

Testimony of Eric W. Gjede  
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Before the Committee on Labor and Public Employees  
Hartford, CT  
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**Testifying on HB 5064 AAC the Labor Department & HB 5065 AAC Unemployment Compensation**

Good afternoon Senator Osten, Representative Tercyak, and members of the Labor and Public Employees Committee. My name is Eric Gjede and I am assistant counsel at the Connecticut Business and Industry Association (CBIA) which represents more than 10,000 large and small companies throughout the state of Connecticut.

It appears that Bills 5064 and 5065 are currently drafted as placeholder bills. I have attached a draft bill that I had previously submitted to the committee that would amend the unemployment compensation statutes, as well as examine current processes utilized by the state's labor department. The business community respectfully requests the committee use either or both of these placeholder bills as vehicles for the submitted language.

The attached language would make the following changes:

1. Section 1 changes an employee's base period for initially qualifying for unemployment compensation with a new employer from \$500 to \$2,000. Increasing this threshold allows employers to test a new employee to see if they are a good fit without becoming part of that employee's base period for unemployment compensation purposes. Although wages have continued to increase over time, this earnings threshold has remained constant for the last 24 years. We ask that you increase this threshold.
2. Section 2 makes ineligible for unemployment benefits any CDL driver that was discharged from employment for losing their commercial driver's license as a result of drunk driving while off duty. An employer should not have to pay unemployment benefits to an individual who loses the license necessary to perform the only job for which they were hired. The business community believes this is a common-sense reform, and will help preserve the unemployment compensation trust fund for future deserving claimants.
3. Section 2 also changes the definition of willful misconduct. Under current law, an individual can be a no call/no show to his or her job three "instances" in a twelve month period before becoming disqualified from receiving unemployment benefits. The problem is, as illustrated by the chart below, the labor department has defined "instance" as being one day or two consecutive days. The result is that an individual can be a no call/no show 5 or 6 days in a 12 month period before they can be terminated for misconduct – which is costly to the employer. The business community requests that you change one instance to mean one day.

**From RCSA 31-236-26d:**

(f) **Consecutive days – Separate Instances.** Where an absence without good cause for absence from work or without notice continued for two or more consecutive days, the Administrator shall rely upon the following table to determine the number of separate instances of absence under this section.

<u>Consecutive Days</u>	<u>Instance(s) of Absence</u>
2	1
3	2
4	2
5	3
6	3

4. Section 3 creates a task force to study the criteria used to determine the sufficiency of an unemployment benefit claimant's reasonable effort to obtain work and the methods by which the labor department verifies said claimant's efforts to obtain work. The labor department has been doing a great job of cracking down on fraudulent receipt of benefits, but in most cases, this occurs after thousands of dollars have been paid to the recipient. The business community suggests business, labor and labor department officials come together to examine the processes used to verify work search efforts. This will help prevent fraud BEFORE it happens.

Thank you for considering the business community's proposals.

Possible Title:  
AN ACT MAKING COST-SAVING REFORMS TO THE UNEMPLOYMENT  
COMPENSATION STATUTES

Section 1. Subdivision (1) of subsection (c) of section 31-225a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2015*):

