

# SENATE CONCURRENT RESOLUTION No. 138

## STATE OF NEW JERSEY 221st LEGISLATURE

INTRODUCED NOVEMBER 10, 2025

**Sponsored by:**

**Senator DECLAN J. O'SCANLON, JR.**

**District 13 (Monmouth)**

### SYNOPSIS

Declares Department of Labor and Workforce Development new rules concerning employment status test for independent contractors inconsistent with legislative intent.

### CURRENT VERSION OF TEXT

As introduced.



1   **A CONCURRENT RESOLUTION** concerning legislative review of rules  
2       and regulations pursuant to Article V, Section IV, paragraph 6 of  
3       the Constitution of the State of New Jersey and prohibiting  
4       adoption of or, if promulgated, invalidating the Department of  
5       Labor and Workforce Development rule on the employment status  
6       test for independent contractors.

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8   **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the  
9       Constitution of the State of New Jersey, the Legislature may review  
10      any rule or regulation adopted or proposed by an administrative  
11      agency to determine if it is consistent with the intent of the  
12      Legislature, and invalidate an adopted rule or regulation, or prohibit  
13      the adoption of a proposed rule or regulation, if it finds that the rule  
14      or regulation is not consistent with legislative intent; and

15   **WHEREAS**, Upon finding that a rule or regulation, either proposed or  
16      adopted, is not consistent with legislative intent, Article V, Section  
17      IV, paragraph 6 provides that the Legislature shall transmit its  
18      findings in the form of a concurrent resolution to the Governor and  
19      the head of the Executive Branch agency which promulgated, or  
20      plans to promulgate, the rule or regulation, and the agency shall have  
21      30 days from the time the concurrent resolution is transmitted to  
22      amend or withdraw the rule or regulation; and

23   **WHEREAS**, If the agency does not amend or withdraw the existing  
24      proposed rule or regulation, Article V, Section IV, paragraph 6  
25      provides that the Legislature may invalidate or prohibit the adoption  
26      of the proposed rule or regulation, following a public hearing held by  
27      either House on the invalidation or prohibition, the placement of a  
28      transcript of the public hearing on the desks of the members of each  
29      House of the Legislature in an open meeting followed by the passage  
30      of at least 20 calendar days, and a vote of the majority of the  
31      authorized membership of each House in favor of a concurrent  
32      resolution invalidating or prohibiting the adoption of the rule or  
33      regulation; and

34   **WHEREAS**, The Legislature enacted the “unemployment compensation  
35      law” (R.S.43:21-1 et seq.) in order to provide unemployment benefits  
36      for a variety of claimants in the State; and

37   **WHEREAS**, The Legislature created as part of the law on unemployment  
38      compensation a test, known as the ABC test, to determine the status  
39      of a worker as an employee or independent contractor for the  
40      payment of taxes and eligibility for unemployment compensation;  
41      and

42   **WHEREAS**, The ABC test consists of three standards at R.S.43:21-  
43      19(i)(6)(A)(B) and (C), each of which must be met for the State to  
44      deem an individual an independent contractor; and

45   **WHEREAS**, At R.S.43:21-19(i)(6)(A), the law states that the first  
46      standard is an individual is to be free from control or direction over  
47      the performance of a service, as both part of the contract of the  
48      individual and in fact; and

