

2022 Regular Session

HOUSE BILL NO. 1067 (Substitute for House Bill No. 241 by Representative Riser)

BY REPRESENTATIVE RISER

1 AN ACT

2 To amend and reenact the heading of Part XIII of Chapter 11 of Title 23 of the Louisiana  
3 Revised Statutes of 1950, R.S. 23:1771, 1773, and 1775(B) and (C)(2), and R.S.  
4 47:1508(B)(28), to enact R.S. 23:1775(F) and R.S. 47:1576.3 and 1576.4, and to  
5 repeal R.S. 23:1772, 1774, and 1776, relative to the Fresh Start Proper Worker  
6 Classification Initiative and the Voluntary Disclosure Program; to provide for  
7 definitions; to provide for eligibility requirements for participation in the Voluntary  
8 Disclosure Program; to provide for the payment of unemployment taxes and  
9 penalties; to provide for withholding taxes, interest, and penalties; to provide for  
10 compliance with federal laws and regulations; to provide for a safe harbor; to provide  
11 for unemployment interest; to provide for a public records exception; to require the  
12 Department of Revenue to promulgate rules and regulations; and to provide for  
13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. The heading of Part XIII of Chapter 11 of Title 23 of the Louisiana  
16 Revised Statutes of 1950, R.S. 23:1771, 1773, and 1775(B) and (C)(2) are hereby amended  
17 and reenacted and R.S. 23:1775(F) is hereby enacted to read as follows:

18 PART XIII. ~~FRESH START PROPER WORKER CLASSIFICATION INITIATIVE~~  
19 ~~AND~~ VOLUNTARY DISCLOSURE PROGRAM

20 §1771. Definitions

21 ~~A.~~ For the purposes of this Part, the following terms have the meanings  
22 ascribed to them:

23 (1) "Applicant" means any association, corporation, estate, firm, individual,  
24 joint venture, limited liability company, partnership, receiver, syndicate, trust, or any

1 other entity, combination, or group that submits or arranges through a representative  
 2 for the submission of an application to request a voluntary disclosure agreement for  
 3 a tax administered by the ~~department~~ commission. ~~If the application is submitted~~  
 4 ~~through a representative, anonymity of the applicant can be maintained until the~~  
 5 ~~voluntary disclosure agreement is executed by the taxpayer and the secretary of the~~  
 6 ~~Louisiana Workforce Commission.~~

7 (2) "Application" means a completed application to request a voluntary  
 8 disclosure agreement and all supplemental information including but not limited to  
 9 cover letters, schedules, reports, and any other documents that provide evidence of  
 10 the applicant's qualification for a voluntary disclosure agreement. Supplemental  
 11 information requested by the ~~Department of Revenue and Louisiana Workforce~~  
 12 ~~Commission~~ commission and timely provided by the applicant shall be considered  
 13 part of the application.

14 (3) "Application date" means the date a fully completed application  
 15 requesting a voluntary disclosure agreement is received by the ~~department~~  
 16 commission. Supplemental information requested by the department and timely  
 17 provided by the applicant shall not extend or delay the application date.

18 (4) ~~"Delinquent penalty" means any specific penalty imposed as a result of~~  
 19 ~~the failure of the taxpayer to timely make any required return or payment~~  
 20 "Commission" means the Louisiana Workforce Commission.

21 (5) "Look-back period" means a period for which a qualified applicant  
 22 agrees to disclose and pay the tax and ~~interest~~ other amounts due. ~~The look-back~~  
 23 ~~period shall include the current calendar year up to the date of registration with the~~  
 24 ~~Department of Revenue and Louisiana Workforce Commission and the one~~  
 25 ~~immediately preceding calendar year. For discontinued, acquired, or merged entities,~~  
 26 ~~the look-back period shall include undisclosed liabilities in the last calendar year in~~  
 27 ~~which the qualified applicant had nexus within this state and the one immediately~~  
 28 ~~preceding calendar year~~ In accordance with the Federal Unemployment Tax Act  
 29 (FUTA), 26 U.S.C. 3303(a), the look-back period shall include the entire three-year  
 30 experience rating period for unemployment taxes for the commission.

1                   (6) "Penalty" means any specific penalty imposed as a result of the failure  
 2                   of the taxpayer to correctly classify a worker or class of workers, if not otherwise  
 3                   specifically excluded.

4                   (7) "Secretary" means the secretary of the Louisiana Workforce  
 5                   Commission.

6                   §1773. Louisiana Voluntary Disclosure Program

7                   A.(1) The Louisiana Voluntary Disclosure Program is established as a  
 8                   process of reporting undisclosed liabilities for ~~withholding taxes administered by the~~  
 9                   ~~Department of Revenue and~~ unemployment taxes administered by the Louisiana  
 10                  Workforce Commission that would have been due for workers who were not  
 11                  classified as employees. The Voluntary Disclosure Program authorizes taxpayers to  
 12                  ~~anonymously~~ confidentially enter into agreements and voluntarily pay  
 13                  unemployment taxes and penalties with no ~~penalty~~ interest.

