

**LEGISLATIVE FISCAL OFFICE
Fiscal Note**



Fiscal Note On: **HB 705** HLS 21RS 1986
 Bill Text Version: **ENGROSSED**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.: HB 151

Date: May 16, 2021 3:10 PM	Author: RISER
Dept./Agy.: Department of Labor / Workforce Commission	Analyst: Monique Appeaning
Subject: Misclassification of Employees	

UNEMPLOYMENT COMP EG INCREASE SG RV See Note Page 1 of 1
 Provides relative to the misclassification of employees and a criteria for the classification of employees

Present law provides that when it is discovered that an employer has not properly classified employees and has failed to pay contributions as requested by present law, the employer shall receive a written warning if there is evidence that the failure was not knowing or willful. Present law provides that on subsequent offenses, an additional fine may be issued between \$100 and \$1,000, or imprisonment between 30 and 90 days, or both, for each misclassified employee. Proposed law increases the fine from \$250 to \$500 per individual if after an investigation that an employer, or any officer, agent, superintendent, foreman, or employee of the employer failed to properly classify an individual as an employee and failed to pay contributions in accordance with present law. Proposed law adds if the employer becomes compliant within 60 days of the citation, the penalty shall be waived. Proposed law provides after the first offense, the administrator shall assess an administrative penalty of the \$1,000 per individual misclassified. 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 \$2,500 per each such individual (increased from \$500 in present law). Proposed law defines an independent contractor as any person or organization including a sole proprietor, partnership, limited liability company, corporation, or other entity that undertakes orally or in writing, to perform services for or in connection with another party in a manner consistent with the requirements of proposed law. Proposed law is not applicable to motor carriers.

EXPENDITURES	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>	<u>2024-25</u>	<u>2025-26</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

REVENUES	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>	<u>2024-25</u>	<u>2025-26</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total						

EXPENDITURE EXPLANATION

There is no anticipated direct material effect on governmental expenditures as a result of this measure. The Louisiana Workforce Commission (LWC) currently conducts audits and issues warning letters when individuals are misclassified.

REVENUE EXPLANATION

Proposed law may result in an indeterminable increase in revenue to LWC when employers misclassify employees as independent contractors and LWC imposes an administrative penalty as provided in proposed law. Present law provides written warnings when employers misclassify employees as independent contractors.

Proposed law provides that all administrative penalties assessed pursuant to proposed law shall be deposited into the state's unemployment trust fund.

LWC reports that there is no precise method available to determine the future revenue that the change in penalties may generate. However, for this note, one might review the past data regarding those instances in which misclassification audits revealed erroneous employee assignments for which warning letters were issued over the past year. Due to COVID-19, there were no audits conducted; therefore, 2019 data is used for this note. In 2019 there were 367 instances that the agency issued warnings letters. There was a total of 3,768 employees identified as improperly classified as independent contractors. Assuming the penalty rates created by this bill were in place and imposed during this period, it would have generated a total of \$1.9 M (3,768 x \$500 = \$1,884,000). This amount is double the potential penalties that would be assessed under present law at \$250 per individual. However, the likelihood of generating that level of funding in the future is doubtful because this figure does not take into account the degree to which employers may be deterred from this practice once word gets out of the consequences for misclassifying employees. Proposed law also provides that if an employer becomes compliant within sixty days of the citation for failure to properly classify an individual, the penalty shall be waived.

Proposed law increases the penalties for subsequent offenses, to \$1,000 for a second offense and \$2,500 for any offense thereafter. The likelihood of these penalties being assessed is indeterminable and speculative.

Senate Dual Referral Rules
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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