## SLS 21RS-956

## **REENGROSSED**

2021 Regular Session

SENATE BILL NO. 244 (Substitute of Senate Bill No. 92 by Senator Luneau)

BY SENATOR LUNEAU

REVENUE DEPARTMENT. Provides for uniform definitions of independent contractor and employee and for penalties for the misclassification of employees. (2/3 - CA7s2.1(A)) (1/1/22)

1	AN ACT
2	To amend and reenact R.S. 23:1711(G)(1) and to enact R.S. 23:1472(15.1) and Part XIII of
3	Chapter 1 to be comprised of R.S. 23:1771 through 1778, relative to employee
4	misclassification; to provide with respect to administrative penalties; to provide
5	relative to the failure to pay contributions; to provide for definitions; to provide
6	factors to be used to identify an independent contractor; to facilitate voluntary
7	resolution of worker classification issues; to enact the Fresh Start Proper Worker
8	Classification Initiative and the Louisiana Voluntary Disclosure Program; to require
9	the Louisiana Workforce Commission to promulgate rules; to provide for the
10	disposition of penalties; to provide a safe harbor; to provide for an effective date; and
11	to provide for related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 23:1711(G)(1) is hereby amended and R.S. 23:1472(15.1) and Part
14	XIII of Chapter 1 to be comprised of R.S. 23:1771 through 1778 are hereby enacted to read
15	as follows:
16	§1711. False statements or representations; failure to file reports or maintain
17	records; duties of officers and agents; presumptive proof; penalties
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waived.

1	G. Misclassification of employees as independent contractors.
2	(1)(a) Written warning. If the administrator determines, after investigation,
3	that an employer, or any officer, agent, superintendent, foreman, or employee of the
4	employer, failed to properly classify an individual as an employee in accordance
5	with this Chapter, and failed to pay contributions required by this Chapter, but the
6	failure was not knowing or willful, the employer shall be issued a written warning
7	as evidence that the employer has been cited for a first offense of misclassification.
8	Such warning shall constitute a determination that any workers identified therein are
9	employees, and all resulting contributions, interest and penalties shall be due, and
10	shall be appealable as provided in this Section. However, no administrative penalties
11	shall be due.
12	(b) Administrative penalties. If the administrator determines, after
13	investigation, that an employer, or any officer, agent, superintendent, foreman, or
14	employee of the employer, after June 30, 2013, and subsequent to the issuance of a
15	written warning, failed to properly classify an individual as an employee and failed
16	to pay contributions in accordance with this Chapter, then, in addition to any

23 (b) Upon the second failure by an employer to properly classify an 24 individual as an employee and pay contributions due, the administrator shall 25 assess an administrative penalty of not more that one thousand dollars for each 26 individual misclassified.

contributions, interest, and penalties otherwise due, the administrator may assess an

administrative penalty of not more than two hundred fifty dollars per each such

individual five hundred dollars for each individual who was misclassified. If the

employer properly classifies the employee and remits the resulting contributions

and interest within sixty days of the issuance of the citation, the penalty shall be

(c) Thereafter, any such failure by an employer to properly classify an
 individual as an employee and pay contributions due shall be subject to an
 administrative penalty of not more than five hundred dollars per each such
 individual. two thousand five hundred dollars for each individual misclassified.

1 In determining the amount of the administrative penalty imposed, the administrator 2 shall consider factors including previous violations by the employer, the seriousness 3 of the violation, the good faith of the employer, and the size of the employer's 4 business. 5 (c) If, after an employer has been issued a written warning and is subsequently found, on two or more separate occasions, to have failed to properly 6 classify an individual as an employee, the employer may also be subject to an 7 8 additional fine of not less than one hundred dollars nor more than one thousand 9 dollars, or imprisoned for not less than thirty days nor more than ninety days, or 10 both. 11 (d) For the purpose of this Subsection, each employee so misclassified shall 12 constitute a separate offense.

