

**LEGISLATIVE FISCAL OFFICE  
Fiscal Note**



Fiscal Note On: **HB 397** HLS 20RS 918  
 Bill Text Version: **ORIGINAL**  
 Opp. Chamb. Action:  
 Proposed Amd.:  
 Sub. Bill For.:

<b>Date:</b> May 5, 2020 1:12 PM	<b>Author:</b> LANDRY
<b>Dept./Agy.:</b> Workforce Commission	<b>Analyst:</b> Tanesha Morgan
<b>Subject:</b> Misclassification of employees	

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

Present law: (1) if an employer fails to properly classify employees and does not pay unemployment insurance contributions, they receive a written warning; (2) second offense up to \$250 per misclassified employee plus contributions and interest; (3) third and subsequent offense up to \$500 per misclassified employee; and (4) subsequent offense of misclassification, a penalty between \$100 - \$1,000 per misclassified employee or imprisonment between 30 - 90 days or both.

Proposed law: (1) removes the written warning and provides a first offense misclassification penalty up to \$5,000 per employee plus contributions and interest; (2) second offense up to \$10,000 per misclassified employee; (3) subsequent offense up to \$25,000 per misclassified employee; and (4) two or more offenses up to \$50,000 additional fine imprisonment between 30 - 90 days or both. Proposed law provides that in addition to any penalties assessed for a second or subsequent offense, an employer is ineligible to receive any state tax rebates to which they are otherwise entitled.

EXPENDITURES	2020-21	2021-22	2022-23	2023-24	2024-25	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	\$0	\$0	\$0	\$0	\$0	\$0
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

  

REVENUES	2020-21	2021-22	2022-23	2023-24	2024-25	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	\$0	\$0	\$0	\$0	\$0	\$0
<b>Annual Total</b>						

**EXPENDITURE EXPLANATION**

There is no anticipated direct material effect on expenditures in LA Workforce Commission (LWC) or Department of Revenue as a result of this measure. Presently, on an annual basis, the Office of Unemployment Insurance Administration within LWC selects approximately 1,000 employers to audit their employee wage records. This measure does not impact the number of annual audits performed by LWC or the audit process. Presumably, some coordination between LWC and Revenue will be required to implement the disallowance of tax rebates. Both department will use existing resources and staff.

**REVENUE EXPLANATION**

The proposed legislation is anticipated to increase administrative penalties assessed to employers that misclassify employees by a substantial, yet indeterminable amount. The bill removes the provision for a written warning on first offenses and instead requires a \$5,000 penalty. In FY 19, LWC issued 367 warning letters to employers that misclassified 3,768 employees. Based on FY 19 data, the proposed legislation would have generated \$18.84 M in penalties (3,768 employees x \$5,000). However, the likelihood of the bill generating this level of funding annually is doubtful because as employers become aware of these increased penalties and become compliant, it is anticipated that the number of first time offenders will decrease. It is speculative as to the number of employers that will be assessed a first, second or third offense in future fiscal years as the penalties under this measure are anticipated to increase compliance.

After the second or subsequent offense, the proposed legislation 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 LFO assumes that all revenue generated from administrative penalties collected pursuant to this measure is deposited into the LWC Penalty and Interest statutory dedication fund.

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}

*Evan Brasseaux*  


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