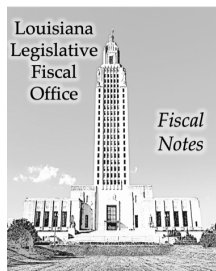


**LEGISLATIVE FISCAL OFFICE
Fiscal Note**



Fiscal Note On: **HB 151** HLS 21RS 272
 Bill Text Version: **ORIGINAL**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: April 28, 2021 8:22 AM	Author: RISER
Dept./Agy.: Department of Labor / Workforce Commission	Analyst: Monique Appeaning
Subject: Misclassification of Employees	

UNEMPLOYMENT COMP OR INCREASE SG RV See Note Page 1 of 1
 Provides for an increase in the administrative penalties assessed for the misclassification of employees

Present law provides that when it is discovered that an employer has not properly classified employees and has failed to pay contributions as requested by present law, the employer shall receive a written warning if there is evidence that the failure was not knowing or willful. Present law provides that on subsequent offenses, an additional fine may be issued between \$100 and \$1,000, or imprisonment between 30 and 90 days, or both, for each misclassified employee. Proposed law instead provides that upon an initial investigation through which it is determined that an employer has knowingly and willfully misclassified employees, in addition to any contributions, interest, and penalties otherwise due, the administrator may assess an administrative penalty of up to \$5,000 per employee. Proposed law increases penalties to \$10,000 per employee for a second offense and to \$25,000 per employee for any subsequent offenses. Proposed law provides that if an employer is subsequently found, on two or more separate occasions, to have failed to properly classify employees, that employer may also be subject to an additional fine of up to \$50,000 and imprisonment between 30-90 days per misclassified employee. Proposed law adds if any employer is subsequently found, on two or more separate occasions, to have failed to properly classify an individual as an employee, the employer shall be ineligible to receive any tax rebate from the state to which he was otherwise entitled.

EXPENDITURES	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	\$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>	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

REVENUES	2021-22	2022-23	2023-24	2024-25	2025-26	5 -YEAR TOTAL
State Gen. Fd.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
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>	\$0
Annual Total						

EXPENDITURE EXPLANATION

There is no anticipated direct material effect on governmental expenditures as a result of this measure. The Louisiana Workforce Commission (LWC) currently conducts audits and issues warning letters when individuals are misclassified.

REVENUE EXPLANATION

Proposed law may result in an indeterminable increase in revenue to LWC when employers misclassify employees as independent contractors and LWC imposes an administrative penalty as provided in proposed law. Present law provides written warnings when employers misclassify employees as independent contractors.

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 \$18.8 M (3,768 x \$5,000 = \$18,840,000). 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 deferred from this practice once word gets out of the consequences for misclassifying employees.

After the second or subsequent offense, the proposed law prohibits the employer from receiving any state tax rebates. To the extent that employers are assessed a second or subsequent offense and are prohibited from receiving any tax rebates, state tax revenues may increase by an indeterminable amount.

NOTE: The Legislative Fiscal Office assumes that all revenue generated from administrative penalties collected pursuant to this measure is deposited into the LWC Penalty and Interest Fund. The loss of state tax rebates by employers on second or subsequent offenses would provide a net positive adjustment to SGF revenues.

For purposes of this fiscal note, the LFO assumes that at least 100 employees may be found per year as being misclassified and penalties incurred against the employer.

<u>Senate</u>	<u>Dual Referral Rules</u>	<u>House</u>
<input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}		<input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
<input checked="" type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}		<input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

Alan M. Boxberger
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