13 (d)(e) No such determination shall be final or effective, and no resulting 14 administrative penalty shall be assessed, unless the administrator first provides the 15 employer with written notification by certified mail of the determination, including 16 the amount of the proposed contributions, interest, and penalties determined to be due and of the opportunity to request a fair hearing before the appeals tribunal, of 17 18 which a record shall be made within thirty days of the mailing of such notice. The 19 hearing request may be made by mail, as evidenced by the official postmarked date, 20 or by otherwise timely delivering such appeal. If the employer does not request a hearing within the thirty-day period the determination shall become final and 21 effective, and the contributions, interest, and penalties due shall be assessed. 22

 23
 (f) The administrative penalties assessed and collected pursuant to the

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 provisions of this Subsection shall be deposited into the Unemployment Trust

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 Fund.

27 §1472. Definitions

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As used in this Chapter, the following terms shall have the meanings ascribed
to them in this Section, unless the context clearly indicates otherwise:

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1	(15.1) "Independent contractor" has the same meaning as provided in
2	<u>R.S. 23:1771.</u>
3	* * *
4	PART XIII. FRESH START PROPER WORKER CLASSIFICATION
5	<b>INITIATIVE AND VOLUNTARY DISCLOSURE PROGRAM</b>
6	<u>§1771. Criteria for classification of an independent contractor</u>
7	A. The legislature finds that it is in the best interests of workers,
8	businesses, and government to have clear, objective, and certain criteria
9	identifying an independent contractor relationship as compared to an
10	employment relationship. These criteria will reduce unnecessary and costly
11	litigation, confusion in the workforce marketplace, among agencies, and within
12	the courts. Therefore, the following provisions are enacted to ensure that
13	employees are properly classified as such and afforded the legal protections and
14	obligations that apply to that status while workers who desire to be independent
15	contractors understand the criteria for that designation.
16	<b>B.</b> For the purposes of this Part and Title 47 of the Louisiana Revised
17	Statutes of 1950, as amended, an independent contractor is any person or
18	organization including a sole proprietor, partnership, limited liability company,
19	corporation, or other entity that undertakes orally or in writing, the
20	performance of services for or in connection with another party in a manner
21	consistent with the requirements of this Part. When an individual or entity
22	meets at least seven of the following criteria there shall be a rebuttable
23	presumption of an independent contractor relationship with the contracting
24	party for whom the independent contractor performs services. The criteria are
25	as follows:
26	(1) The individual or entity operates an independent business through
27	which he provides services for or in connection with the contracting party.
28	(2) The individual or entity represents his services as self-employment
29	available to others, including through the use of an application platform to

1	(3) The individual or entity accepts responsibility for all tax liability
2	associated with payments received from or through the contracting party.
3	(4) The individual or entity is responsible for obtaining and maintaining
4	any required registration, licenses, or other authorization necessary for the legal
5	performance of the services rendered by him as the contractor.
6	(5) The individual or entity is not insured under the contracting party's
7	health insurance or workers' compensation insurance coverages and is not
8	covered for unemployment insurance benefits.
9	(6) The individual or entity has the right to accept or decline requests for
10	services by or through the contracting party and is able to perform services for
11	or through other parties or can accept work from and perform work for other
12	businesses and individuals besides the contracting party even if the individual
13	voluntarily chooses not to exercise this right or is temporarily restricted from
14	doing so.
15	(7) The contracting party does not direct or oversee the performance,
16	methods, or processes the individual or entity uses to perform services.
17	(8) The contracting party has the right to impose quality standards or a
18	deadline for completion of services performed, or both, but the individual or
19	entity determines the days worked and the time periods of work.
20	(9) The individual or entity furnishes the major tools or items of
21	equipment needed to perform the work.
22	(10) The individual or entity is paid a fixed or contract rate for the work
23	<u>he performs and the contracting party does not pay the individual or entity a</u>
24	salary or wages based on an hourly rate.
25	(11) The individual or entity is responsible for the majority of expenses
26	<u>he incurs in performing the services, unless the expenses are reimbursed under</u>
27	an express provision of a written contract between the parties or the expenses
28	reimbursed are commonly reimbursed under industry practice.
29	(12) The individual or entity can use assistants as he considers proper for
30	the performance of the work and is directly responsible for their supervision

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and	com	pensation.	

