

A bill for an act
relating to employment; prohibiting misrepresentation of employees as
independent contractors; authorizing and requiring the commissioner of revenue
to review certifications of independent contractor status; amending Minnesota
Statutes 2006, sections 181.722; 289A.12, by adding a subdivision.

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

Section 1. Minnesota Statutes 2006, section 181.722, is amended to read:

**181.722 MISREPRESENTATION OF EMPLOYMENT RELATIONSHIP
PROHIBITED.**

Subdivision 1. **Prohibition.** ~~No employer~~ A person shall not misrepresent ~~the~~
~~nature of its employment relationship with its employees~~ to any person, including federal,
~~state, or local government unit, to other employers, or to its employees~~ agencies that an
individual is an independent contractor rather than an employee or that an independent
contractor satisfies statutory requirements so as not to be treated like an employee. ~~An~~
~~employer misrepresents the nature of its employment relationship with its employees~~
~~if it makes~~ A misrepresentation includes any statement ~~regarding the nature of the~~
~~relationship~~ that the employer knows or has reason to know is untrue and if it fails. A
misrepresentation includes a failure to report individuals as employees when legally
required to do so. This section applies only to individuals who are doing commercial or
residential building construction or improvements in the public or private sector.

Subd. 2. **Agreements to misclassify prohibited.** ~~No~~ An employer shall not require
or request any ~~employee~~ individual to enter into any agreement, or sign any document,
that results in misclassification of the ~~employee~~ individual as an independent contractor
rather than as an employee, requires an untrue statement by the individual related to

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classification of the individual as an employee, or otherwise does not accurately reflect the employment relationship with the employer.

Subd. 3. **Determination of employment relationship.** (a) For purposes of this section, the nature of an employment relationship is determined using the same tests and in the same manner as employee status is determined under the applicable workers' compensation and unemployment insurance program laws and rules.

(b) In addition to any other requirements of law or rule, an individual may not be determined an independent contractor who is not an employee under section 176.042, subdivision 2, unless the employer certifies in writing on a form provided by the commissioner of labor and industry that the independent contractor satisfies the conditions of section 176.042, subdivision 2, clauses (1) to (9). The commissioner of labor and industry shall review certifications and, if a certificate for any reason raises a concern of misclassification, the commissioner must investigate that certificate and inform the commissioner of revenue of the concern. The commissioner of revenue must review information returns filed under section 6041A of the Internal Revenue Code by employers about whom the commissioner of revenue has received notice under this subdivision.

(c) In addition to any other requirements of law or rule, an individual may not be determined an independent contractor under section 268.035, subdivision 9, unless the employer certifies in writing that the individual satisfies the conditions of section 268.035, subdivision 9, clauses (1) to (9).

(d) A copy of the certification under this subdivision must, upon request, be provided to the individual who is the subject of the certification.

Subd. 4. **Civil remedy.** ~~A construction worker, as defined in section 179.254, who is not an independent contractor and has been~~ person injured by a violation of this section, may bring a civil action for damages against the violator. ~~If the construction worker injured is~~ person is determined to be an employee or an independent contractor considered an employee of the violator of this section, the employee's representative, as defined in section 179.01, subdivision 5, may bring a civil action for damages against the violator on behalf of the employee. In addition to damages, the court may award attorney fees, costs, and disbursements to a ~~construction worker recovering~~ recovery under this section.

Subd. 5. **Reporting of violations.** Any court finding that a violation of this section has occurred shall transmit a copy of its findings of fact and conclusions of law to the commissioner of labor and industry. The commissioner of labor and industry shall report the finding to relevant state and federal agencies, including the commissioner of commerce, the commissioner of employment and economic development, the commissioner of revenue, the federal Internal Revenue Service, and the United States Department of Labor.

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3.1 Subd. 6. **Penalty.** A person making a certification under subdivision 3 with the
3.2 knowledge that it is untrue is guilty of a misdemeanor.

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

3.5 Subd. 15. **Review of independent contractor certifications.** The commissioner
3.6 shall participate with the commissioner of labor and industry in an annual review and
3.7 comparison of independent contractor certifications of employers required under section
3.8 181.722, subdivision 3, and information returns required under section 6041A of the
3.9 Internal Revenue Code. The commissioner must review any independent contractor
3.10 certifications applicable to returns audited or investigated under section 289A.35.