

Comments of the Messenger Courier Association of America (MCAA)

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

To be considered by the NCOIL Workers' Compensation Insurance Committee on Friday, March 5, 2010.

Sponsored for discussion by Rep. George Keiser (ND)

Section 1. Purpose

The purpose of this Act is to establish clear criteria to determine employee and independent contractor status for workers' compensation coverage purposes.

Section 2. Definitions

Definitions for this Section will track definitions in *[Insert Workers' Compensation Statute]*.

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 responsible for the maintenance of the equipment;
3. the individual is responsible for the 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 hiring entity, including, but not limited to, tolls, permits, and lumper fees;~~ THE INDIVIDUAL MAY BE PAID THE CARRIER'S FUEL SURCHARGE AND INCIDENTAL COSTS BY A CONTRACTING 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 a percentage of any schedule of rates, and not on the basis of the hours or time expended;~~ THE INDIVIDUAL'S COMPENSATION IS BASED ON FACTORS RELATED TO THE WORK PERFORMED, SUCH AS PERCENTAGES OF REVENUE, TYPE OF EQUIPMENT REQUIRED, CLASS OR TYPE OF FREIGHT TRANSPORTED, DEGREE OF DIFFICULTY OR EASE IN EFFECTING DELIVERIES AND/OR PICK-UPS AT SPECIFIC LOCATIONS, AND NOT STRICTLY ON THE BASIS OF THE HOURS OR TIME EXPENDED;

6. ~~the individual substantially controls the means and manner of performing services, in conformance with regulatory requirements and specifications of a shipper;~~ THE INDIVIDUAL CONTROLS THE MANNER IN WHICH SERVICES ARE PERFORMED, SUBJECT TO SHIPPER SPECIFICATIONS ESTABLISHING THE PARAMETERS OF THE CONTRACTED SERVICE; 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.

Section 4. Penalties

Penalties for non-compliance will be levied in accordance with *[Insert Workers' Compensation Statute]*.

Section 5. Enforcement

The *[Insert Applicable State Agency]* shall have enforcement authority as provided under *[Insert Workers' Compensation Statute]*.

Section 6. Effective Date

This Act shall take effect immediately.