2	C. Obtaining an independent contractor certification from the state is
3	optional and is not required to establish independent contractor status. Any
4	contracting party or independent contractor may rely on the provisions of this
5	Section for the purpose of establishing an employment or independent
6	<u>contractor relationship.</u>
7	§1772. The Fresh Start Proper Worker Classification Initiative
8	A. The Fresh Start Proper Worker Classification Initiative is optional
9	and provides taxpayers with an opportunity to voluntarily reclassify their
10	workers as employees for future tax periods. To participate, a taxpayer shall
11	meet all the eligibility requirements, apply to participate in the Fresh Start
12	Proper Worker Classification Initiative, produce a certificate of proof of
13	workers' compensation coverage for all employees, and enter into a closing
14	agreement with the Louisiana Workforce Commission and the Department of
15	Revenue.
16	<b>B.</b> The Fresh Start Proper Worker Classification Initiative applies to
17	taxpayers that are currently treating their workers as independent contractors
18	or other nonemployees and want to prospectively treat the workers as
19	employees. To be eligible, a taxpayer shall have consistently treated the workers
20	for the previous three years as nonemployees, and shall have filed all required
21	Forms 1099-NECs with the Internal Revenue Service with respect to those
22	workers, consistent with the nonemployee treatment.
23	C. An eligible taxpayer who participates in the Fresh Start Proper
24	Worker Classification Initiative agrees to prospectively treat the class or classes
25	of workers identified in the application as employees for future tax periods and
26	is not liable for any withholding tax, unemployment tax, interest, or penalties
27	with respect to any amounts paid to any workers before the date on which the
28	taxpayer is accepted for participation in the Fresh Start Proper Worker
29	Classification Initiative.
30	<b>D. Eligible taxpayers who wish to participate in the Fresh Start Proper</b>

1	Worker Classification Initiative shall submit an application for participation in
2	the program using the application for Fresh Start Proper Worker Classification
3	Initiative, to the Department of Revenue. The Department of Revenue shall
4	contact the taxpayer or authorized representative to complete the process once
5	it has reviewed the application and verified the taxpayer's eligibility. Taxpayers
6	whose application have been accepted enter into a joint closing agreement with
7	the Department of Revenue and Louisiana Workforce Commission whereby the
8	taxpayer confirms the agreement to treat the class or classes of workers
9	identified in the application as employees beginning on the date on which the
10	taxpayer receives notice from the Department of Revenue that the taxpayer's
11	application has been accepted.
12	E. The following employers shall not be eligible to participate in the
13	program:
14	(1) Employers who are currently under audit concerning the
15	classification of the classes of workers by the Internal Revenue Service, the
16	United States Department of Labor, or by a state government entity.
17	(2) Employers who are contesting in court the classification of the class
18	or classes of workers from a previous audit by the Internal Revenue Service, the
19	United States Department of Labor, the Department of Revenue, or the
20	Louisiana Workforce Commission.
21	(3) Employers who have withheld Louisiana state income taxes from the
22	amounts paid to any worker, and who have not remitted the tax to the
23	Louisiana Department of Revenue.
24	(4) For the purposes of Paragraphs (1) and (2) of this Subsection, a
25	taxpayer that is a member of an affiliated group within the meaning of Section
26	1504(a) of the Internal Revenue Code if any member of the affiliated group is
27	under an employment, withholding, or unemployment tax audit.
28	<u>§1773. The Louisiana Voluntary Disclosure Program</u>
29	A.(1) The Louisiana Voluntary Disclosure Program is established as a
30	process of reporting undisclosed liabilities for withholding taxes administered

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1	by the Department of Revenue and unemployment taxes administered by the
2	Louisiana Workforce Commission that would have been due for workers who
3	were not classified as employees. The Voluntary Disclosure Program authorizes
4	taxpayers to anonymously enter into agreements and voluntarily pay taxes with
5	no penalty.
6	(2) In order to be admitted to the program, an employer shall obtain and
7	produce a certificate proving he has obtained workers' compensation coverage
8	<u>for his employees.</u>
9	<b>B. Definitions. For purposes of this Part, the following terms shall have</b>
10	the following meanings:
11	(1) "Applicant" means any association, corporation, estate, firm,
12	individual, joint venture, limited liability company, partnership, receiver,
13	syndicate, trust, or any other entity, combination, or group that submits or
14	arranges through a representative for the submission of an application to
15	request a voluntary disclosure agreement for a tax administered by the
16	department. If the application is submitted through a representative, anonymity
17	of the applicant can be maintained until the voluntary disclosure agreement is
18	executed by the taxpayer and the secretary.
19	(2) "Application" means a completed application to request voluntary
20	disclosure agreement and all supplemental information including but not
21	limited to cover letters, schedules, reports, and any other documents that
22	provide evidence of the applicant's qualification for a voluntary disclosure
23	agreement. Supplemental information requested by the department and timely
24	provided by the applicant shall be considered part of the application.
25	(3) "Application date" means the date a fully completed application
26	requesting a voluntary disclosure agreement is received by the department.
27	Supplemental information requested by the department and timely provided by
28	the applicant shall not extend or delay the application date.
29	(4) "Delinquent penalty" means any specific penalty imposed as a result
30	of the failure of the taxpayer to timely make any required return or payment.

