

**LEGISLATIVE FISCAL OFFICE
Fiscal Note**



Fiscal Note On: **SB 244** SLS 21RS 956
 Bill Text Version: **REENGROSSED**
 Opp. Chamb. Action: **w/ HSE COMM AMD**
 Proposed Amd.:
 Sub. Bill For.: SB 92

Date: June 7, 2021 10:07 AM **Author:** LUNEAU
Dept./Agy.: Dept of Labor/Workforce Commission/ Dept of Revenue **Analyst:** Monique Appeaning
Subject: Misclassification of Employees

REVENUE DEPARTMENT RE1 SEE FISC NOTE OF RV Page 1 of 1

Provides for uniform definitions of independent contractor and employee and for penalties for the misclassification of employees. (2/3 - CA7s2.1(A)) (1/1/22)
Proposed law establishes the Fresh Start Proper Worker Classification Initiative and Voluntary Disclosure Program, the Louisiana Voluntary Disclosure Program, and the Safe Harbor Program. It also provides for Voluntary Disclosure Agreements. The Louisiana Workforce Commission, in consultation with the Louisiana Department of Revenue (LDR) shall promulgate rules and regulations necessary for the administration of proposed law. Proposed law provides for after all tax and interest due for the look-back period are paid, the delinquent penalties shall be waived, unless the tax disclosed was collected but not remitted. Where the tax was collected but not remitted, the secretary of the LDR may consider waiving payment of the whole or any part of the delinquent penalties on a case-by-case basis. Proposed law provides for specific remedies regarding look-back periods that pertain to individual income tax returns filed by any worker in the class or classes of workers identified in the application as verified by the LDR. Proposed law provides for specific remedies pertaining to interest due for tax disclosed by the applicant. Proposed law shall not apply to specific individuals, entities and industries. Effective 1/1/22.

EXPENDITURES	2021-22	2022-23	2023-24	2024-25	2025-26	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

REVENUES	2021-22	2022-23	2023-24	2024-25	2025-26	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

EXPENDITURE EXPLANATION

Proposed law will create a workload impact to the Louisiana Workforce Commission (LWC) and LDR. The proposed law creates the Fresh Start Proper Worker Classification Initiative and Voluntary Disclosure Program, the Louisiana Voluntary Disclosure Program, and the Safe Harbor Program. These programs will add duties and responsibilities. LWC reports that it believes it can handle the provisions of this measure with existing staff and budgetary resources. LDR indicates that implementation of proposed law will be absorbed by the its existing budgetary and personnel resources, but that an assessment will be made at the end of the session to assess the cumulative effect of all new legislation. It may be determined that additional resources are needed at that time.

REVENUE EXPLANATION

Proposed law may result in an indeterminable increase in penalties if violations for misclassifying employees are assessed to employers. LWC reports that the present law provides these penalties are deposited into the Labor-Penalty and Interest Account.

Present law provides that the Labor-Penalty and Interest Account is a *Special Revenue Fund* R.S. 23:1513 – Act 1114 of 1997 established this account within the employment security administration fund. All interest, fines, and penalties collected from employers and claimants are be paid into this account and shall at no time be considered to be a part of the unemployment compensation fund. All monies in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other monies in the employment security administration fund, except that monies in this account shall not be commingled with other funds, but they shall be maintained in a separate account in the books of the depository. Any balances in this account shall not lapse at any time but shall be continuously available for expenditure in the following order of priority: 1. to pay costs and fees for the collection of delinquent monies owed, 2. to administer the following labor laws: a. apprenticeship, b. minor labor laws, c. medical and other examinations, d. private employment services, e. interference with individual rights, and 3. to provide for any other special services, projects, or needs of the department as determined by the secretary of labor.

LWC reports that there is no precise method available to determine the future revenue that the change in penalties may generate. However, for this note, one might review the past data regarding those instances in which misclassification audits revealed erroneous employee assignments for which warning letters were issued over the past year. Due to COVID-19, there were no audits conducted; therefore, 2019 data is used for this note. In 2019 there were 367 instances that the agency issued warnings letters. There was a total of 3,768 employees identified as improperly classified as independent contractors. Assuming the penalty rates created by this bill were in place and imposed during this period, it would have generated a total of \$1.9 M (3,768 x \$500 = \$1,884,000). This amount is double the potential penalties that would be assessed under present law at \$250 per individual. However, the likelihood of generating that level of funding in the future is doubtful because this figure does not take into account the degree to which employers may be deterred from this practice once word gets out of the consequences for misclassifying employees. Proposed law also provides that if an employer becomes compliant within 60 days of the citation for failure to properly classify an individual, the penalty shall be waived.

Senate Dual Referral Rules
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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