



General Assembly

February Session, 2012

**Raised Bill No. 385**

LCO No. 1813

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Referred to Committee on Transportation

Introduced by:  
(TRA)

**AN ACT CONCERNING OWNER OPERATORS IN THE MOTOR CARRIER INDUSTRY.**

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2 general statutes is repealed and the following is substituted in lieu  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 from passage*):

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

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

10 (B) Service performed in the employ of the United States  
11 government, any other state, any town or city of any other state, or any  
12 political subdivision or instrumentality of any of them; except that, to  
13 the extent that the Congress of the United States permits states to  
14 require any instrumentalities of the United States to make  
15 contributions to an unemployment fund under a state unemployment

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

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

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

41 (E) Service not in the course of the employer's trade or business  
42 performed in any calendar quarter by an employee, unless the cash  
43 remuneration paid for such service is fifty dollars or more and such  
44 service is performed by an individual who is regularly employed by  
45 such employer to perform such service. For purposes of this  
46 subparagraph, an individual shall be deemed to be regularly  
47 employed by an employer during a calendar quarter only if (i) on each

48 of some twenty-four days during such quarter such individual  
49 performs for such employer for some portion of the day service not in  
50 the course of the employer's trade or business; or (ii) such individual  
51 was so employed by such employer in the performance of such service  
52 during the preceding calendar quarter;

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

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

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

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

78 (J) Service performed by an individual who is enrolled, at a

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

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

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

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

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

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

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

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

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

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

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

126 (P) Service performed in intrastate or interstate commerce by the  
127 operator of a motor carrier operating or causing to be operated on any  
128 highway in this state any qualified motor vehicle, as defined in section  
129 12-478, provided the following conditions are met:

130 (i) The operator owns the motor vehicle or holds it under a bona  
131 fide lease arrangement, provided any lease arrangement, loan or loan  
132 guarantee is not with the contracting entity, with the exception of a  
133 lease arrangement with the contracting entity for the use of a substitute  
134 motor vehicle to perform services in the event that the operator's  
135 primary motor vehicle is being serviced or repaired;

136 (ii) The operator is responsible for substantially all of the principal  
137 operating costs of the motor vehicle, including, but not limited to,  
138 maintenance, fuel, repairs, supplies, vehicle insurance and personal  
139 expenses, provided the operator may be paid by the contracting entity

140 for operating costs directly related to services rendered by the  
141 operator, including, but not limited to, tolls, permits, communication  
142 charges and loading fees;

143 (iii) The operator is responsible for supplying the necessary services  
144 to operate the motor vehicle;

145 (iv) The operator's compensation is based on factors related to the  
146 work performed, including, but not limited to, mileage-based rates, a  
147 percentage of any schedule of rates, or by the hours or time expended  
148 in relation to actual performance of the contracted-for services;

149 (v) The operator substantially controls the means and manner of  
150 performing services, which shall be evidenced by doing so in  
151 conformance with all state and federal requirements and specifications  
152 of the shipper; and

153 (vi) The operating agreement includes provisions that meet the  
154 conditions in clauses (i) to (v), inclusive, of this subparagraph; that the  
155 operator acknowledges the operator's status as an independent  
156 contractor and not an employee of the contracting entity; and that such  
157 operating agreement shall be presented to the Labor Department upon  
158 request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	31-222(a)(5)

**Statement of Purpose:**  
To apply the independent contractor standard to owner operators in the motor carrier industry.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*