 for an oversize vehicle, overweight vehicle or a vehicle with a load

111 traveling upon any Connecticut highway pursuant to a permit  
112 required by section 14-270, and the regulations adopted pursuant to  
113 said section, provided the following conditions are met:

114 (i) The service is provided by an individual operator who has  
115 previously been engaged in the business or trade of providing such  
116 escort motor vehicle;

117 (ii) The operator is, and has been, free from control and direction by  
118 any other business or other person in connection with the actual  
119 performance of such services;

120 (iii) The operator owns his or her own vehicle, and statutorily  
121 required equipment, and exclusively employs this equipment in  
122 providing such services; and

123 (iv) The operator is treated as an independent contractor for all  
124 purposes, including, but not limited to, federal and state taxation,  
125 workers' compensation, choice of hours worked and choice to accept  
126 referrals from multiple entities without consequence.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	31-222(a)(5)

**LAB**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Labor Dept.	Unemployment Compensation Fund - Revenue Loss	See Below	See Below

**Municipal Impact:** None

**Explanation**

The bill will result in a loss to the Department of Labor’s Unemployment Compensation Fund. If escort drivers are considered independent contractors, the entity that hires such individuals would be exempt from paying unemployment taxes on the individuals’ pay. The number of entities that would be exempt is unknown at this time; however, the Department of Labor is aware of three entities that would be responsible for paying approximately \$35,000 total in unemployment taxes for about 65 individuals.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of escort drivers considered to be independent contractors.

**OLR Bill Analysis****HB 5110*****AN ACT CONCERNING ESCORT CAR OPERATORS.*****SUMMARY:**

This bill makes escort car drivers independent contractors, rather than employees, for purposes of unemployment compensation law, if they meet the bill's conditions. These drivers, under permit from the Department of Transportation, accompany oversized or overweight vehicles on state highways. As independent contractors they will not be eligible for unemployment compensation benefits and the entity that hires them will not be responsible for paying unemployment taxes on the drivers' pay.

EFFECTIVE DATE: October 1, 2008

**CRITERIA FOR INDEPENDENT CONTRACTOR DRIVERS**

The bill removes an escort or flag vehicle driver from the definition of employee under the unemployment compensation law if they:

1. were previously engaged in the business or trade of providing such escort motor vehicle;
2. are, and were, free from control and direction by any other business or other person in connection with the actual performance of such services;
3. owns their own vehicle, and statutorily required equipment, and exclusively employ this equipment in providing such services; and
4. are treated as independent contractors for all purposes, including, federal and state taxation, workers' compensation, choice of hours worked, and choice to accept referrals from

multiple entities without consequence.

Under current law, to be considered an independent contractor a person must:

1. be free from control and direction in connection with the performance of the service, both under his or her contract of hire and in fact;
2. perform the service either outside the usual course of business of the employer or outside of all the employer's places of business; and
3. be customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service performed.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 11    Nay 0    (03/04/2008)