14                  (2) In order to be admitted to the program, an employer shall obtain and  
 15                  produce a certificate proving he has obtained workers' compensation coverage for  
 16                  his employees.

17                  (3) The following employers shall not be eligible to participate in the  
 18                  program:

19                  (a) Employers who are currently under audit concerning the classification  
 20                  of the classes of workers by the Internal Revenue Service, the United States  
 21                  Department of Labor, or a state government entity.

22                  (b) Employers who are contesting in court or in an administrative proceeding  
 23                  the classification of the class or classes of workers from a previous audit by the  
 24                  Internal Revenue Service, the United States Department of Labor, the Louisiana  
 25                  Department of Revenue, or the Louisiana Workforce Commission.

26                  (4) No worker who performs services that are statutorily excluded from the  
 27                  definition of covered employment provided for in R.S. 23:1472 shall be eligible for  
 28                  reclassification as an employee.

29                  (5) The provisions of this Section shall not apply to either of the following:





1           (1) "Applicant" means any association, corporation, estate, firm, individual,  
2           joint venture, limited liability company, partnership, receiver, syndicate, trust, or any  
3           other entity, combination, or group that submits or arranges through a representative  
4           for the submission of an application to request relief under the Fresh Start Proper  
5           Worker Classification Initiative for a tax administered by the department.

6           (2) "Application" means a completed application to request relief under the  
7           Fresh Start Proper Worker Classification Initiative and all supplemental information  
8           including but not limited to cover letters, schedules, reports, and any other  
9           documents that provide evidence of the applicant's qualification for the Fresh Start  
10           Proper Worker Classification Initiative. Supplemental information requested by the  
11           department and timely provided by the applicant shall be considered part of the  
12           application.

13           (3) "Application date" means the date a fully completed application  
14           requesting relief under the Fresh Start Proper Worker Classification Initiative is  
15           received by the department. Supplemental information requested by the department  
16           and timely provided by the applicant shall not extend or delay the application date.

17           (4) "Class of workers" means a group of workers who perform the same or  
18           similar services.

19           (5) "Commission" means the Louisiana Workforce Commission.

20           (6) "Department" means the Department of Revenue.

21           (7) "Secretary" means the secretary of the Department of Revenue.

22           B. The Fresh Start Proper Worker Classification Initiative is optional and  
23           provides a taxpayer with an opportunity to voluntarily reclassify his worker as an  
24           employee for a future tax period. To be eligible, a taxpayer shall meet all of the  
25           following requirements:

26           (1) Apply to the Fresh Start Proper Worker Classification Initiative between  
27           January 1, 2023, and December 31, 2023.

28           (2) Produce a certificate of proof of workers' compensation coverage for the  
29           employee.

30           (3) Enter into a closing agreement with the department.

1           C. The Fresh Start Proper Worker Classification Initiative applies to  
2           taxpayers that are currently treating their workers as independent contractors or other  
3           nonemployees and want to prospectively treat the workers as employees. To be  
4           eligible, a taxpayer shall have consistently treated the workers for the previous three  
5           years as nonemployees, and shall have filed any required Form 1099-MISC, Form  
6           1099-NEC, or equivalent form with the Internal Revenue Service with respect to  
7           those workers, consistent with the nonemployee treatment.

8           D.(1) An eligible taxpayer that participates in the Fresh Start Proper Worker  
9           Classification Initiative agrees to prospectively treat the class or classes of workers  
10           identified in the application as employees for future tax periods and is not liable for  
11           any withholding tax or related interest and penalties with respect to any amounts paid  
12           to any workers before the date on which the taxpayer is accepted for participation in  
13           the Fresh Start Proper Worker Classification Initiative.

14           (2) An eligible taxpayer shall not be entitled to any relief from unemployment  
15           tax, interest, or penalties pursuant to this Section, but may seek relief in accordance  
16           with R.S. 23:1775.

17           (3) An eligible taxpayer may request that the commission develop with the  
18           taxpayer a reasonable payment schedule for unemployment taxes owed for the look-  
19           back period as defined in R.S. 23:1771. However, payment of all outstanding  
20           unemployment liabilities shall not be required prior to acceptance of the taxpayer's  
21           application.

22           E.(1) An eligible taxpayer that wishes to participate in the Fresh Start Proper  
23           Worker Classification Initiative shall submit an application for participation in the  
24           program to the department on a form prescribed by the secretary. The department  
25           shall contact the taxpayer or authorized representative to complete the application  
26           process once it has reviewed the application and verified the taxpayer's eligibility.

27           (2) An accepted application constitutes a joint closing agreement between  
28           the taxpayer and the department.

