



State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

REPRESENTATIVE BRIAN BECKER
19TH ASSEMBLY DISTRICT

LEGISLATIVE OFFICE BUILDING
ROOM 4009
HARTFORD, CT 06106-1591

CAPITOL: 860-240-8585
FAX: 860-240-0206
E-MAIL: Brian.Becker@cga.ct.gov

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Statement of Brian S. Becker
State Representative for the 19th Assembly District
before the
Labor and Public Employees Committee of the Connecticut General Assembly
February 26, 2013
in support of
HB 6151
An Act Concerning Certain Operators of Motor Vehicles
and Eligibility for Unemployment Benefits

Chairman Osten, Chairman Tercyak, Ranking Member Markley, Ranking Member Smith, and the other distinguished members of the Labor and Public Employees Committee, thank you for raising and taking the time to hear testimony on HB 6151, An Act Concerning Certain Operators of Motor Vehicles and Eligibility for Unemployment Benefits.

I have a constituent, Ed Michaels, who owns a trucking company, American Transportation and Logistics, LLC (the "American Transportation"), located in Windsor Locks, Connecticut. His company uses independent contractors who own their own trucks to haul freight both within and without the state of Connecticut. The state Department of Labor (the "DOL") has commenced an investigation to determine whether the American Transportation's drivers really are independent contractors or whether they should be classified as employees.

Currently, Connecticut state law has what is known as the "ABC Test" to determine whether an individual is an employee or an independent contractor.¹ The ABC Test is more comprehensive than the IRS test designed to make the same determination. American Transportation meets the elements of the IRS test required to establish that its drivers are independent contractors, but may not meet all of the elements of the ABC Test.

All parts of the state's ABC Test must be satisfied for an individual to be considered an independent contractor under Connecticut state law. Part C of the test requires that the individual be "customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed." The DOL has interpreted this provision as requiring that an individual work for more than one party in a given calendar year in order to meet this part of the test.²

¹ The ABC Test may be found in C.G.S. §31-222(a)(1)(B)(ii)(I)-(III).

Many of Mr. Michaels's drivers choose to work only for his company. Therefore, there is a good possibility that the DOL will determine that those drivers should be deemed employees rather than independent contractors of American Transportation. This would be a devastating result to American Transportation's business.

The trucking business is very competitive. American Transportation competes with trucking companies from around the country, many of whom are located in states that do not use the ABC Test. Mr. Michaels has told me that the only way he can compete in the trucking business is to be in a position to give a flat fee quote to his customers. This is standard industry practice. Upon winning a bid, he offers his independent contractor drivers the opportunity to haul the freight for a fixed fee. If American Transportation were to be forced to treat these drivers as employees and pay them hourly wages rather than fixed fees, American Transportation would be not be able to compete with out-of-state carriers.

If the drivers were deemed to be employees, it would put American Transportation at serious risk of losing money or losing business. The company would be at risk of losing money on any trips involving traffic jams or other delays since the amount of wages it would need to pay could be substantially higher than the wages it anticipated when bidding for the job. The company also would be potentially liable for unemployment compensation for drivers anytime the drivers chose to remain idle rather than hauling a particular load. If the company attempted to build these additional costs into its bids to customers, it would price itself right out of the market. Either way, Mr. Michaels assures me, American Transportation could not survive.

As you consider this bill and whether the exemption it seeks is appropriate, ask yourself this question: In what other business does an employee have to invest tens of thousands of dollars of his or her own money in equipment in order to be hired? The truckers who drive for American Transportation own or lease their own trucks at substantial personal cost. These drivers want to be their own bosses; they think of themselves as independent contractors, and they should be treated accordingly.

I have spoken with the DOL about this bill and worked with them and Mike Riley of the Motor Transport Association on some revised language to satisfy concerns about the breadth of the bill. We appear to be close to an agreement and will continue to work towards one.

Governor Malloy has repeatedly stated that our state is "open for business." The Governor and all of us want to help our state's companies compete in the marketplace. For a Connecticut trucking company doing business on a nationwide basis to be put at a competitive disadvantage by a more restrictive definition of "independent contractor" is just wrong. The bill before you and the revised language we plan to submit seeks to right that wrong by creating a narrow exemption to the ABC Test. Please help our state's companies preserve and create jobs. Please support HB 6151. Thank you.