§ 862-b. Presumption of employment in the commercial goods transportation industry. 1. Any person performing commercial goods transportation services for a commercial goods transportation contractor shall be classified as an employee of the commercial goods transportation contractor unless payment for such services is reported on a Federal Income Tax form 1099 if required by law and either the person is a separate business entity under subdivision two of this section or all of the following criteria are met, in which case the person shall be an independent contractor:

(a) the individual is free from control and direction in performing the job, both under his or her contract and in fact;

(b) the service must be performed outside the usual course of business for which the service is performed; and

(c) the individual is customarily engaged in an independently established trade, occupation, profession, or business that is similar to the service at issue.

2. A business entity, including any sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity that may also be a commercial goods transportation contractor under this section shall be considered a separate business entity from the commercial goods transportation contractor where all the following criteria are met:

(a) the business entity is performing the service free from the direction or control over the means and manner of providing the service, subject only to the right of the commercial goods transportation contractor for whom the service is provided to specify the desired result or federal rule or regulation;

(b) the business entity is not subject to cancellation or destruction upon severance of the relationship with the commercial goods transportation contractor;

(c) the business entity has a substantial investment of capital in the business entity, including but not limited to ordinary tools and equipment;

(d) the business entity owns or leases the capital goods and gains the profits and bears the losses of the business entity;

(e) the business entity may make its services available to the general

public or others not a party to the business entity's written contract referenced in paragraph (g) of this subdivision in the business community on a continuing basis;

(f) the business entity provides services reported on a Federal Income Tax form 1099, if required by law;

(g) the business entity performs services for the commercial goods transportation contractor pursuant to a written contract, under the business entity's name, specifying their relationship to be as independent contractors or separate business entities;

(h) when the services being provided require a license or permit, the business entity pays for the license or permit in the business entity's name or, where permitted by law, pays for reasonable use of the commercial goods transportation contractor's license or permit;

(i) if necessary, the business entity hires its own employees without the commercial goods transportation contractor's approval, subject to applicable qualification requirements or federal or state laws, rules or regulations, and pays the employees without reimbursement from the commercial goods transportation contractor;

(j) the commercial goods transportation contractor does not require that the business entity be represented as an employee of the commercial goods transportation contractor to its customers; and

(k) the business entity has the right to perform similar services for others on whatever basis and whenever it chooses.

3. The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section, except as set forth in paragraph (f) of subdivision two of this section.

4. An individual's act of securing workers' compensation insurance with a carrier as a sole proprietor, partnership or otherwise shall not be binding on any determination under this section.

5. When a business entity meets the definition of a separate business entity pursuant to subdivision two of this section, the separate business entity will be considered a commercial goods transportation

contractor subject to all the provisions of this article in regard to the classification of individuals performing services for it.