

A bill for an act
relating to labor and employment; regulating trucking industry classifications of
employment; amending Minnesota Statutes 2008, section 268.035, subdivision
25b.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 268.035, subdivision 25b, is amended to
read:

Subd. 25b. **Trucking industry/independent contractors.** In the trucking industry,
an owner-operator of a vehicle that is licensed and registered as a truck, tractor, or
truck-tractor by a governmental motor vehicle regulatory agency is an independent
contractor, and is not considered an employee, while performing services in the operation
of the truck only if each of the following factors is present:

- ~~(1) the individual owns the equipment or holds it under a bona fide lease arrangement;~~
- ~~(2) the individual is responsible for the maintenance of the equipment;~~
- ~~(3) the individual bears the principal burdens of the operating costs, including fuel,
repairs, supplies, vehicle insurance, and personal expenses while on the road;~~
- ~~(4) the individual is responsible for supplying the necessary personal services
to operate the equipment;~~
- ~~(5) the individual's compensation is based on factors related to the work performed,
such as a percentage of any schedule of rates, and not on the basis of the hours or time
expended; and~~
- ~~(6) the individual enters into a written contract that specifies the relationship to be
that of an independent contractor and not that of an employee.~~

(1) the individual is substantially free from control or direction over the performance of services, both under a contract of service and in fact;

(2) the service provided by the individual is either outside the usual course of business of the enterprise for which service is performed or the service is performed outside of all the places of business of the enterprise for which the service is performed; and

(3) the individual is customarily engaged in an independently established trade, occupation, profession, or business where the individual does not routinely become unemployed when the relationship with a particular enterprise ends.

Sec. 2. DEPARTMENT AUDITS; EMPLOYEE STATUS DETERMINATION; DATA SHARING.

The commissioners of employment and economic development, revenue, and labor and industry shall:

(1) increase data sharing regarding determinations of independent contractor classifications;

(2) conduct sufficient audits of trucking industry employers to determine whether patterns of improper classifications of owner-operators as independent contractors exists;

(3) in addition to the audits required by clause (2), or any other audits, audit enterprises that have been found by courts and regulators in other jurisdictions to have improperly classified owner-operators as independent contractors; and

(4) in order to ensure proper classification, develop a system that permits workers or their representatives to request an employee status determination from any of the departments of employment and economic development, revenue, or labor and industry.

To the extent practicable, the departments shall maintain confidentiality of any worker requesting a determination and no employer may retaliate against a worker for requesting an employee status determination. The employee status determination may be appealed by the individual requesting the determination.