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BILL ANALYSIS



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Senate Bill 645 (as introduced 12-8-15)
Sponsor: Senator Mike Kowall
Committee: Commerce

Date Completed: 9-20-16

CONTENT

The bill would create the "Employee Classification Act" to do the following:

- **Prohibit an employer from misclassifying an employee in a report required under State law.**
- **Define "misclassify".**
- **Specify when, in the trucking and messenger courier industries, an individual who was the operator of a vehicle or vessel would not be considered an employee.**

Misclassification

An employer or an agent of an employer would be prohibited from misclassifying an employee in a report required under State law. If the misclassification resulted in a lessening or avoidance of a legal obligation to the employee, another individual, or the State, the employer or agent would be subject to the sanctions provided in the statute under which the report was required.

"Misclassify" would mean to fail to properly identify an individual as performing services in employment in an employer-employee relationship with an employer. Except for employment in the trucking and messenger courier industries, an employer-employee relationship would be determined using the 20-factor test announced by the Internal Revenue Service in Revenue Ruling 87-141, 1987-1 C.B. 296.

An individual from whom an employer was required to withhold Federal income tax would be considered prima facie to perform services in employment in an employment relationship for purposes of classification as an employee.

Trucking & Messenger Courier Industries

In the trucking and messenger courier industries, an individual who was the operator of a vehicle or vessel would be considered an employee, unless all of the following applied:

- The individual was responsible for supplying the necessary services to operate the vehicle or vessel and equipment.
- The individual's compensation was based on factors related to the work performed, such as a mileage-based rate or a percentage of any schedule of rates, and not solely based on hours or time spent.
- The individual substantially controlled the means and manner of performing services in conformance with regulatory requirements and specifications of a shipper.
- All of the requirements described below were met.

The individual also would have to own the vehicle or vessel or hold it under a bona fide lease arrangement that was not through an arrangement, loan, or loan guarantee with the contracting entity or any affiliate of the contracting entity. This requirement would not apply to temporary replacement lease agreements.

The individual would have to be responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment, including maintenance, fuel, repairs, supplies, vehicle insurance, and personal expenses. If the contracting entity paid the individual only a fuel surcharge and incidental costs, such as tolls, permits, or lump sum fees, the individual would meet this requirement.

The contracting entity and the individual would have to sign and date an agreement that the individual would substantially meet the above conditions and that the individual agreed to be an independent contractor and not an employee. The agreement would have to be produced on the demand of the director or the director's agent

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.