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## DIGEST

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Patricia Smith

HB No. 1387

**Abstract:** Enacts the Independent Contractor Control Act. Provides for the duty to properly classify employees and establishes penalties for failure to properly classify such employees.

Proposed law (R.S. 23:931) creates the Independent Contractor Control Act. Provides that improperly classifying employees deprives workers of benefits and puts businesses that do comply with the law at a competitive disadvantage.

Proposed law (R.S. 23:932) defines an "employer" as an individual or legal business entity or successor thereof who is engaged in business in Louisiana and includes contractors and subcontractors.

Proposed law (R.S. 23:932(B)(1)) provides all services performed by an individual for remuneration paid by an employer shall be deemed employment for the purpose of the state's unemployment compensation, workers' compensation, and tax laws unless each of the following applies:

- (1) The individual is free from control or direction over the performance of that service.
- (2) The service is outside of the usual course of business for which the service is performed or the service is performed outside of all the places of business of the employer for which the service is performed.
- (3) The individual is engaged in an independently established trade, occupation, profession, or business.

Proposed law (R.S. 23:932(B)(2)) provides all services performed by an individual for remuneration paid by an employer shall be deemed employment for the purpose of workers' compensation, unless it is shown that the individual is an independent contractor.

Proposed law (R.S. 23:932(B)(3)) provides that failure to withhold taxes or pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination of employment.

Proposed law (R.S. 23:932(B)(4)) provides if a determination is made that an employer/employee relationship does not exist, that finding will not supersede a determination of an

employer/employee relationship under other provisions of law for the purposes of income tax withholding.

Proposed law (R.S. 23:933) provides that an employer who fails to properly classify an individual as an employee or fails to pay wages, benefits, taxes, or other contributions required by law shall be subject to criminal penalties.

Proposed law provides an employer in violation of proposed law, when the value of benefits claimed or payments obtained have a value of \$10,000 or more, shall be imprisoned for not more than 10 years or fined not more than \$10,000, or both. For a subsequent offense, an employer shall be fined not more than \$30,000 or imprisoned for not more than two years, or both.

Proposed law provides an employer in violation of proposed law, when the value of benefits claimed or payments obtained have a value of \$2,500 but less than \$10,000, shall be imprisoned for not more than five years or fined not more than \$5,000, or both. For a subsequent offense, an employer shall be fined not more than \$15,000 or imprisoned for not more than five years, or both.

Proposed law provides an employer in violation of proposed law, when the value of benefits claimed or payments obtained have a value of less than \$2,500 shall be imprisoned for not more than six months or fined not more than \$500, or both. For a subsequent offense, an employer shall be fined not more than \$5,000 or imprisoned for not more than one year, or both.

Proposed law provides in addition to criminal penalties, the employer shall provide restitution to all misclassified employees in the amount of underpayment in connection with the misclassification.

Proposed law authorizes the secretary to refer violations of proposed law to the attorney general for investigation and prosecution. Provides that all monies collected as a penalty for failure to properly classify shall be equally applied toward enforcement and administrative costs of the Dept. of Labor and the office of the attorney general.

Proposed law (R.S. 23:933(E)) provides if the secretary finds that the employer has knowingly failed to properly classify an individual and failed to pay required wages, benefits, taxes, and other contributions, the secretary shall place such employer on a list of employers who are prohibited from contracting with a public body. Upon request, requires the secretary to mail that list to any public body. Authorizes the secretary to bring an action to invalidate the contract.

Proposed law (R.S. 23:933(F)(1)) provides in addition to criminal penalties, the court, upon motion of the attorney general, shall issue an order of suspension of any and all professional licenses. The order shall contain the name, address, and federal employer identification number of every business owned by the employer that was found to be in violation. The order shall be served upon the appropriate board within 30 days of receipt. The board shall suspend any and all licenses of the businesses owned by the employer found in violation. The order shall remain in effect until the court issues an order to reinstate. A subsequent order shall be issued upon a

motion and affidavit by the employer stating all employees have been properly classified, accompanied by a release signed by the secretary indicating that the employer has paid all penalties.

Proposed law (R.S. 23:933(F)(2)) provides that if an employer subsequently violates the provisions of proposed law within five years from the date of suspension of any license, the court shall issue a cease and desist order on all businesses owned by the employer within 72 hours of the signing of the order. The order shall contain the name, address, and federal employer identification number of every business owned by the employer that was found to be in violation. The order shall be served upon every work site of the employer. Any violation of the cease and desist order shall be punishable as contempt of court on the part of the employer. The order of suspension shall remain in effect until the court issues a subsequent order releasing the employer for the cease and desist. A subsequent order shall be issued upon a motion and affidavit by the employer stating all employees have been properly classified, accompanied by a release signed by the secretary indicating that the employer has paid all penalties.

Proposed law (R.S. 23:933(G)) prohibits an employer from requiring or requesting that any individual enter into an agreement or sign a document which results in the misclassification of an employee. Provides that an employee not properly classified may bring a civil action against the employer for failing to properly classify the employee. Provides for the assessment of attorney fees and other costs of the action in addition to any damages.

Proposed law (R.S. 23:933(H)) provides a person may not incorporate or form, or assist in forming, an entity for the purpose of facilitating or evading detection of a violation. A person may not conspire with, aid, assist, or advise an employer in a manner that results in a violation.

Proposed law (R.S. 23:934) provides that an employer, for at least one year, shall keep records of the following: name, address, and social security number of each independent contractor; the amount paid to each independent contractor; and the other information that the secretary requires.

Proposed law provides that failure to comply may result in a fine or imprisonment. Provides that the department may seek enforcement of any order, assessment, or subpoena by making a referral to the attorney general.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 23:931-934)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Specifies that the term "employer" does not apply to services performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products in the home or a place other than in a permanent retail establishment.
2. Deletes the definition of "public works" which was defined as construction, reconstruction, demolition, alteration, custom fabrication, repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.
3. Deletes language that specifies that only those services performed in the making of improvements to real property constitute employment.
4. Makes technical changes.