



# House of Representatives

General Assembly

**File No. 327**

*January Session, 2013*

Substitute House Bill No. 6151

*House of Representatives, April 3, 2013*

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING CERTAIN OPERATORS OF MOTOR VEHICLES AND ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.***

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2 general statutes is repealed and the following is substituted in lieu  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, 2013*):

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 by the operator of a motor vehicle  
127 transporting property for compensation pursuant to an agreement  
128 with a contracting party, provided the following conditions are met:

129 (i) The motor vehicle has a gross vehicle weight rating in excess of  
130 ten thousand pounds;

131 (ii) The operator owns such motor vehicle or holds it under a bona  
132 fide lease arrangement, provided any lease arrangement, loan or loan  
133 guarantee is commercially reasonable and is not with the contracting  
134 party or any related entity. For purposes of this subparagraph, a lease  
135 arrangement, loan or loan guarantee shall be commercially reasonable  
136 if it is on terms equal to terms available in a trucking equipment  
137 purchase or lease in customary and usual retail transactions generally  
138 available in the state;

139 (iii) The operator's compensation is based on factors, which may

140 include, but not be limited to, mileage-based rates, a percentage of any  
141 schedule of rates or by the hours or time expended in relation to actual  
142 performance of the service contracted for or an agreed upon flat fee;

143 (iv) The operator may refuse to work without consequence and may  
144 accept work from multiple contracting entities in compliance with  
145 statutory and regulatory limitations without consequence. The service  
146 performed by the operator shall satisfy the requirements of  
147 subparagraph (B)(ii) of subdivision (1) of subsection (a) of this section,  
148 except that the administrator shall not find that the operator is an  
149 employee of the contracting party solely because such operator  
150 chooses to perform services only for such contracting party; and

151 (v) The provisions of this subparagraph shall not affect the  
152 applicability of any provision of chapter 229.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	31-222(a)(5)

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Labor Dept.	UCF - Net Revenue Loss	Potential Significant	Potential Significant

**Municipal Impact:** None

**Explanation**

The bill exempts certain professional truck drivers who own or lease trucks weighing over 10,000 lbs., from coverage under the state's unemployment law. This makes these drivers ineligible for unemployment benefits

There is a savings to the unemployment compensation fund associated with these workers becoming ineligible to collect unemployment benefits. Additionally, there is an offsetting revenue loss to the fund associated with companies no longer paying taxes on these workers.

There are 15,000 workers who drive vehicles over 10,000 lbs. and are classified as employees. It is not known how many of these workers own their own vehicles and meet the bill's other requirements for exemption from unemployment law. The extent of the net revenue loss to the Unemployment Compensation Fund depends on the number of workers the bill exempts, and the number who would have been laid off and collected unemployment benefits.

The following table shows the potential savings and offsetting revenue loss to the unemployment compensation fund as a result of

this bill. It assumes 8% of the population of impacted workers becomes unemployed<sup>1</sup> after the bill's effective date, and that all unemployed workers would have sought unemployment benefits. The net impact varies based on the number of unemployed workers who own or lease their own vehicles and meet the bill's other requirements for exemption from unemployment compensation.

### Unemployment Compensation Fund Potential Revenue Loss Scenarios<sup>1</sup>

Population	Population Becoming Unemployed	Benefit Savings \$	Revenue Loss \$	Net Impact \$
15,000	1,200	6,993,600	10,125,000	(3,131,400)
7,500	600	3,496,800	5,062,500	(1,565,700)
1,000	80	466,240	675,000	(208,760)
100	8	46,624	67,500	(20,876)

<sup>1</sup>Benefit savings calculated using average weekly benefit payment of \$310 and an average of 18.8 weeks of benefit payments. Revenue loss calculated using an average employer tax rate of 4.5% and a taxable wage base of \$15,000. Information obtained from the Department of Labor.

### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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<sup>1</sup>The Department of Labor's Office of Research reports a statewide unemployment rate of 8.0% for the month of February, 2013.

**OLR Bill Analysis****sHB 6151*****AN ACT CONCERNING CERTAIN OPERATORS OF MOTOR VEHICLES AND ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.*****SUMMARY:**

This bill exempts certain professional truck drivers from coverage under the state's unemployment law. These drivers will not accrue unemployment benefits for their service and businesses using them will not need to pay unemployment taxes or meet the unemployment law's requirements, other than its record keeping requirements, for their service. The exemption applies to drivers who transport property under a contract with another party if:

1. the driver's vehicle has a gross vehicle weight rating over 10,000 pounds;
2. the driver owns the vehicle or holds it under a "commercially reasonable" bona fide lease subject to certain conditions;
3. the driver's pay is based on factors that can include mileage-based rates, a percentage of any rate schedules, time spent driving, or a flat fee;
4. the driver can refuse to work without consequence and can accept work from many contractors without consequence; and
5. the driver is not considered an employee under the unemployment law's "ABC test." When considering if a driver meets the ABC test, the bill prohibits the labor commissioner from making a determination solely because the driver chooses to perform services only for one party (see BACKGROUND).

Under the bill, commercially reasonable means the lease, loan, or

loan guarantee for the driver’s vehicle (1) is not with the contracting party or any related entity and (2) has terms equal to those typically available for a retail trucking equipment lease or purchase in the state.

The bill also prohibits the exemption from affecting any state income tax requirements.

EFFECTIVE DATE: October 1, 2013

**BACKGROUND**

***ABC Test***

Unemployment law presumes a worker to be an employer’s employee unless the worker meets the ABC test’s three requirements. Workers who satisfy the test are generally considered independent contractors exempt from the unemployment law. The worker must (A) be free from the employer’s control and direction; (B) perform a service outside the employer’s usual course of business or outside of all the employer’s places or businesses; and (C) be customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the service being performed for the employer. Under current law, a worker can fail part C of the test if he or she provides services for only one employer.

***Related Bill***

sHB 6560, reported favorably by the Transportation Committee, creates a similar unemployment exemption for professional truck drivers and messenger couriers.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 3 (03/19/2013)