1	(5) "Department" means the Louisiana Workforce Commission or the
2	Department of Revenue.
3	(6) "Look-back period" means a period for which a qualified applicant
4	agrees to disclose and pay the tax and interest due. The look-back period shall
5	include the current calendar year up to the date of registration with the
6	department and the one immediately preceding calendar year. For
7	discontinued, acquired, or merged entities, the look-back period shall include
8	undisclosed liabilities in the last calendar year in which the qualified applicant
9	had nexus within this state and the one immediately preceding calendar year.
10	(7) "Non-qualified applicant" includes any taxpayer who has either of
11	the following conditions:
12	(a) Has been contacted by the department concerning a liability
13	regarding a tax for which a voluntary disclosure agreement is requested,
14	including but not limited to a potential liability or contact for the purpose of
15	performing an audit of the taxpayer's records.
16	(b) Is affiliated with another entity that has been contacted by the
17	department for the purpose of performing an audit of the affiliated entity's
18	records. A non-qualified applicant under this Subparagraph may become a
19	qualified applicant after the audit of the affiliated entity has been completed,
20	provided the applicant is not disqualified under Subparagraph (a) of this
21	Paragraph.
22	(8) "Qualified applicant" means any taxpayer, other than a non-
23	qualified applicant, subject to the reporting and payment of unemployment or
24	withholding tax imposed by the state of Louisiana.
25	(9) "Undisclosed liability" means an unemployment tax or withholding
26	tax liability that became due during the look-back period and which has not
27	been determined, assessed, or otherwise identified by or known to the
28	department at the time of disclosure and which would likely not be discovered
29	through normal administrative activities. The undisclosed liability shall exceed
	five hundred dollars during the look-back period to qualify for consideration

1	of a voluntary disclosure agreement. For purposes of unemployment tax, an
2	undisclosed liability shall be determined based on the applicant's existing
3	experience rating, or if there is no existing experience rating, then pursuant to
4	R.S. 23:1535. The secretary of the department may conduct an audit of the
5	applicant's records to confirm the amount of the undisclosed liability.
6	C. The Louisiana Workforce Commission, in consultation with the
7	Department of Revenue shall promulgate rules and regulations necessary for
8	the administration of the Voluntary Disclosure Program.
9	<b>§1774. Voluntary Disclosure Agreements; withholding tax</b>
10	A. (1) After the secretary of the Department of Revenue has reviewed the
11	application and determined from the information included that the applicant
12	qualifies for a voluntary disclosure agreement, the secretary shall send a copy
13	of the agreement to the applicant or the applicant's representative for signature.
14	(2) The applicant or applicant's representative, acting under the
15	authority of a power of attorney, shall sign the agreement and return it to the
16	secretary within thirty calendar days of the postmark or email date, or within
17	any extension of time authorized by the secretary beyond thirty calendar days
18	from the postmark or email date.
19	(3) After the signed agreement is received from the applicant, the
20	secretary or her authorized representative shall sign the agreement and return
21	a copy of the agreement which has been signed by both parties to the applicant.
22	(4) After all tax and interest due for the look-back period have been paid,
23	the delinquent penalties shall be waived, unless the tax disclosed was collected
24	but not remitted. Where the tax was collected but not remitted, the secretary
25	may consider waiving payment of the whole or any part of the delinquent
26	penalties on a case-by-case basis.
27	<b>B.</b> All tax due for the look-back period, which shall exclude any tax that
28	was reported on an individual income tax return filed by any worker in the class
29	or classes of workers identified in the application as verified by the Department
30	of Revenue, shall be paid within sixty calendar days of the secretary's signing

