

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.

7

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,

8

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

11

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.

17

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

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.