



**SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY**

ATTORNEYS AT LAW

INDIANAPOLIS

CHICAGO • WASHINGTON, D.C. • LOS ANGELES • KANSAS CITY • CHATTANOOGA • DETROIT

10 W. Market Street, Suite 1500 Indianapolis, Indiana 46204  
phone (317) 637-1777 fax (317) 687-2414

[www.scopelitis.com](http://www.scopelitis.com)

**GREGORY M. FEARY**  
MANAGING PARTNER  
[gfeary@scopelitis.com](mailto:gfeary@scopelitis.com)  
DIRECT DIAL: (317) 492-9223

April 22, 2010

**VIA E-MAIL**/[jestey@ncoil.org](mailto:jestey@ncoil.org)

National Conference of Insurance Legislators  
c/o Jordan Estey, Director of Legislative Affairs & Education  
385 Jordan Road  
Troy, NY 12180

Re: Proposed Trucking and Messenger Courier Industries Workers'  
Compensation Model Act – Revised Comments

Dear Mr. Estey:

The American Trucking Associations, Inc. (“ATA”) respectfully submits additional comments as contained within the attached redline of the Workers’ Compensation Committee’s Proposed Trucking and Messenger Courier Industries Workers’ Compensation Model Act.

ATA is a nonprofit corporation incorporated under the laws of the District of Columbia, with its principal place of business in Arlington, Virginia. ATA is the national trade association of the trucking industry. It has approximately 2,000 direct motor carrier members and, in cooperation with state trucking associations and affiliated national trucking conferences, ATA represents tens of thousands of motor carriers. ATA was created to promote and protect the interests of the trucking industry, which consists of every type and geographical scope of motor carrier operation in the United States, including for-hire carriers, private carriers, leasing companies and others.

As reflected in my comments to the Committee at the Conference’s Spring Meeting, the proposed language as drafted by the Committee provides a sound

basis to further clarify the treatment of independent contractors within the trucking industry. The revised comments make minor changes to the comments that ATA previously submitted to the Committee.

Additionally, ATA respectfully submits an additional comment pertaining to factor 6, regarding “substantial control” of the independent contractor. While ATA appreciates the reasoning behind its inclusion, it is the industry’s experience that such language ultimately serves to increase litigation regarding the issue, and can encourage the improper application of the traditional “control” test to the owner-operator/motor carrier relationship. It is ATA’s view that the remaining factors, especially relating to the ownership of the expensive tractor-trailer, will sufficiently establish that the owner-operator is free from control by the motor carrier and that factor 6 should be removed in its entirety. This would provide the “bright line”- yet objective – standard advocated for by those offering comments at the Spring Meeting.

ATA appreciates the opportunity to provide this viewpoint, and looks forward to providing any additional information the Committee may seek.

Very truly yours,

/s/ Gregory M. Feary

enclosures

**NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)**  
**Proposed Trucking and Messenger Courier Industries Workers' Compensation Model Act**

---

\* \* \* \*

**Section 3. Independent Contractors in the Trucking and Messenger Courier Industries**

- A. In the trucking and messenger courier industries, an operator of a car, van, truck, tractor, or truck-tractor that is licensed and registered by a governmental motor vehicle agency is an employee and subject to state workers' compensation laws and regulations, unless each of the following factors are present, and if each factor is present the operator is an independent contractor:
1. the individual owns the equipment or holds it under a bona fide lease arrangement;
  2. the individual ~~is bears the practical~~ responsibility~~le~~ for the maintenance of the equipment;
  3. the individual is responsible for **substantially all of** the **principal** operating costs of the vehicle, including fuel, repairs, supplies, vehicle insurance, and personal expenses. The individual may be paid the carrier's fuel surcharge and incidental costs by the **carrier, hiring entity**, including, but not limited to, tolls, permits, and lumper fees;
  4. the individual is responsible for supplying the necessary personal services to operate the equipment;
  5. the individual's compensation is based on factors related to the work performed, such as **mileage-based rates or** a percentage of any schedule of rates, and not **solely** on the basis of the hours or time expended;
  6. the individual substantially controls the means and manner of performing services, in conformance with **statutory and** regulatory requirements and specifications of a shipper; and
  7. the individual enters into a written contract that specifies the relationship to be that of an independent contractor and not that of an employee.

\* \* \* \*