1	date of the voluntary disclosure agreement or within any extension of time
2	authorized by the secretary beyond sixty calendar days of the signing date. All
3	schedules or returns required by the secretary to show the amount of tax due
4	shall be included with this payment.
5	C. The secretary shall compute the interest due for the tax disclosed by
6	the applicant and send a schedule by mail or email to the applicant or his
7	representative showing the amount of tax, interest, and delinquent penalty due.
8	The applicant shall submit payment of the full amount of the interest not
9	remitted or waived within thirty calendar days from the postmark or email date
10	of the schedule or, if applicable, within any extension of time granted by the
11	secretary. If payment of the full amount due has not been received timely, the
12	secretary may void the agreement.
13	D. The terms of the voluntary disclosure agreement shall be valid,
14	binding, and enforceable by and against all parties, including their transferees,
15	successors, and assignees.
16	E. The secretary may void a voluntary disclosure agreement if the
17	applicant fails to comply with any of the conditions outlined in the agreement.
18	§1775. Voluntary Disclosure Agreements; unemployment taxes
19	A. (1) After the secretary of the Louisiana Workforce Commission has
20	reviewed the application and determined from the information included therein
21	that the applicant qualifies for a voluntary disclosure agreement, the secretary
22	shall send a copy of the agreement to the applicant or the applicant's
23	representative for signature.
24	(2) The applicant or applicant's representative, acting under the
25	authority of a power of attorney, shall sign the agreement and return it to the
26	secretary within thirty calendar days of the postmark or email date, or within
27	any extension of time authorized by the secretary beyond thirty calendar days
28	from the postmark or email date.
29	(3) After the signed agreement is received from the applicant, the
30	secretary or his authorized representative shall sign the agreement and return

1	a copy of the agreement which has been signed by both parties to the applicant.
2	(4) The secretary shall credit the account of all workers identified by the
3	applicant in the application for unemployment benefits with respect to the
4	look-back period.
5	<b>B. After all unemployment tax and interest due for the look-back period</b>
6	have been paid, the delinquent penalties shall be waived.
7	C.(1) All unemployment tax due for the look-back period shall be paid
8	within sixty calendar days of the secretary's signing date of the voluntary
9	disclosure agreement or within any extension of time authorized by the
10	secretary beyond sixty calendar days of the signing date. All schedules or
11	returns required by the secretary to show the amount of tax due shall be
12	included with this payment.
13	(2) The secretary shall compute the interest due for the tax disclosed by
14	the applicant and send a schedule by mail or email to the applicant or his
15	representative showing the amount of tax and interest due. The applicant shall
16	submit payment of the full amount of the interest within thirty calendar days
17	from the postmark or email date of the schedule or, if applicable, within any
18	extension of time granted by the secretary. If payment of the full amount due
19	has not been received at the expiration of such time, the secretary may void the
20	agreement.
21	D. The terms of the voluntary disclosure agreement shall be valid,
22	binding, and enforceable by and against all parties, including their transferees,
23	successors, and assignees.
24	<b>E.</b> The secretary may void the voluntary disclosure agreement if the
25	applicant fails to comply with any of the conditions outlined in the agreement.
26	<u>§1776. Safe harbor</u>
27	Any putative employer meeting the following three requirements shall
28	not owe withholding or unemployment taxes for the workers to whom these
29	requirements apply:
30	A. Reporting consistency. The putative employer timely filed all required

1	federal tax and information returns for independent contractors who were paid
2	six hundred dollars or more, such as Form 1099-MISC/1099-NEC. Relief is not
3	available for any worker for whom the employer did not file the required
4	information return.
5	<b>B.</b> Substantive consistency. The putative employer and any predecessor
6	always treated the worker as an independent contractor, however if any similar
7	worker was treated as an employee, relief is not available.
8	C. Reasonable basis. The putative employer had a reasonable basis for
9	not treating the worker as an employee including any of the following:
10	(1) Reliance on a court case or Internal Revenue Service ruling.
11	(2) The putative employer was previously audited and the Internal
12	Revenue Service considered employment taxes but did not reclassify the
13	workers.
14	(3) Independent contractor treatment is common in the putative
15	employer's industry for workers providing similar services.
16	(4) The putative employer and any predecessor always treated the
17	worker as an independent contractor.
18	(5) Reliance on legal advice or advice of an accountant.
19	(6)Notwithstanding any contrary provision of this Paragraph, if any
20	similar worker was treated as an employee, relief is not available.
21	§1777. Reporting to the Department of Revenue by service recipients
22	<u>A. Any service recipient who files or is required to file a Form 1099-NEC</u>
23	with the Internal Revenue Service for services performed in Louisiana shall file
24	<u>a copy of the return with the Department of Revenue. The return copy shall be</u>
25	filed on or before the twenty-eighth day of February of each year for the
26	preceding calendar year beginning February 28, 2022. The secretary may grant
27	extensions up to thirty days, to file the report, and to waive the reporting
28	requirement upon a showing that the requirement creates an undue hardship.
29	<b>B.</b> The Department of Revenue may utilize data analytic discovery
30	procedures to identify potential cases of misclassification with the return data