(c) (1) (A) Any week for which the employer has compensated the claimant in the form of wages in lieu of notice, dismissal payments or any similar payment for loss of wages shall be considered a week of employment for the purpose of determining employer chargeability. (B)(i) No benefits shall be charged to any employer who paid wages of (i) five hundred dollars or less to the claimant in his or her base period, provided his or her base period commenced prior to January 1, 2015, or (ii) two thousand dollars or less to the claimant in his or her base period, provided his or her base period commenced on or after January 1, 2015. (C) No dependency allowance paid to a claimant shall be charged to any employer. (D) In the event of a natural disaster declared by the President of the United States, no benefits paid on the basis of total or partial unemployment which is the result of physical damage to a place of employment caused by severe weather conditions including, but not limited to, hurricanes, snow storms, ice storms or flooding, or fire except where caused by the employer, shall be charged to any employer. (E) If the administrator finds that (i) an individual's most recent separation from a base period employer occurred under conditions which would result in disqualification by reason of subdivision (2), (6) or (9) of subsection (a) of section 31-236, or (ii) an individual was discharged for violating an employer's drug testing policy, provided the policy has been adopted and applied consistent with sections 31-51t to 31-51aa, inclusive, section 14-261b and any applicable federal law, no benefits paid thereafter to such individual with respect to any week of unemployment which is based upon wages paid by such employer with respect to employment prior to such separation shall be charged to such employer's account, provided such employer shall have filed a notice with the administrator within the time allowed for appeal in section 31-241. (F) No base period employer's account shall be charged with respect to benefits paid to a claimant if such employer continues to employ such claimant at the time the employer's account would otherwise have been charged to the same extent that he employed him during the individual's base period, provided the employer shall notify the administrator within the time allowed for appeal in section 31-241. (G) If a claimant has failed to accept suitable employment under the provisions of subdivision (1) of subsection (a) of section 31-236 and the disqualification has been imposed, the account of the employer who makes an offer of employment to a claimant who was a former employee shall not be charged with any benefit payments made to such claimant after such initial offer of reemployment until such time as such claimant resumes employment with such employer, provided such employer shall make application therefor in a form acceptable to the administrator. The administrator shall notify such employer whether or not his application is granted. Any decision of the administrator

denying suspension of charges as herein provided may be appealed within the time allowed for appeal in section 31-241. (H) Fifty per cent of benefits paid to a claimant under the federal-state extended duration unemployment benefits program established by the federal Employment Security Act shall be charged to the experience accounts of the claimant's base period employers in the same manner as the regular benefits paid for such benefit year. (I) No base period employer's account shall be charged with respect to benefits paid to a claimant who voluntarily left suitable work with such employer (i) to care for a seriously ill spouse, parent or child or (ii) due to the discontinuance of the transportation used by the claimant to get to and from work, as provided in subparagraphs (A)(ii) and (A)(iii) of subdivision (2) of subsection (a) of section 31-236.

Sec. 2. Subsection (a) of section 31-236 is repealed and the following is substituted in lieu thereof (*Effective January 1, 2015*):

(a) An individual shall be ineligible for benefits:

(1) If the administrator finds that the individual has failed without sufficient cause either to apply for available, suitable work when directed so to do by the Public Employment Bureau or the administrator, or to accept suitable employment when offered by the Public Employment Bureau or by an employer, such ineligibility to continue until such individual has returned to work and has earned at least six times such individual's benefit rate. Suitable work means either employment in the individual's usual occupation or field or other work for which the individual is reasonably fitted, provided such work is within a reasonable distance of the individual's residence. In determining whether or not any work is suitable for an individual, the administrator may consider the degree of risk involved to such individual's health, safety and morals, such individual's physical fitness and prior training and experience, such individual's skills, such individual's previous wage level and such individual's length of unemployment, but, notwithstanding any other provision of this chapter, no work shall be deemed suitable nor shall benefits be denied under this chapter to any otherwise eligible individual for refusing to accept work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (B) if the wages, hours or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization; (D) if the position offered is for work which commences or ends between the hours of one and six o'clock in the morning if the administrator finds that such work would constitute a high degree of risk to the health, safety or morals of the individual, or would be beyond the physical capabilities or fitness of the individual or there is no suitable transportation available from the individual's home to or from the individual's place of employment; or (E) if, as a condition of being employed, the individual would be required to agree not to leave such position if recalled by the individual's former employer;

