

PROPOSED AMENDMENTS TO SENATE BILL NO. 2071

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 65-01-03 of the North Dakota Century Code, relating to the workers' compensation presumption of employment.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-03. ~~Person~~ Individual performing service for remuneration presumed an employee.**

1. Each ~~person~~ individual who performs services for another for remuneration is presumed to be an employee of the person for ~~whom~~ which the services are performed, unless it is proven that the ~~person~~ individual is an independent contractor under the "common law" test. The person ~~who~~ that asserts that ~~a person~~ an individual is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.
2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:
  - a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.
  - b. The individual is responsible for the maintenance and repair of the truck or tractor.
  - c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.
  - d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.
  - e. Income taxes are not withheld from the individual's compensation.
  - f. The individual generally determines the details and means of performing the services, in conformance with statutory or regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
  - g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship."

Renumber accordingly