

DEPARTMENT OF TAXATION

2023 Fiscal Impact Statement

1. **Patron** David W. Marsden

3. **Committee** Senate Finance and Appropriations

4. **Title** Worker Misclassification; Debarment
Procedures

2. **Bill Number** SB 1354

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would clarify the procedures under which an employer may be debarred from public contracts for misclassification of workers. Under current law, it is unclear whether the employer has a right to appeal a determination that the employer failed to properly classify an employee and what procedures the employer must follow to make such an appeal. This bill would clarify that, upon being notified by the Department that a worker has been misclassified, an employer has a right to file an administrative or judicial appeal. In addition, this bill would clarify that no employer can be debarred due to worker misclassification unless such employer has exhausted all rights of administrative and judicial appeals or the time period for bringing such appeals has expired.

If enacted during the 2023 Regular Session of the General Assembly, this bill would become effective July 1, 2023.

This is a Department of Taxation bill.

6. **Budget amendment necessary:** No.

7. **No Fiscal Impact:** (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

This bill would have no revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

During the 2020 Session, legislation was passed to penalize worker misclassification, where an employer improperly treats a worker as an independent contractor when they are actually an employee. The legislation provided that, if an individual performs services for an employer for remuneration, that individual will be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates that such individual is an independent contractor. The Department uses IRS guidelines to determine whether a worker is an employee or an independent contractor with respect to their employer by testing the degree of behavioral and financial control between the worker and the employer. The Department enforces these provisions in conjunction with its enforcement of the requirement that employers withhold individual income tax from employee pay.

Any employer, or officer or agent of the employer, that fails to properly classify an individual as an employee and fails to pay taxes, benefits, or other contributions required to be paid with respect to an employee is subject to a civil penalty of up to \$1,000 per misclassified individual for the first offense, up to \$2,500 per misclassified individual for the second offense, and up to \$5,000 per misclassified individual for the third offense or any subsequent offenses.

If the Department determines that an employer failed to properly classify an individual as an employee, all public bodies and covered institutions are prohibited from awarding a contract to such employer or to any firm, corporation, or partnership in which the employer has an interest for the following time periods:

- Up to one year from the date of the notice for a second offense; and,
- Up to two years from the date of notice for a third or subsequent offense.

This is referred to as “debarment,” and is applied in addition to the monetary penalties discussed above. The Tax Commissioner has the authority to share information with certain state agencies to identify employers who fail to properly classify individuals as employees. Such agencies are required to notify the Department if they have reason to believe that an employer has failed to properly classify individuals as employees, and such agencies may share any information with the Department that may assist in enforcing the proper classification of employees.

Proposed Legislation

This bill would clarify the procedures under which an employer may be debarred from public contracts for misclassification of workers. Under current law, it is unclear whether the

employer has a right to appeal a determination that the employer failed to properly classify an employee and what procedures the employer must follow to make such an appeal. This bill would clarify that, upon being notified by the Department that a worker has been misclassified, an employer has a right to file an administrative or judicial appeal. In addition, this bill would clarify that no employer can be debarred due to worker misclassification unless such employer has exhausted all rights of administrative and judicial appeals or the time period for bringing such appeals has expired.

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Similar Legislation

House Bill 1684 is identical to this bill.

cc : Secretary of Finance

Date: 1/21/2023 JLOF
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