(2) (A) If, in the opinion of the administrator, the individual has left suitable work voluntarily and without good cause attributable to the employer, until such individual has earned at least ten times such individual's benefit rate, provided whenever an individual voluntarily leaves part-time employment under conditions that would render the individual ineligible for benefits, such individual's ineligibility shall be limited as provided in subsection (b) of this section, if applicable, and provided further, no individual shall be ineligible for benefits if the individual leaves suitable work (i) for good cause attributable to the employer, including leaving as a result of changes in conditions created by the individual's employer, (ii) to care for the individual's spouse, child, or parent with an illness or disability, as defined in subdivision (16) of this subsection, (iii) due to the discontinuance of transportation, other than the individual's personally owned vehicle, used to get to and from work, provided no reasonable alternative transportation is available, (iv) to protect the individual, the individual's child, the individual's spouse or the individual's parent from becoming or remaining a victim of domestic violence, as defined in section 17b-112a, provided such individual has made reasonable efforts to preserve the employment, but the employer's account shall not at any time be charged with respect to any voluntary leaving that falls under subparagraph (A)(iv) of this subdivision, (v) for a separation from employment that occurs on or after July 1, 2007, to accompany a spouse who is on active duty with the armed forces of the United States and is required to relocate by the armed forces, but the employer's account shall not at any time be charged with respect to any voluntary leaving that falls under subparagraph (A)(v) of this subdivision, or (vi) to accompany such individual's spouse to a place from which it is impractical for such individual to commute due to a change in location of the spouse's employment, but the employer's account shall not be charged with respect to any voluntary leaving under subparagraph (A)(vi) of this subdivision; or (B) if, in the opinion of the administrator, the individual has been discharged or suspended for felonious conduct, conduct constituting larceny of property or service, the value of which exceeds twenty-five dollars, or larceny of currency, regardless of the value of such currency, wilful misconduct in the course of the individual's employment, or participation in an illegal strike, as determined by state or federal laws or regulations, until such individual has earned at least ten times the individual's benefit rate; provided an individual who (i) while on layoff from regular work, accepts other employment and leaves such other employment when recalled by the individual's former employer, (ii) leaves work that is outside the individual's regular apprenticeable trade to return to work in the individual's regular apprenticeable trade, (iii) has left work solely by reason of governmental regulation or statute, or (iv) leaves part-time work to accept full-time work, shall not be ineligible on account of such leaving and the employer's account shall not at any time be charged with respect to such separation, unless such employer has elected payments in lieu of contributions;

(3) During any week in which the administrator finds that the individual's total or partial unemployment is due to the existence of a labor dispute other than a lockout at the factory, establishment or other premises at which the individual is or has been employed, provided the

provisions of this subsection do not apply if it is shown to the satisfaction of the administrator that (A) the individual is not participating in or financing or directly interested in the labor dispute that caused the unemployment, and (B) the individual does not belong to a trade, class or organization of workers, members of which, immediately before the commencement of the labor dispute, were employed at the premises at which the labor dispute occurred, and are participating in or financing or directly interested in the dispute; or (C) the individual's unemployment is due to the existence of a lockout. A lockout exists whether or not such action is to obtain for the employer more advantageous terms when an employer (i) fails to provide employment to its employees with whom the employer is engaged in a labor dispute, either by physically closing its plant or informing its employees that there will be no work until the labor dispute has terminated, or (ii) makes an announcement that work will be available after the expiration of the existing contract only under terms and conditions that are less favorable to the employees than those current immediately prior to such announcement; provided in either event the recognized or certified bargaining agent shall have advised the employer that the employees with whom the employer is engaged in the labor dispute are ready, able and willing to continue working pending the negotiation of a new contract under the terms and conditions current immediately prior to such announcement;

