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## DIGEST

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HB 705 Engrossed

2021 Regular Session

Riser

**Abstract:** Provides for the misclassification of employees and a criteria for classifying employees.

Present law provides that if, after an investigation, the administrator determines that an employer, or any officer, agent, superintendent, foreman, or employee of the employer, failed to properly classify an individual as an employee and failed to pay contributions and that failure was not knowingly or willfully, the employer will be issued a written warning. Present law further provides that the written warning shall constitute as evidence that the employer has been cited for a first offense for misclassification.

Proposed law repeals present law.

Present law provides that the administrator may assess an administrative penalty of not more than \$250 per each employer who has misclassified an employee and failed to pay contributions.

Proposed law changes the administrative penalty amount from \$250 to \$500.

Proposed law provides that after the first offense, the administrator shall assess an administrative penalty of \$1,000 per each individual who is misclassified.

Present law provides that an employer who fails to properly classify an individual as an employee and pay contributions, shall be subject to an administrative penalty of not more than \$500.

Proposed law changes the administrative penalty amount from \$500 to \$2,500.

Present law provides that after an employer has been issued a written warning and is subsequently found on two or more separate occasions to have still misclassified an employee, the employer may also be subject to an additional fine of not less than \$100 and nor more than \$1,000, or be imprisoned for not less than 30 days nor more than 90 days, or both.

Proposed law repeals present law.

Proposed law provides that all administrative penalties assessed pursuant to proposed law shall be deposited into the state's unemployment trust fund.

Proposed law provides that for the purposes of proposed law, an independent contractor means any person or organization, including a sole proprietor, partnership, limited liability company,

corporation, or other entity that undertakes orally or in writing, to perform services for or in connection with another party in a manner consistent with the requirements of proposed law.

Proposed law provides that if an individual or entity meets at least seven of twelve criteria listed in proposed law, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work.

Proposed law provides that obtainment of an independent contractor certification from the state is optional and is not required to establish independent contractor status. Proposed law further provides that any contracting party or independent contractor may rely on the provisions of proposed law to establish an employment or independent contractor relationship.

Proposed law provides that proposed law shall not apply to any motor carrier who pursuant to a contract with an owner operator as defined in present law undertakes the performance of services as a motor carrier.

(Amends R.S. 23:1711(G)(1); Adds R.S. 23:1711.1)