

LEGISLATIVE FISCAL OFFICE
Fiscal Note



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

Date: May 19, 2021 6:34 PM **Author:** LUNEAU
Dept./Agy.: Dept of Labor/Workforce Commission/ Dept of Revenue **Analyst:** Monique Appeaning
Subject: Misclassification of Employees

REVENUE DEPARTMENT RE SEE FISC NOTE OF RV See Note Page 1 of 2

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. 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.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
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 the Louisiana Department of Revenue (LDR). 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. LDR reports that additional personnel will be required to administer the two programs proposed in this legislation. LDR reports that one Revenue Tax

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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 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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CONTINUED EXPLANATION from page one:

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Specialist (\$70,729 salary and related benefits) is needed in the first fiscal year to administer the Fresh Start Proper Worker Classification Initiative. LDR reports one Revenue Tax Auditor Specialist is required in the ensuing fiscal years to administer the Voluntary Disclosure Program. Computer system development, modification, and testing at an estimated cost of \$51,360 would be required for the return reporting to LDR by service recipients who issued 1099-NEC's to the IRS. The bill takes effect 1/1/2022, so it would apply to the return required to be filed on or before 2/28/2022. The total reported needed in FY 22 is \$122,089, in FY 23 it is \$190,983, FY 24 it is \$194,802, FY 25 it is \$198,698 and FY 26 it is \$202,672. LDR indicates that implementation of proposed law will be absorbed by the department's 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.

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