



House of Representatives

General Assembly

File No. 374

January Session, 2013

Substitute House Bill No. 6560

House of Representatives, April 4, 2013

The Committee on Transportation reported through REP. GUERRERA of the 29th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING OWNER-OPERATORS OF CERTAIN VEHICLES.

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2 general statutes is repealed and the following is substituted in lieu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) (i) Notwithstanding subparagraph (B)(ii)(III) of subdivision (1)
127 of subsection (a) of this section, service performed in intrastate or
128 interstate commerce by the owner-operator of a motor vehicle or motor
129 vehicles with a gross vehicle weight rating of more than ten thousand
130 pounds, or the owner-operator of a motor vehicle or motor vehicles
131 with a gross vehicle weight rating of less than ten thousand pounds
132 who is engaged in the messenger courier industry, who transports
133 property by motor vehicle for compensation, provided the following
134 conditions are met:

135 (I) The operator owns the motor vehicle or holds it under a bona
136 fide lease arrangement, provided any lease arrangement, loan or loan
137 guarantee is commercially reasonable and is not with the contracting
138 entity, or any related entity. For the purposes of this subparagraph, a
139 lease arrangement, loan or loan guarantee shall be commercially
140 reasonable if it is on terms equal to terms available in a trucking

141 equipment purchase or lease in customary and usual retail transactions
142 generally available in the state;

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

147 (III) The operator may refuse work without consequence and may
148 accept work from multiple contracting entities in compliance with
149 statutory and regulatory limitations without consequence. Nothing in
150 this subparagraph shall prevent such operator from working for a
151 single contracting entity.

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

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

TRA *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.

OFA Fiscal Note

State Impact:

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

Municipal Impact: None

Explanation

The bill makes certain professional truck drivers ineligible for unemployment benefits. Certain truck drivers who; 1) own a vehicle weighing more than 10,000 lbs. or; 2) own a vehicle weighing less than 10,000 lbs. who are in the messenger courier industry, would be exempt.

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 approximately 21,000 workers classified as employees who drive vehicles over 10,000 lbs. or drive vehicles under 10,000 lbs and are considered couriers.¹ 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

¹ Department of Labor, Office of Research.

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 unemployed² after the bill's effective date, and that all unemployed workers would have sought unemployment benefits. The net impact varies based on the size of the impacted population.

**Unemployment Compensation Fund Potential Revenue Loss
Scenarios¹**

Impacted Population	Population Becoming Unemployed	Benefit Savings \$	Revenue Loss \$	Net Impact \$
21,000	1,680	\$9,791,040	\$14,175,000	\$(4,383,960)
15,750	1,260	\$7,343,280	\$10,631,250	\$(3,287,970)
10,500	840	\$4,895,520	\$7,087,500	\$(2,191,980)
5,250	420	\$2,447,760	\$3,543,750	\$(1,095,990)
2,100	168	\$979,104	\$1,417,500	\$ (438,396)

¹Benefit 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.

Sources: Department of Labor

²The 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 6560****AN ACT CONCERNING OWNER-OPERATORS OF CERTAIN VEHICLES.****SUMMARY:**

This bill makes truck drivers who meet certain conditions independent contractors, rather than employees, for purposes of unemployment compensation. It exempts these drivers from the third prong of a three-prong test used to determine who is an independent contractor for purposes of unemployment compensation. By law, independent contractors are not eligible for unemployment compensation benefits, and the entities that hire them (“contracting entities”) are not responsible for paying unemployment taxes on their pay.

EFFECTIVE DATE: Upon passage

INDEPENDENT CONTRACTORS

By 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 employer’s usual course of business 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.

Under the bill, a truck driver (“owner-operator”) in intrastate or

interstate commerce does not have to meet the third prong of the test. A driver is an independent operator if he or she:

1. transports property, for compensation, (a) in a truck or trucks with a maximum loaded weight of more than 10,000 pounds or (b) as a messenger courier business in a truck with a maximum loaded weight of less than 10,000 pounds;
2. owns or leases the vehicle, provided the lease, loan, or loan guarantee is commercially reasonable and is not with the contracting entity or a related entity;
3. receives compensation based on factors related to the work performed, including mileage-based rates, a percentage of any rate schedule, or the time actually spent performing the contracted-for services; and
4. may, without consequence, refuse work or accept work according to law from multiple contracting entities, although he or she may work for a single contracting entity.

Under the bill, a lease arrangement is commercially reasonable if it is on terms equal to terms available in a trucking equipment purchase or lease in customary and usual retail transactions generally available in the state.

The bill does not affect such an owner-operator's obligations under the state income tax.

BACKGROUND

Related Bill

HB 6151, reported favorably by the Labor and Public Employees Committee, makes truck drivers who drive vehicles weighing more than 10,000 pounds and meet certain conditions independent operators for purposes of unemployment compensation.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute

Yea 34 Nay 0 (03/15/2013)