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)
Senator ROBERT W. SINGER
District 30 (Monmouth and Ocean)

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.

(Sponsorship Updated As Of: 5/11/2026)

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

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

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

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

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

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

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

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

WHEREAS, At R.S.43:21-19(i)(6)(B), the law states that the second standard is the service provided by the individual is to be either outside the usual course of business for which the service is performed or the service is performed outside of all the places of business of the enterprise for which the service is performed; and

WHEREAS, At R.S.43:21-19(i)(6)(C), for the third standard, the law requires that an individual be customarily engaged in an independently established trade, occupation, profession or business; and

WHEREAS, An individual who does not meet all three standards and is therefore deemed an employee under the ABC test is also considered an employee for purposes of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., P.L.1965, c.173 (C.34:11-4.1 et seq.), and other applicable State tax laws, and the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.); and

WHEREAS, On May 5, 2025, the Department of Labor and Workforce Development proposed a new rule to update current rules and regulations on the ABC test; and

WHEREAS, At proposed rule N.J.A.C. 12:11-1.3(c)(2)(i)(3), it is permissible to consider, when determining if a putative employer has exercised control over an individual, if the employer requires the individual to use a digital application or software in the course of performing the services controlled by the putative employer when, in reality, these are standard, often legally required, business practices rather than indications of employer-employee control; and

WHEREAS, Proposed rule N.J.A.C. 12:11-1.5(h) stipulates that it is insufficient to declare an individual being engaged in an independently established trade, occupation, profession, or business if the individual has their own liability insurance, or follows a requirement or the encouragement of a putative employer to obtain this insurance, when obtaining liability insurance follows general standard safety practices and does not indicate employer control or employment status of an individual; and

WHEREAS, The inclusion of transportation network companies by declaring drivers' vehicles as part of their place of business in proposed rule N.J.A.C. 12:11-1.4(d)(1) eliminates a key avenue of independent work permissible under current State law and contradicts the Third Circuit Court of Appeals previous holding that the ABC test remains lawful because it leaves intact the option to operate as an independent contractor when working for a transportation network company; and

WHEREAS, Proposed rules N.J.A.C. 12:11-1.5(f) and 12:11-1.6(b) render irrelevant hallmarks of independent work, including obtaining professional licensure, working for multiple employers, and filing a Federal Form 1099, in favor of a presumption of employment; and

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

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

1. The Legislature declares the rules and regulations proposed by the Department of Labor and Workforce Development to modify the factors to consider when performing the ABC test to determine the status of an individual as an independent contractor or employee 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.

STATEMENT

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

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