

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED 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 section 65-01-03 of the North Dakota Century Code,
2 relating to the workers' compensation presumption of employment.

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

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

6 **65-01-03. ~~Person~~ Individual performing service for remuneration presumed an**
7 **employee.**

8 1. Each ~~person~~ individual who performs services for another for remuneration is
9 presumed to be an employee of the person for ~~whom~~ which the services are
10 performed, unless it is proven that the ~~person~~ individual is an independent
11 contractor under the "common law" test. The person ~~who~~ that asserts that a
12 ~~person~~ an individual is an independent contractor under the "common law" test,
13 rather than an employee, has the burden of proving that fact.

14 2. In the case of commercial motor vehicles whose gross vehicle weight rating is
15 more than twenty-six thousand pounds [11793.40 kilograms], with an individual
16 operating a licensed truck or licensed tractor for a motor carrier of property, the
17 presumption in subsection 1 is successfully rebutted if all of the following factors
18 are present:

19 a. The individual owns, leases, or enters a purchase agreement to purchase a
20 truck or tractor. The lease or purchase agreement must represent reasonably
21 the value of the lease or purchase of the truck or tractor. The lease or
22 purchase agreement may be with the carrier of property. An unreasonable
23 lease or purchase agreement with a third party, unaffiliated with the carrier,
24 does not affect this factor.

- 1 b. The individual is responsible for the maintenance and repair of the truck or
- 2 tractor.
- 3 c. The individual bears the principal burden of operating costs, including fuel,
- 4 supplies, vehicle insurance, and personal expenses.
- 5 d. The individual is responsible for supplying the necessary personal services to
- 6 operate the truck or tractor.
- 7 e. Income taxes are not withheld from the individual's compensation.
- 8 f. The individual generally determines the details and means of performing the
- 9 services, in conformance with statutory or regulatory requirements, operating
- 10 procedures of the carrier, and specifications of the shipper.
- 11 g. The individual enters a written agreement with the motor carrier outlining the
- 12 nature of the relationship.