(4) During any week with respect to which the individual has received or is about to receive remuneration in the form of (A) wages in lieu of notice or dismissal payments, including severance or separation payment by an employer to an employee beyond the employee's wages upon termination of the employment relationship, unless the employee was required to waive or forfeit a right or claim independently established by statute or common law, against the employer as a condition of receiving the payment, or any payment by way of compensation for loss of wages, or any other state or federal unemployment benefits, except mustering out pay, terminal leave pay or any allowance or compensation granted by the United States under an Act of Congress to an ex-serviceperson in recognition of the ex-serviceperson's former military service, or any service-connected pay or compensation earned by an ex-serviceperson paid before or after separation or discharge from active military service, or (B) compensation for temporary disability under any workers' compensation law;

(5) Repealed by P.A. 73-140;

(6) If the administrator finds that the individual has left employment to attend a school, college or university as a regularly enrolled student, such ineligibility to continue during such attendance;

(7) Repealed by P.A. 74-70, S. 2, 4;

(8) If the administrator finds that, having received benefits in a prior benefit year, the individual has not again become employed and been paid wages since the commencement of said prior benefit year in an amount equal to the greater of three hundred dollars or five times the individual's weekly benefit rate by an employer subject to the provisions of this chapter or

by an employer subject to the provisions of any other state or federal unemployment compensation law;

(9) If the administrator finds that the individual has retired and that such retirement was voluntary, until the individual has again become employed and has been paid wages in an amount required as a condition of eligibility as set forth in subdivision (3) of section 31-235; except that the individual is not ineligible on account of such retirement if the administrator finds (A) that the individual has retired because (i) such individual's work has become unsuitable considering such individual's physical condition and the degree of risk to such individual's health and safety, and (ii) such individual has requested of such individual's employer other work that is suitable, and (iii) such individual's employer did not offer such individual such work, or (B) that the individual has been involuntarily retired;

(10) Repealed by P.A. 77-426, S. 6, 19;

(11) Repealed by P.A. 77-426, S. 6, 19;

(12) Repealed by P.A. 77-426, S. 17, 19;

(13) If the administrator finds that, having been sentenced to a term of imprisonment of thirty days or longer and having commenced serving such sentence, the individual has been discharged or suspended during such period of imprisonment, until such individual has earned at least ten times such individual's benefit rate;

(14) If the administrator finds that the individual has been discharged or suspended because the individual has been disqualified under state or federal law from performing the work for which such individual was hired as a result of a drug or alcohol testing program mandated by and conducted in accordance with such law, until such individual has earned at least ten times such individual's benefit rate;

(15) If the individual is a temporary employee of a temporary help service and the individual refuses to accept suitable employment when it is offered by such service upon completion of an assignment until such individual has earned at least six times such individual's benefit rate; [and]

**(16) If the administrator finds that the individual has been discharged or suspended because the individual has been disqualified from performing the work for which such individual was hired due to the loss of such individual's operator's license as a result of a drug or alcohol testing program conducted in accordance with sections 14-227a, 14-227b or 14-44k, regardless of whether such testing program was conducted while the individual was off-duty, until such individual has earned at least ten times such individual's benefit rate; and**

(17) For purposes of subparagraph (A)(ii) of subdivision (2) of this subsection, "illness or disability" means an illness or disability diagnosed by a health care provider that necessitates care for the ill or disabled person for a period of time longer than the employer is willing to grant leave, paid or otherwise, and "health care provider" means (A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; (B) a podiatrist, dentist, psychologist, optometrist or chiropractor authorized to practice by the state in which such person practices and performs within the scope of the authorized practice; (C) an advanced practice registered nurse, nurse practitioner, nurse midwife or clinical social worker authorized to practice by the state in which such person practices and performs within the scope of the authorized practice; (D) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; (E) any medical practitioner from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; (F) a medical practitioner, in a practice enumerated in subparagraphs (A) to (E), inclusive, of this subdivision, who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country; or (G) such other health care provider as the Labor Commissioner approves, performing within the scope of the authorized practice. For purposes of subparagraph (B) of subdivision (2) of this subsection, "wilful misconduct" means deliberate misconduct in wilful disregard of the employer's interest, or a single knowing violation of a reasonable and uniformly enforced rule or policy of the employer, when reasonably applied, provided such violation is not a result of the employee's incompetence and provided further, in the case of absence from work, "wilful misconduct" means an employee must be absent without either good cause for the absence or notice to the employer which the employee could reasonably have provided under the circumstances for three separate instances within a twelve-month period. Except with respect to tardiness, for purposes of subparagraph (B) of subdivision (2) of this subsection, each instance in which an employee is absent for one day [or two consecutive days] without either good cause for the absence or notice to the employer which the employee could reasonably have provided under the circumstances constitutes a "separate instance". For purposes of subdivision (15) of this subsection, "temporary help service" means any person conducting a business that consists of employing individuals directly for the purpose of furnishing part-time or temporary help to others; and "temporary employee" means an employee assigned to work for a client of a temporary help service.

