

A bill for an act

relating to workers' compensation; clarifying the powers to determine independent contractor status; requiring commissioner of revenue review of certain documents related to independent contractor status; amending Minnesota Statutes 2006, sections 176.042, subdivision 2; 289A.12, by adding a subdivision.

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

Section 1. Minnesota Statutes 2006, section 176.042, subdivision 2, is amended to read:

Subd. 2. **Exception.** (a) An independent contractor, as described in subdivision 1, is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

(1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;

(2) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year;

(3) operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work;

(4) incurs the main expenses related to the service or work that the independent contractor performs under contract;

(5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;

(6) receives compensation for work or service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;

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(7) may realize a profit or suffer a loss under contracts to perform work or service;
(8) has continuing or recurring business liabilities or obligations; and
(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

(b) An employer must certify in writing that the employer has reviewed whether clauses (1) to (9) have been satisfied with respect to an independent contractor and that, to the best of the employer's knowledge, the conditions have been satisfied. The employer must make a reasonable investigation before certifying. The certification must be made prior to the performance of services by the independent contractor for the employer. The certification must be done on a form approved by the commissioner. A copy of the form must be provided to the commissioner and, upon request, to a workers' compensation insurer and the individual to whom the certification applies. The commissioner shall review the certificates and shall investigate and audit certificates on a random basis and, when the review raises questions as to the truthfulness of a certificate, the commissioner must notify the commissioner of revenue and provide the commissioner of revenue a copy of the certificate. The commissioner of revenue must review the information returns required under section 6041A of the Internal Revenue Code of an employer whose certifications have been provided to the commissioner.

(c) A person who signs a certificate knowing it to be untrue is guilty of a misdemeanor.

Sec. 2. Minnesota Statutes 2006, section 289A.12, is amended by adding a subdivision to read:

Subd. 15. **Review of independent contractor certifications.** The commissioner shall participate with the commissioner of labor and industry in an annual review and comparison of independent contractor certifications of employers required under section 181.722, subdivision 3, and information returns required under section 6041A of the Internal Revenue Code. The commissioner must review any independent contractor certifications applicable to returns audited or investigated under section 289A.35.