

HB 1355-FN – AS INTRODUCED

2014 SESSION

14-2506
08/10

HOUSE BILL ***1355-FN***

AN ACT relative to unemployment compensation for self-employed individuals.

SPONSORS: Rep. St. James, Rock 13; Sen. Pierce, Dist 5

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill permits a corporation to exclude the wages of certain individuals from the wages it reports to the department of employment security.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to unemployment compensation for self-employed individuals.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Unemployment Compensation; Payment of Contributions. Amend RSA 282-
2 A:69 by inserting after paragraph I the following new paragraph:

3 I-a.(a) A corporate entity or a limited liability company that opts for corporate status for
4 federal tax purposes may exclude from the wages reportable to the department of employment
5 security and subject to taxation the wages of any individual who meets the requirements of
6 subparagraph (b).

7 (b) An individual meets the requirements of this subparagraph if 3 or more of the
8 following apply to such individual's relationship to a corporate entity or a limited liability company:

9 (1) The individual is a sole proprietor, partner, officer, or director, both in name and
10 in fact.

11 (2) The individual has an investment or is a stockholder.

12 (3) The individual formed the entity or became involved in the activity in order to
13 create profits, which for purposes of this subparagraph shall include wages, capital gains, dividends,
14 salaries, commissions, bonuses, board, rent, housing, payment in kind, insurance, disability plans,
15 retirement and similar advantages, and benefits.

16 (4) The individual controls or has the right to control the business.

17 (5) The individual has a spouse, parent, child, brother, sister, or step family member
18 of the same relationship who is either an officer, manager, director, investor, stockholder, or partner,
19 who controls or who has the express or implied right to control the business, and such family
20 member has either acceded to the decisions of the individual or delegated rights or authority to the
21 individual.

22 (6) The individual performs services not required to be done by an officer or director.

23 (c) The election of such exclusion shall be for 3 years or more and shall be made on or
24 before January 1 of the applicable year. Thereafter, the corporate entity or limited liability company
25 may rescind election of the exemption no later than January 1, for any year, but such rescission shall
26 be irrevocable for 3 calendar years.

27 2 Effective Date. This act shall take effect 60 days after its passage.

HB 1355-FN - FISCAL NOTE

AN ACT relative to unemployment compensation for self-employed individuals.

FISCAL IMPACT:

The Department of Employment Security states this bill, as introduced, will decrease state restricted revenue by \$7,681,800 in FY 2014, and by \$7,291,200 in FY 2015 and each year thereafter, and decrease state restricted expenditures by \$16,483 in FY 2014 and each year thereafter. There is no fiscal impact on county and local revenues or expenditures.

METHODOLOGY:

The Department of Employment Security states this bill allows owner-officers of businesses that elect to incorporate or elect corporate status for federal tax purposes in limited liability companies/corporations or corporations the option of not being treated as an employee of their business resulting in the income of the owners not being reportable wages and not subject to unemployment tax. The Department estimates there are 39,848 in-state employing units reporting wages in New Hampshire and further assumes 52 percent or 20,721 (39,848 * 52%) of these units are corporations or limited liability corporations. The Department also assumes 2 owner-officers per business and a 75 percent participation rate, resulting in approximately 31,000 (20,721 employing units * 2 individuals per unit * 75%) individuals that would opt out of wage reporting. The taxable wage base is \$14,000 in New Hampshire and the tax rate for FY 2014 is 1.77 percent and in FY 2015 is 1.68 percent. The estimated decrease in employment tax is \$7,681,800 (\$14,000 taxable wage base * 1.77 %= \$247.80 per individual * 31,000 individuals) in FY 2014 and \$7,291,200 (\$14,000 taxable wage base * 1.68 %= \$235.20 per individual * 31,000 individuals) in FY 2015 and each year thereafter.

The Department assumes five individuals originally determined to be disqualified from receiving benefits due to leaving self-employment will requalify for and receive benefits each year. On average, an individual receives benefits for 15.3 weeks and the average weekly benefit is \$287.28. The Department estimates a total of \$21,977 (5 individuals * 15.3 weeks * \$287.28 average weekly benefit) would be paid out to the five individuals. Because the Department assumes a 75 percent participation rate for owner-officers of corporations and LLC/corporations, it is assumed the benefits paid will decrease by 75 percent or \$16,483 (75% * \$21,977 benefits paid), decreasing the expenditures from the Unemployment Compensation Trust Fund.