1	required to be filed pursuant to this Section.
2	<u>§1778. Applicability</u>
3	This Part shall not apply to any motor carrier who pursuant to a
4	contract with an owner operator as defined in R.S. 23: 1021(10) undertakes the
5	performance of services as a motor carrier.
6	Section 2. This Act shall become effective on January 1, 2022; if vetoed by the
7	governor and subsequently approved by the legislature, this Act shall become effective on
8	January 1, 2022, or on the day following such approval by the legislature, whichever is later.
9	Section 3. The provisions of this Act shall not apply to any person or organization
10	licensed by the Louisiana Department of Insurance, any securities broker-dealer, or any
11	investment adviser or their agents and representatives who are registered with the Securities
12	and Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the
13	State of Louisiana.

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 Johnston.

	DIGEST	
SB 244 Reengrossed	2021 Regular Session	Luneau

<u>Present law</u> provides a schedule of penalties imposed by the Louisiana Workforce Commission (LWC) for the misclassification of employees as independent contractors.

- (1) A written warning for the first violation.
- (2) \$250 for the first violation after the written warning is issued.
- (3) \$500 for the second violation after the written warning.
- (4) Up to \$1,000 for each subsequent violation and up to 90 days imprisonment.

<u>Proposed law</u> changes the penalty structure, eliminates the written warning, and removes the possibility of imprisonment.

- (1) \$500 for the first violation, which is waived if the employer properly classifies the employee and pays any tax due within 60 days of the citation.
- (2) Up to \$1,000 for the second violation.
- (3) \$2,500 for each subsequent violation.

<u>Proposed law</u> directs the penalties associated with worker misclassification to be deposited into the Unemployment Trust Fund.

Proposed law provides for the determination of which workers are properly classified as

independent contractors by establishing a rebuttable presumption that workers who meet seven of the 12 criteria in <u>proposed law</u> are independent contractors.

- (1) The individual or entity operates an independent business through which he provides services for or in connection with the contracting party.
- (2) The individual or entity represents his services as self-employment available to others, including through the use of an application platform to obtain work opportunities or as a lead generation service.
- (3) The individual or entity accepts responsibility for all tax liability associated with payments received from or through the contracting party.
- (4) The individual or entity is responsible for obtaining and maintaining any required registration, licenses, or other authorization necessary for the legal performance of the services rendered by him as the contractor.
- (5) The individual or entity is not insured under the contracting party's health insurance or workers' compensation insurance coverages and is not covered for unemployment insurance benefits.
- (6) The individual or entity has the right to accept or decline requests for services by or through the contracting party and is able to perform services for or through other parties or can accept work from and perform work for other businesses and individuals besides the contracting party even if the individual voluntarily chooses not to exercise this right or is temporarily restricted from doing so.
- (7) The contracting party does not direct or oversee the performance, methods, or processes the individual or entity uses to perform services.
- (8) The contracting party has the right to impose quality standards or a deadline for completion of services performed, or both, but the individual or entity determines the days worked and the time periods of work.
- (9) The individual or entity furnishes the major tools or items of equipment needed to perform the work.
- (10) The individual or entity is paid a fixed or contract rate for the work he performs and the contracting party does not pay the individual or entity a salary or wages based on an hourly rate.
- (11) The individual or entity is responsible for the majority of expenses he incurs in performing the services, unless the expenses are reimbursed under an express provision of a written contract between the parties or the expenses reimbursed are commonly reimbursed under industry practice.
- (12) The individual or entity can use assistants as he considers proper for the performance of the work and is directly responsible for their supervision and compensation.