29           (3)(a) The closing agreement shall constitute confirmation by the taxpayer  
30           to treat the class or classes of workers identified in the application as employees and

1 to comply with any and all reporting and payment obligations related to withholding  
2 tax, unemployment tax, and workers' compensation coverage for the period  
3 subsequent to the effective date of the agreement.

4 (b) Notwithstanding any provision of law to the contrary, any reclassification  
5 of a class or classes of workers performing the following services shall be limited to  
6 withholding tax and shall not be eligible for reclassification as an employee for  
7 purposes of unemployment tax:

8 (i) Any services that are statutorily excluded from the definition of  
9 employment provided for in R.S. 23:1472.

10 (ii) Any service performed in the employ of a state, and political subdivision  
11 of the state, or of an Indian tribe, or any instrumentality of the state, any political  
12 subdivision of the state, or any Indian tribe, which is wholly owned by one or more  
13 states, political subdivisions, or Indian tribes, but only if the service is excluded from  
14 employment as defined in the Federal Unemployment Tax Act.

15 (iii) Any service performed by an individual in the employ of a religious,  
16 charitable, educational, or other organization, but only if the service is excluded from  
17 employment as defined in the Federal Unemployment Tax Act.

18 (4) The closing agreement shall become effective on the date that the  
19 taxpayer receives notice from the department that the taxpayer's application is  
20 accepted.

21 (5) Failure to comply with the terms of the closing agreement and this  
22 Section may nullify the acceptance of the taxpayer's application. If an acceptance  
23 is nullified, the taxpayer shall become liable for withholding tax, interest, and  
24 penalties determined to be due for prior periods.

25 (6) The secretary may disclose any information provided in an application  
26 or in support of an application to the commission in order to coordinate the review  
27 and consideration of the application. Any information furnished shall be considered  
28 confidential and privileged and held by the commission as provided for in R.S.  
29 47:1508.



1           F. The following employers shall not be eligible to participate in the  
 2           program:

3           (1)(a) Employers that are currently under audit concerning the classification  
 4           of the classes of workers by the Internal Revenue Service, the United States  
 5           Department of Labor, or by a state government entity.

6           (b) Employers who are contesting in court the classification of the class or  
 7           classes of workers from a previous audit by the Internal Revenue Service, the United  
 8           States Department of Labor, the department, or the commission.

9           (c) Employers who have withheld state income taxes from the amounts paid  
 10          to any worker and who have not remitted the tax to the department.

11          (2) For the purposes of Subparagraphs (a) and (b) of this Paragraph, a  
 12          taxpayer that is a member of an affiliated group within the meaning of Section  
 13          1504(a) of the Internal Revenue Code shall be ineligible if any member of the  
 14          affiliated group is under an employment, withholding, or unemployment tax audit.

15          G. A finding that a taxpayer failed to provide information or documentation  
 16          to reveal a fact material to an eligibility determination or made a material  
 17          misrepresentation as to any eligibility requirement shall immediately nullify the  
 18          acceptance of the taxpayer's application.

19          H. The department shall have the authority to promulgate rules and  
 20          regulations for the administration of the Fresh Start Proper Worker Classification  
 21          Initiative. Additionally, the department shall promulgate rules and regulations no  
 22          later than July 1, 2023, establishing a voluntary disclosure program for reporting  
 23          undisclosed liabilities for withholding taxes that would have been due for workers  
 24          who were not classified as employees.

25          §1576.4. Safe harbor

26          Any putative employer meeting the requirements provided for in this Section  
 27          shall not owe withholding tax, interest, or penalties otherwise due for the workers to  
 28          whom these requirements apply:

29          (1) Reporting consistency. The putative employer timely filed all required  
 30          federal tax and information returns for independent contractors who were paid six

1 hundred dollars or more, such as Form 1099-MISC or Form 1099-NEC. Relief is not  
2 available for any worker for whom the employer did not file the required information  
3 return.

4 (2) Substantive consistency. The putative employer and any predecessor  
5 always treated the worker as an independent contractor; however, if any similar  
6 worker was treated as an employee, relief is not available.

7 (3)(a) Reasonable basis. The putative employer had a reasonable basis for  
8 not treating the worker as an employee including any of the following:

9 (i) The putative employer relied on a court case or Internal Revenue Service  
10 ruling.

11 (ii) The putative employer was previously audited and the Internal Revenue  
12 Service considered employment taxes but did not reclassify the workers.

13 (iii) Independent contractor treatment is common in the putative employer's  
14 industry for workers providing similar services.

15 (iv) The putative employer and any predecessor always treated the worker  
16 as an independent contractor.

17 (v) The putative employer relied on legal advice or advice of an accountant.

18 (b) Notwithstanding any contrary provision of this Paragraph, if any similar  
19 worker was treated as an employee, relief is not available.

20 Section 3. R.S. 23:1772, 1774, and 1776 are hereby repealed in their entirety.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_