



General Assembly

January Session, 2017

Committee Bill No. 5549

LCO No. 3523



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CLARIFYING CERTAIN UNEMPLOYMENT COMPENSATION PROVISIONS AS APPLICABLE TO INDEPENDENT CONTRACTORS.

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2 general statutes is repealed and the following is substituted in lieu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, 2017*):

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 such
8 individual's son, daughter or spouse, and service performed by a child
9 under the age of eighteen in the employ of such child's father or
10 mother;

11 (B) Service performed in the employ of the United States
12 government, any other state, any town or city of any other state, or any
13 political subdivision or instrumentality of any of them; except that, to
14 the extent that the Congress of the United States permits states to

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

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

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

42 (E) Service not in the course of the employer's trade or business
43 performed in any calendar quarter by an employee, unless the cash
44 remuneration paid for such service is fifty dollars or more and such
45 service is performed by an individual who is regularly employed by
46 such employer to perform such service. For purposes of this

47 subparagraph, an individual shall be deemed to be regularly
48 employed by an employer during a calendar quarter only if (i) on each
49 of some twenty-four days during such quarter such individual
50 performs for such employer for some portion of the day service not in
51 the course of the employer's trade or business; or (ii) such individual
52 was so employed by such employer in the performance of such service
53 during the preceding calendar quarter;

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

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

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

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

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

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

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

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

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

109 (O) Service performed by the operator of an escort motor vehicle,

110 for an oversize vehicle, overweight vehicle or a vehicle with a load
111 traveling upon any Connecticut highway pursuant to a permit
112 required by section 14-270, and the regulations adopted pursuant to
113 said section, provided the following conditions are met:

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

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

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

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

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

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

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

140 (iii) The operator's compensation is based on factors, which may
141 include, but not be limited to, mileage-based rates, a percentage of any
142 schedule of rates or by the hours or time expended in relation to actual
143 performance of the service contracted for or an agreed upon flat fee;

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

152 (v) The provisions of this subparagraph shall not affect the
153 applicability of any provision of chapter 229; and

154 (Q) Service performed by an individual as a producer with a service
155 contract company or insurance agency that provides finance and
156 insurance products and services to the automotive market, provided
157 the following conditions are met:

158 (i) The service is provided by an individual producer who is
159 otherwise engaged in an employment relationship with a business or
160 trade involving automotive sales;

161 (ii) The producer is, and has been, free from control and direction by
162 any service contract company or insurance agency that provides
163 finance and insurance products and services to the automotive market
164 in connection with the actual performance of such services; and

165 (iii) The producer is treated, by the service contract company or
166 insurance agency that provides finance and insurance products and
167 services to the automotive market, as an independent contractor for all
168 purposes, including, but not limited to, federal and state taxation,
169 workers' compensation, choice of hours worked and choice to accept

170 referrals from multiple entities without consequence.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	31-222(a)(5)

Statement of Purpose:

To clarify unemployment tax law so that certain independent contractors are not improperly treated as employees.

[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.]

Co-Sponsors: REP. KLARIDES, 114th Dist.

H.B. 5549