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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2742

03/06/2014 Authored by Johnson, S., The bill was read for the first time and referred to the Committee on Labor, Workplace and Regulated Industries

1.1 A bill for an act
1.2 relating to workers' compensation; regulating independent contract status of
1.3 certain individuals in the trucking industry; imposing penalties; amending
1.4 Minnesota Statutes 2012, section 176.043.

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

1.6 Section 1. Minnesota Statutes 2012, section 176.043, is amended to read:

1.7 176.043 TRUCKING AND/DELIVERY/MESSENGER/COURIER
1.8 INDUSTRIES; INDEPENDENT CONTRACTORS.

1.9 Subdivision 1. Definitions. In the trucking and messenger/courier industries, an
1.10 operator of a car, van, truck, tractor, or truck-tractor that is licensed and registered by a
1.11 governmental motor vehicle agency is an employee unless each of the following factors is
1.12 present, and if each factor is present, the operator is an independent contractor:

- 1.13 (1) the individual owns the equipment or holds it under a bona fide lease arrangement;
1.14 (2) the individual is responsible for the maintenance of the equipment;
1.15 (3) the individual is responsible for the operating costs, including fuel, repairs,
1.16 supplies, vehicle insurance, and personal expenses. The individual may be paid the
1.17 carrier's fuel surcharge and incidental costs, including, but not limited to, tolls, permits,
1.18 and lumper fees;
1.19 (4) the individual is responsible for supplying the necessary personal services
1.20 to operate the equipment;
1.21 (5) the individual's compensation is based on factors related to the work performed,
1.22 such as a percentage of any schedule of rates, and not on the basis of the hours or time
1.23 expended;

2.1 ~~(6) the individual substantially controls the means and manner of performing the~~
 2.2 ~~services, in conformance with regulatory requirements and specifications of the shipper;~~
 2.3 ~~and~~

2.4 ~~(7) the individual enters into a written contract that specifies the relationship to be~~
 2.5 ~~that of an independent contractor and not that of an employee. (a) As used in this section,~~
 2.6 ~~the terms defined in this subdivision have the meanings given them.~~

2.7 (b) "Commercial goods transportation contractor" means any sole proprietor,
 2.8 partnership, firm, corporation, limited liability company, association, or other legal entity
 2.9 permitted by law to do business within the state that compensates commercial vehicle
 2.10 drivers, couriers, or messengers who possess a state-issued commercial driver's license
 2.11 to transport goods in Minnesota. Commercial goods transportation contractor includes a
 2.12 general commercial goods transportation contractor or a commercial goods transportation
 2.13 subcontractor.

2.14 (c) "Commercial goods transportation services" means the transportation of goods
 2.15 for compensation by a commercial vehicle driver who possesses a state-issued commercial
 2.16 driver's license and transports goods in Minnesota.

2.17 **Subd. 2. Presumption of employment in commercial goods transportation**
 2.18 **industry.** An individual performing commercial goods transportation services for a
 2.19 commercial goods transportation contractor is an employee, unless the person is a separate
 2.20 business entity under subdivision 4 or is classified as an independent contractor under
 2.21 subdivision 3.

2.22 **Subd. 3. Independent contractor.** An individual is an independent contractor if:

2.23 (1) the individual is free from control and direction in performing the job, both
 2.24 under contract and in fact;

2.25 (2) the service is performed outside the usual course of business for which the
 2.26 service is performed; and

2.27 (3) the individual is customarily engaged in an independently established trade,
 2.28 occupation, profession, or business that is similar to the service at issue.

2.29 **Subd. 4. Separate business entity.** A business entity, including any sole proprietor,
 2.30 partnership, corporation, or entity that may be a commercial goods transportation
 2.31 contractor under this section, shall be considered a separate business entity from the
 2.32 commercial goods transportation contractor if all of the following criteria are met:

2.33 (1) the business entity is performing the service free from the direction or control
 2.34 over the means and manner of providing the service, subject only to the right of the
 2.35 commercial goods transportation contractor for whom the service is provided to specify
 2.36 the desired result;

3.1 (2) the business entity is not subject to cancellation or destruction upon severance of
3.2 the relationship with the commercial goods transportation contractor;

3.3 (3) the business entity has a substantial investment of capital in the business entity
3.4 beyond ordinary tools and equipment and a personal vehicle;

3.5 (4) the business entity owns the capital goods and gains the profits and bears the
3.6 losses of the business entity;

3.7 (5) the business entity makes its services available to the general public or the
3.8 business community on a continuing basis;

3.9 (6) the business entity includes income from services rendered on a federal income
3.10 tax schedule as an independent business or profession;

3.11 (7) the business entity performs services for the commercial goods transportation
3.12 contractor under the business entity's name;

3.13 (8) when the services being provided require a license or permit, the business entity
3.14 obtains and pays for the license or permit in the business entity's name;

3.15 (9) the business entity furnishes the tools and equipment necessary to provide the
3.16 service;

3.17 (10) if necessary, the business entity hires its own employees without the commercial
3.18 goods transportation contractor's approval, pays the employees without reimbursement
3.19 from the commercial goods transportation contractor, and reports the employees' income
3.20 to the Internal Revenue Service;

3.21 (11) the commercial goods transportation contractor does not represent the business
3.22 entity as an employee of the commercial goods transportation contractor to its customers;

3.23 and

3.24 (12) the business entity has the right to perform similar services for others on
3.25 whatever basis and whenever it chooses.

3.26 Subd. 5. **Notice.** (a) Every commercial goods transportation contractor shall post
3.27 in a prominent and accessible place on the site where commercial goods transportation
3.28 activity is conducted a legible statement, provided by the commissioner, that describes the
3.29 responsibility of independent contractors to pay taxes required by state and federal law; the
3.30 rights of employees to workers' compensation, unemployment benefits, minimum wage,
3.31 overtime and other federal and state workplace protections; protections against retaliation;
3.32 and the penalties in paragraph (c) if the contractor fails to properly classify an individual
3.33 as an employee. The notice must also contain contact information for individuals to file
3.34 complaints or inquire with the commissioner about employment classification status.
3.35 This information shall be provided in English, Spanish, or other languages required by

4.1 the commissioner. The posted statement shall be constructed of materials capable of
4.2 withstanding adverse weather conditions.

4.3 (b) The commissioner shall create the notice and post it on the department's Web site
4.4 for downloading by commercial goods transportation contractors.

4.5 (c) Commercial goods transportation contractors who violate this section shall
4.6 be subject to a civil penalty of up to \$1,500 for a first violation, and up to \$5,000 for a
4.7 subsequent violation within a five-year period.

4.8 **EFFECTIVE DATE.** This section is effective August 1, 2014, and the
4.9 commissioner must post the notice required by Minnesota Statutes, section 176.043,
4.10 subdivision 5, paragraph (b), within 30 days of the effective date.