1   **WHEREAS**, At R.S.43:21-19(i)(6)(B), the law states that the second  
2       standard is the service provided by the individual is to be either  
3       outside the usual course of business for which the service is  
4       performed or the service is performed outside of all the places of  
5       business of the enterprise for which the service is performed; and  
6   **WHEREAS**, At R.S.43:21-19(i)(6)(C), for the third standard, the law  
7       requires that an individual be customarily engaged in an  
8       independently established trade, occupation, profession or business;  
9       and  
10   **WHEREAS**, An individual who does not meet all three standards and is  
11       therefore deemed an employee under the ABC test is also considered  
12       an employee for purposes of the “Temporary Disability Benefits  
13       Law,” P.L.1948, c.110 (C.43:21-25 et seq.), the “New Jersey Gross  
14       Income Tax Act,” N.J.S.54A:1-1 et seq., P.L.1965, c.173 (C.34:11-  
15       4.1 et seq.), and other applicable State tax laws, and the “New Jersey  
16       State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.);  
17       and  
18   **WHEREAS**, On May 5, 2025, the Department of Labor and Workforce  
19       Development proposed a new rule to update current rules and  
20       regulations on the ABC test; and  
21   **WHEREAS**, At proposed rule N.J.A.C. 12:11-1.3(c)(2)(i)(3), it is  
22       permissible to consider, when determining if a putative employer has  
23       exercised control over an individual, if the employer requires the  
24       individual to use a digital application or software in the course of  
25       performing the services controlled by the putative employer when, in  
26       reality, these are standard, often legally required, business practices  
27       rather than indications of employer-employee control; and  
28   **WHEREAS**, Proposed rule N.J.A.C. 12:11-1.5(h) stipulates that it is  
29       insufficient to declare an individual being engaged in an  
30       independently established trade, occupation, profession, or business  
31       if the individual has their own liability insurance, or follows a  
32       requirement or the encouragement of a putative employer to obtain  
33       this insurance, when obtaining liability insurance follows general  
34       standard safety practices and does not indicate employer control or  
35       employment status of an individual; and  
36   **WHEREAS**, The inclusion of transportation network companies by  
37       declaring drivers’ vehicles as part of their place of business in  
38       proposed rule N.J.A.C. 12:11-1.4(d)(1) eliminates a key avenue of  
39       independent work permissible under current State law and  
40       contradicts the Third Circuit Court of Appeals previous holding that  
41       the ABC test remains lawful because it leaves intact the option to  
42       operate as an independent contractor when working for a  
43       transportation network company; and  
44   **WHEREAS**, Proposed rules N.J.A.C. 12:11-1.5(f) and 12:11-1.6(b)  
45       render irrelevant hallmarks of independent work, including obtaining  
46       professional licensure, working for multiple employers, and filing a  
47       Federal Form 1099, in favor of a presumption of employment; and

1   **WHEREAS**, The legislative intent of the ABC test is consistency when  
 2       determining who is an employee, which has been effectively flipped  
 3       by the proposed rules of the Department of Labor and Workforce  
 4       Development into a test where employment is heavily presumed by  
 5       minimizing or misapplying factors typically associated with  
 6       independent contracting, a standard not endorsed by the Legislature;  
 7       now, therefore,

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 9       **BE IT RESOLVED** *by the Senate of the State of New Jersey (the*  
 10      *General Assembly concurring):*

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 12       1. The Legislature declares the rules and regulations proposed  
 13       by the Department of Labor and Workforce Development to modify  
 14       the factors to consider when performing the ABC test to determine  
 15       the status of an individual as an independent contractor or employee  
 16       to be inconsistent with the intent of the Legislature.

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 18       2. Copies of this concurrent resolution, as filed with the  
 19       Secretary of State, shall be transmitted by the Clerk of the General  
 20       Assembly and the Secretary of the Senate to the Governor and the  
 21       Secretary of the Department of Labor and Workforce Development.

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 23       3. Pursuant to Article V, Section IV, paragraph 6 of the  
 24       Constitution of the State of New Jersey, the Department of Labor and  
 25       Workforce Development shall have 30 days following transmittal of  
 26       this resolution to amend or withdraw the proposed rules at N.J.A.C.  
 27       12:11, published at 57 N.J.R. 894(a), or the Legislature may, by  
 28       passage of another concurrent resolution, exercise its authority under  
 29       the Constitution to either prohibit adoption of, or if promulgated,  
 30       invalidate the rules and regulations in whole or in part.

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#### STATEMENT

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35       This concurrent resolution embodies the findings of the  
 36       Legislature that rules proposed by the Department of Labor and  
 37       Workforce Development at N.J.A.C. 12:11, to modify the factors that  
 38       may be considered when determining whether an individual is an  
 39       independent contractor, are not consistent with the legislative intent  
 40       of the ABC test codified in the unemployment compensation law of  
 41       the State.

42       The Department of Labor and Workforce Development has 30  
 43       days from the date of transmittal of this resolution to amend or  
 44       withdraw the proposed rules or the Legislature may, by passage of  
 45       another concurrent resolution, exercise its authority under the New  
 46       Jersey Constitution to invalidate the proposed rules in whole or in  
 47       part.