



**LEGISLATIVE FISCAL OFFICE  
Fiscal Note**

Fiscal Note On: **SB 244** SLS 21RS 956  
 Bill Text Version: **ENGROSSED**  
 Opp. Chamb. Action:  
 Proposed Amd.:  
 Sub. Bill For.:

**Date:** May 3, 2021 2:55 PM **Author:** LUNEAU  
**Dept./Agy.:** Dept of Labor/Workforce Commission/ Dept of Revenue **Analyst:** Monique Appeaning  
**Subject:** Misclassification of Employees

REVENUE DEPARTMENT EG SEE FISC NOTE OF RV See Note 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 amends and reenacts specific parts of the law pertaining to the misclassification of employees as independent contractors. Administrative penalty changes include the following: from \$250 to \$500 for the first violation for each individual who the employer misclassified. However, it is waived if the employer properly classifies the employee and pays any tax due within 60 days of the citation. For a second violation, the maximum is \$1,000 for each individual misclassified. Subsequent misclassifications, the administrative penalty increases to \$2,500 for each individual misclassified. Proposed law provides that the administrative penalties assessed and collected pursuant to the provisions of the proposed law shall be deposited into the Unemployment Trust Fund. Proposed law provides that "independent contractor" means the same as provided in R.S. 23:1772. Proposed law establishes a "Fresh Start Proper Worker Classification Initiative and Voluntary Disclosure Program" that provides for criteria for the classification of an independent contractor, provides that the program is optional, and provides taxpayers an opportunity to voluntarily reclassify their workers as employees for future tax periods, provides for voluntary disclosure agreements; withholding tax, unemployment taxes, safe harbor, and reporting to the Department of Revenue by service recipients. Effective on January 1, 2022.

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

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

**EXPENDITURE EXPLANATION**

Proposed law will create a workload impact to the Louisiana Workforce Commission (LWC). LWC reports that the proposed law creates the Fresh Start Program, which will add duties and responsibilities. However, the agency reports that it believes it can handle the provisions of this measure with existing staff and budgetary resources.

Feedback from the Department of Revenue (LDR) was requested. This fiscal note will be updated as additional information becomes available.

**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. Proposed law requires penalties collected to be deposited in the Unemployment Insurance Trust Fund. Therefore, proposed law will create an indeterminable revenue loss to the agency that will now be diverted to the Unemployment Insurance Trust Fund; however, these funds will provide a revenue stream to address the current deficit in the fund. The Unemployment Insurance Trust Fund is off-budget and held at the federal level.

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 to 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.

Feedback from the Department of Revenue (LDR) was requested. This fiscal note will be updated as additional information is available.

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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