

2020 Second Extraordinary Session

SENATE BILL NO. 57

BY SENATORS LUNEAU, ALLAIN AND CARTER

REVENUE DEPARTMENT. Establishes reporting requirements for businesses and governmental entities using service providers. (2/3 - CA7s2.1(A)) (1/1/21) (Item #23)

1 AN ACT

2 To amend and reenact R.S. 47:1508(B)(28) and to enact R.S. 47:114.1, relative to reporting  
3 requirements to the Department of Revenue; to require businesses and governmental  
4 entities that pay certain service providers to file reports; to provide for the format of  
5 the reports; to provide for an exception to the confidentiality of the records of the  
6 secretary of the Department of Revenue; to provide for definitions; to provide for  
7 exceptions; to provide for penalties; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:1508(B)(28) is hereby amended and reenacted and R.S. 47:114.1  
10 is hereby enacted to read as follows:

11 **§114.1. Louisiana Act of Government Against Misclassified Employees**

12 **A. This Section shall be known and may be cited as the "Louisiana Act**  
13 **of Government Against Misclassified Employees" or "LA A GAME".**

14 **B. The legislature hereby finds that the misclassification of employees is**  
15 **a serious problem in Louisiana that drains revenues otherwise due to state and**  
16 **local government and is contrary to the public policy of this state.**  
17 **Misclassification of employees results in unfair competitive advantages and**

1 harms Louisiana businesses that properly comply with applicable laws. It is the  
2 intent and purpose of this Section to encourage the secretary of the Louisiana  
3 Department of Revenue and the secretary of the Louisiana Workforce  
4 Commission to work collaboratively to detect, investigate, and extinguish cases  
5 of misclassification of employees in this state utilizing the reports required by  
6 this Section. Further, the legislature directs that the reporting requirements  
7 shall be developed by the secretary as to cause the least amount of  
8 administrative or compliance burden feasible to businesses and the state.

9 C. For purposes of this Section:

10 (1) "LA A GAME Annual Report" means a report prescribed by the  
11 secretary and filed annually by a service recipient that includes the following  
12 information:

13 (a) The service recipient's name, business name, and address.

14 (b) The service recipient's federal employer identification number, social  
15 security number, Louisiana Department of Revenue account number, or other  
16 identifying number as required by the secretary.

17 (c) The service provider's full name, address, social security number or  
18 federal employer identification number, and the total amount paid to the service  
19 provider during the calendar year.

20 (2) "Secretary" means the secretary of the Louisiana Department of  
21 Revenue.

22 (3) "Service recipient" means any individual, person, corporation,  
23 association, or partnership, or agent thereof, doing business in this state,  
24 deriving trade or business income from sources within this state, or in any  
25 manner is engaged in the course of a trade or business subject to the laws of this  
26 state that pays, in the course of its trade or business, remuneration to a service  
27 provider for services provided in this state. "Service recipient" includes any  
28 agency or political subdivision of the state.

29 (4) "Service provider" means a person who is not an employee of the

1 service recipient who receives remuneration for services performed for the  
2 service recipient in Louisiana.

3 D. Beginning January 1, 2022, any service recipient who makes or is  
4 required to make a return to the Internal Revenue Service, in accordance with  
5 Section 6041A(a) of the Internal Revenue Code, relating to payments made to  
6 a service provider as remuneration for services provided in this state, shall file  
7 the LA A GAME Annual Report with the secretary as provided in this Section.

8 E.(1) The LA A GAME Annual Report required pursuant to this Section  
9 shall be filed with the secretary on or before the 28th day of February of each  
10 year for the preceding calendar year. The first LA A GAME Annual Report  
11 shall be filed on or before February 28, 2022, for remunerations made during  
12 calendar year 2021.

13 (2) Upon receipt of a written request from a service recipient in the  
14 manner prescribed by the secretary, the secretary may grant a reasonable  
15 extension of time, not exceeding thirty days, for filing the annual report.

16 (3) The secretary may waive the annual reporting requirement upon a  
17 showing by the service recipient that the requirement creates an undue  
18 hardship. A request for waiver shall be submitted to the secretary in the  
19 manner prescribed by the secretary.

20 F.(1) A penalty shall be imposed for the delinquent submission of, or  
21 failure to submit, the LA A GAME Annual Report in the form prescribed by  
22 the secretary.

23 (2) For each failure to fully comply with LA A GAME Annual Report  
24 filing requirements, the secretary may assess a penalty of one hundred dollars  
25 for each service provider for whom the required information is not reported  
26 timely or is incomplete. The total penalty imposed pursuant to this Subsection  
27 shall not exceed ten thousand dollars per calendar year.

28 (3) If the failure to timely submit a complete and accurate LA A GAME  
29 Annual Report is attributable, not to the negligence of the service recipient, but

1 to other causes set forth in written form and considered reasonable by the  
2 secretary, the secretary may waive all or any part of the specific penalty  
3 provided for the failure.

