

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2071
(Senators J. Lee, Klein, Wanzek)
(Representatives Ruby, N. Johnson)

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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2071.

Senate Vote: Yeas 43 Nays 0 Absent 4

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State