Sec. 3. (Effective July 1, 2014) (a) There is established a task force to study the criteria used to determine the sufficiency of an unemployment benefit claimant's reasonable effort to obtain work and the methods by which the labor department verifies said claimant's effort to obtain work. The task force shall analyze the criteria and methods currently used by the labor department, the criteria and methods used by labor departments in other states, and technology that can be utilized to help improve work search verification efforts. The task force may solicit input from the labor department's employment security division and employment security

appeals. The task force shall make recommendations, which shall include but are not limited to, changes to the criteria used to determine the sufficiency of an unemployment benefit claimant's work search, and methods or technology that can be used and implemented by the labor department to improve and expand verification of unemployment benefit claimant work search efforts.

(b) The task force shall consist of the following members:

(1) The chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to unemployment compensation, or the chairpersons' and ranking members' designees;

(2) One appointed by the speaker of the House of Representatives who shall be an individual with experience providing human resource services to employers;

(3) One appointed by the president pro tempore of the Senate who shall have experience providing legal representation to unemployment benefit claimants;

(4) One appointed by the majority leader of the House of Representatives who shall have experience providing legal representation to unemployment benefit claimants;

(5) One appointed by the majority leader of the Senate who shall represent labor organizations;

(6) One appointed by the minority leader of the House of Representatives who shall represent businesses in the state;

(7) One appointed by the minority leader of the Senate who shall have experience providing legal representation to employers on unemployment benefit claims;

(8) Two appointed by the Governor, one of whom shall be a representative of an employee staffing agency, and one of whom shall represent individuals providing third party unemployment compensation claim consultation services to employers; and

(9) The Labor Commissioner, or said commissioner's designee.

(c) All appointments to the task force shall be made not later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) The president pro tempore of the Senate and the speaker of the House of Representatives shall each appoint one chairperson of the task force from among the members. Such chairpersons shall schedule the first meeting of the task force, which shall be held not later than

sixty days after the effective date of this section. A majority of the task force members shall constitute a quorum. A majority vote of a quorum shall be required for any official action of the task force. The task force shall meet upon the call of the chairs or upon the request of a majority of the members.

(e) The administrative staff of the labor department shall serve as administrative staff of the task force.

(f) Members of the task force shall serve without compensation, except for necessary expenses incurred in the performance of their duties.

(g) Not later than January 1, 2015, the task force shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, on its findings and recommendations to the joint standing committees of the General Assembly having cognizance of matters relating to unemployment compensation. The task force shall terminate on the date that it submits such report or January 1, 2015, whichever is later.

**Statement of Purpose:** To increase the minimum base period wages needed to qualify for unemployment compensation, disqualify from receiving unemployment benefits commercial drivers that cannot perform the work for which they were hired because their license was revoked as a result of drunk driving\*, redefine unexcused absence to mean a single day of absence without calling in to work, and to establish a task force to develop a more reliable method of verifying efforts to search for work.

**\*For more info: Tunxis Ohr's Fuel, Inc. v. Administrator, Unemployment Compensation Act, et al (SC 18791) (July 30, 2013)**