

Sixty-first  
Legislative Assembly  
of North Dakota

## SENATE BILL NO. 2071

Introduced by

Senators J. Lee, Klein, Wanzek

Representatives Ruby, N. Johnson

1 A BILL for an Act to amend and reenact subsection 16 of section 65-01-02 of the North Dakota  
2 Century Code, relating to the workers' compensation definition of employee.

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

4 **SECTION 1. AMENDMENT.** Subsection 16 of section 65-01-02 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6 16. "Employee" means ~~a person~~ an individual who performs hazardous employment  
7 for another for remuneration unless the ~~person~~ individual is an independent  
8 contractor under the "common law" test or otherwise specified under this  
9 subsection.

10 a. The term includes:

- 11 (1) All elective and appointed officials of this state and ~~its~~ the state's  
12 political subdivisions, including municipal corporations ~~and including,~~  
13 the members of the legislative assembly, all elective officials of the  
14 several counties of this state, and all elective peace officers of any city.
- 15 (2) Aliens.
- 16 (3) County general assistance workers, except those who are engaged in  
17 repaying to counties moneys that the counties have been compelled by  
18 statute to expend for county general assistance.
- 19 (4) Minors, whether lawfully or unlawfully employed; ~~a.~~ A minor is deemed  
20 sui juris for the purposes of this title, and no other person has any claim  
21 for relief or right to claim workforce safety and insurance benefits for  
22 any injury to a minor worker, ~~but.~~ However, in the event of the award of  
23 a lump sum of benefits to a minor employee, the lump sum may be paid  
24 only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) Any ~~person~~ individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that ~~person's~~ individual's employer.
- (2) Any ~~person~~ individual who is engaged in an illegal enterprise or occupation.
- (3) ~~The~~ An employer's spouse of an employer or a an employer's child under the age of twenty-two ~~of an employer~~. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) Any real estate broker or real estate salesperson, provided the ~~person~~ meets the following three requirements are met:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement ~~must exist~~ exists between the salesperson or broker and the person ~~or firm for whom~~ which the salesperson or broker works, ~~which~~. The agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the

1 newspaper or shopping news which states that the individual is an  
2 independent contractor.

3 (7) Any individual who owns or holds under a bona fide lease a motor  
4 vehicle that the individual leases to a motor carrier if the individual  
5 personally operates the leased motor vehicle under a written agreement  
6 with the motor carrier which specifies that the operations involve an  
7 independent contractor relationship and if the individual meets the  
8 independent contractor requirements of this paragraph. An individual  
9 operating a motor vehicle for a motor carrier is considered an  
10 independent contractor under this paragraph if each of the following  
11 factors is substantially present:

12 (a) The individual makes a material investment or incurs a material  
13 obligation related to equipment contracted to the carrier and used  
14 in performing service.

15 (b) The individual has direction and control in meeting and  
16 performing contract obligations subject to conformance with  
17 governmental dictates, lawful requirements of third parties  
18 relative to the transport or other contractual obligations  
19 undertaken, and any reasonable administrative and clerical  
20 procedures needed for contract administration.

21 (c) The individual has the principal burden of the operating costs and  
22 personal expenses related to contract work.

23 (d) The individual's compensation is based primarily on factors  
24 related to contract work and not on the number of hours worked  
25 and the compensation affords the individual the opportunity to  
26 realize a profit or loss based on the relationship of business  
27 receipts and expenditures.

28 (e) The individual is responsible for hiring or otherwise engaging and  
29 paying the necessary personnel to operate the equipment and  
30 meet any related contract obligations.

1                               (f)    A written contract governs the relationship and specifies the  
2                                       relationship of the parties to be that of independent contractor  
3                                       and not an employer-employee relationship.

4                               (8)    An employer.

5                               c.    ~~Persons~~ Individuals employed by a subcontractor, or by an independent  
6                                       contractor operating under an agreement with the general contractor, for the  
7                                       purpose of this chapter are deemed to be employees of the general contractor  
8                                       who is liable and responsible for the payments of premium for the coverage of  
9                                       these employees until the subcontractor or independent contractor has  
10                                      secured the necessary coverage and paid the premium for the coverage.  
11                                     This subdivision does not impose any liability upon a general contractor other  
12                                     than liability to the organization for the payment of premiums ~~which~~ that are  
13                                     not paid by a subcontractor or independent contractor.