<u>Proposed law</u> authorizes contracting parties to rely on this 12-step test for purposes of establishing an employment or independent contractor relationship.

<u>Proposed law</u> creates the optional Fresh Start Proper Worker Classification Initiative to provide taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods.

<u>Proposed law</u> provides that to be eligible a taxpayer must have consistently treated the workers as nonemployees for the previous three years and must have filed all required forms with the IRS with respect to those workers consistent with nonemployee treatment.

<u>Proposed law</u> allows eligible taxpayers who participate in the Initiative to prospectively treat classes of workers as employees for future tax periods and not be liable for any withholding tax, unemployment tax, interest or penalties with respect to any workers before the date on which the taxpayer is accepted for participation in the program.

<u>Proposed law</u> requires taxpayers who want to participate in the Fresh Start Proper Worker Classification Initiative to apply with the Dept. of Revenue (DOR).

<u>Proposed law</u> provides that the DOR will review the application for eligibility and contact the taxpayer once a determination has been made.

<u>Proposed law</u> provides that taxpayers accepted for the program will enter into a joint agreement with LWC and DOR in which the taxpayer agrees to classify the workers as employees from the acceptance date.

<u>Proposed law</u> does not allow taxpayers who are contesting the classification of workers in court or taxpayers under audit for worker classification by the IRS, U.S. Dept. of Labor, or a state agency to participate in the program.

<u>Proposed law</u> provides that a taxpayer is considered to be under audit for purposes of the Fresh Start Proper Worker Classification Initiative if a member of their affiliated group is under audit.

<u>Proposed law</u> does not allow taxpayers who have withheld state income taxes from their workers but who have not remitted the tax to DOR to participate in the program.

<u>Proposed law</u> creates the Louisiana Voluntary Disclosure Program (VDA Program) for the voluntary and anonymous reporting of undisclosed liabilities for withholding taxes administered by the DOR and unemployment taxes administered by LWC.

<u>Proposed law</u> requires employers to provide proof that the employees are covered by workers' compensation to participate in the VDA Program.

<u>Proposed law provides for definitions applicable to the VDA Program, including a definition</u> of "look-back period" that must include the current calendar year up to the date of registration with the department and the one immediately preceding calendar year.

<u>Proposed law</u> requires the waiver of any delinquent penalty after all tax and interest due for the look-back period have been paid by the VDA Program applicant whose application has been accepted, unless the tax disclosed was collected but not remitted.

<u>Proposed law</u> does not allow applicants who have been contacted by the DOR or LWC concerning a liability regarding a tax for which a voluntary disclosure agreement is requested.

<u>Proposed law</u> provides a safe harbor from unemployment and withholding taxes for putative employers who have consistently and timely filed all required federal tax and information returns for their workers as independent contractors, always treated the particular classification of worker as an independent contractor, and had a reasonable basis for not treating the class of workers as an employee.

<u>Proposed law</u> provides that the safe harbor does not apply if the putative employer treated any similar worker as an employee.

<u>Proposed law</u> requires a service recipient who files or is required to file a Form 1099-NEC for independent contractors they use to file a copy of the federal return with the DOR on or before Feb. 28th of each year and further provides that the DOR may use data analytics to determine if any of the service providers included in the reports were misclassified.

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<u>Proposed law</u> provides that <u>proposed law</u> does not apply to a motor vehicle carrier who undertakes the performance of services as a motor carrier pursuant to a contract with an owner-operator as defined in <u>present law</u> (R.S. 23:1021(10)).

<u>Proposed law</u> provides that the Act shall not apply to any person or organization licensed by the La. Dept. of Insurance, any securities broker-dealer, or any investment adviser or their agents and representatives registered with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the State of Louisiana.

Effective January 1, 2022.

(Amends R.S. 23:1711(G)(1); adds R.S. 23:1472(15.1) and 1771-1778)

Summary of Amendments Adopted by Senate

## Senate Floor Amendments to engrossed bill

- 1. Provide that <u>proposed law</u> is not applicable to a motor carrier performing the services of a motor carrier pursuant to a contract with an owner-operator.
- 2. Provide that the provisions of the Act do not apply to certain persons or organizations registered with specified federal regulatory agencies or the state of Louisiana.
- 3. Make technical changes.