

ASSEMBLY CONCURRENT RESOLUTION No. 73

STATE OF NEW JERSEY 222nd LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2026 SESSION

Sponsored by:
Assemblywoman VICTORIA A. FLYNN
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.



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,

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

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.

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

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.

34 STATEMENT

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.