

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; 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 an electronic filing of Internal
11 Revenue Service Form 1099-NEC or successor form, or in the absence of such
12 electronic form, a report prescribed by the secretary and filed annually by a
13 service recipient that includes the following information:

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

15 (b) The service recipient's federal employer identification number, social
16 security number, or another appropriate identifying number if neither a federal
17 identification nor social security number is known to the service recipient.

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

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

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

1 (4) "Service provider" means a person who is not an employee of the
2 service recipient who receives remuneration for services performed for the
3 service recipient in Louisiana.

4 D. Beginning January 1, 2022, any service recipient who makes or is
5 required to make a return to the Internal Revenue Service, in accordance with
6 Section 6041A(a) of the Internal Revenue Code and Treasury Regulations
7 adopted thereunder and other administrative guidance issued by the Internal
8 Revenue Service, including the instructions to Internal Revenue Service Form
9 1099-NEC or successor form, relating to payments made to a service provider
10 as remuneration for services provided in this state, shall file the LA A GAME
11 Annual Report with the secretary as provided in this Section.

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

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

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

24 F.(1) The secretary shall design and provide for the electronic filing of
25 LA A GAME Annual Reports at no charge for use by the service recipients. The
26 secretary may require electronic filing of LA A GAME Annual Reports by rule
27 and shall provide for hardship exceptions.

28 (2) The secretary shall prescribe the forms and format to be used when
29 submission of the LA A GAME Annual Report is to be made in a manner other

1 than electronic filing of Internal Revenue Service Form 1099-NEC or successor
 2 form. Any media and record layout the secretary may require for such
 3 submission shall be consistent with the filing requirements for Internal Revenue
 4 Service Form 1099-NEC or successor form.

* * *

§1508. Confidentiality of tax records

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B. Nothing herein contained shall be construed to prevent:

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

* * *

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

The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jeanne C. Johnston.

DIGEST

SB 57 Reengrossed

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 an electronic filing of an Internal Revenue Service (IRS) Form 1099-NEC, or in the absence of an electronic filing, 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, or another appropriate identifying number.

- (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 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.

Proposed law requires the secretary to design and provide for electronic filing of reports at no charge and may require electronic filing of the reports. Further requires the secretary to prescribe the forms and format to be used when submission of the LA A GAME Annual Report is made in a manner other than electronic filing of the IRS Form 1099-NEC.

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.

Senate Floor Amendments to engrossed bill

1. Provide for alternative identifying number for service recipients.
2. Delete penalty provisions.
3. Delete requirement for secretary to develop report forms in consultation with service recipients.
4. Delete provisions for promulgation of rules.
5. Require secretary to prescribe forms and format to be used when electronic filing is not utilized.