

## HOUSE SUMMARY OF SENATE AMENDMENTS

HB 705

2021 Regular Session

Riser

UNEMPLOYMENT COMP: Provides relative to the misclassification of employees and a criteria for the classification of employees

**Synopsis of Senate Amendments**

1. Provides that the penalty shall be waived for the first offense, if the employer becomes compliant within sixty days of the citation.
2. Provides that one-half of any administrative penalties assessed pursuant to present law shall be deposited into the state's unemployment trust fund.
3. Deletes the definition of "independent contractor".
4. Provides that there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work, if an individual or entity, which controls the performance, methods, or processes used to perform services, meets specified criteria.
5. Reduces the criteria an independent contractor must meet in order to have a rebuttable presumption from seven to six.
6. Deletes proposed law that provides that the contracting party does not direct or oversee the performance, methods, or processes of the individual or entity used to perform services as a single criterion for an independent contractor relationship.
7. Deletes proposed law that provides that obtainment of an independent contractor certification from the state is optional and is not required to establish independent contractor status.
8. Provides that proposed law shall not apply to any service excluded from the term "employment" as provided in present law.
9. Provides that proposed law shall not apply to any service performed in the employ of a state, any political subdivision of the state, or of an Indian tribe if the service is excluded from employment as defined in the Federal Unemployment Tax Act.
10. Provides that proposed law shall not apply to any service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from employment as defined in the Federal Unemployment Tax Act.
11. Provides that proposed law shall be known and may be cited as "The Ernest C. Stephens Act".
12. Provides that proposed law shall not apply to any person or organization licensed by the Dept. of Insurance, any securities broker-dealer, or any investment adviser or their agents and representatives who are registered with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the state of Louisiana.
13. Makes technical changes.

### **Digest of Bill as Finally Passed by Senate**

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, but waives this penalty if the employer becomes compliant within 60 days of the citation for the first offense.

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 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 one-half of any administrative penalty assessed pursuant to proposed law shall be deposited into the state's unemployment trust fund.

Proposed law provides that if an individual or entity meets at least six of 11 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, if an individual or entity controls the performance, methods, or processes and meets those certain criteria.

Proposed law 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, any service excluded from the term "employment" as provided in present law, and any service performed for a nonprofit organization that is exempt from taxation under federal law.

Proposed law provides that proposed law shall not apply to any service excluded from the term employment as provided in present law.

Proposed law provides that proposed law shall not apply to any service performed in the employ of a state, any political subdivision of the state, or of an Indian tribe if the service is

excluded from employment as defined in the Federal Unemployment Tax Act.

Proposed law provides that proposed law shall not apply to any service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from employment as defined in the Federal Unemployment Tax Act.

Proposed law provides that the provisions of proposed law shall not apply to any person or organization licensed by the Dept. of Insurance, any securities broker-dealer, or any investment adviser or their agents and representatives who are registered with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the state.

Proposed law provides that proposed law shall be known and may be cited as "The Ernest C. Stephens Act".

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