

**SENATE CONCURRENT  
RESOLUTION No. 62**

**STATE OF NEW JERSEY  
222nd LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2026 SESSION

**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**

Introduced Pending Technical Review by Legislative Counsel.



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1   **A CONCURRENT RESOLUTION** concerning legislative review of  
2   rules and regulations pursuant to Article V, Section IV,  
3   paragraph 6 of the Constitution of the State of New Jersey and  
4   prohibiting adoption of or, if promulgated, invalidating the  
5   Department of Labor and Workforce Development rule on the  
6   employment status 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  
21   have 30 days from the time the concurrent resolution is transmitted  
22   to 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  
27   by either House on the invalidation or prohibition, the placement of  
28   a transcript of the public hearing on the desks of the members of  
29   each House of the Legislature in an open meeting followed by the  
30   passage of at least 20 calendar days, and a vote of the majority of  
31   the 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  
36   benefits for a variety of claimants in the State; and  
37   **WHEREAS**, The Legislature created as part of the law on  
38   unemployment compensation a test, known as the ABC test, to  
39   determine the status of a worker as an employee or independent  
40   contractor for the payment of taxes and eligibility for  
41   unemployment compensation; 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  
12   considered an employee for purposes of the “Temporary Disability  
13   Benefits Law,” P.L.1948, c.110 (C.43:21-25 et seq.), the “New  
14   Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., P.L.1965,  
15   c.173 (C.34:11-4.1 et seq.), and other applicable State tax laws, and  
16   the “New Jersey State Wage and Hour Law,” P.L.1966, c.113  
17   (C.34:11-56a et seq.); 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  
23   has exercised control over an individual, if the employer requires  
24   the individual to use a digital application or software in the course  
25   of performing the services controlled by the putative employer  
26   when, in reality, these are standard, often legally required, business  
27   practices 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  
46   obtaining professional licensure, working for multiple employers,  
47   and filing a Federal Form 1099, in favor of a presumption of  
48   employment; and

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

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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.

22  
23      3. Pursuant to Article V, Section IV, paragraph 6 of the  
24      Constitution of the State of New Jersey, the Department of Labor  
25      and Workforce Development shall have 30 days following  
26      transmittal of this resolution to amend or withdraw the proposed  
27      rules at N.J.A.C. 12:11, published at 57 N.J.R. 894(a), or the  
28      Legislature may, by passage of another concurrent resolution,  
29      exercise its authority under the Constitution to either prohibit  
30      adoption of, or if promulgated, invalidate the rules and regulations  
31      in whole or in part.

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STATEMENT

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

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