4 G.(1) In consultation with service recipients and their representatives,  
5 the secretary shall prescribe the forms and format to be used for compliance  
6 with the provisions of this Section. The secretary may also prescribe the types  
7 of media and record layout to be used in the submission of the LA A GAME  
8 Annual Report consistent with Internal Revenue Service Form 1099-MISC,  
9 Form 1099-NEC, or successor forms' filing requirements.

10 (2) The secretary may promulgate rules and regulations to prescribe any  
11 alternative technological, mathematical, or data-driven methods for filing,  
12 signing, and submitting any report, statement, or other document required  
13 pursuant to this Section.

14 (3) The secretary shall design and provide for the electronic filing of LA  
15 A GAME Annual Reports at no charge for use by the service recipients. The  
16 secretary may require electronic filing of LA A GAME Annual Reports by rule  
17 and shall provide for hardship exceptions.

18 \* \* \*

19 §1508. Confidentiality of tax records

20 \* \* \*

21 B. Nothing herein contained shall be construed to prevent:

22 \* \* \*

23 (28) The sharing or furnishing, in the discretion of the secretary, of LA A  
24 GAME Annual Reports required by R.S. 47:114.1 or other information to the  
25 Louisiana Workforce Commission for the purposes of determining, investigating, or  
26 prosecuting fraud related to all areas administered by the Louisiana Workforce  
27 Commission. Any information shared or furnished shall be considered and held  
28 confidential and privileged by the Louisiana Workforce Commission to the same  
29 extent heretofore provided.

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Section 2. This Act shall become effective on January 1, 2021.

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The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Curry J. Lann.

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## DIGEST

SB 57 Engrossed

2020 Second Extraordinary Session

Luneau

Proposed law creates the "Louisiana Act of Government Against Misclassified Employees" or "LA A GAME" and provides for annual reporting requirements.

Proposed law defines the following terms:

- (1) "LA A GAME Annual Report" means a report prescribed by the secretary and filed annually by a service recipient that includes the following information:
  - (a) The service recipient's name, business name, and address.
  - (b) The service recipient's federal employer identification number, social security number, La. Dept. of Revenue account number, or other identifying number as required by the secretary.
  - (c) The service provider's full name, address, social security number or federal employer identification number, and the total amount paid to the service provider during the calendar year.
- (2) "Secretary" means the secretary of the La. Dept. of Revenue.
- (3) "Service recipient" means any individual, person, corporation, association, or partnership, or agent thereof, doing business in this state, deriving trade or business income from sources within this state, or in any manner is engaged in the course of a trade or business subject to the laws of this state that pays, in the course of its trade or business, remuneration to a service provider for services provided in this state. "Service recipient" includes any agency or political subdivision of the state.
- (4) "Service provider" means a person who is not an employee of the service recipient who receives remuneration for services performed for the service recipient in Louisiana.

Proposed law requires any service recipient who makes or is required to make a return to the IRS relating to payments made to a service provider as remuneration for services provided in this state to file the annual report with the secretary beginning January 1, 2022.

Proposed law requires the first annual report to be filed on or before February 28, 2022 for remunerations made during calendar year 2021.

Proposed law requires the annual report to be filed with the secretary on or before February 28th of each year for the preceding calendar year.

Proposed law authorizes the secretary to grant filing extensions and waive the annual reporting requirement in certain circumstances.

Proposed law authorizes the secretary to assess a penalty of \$100 for each service provider for late or incomplete reports and caps the total penalty imposed at no more than \$10,000

per calendar year.

Proposed law requires the secretary to develop forms for the annual report in consultation with service recipients.

Proposed law authorizes the secretary to promulgate rules and requires the secretary to design and provide for the electronic filing of annual reports at no charge for use by the service recipients and to provide for hardship exceptions.

Proposed law provides for an exception to the confidentiality of tax records of the secretary of the Dept. of Revenue for the sharing of certain information with the Louisiana Workforce Commission.

Effective January 1, 2021.

(Amends R.S. 47:1508(B)(28); adds R.S. 47:114.1)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Creates the "Louisiana Act of Government Against Misclassified Employees" and provides for annual reporting requirements.
2. Requires any service recipient who is required to make a return to the IRS relating to payments made to a service provider to file an annual report with the secretary of the Dept. of Revenue beginning January 1, 2022 regardless of the number of service providers used.
3. Increases the penalty cap from \$7,500 to \$10,000 per year.
4. Authorizes the secretary to promulgate rules and requires the secretary to provide for the electronic filing of annual reports.
5. Requires the secretary of the Dept. of Revenue to consult with service recipients when developing forms for the annual report.
6. Provides for an exception to the confidentiality of the records of the secretary of the Dept. of Revenue for the sharing of certain information with the Louisiana Workforce Commission.