HLS 16RS-1180 ORIGINAL

2016 Regular Session

HOUSE BILL NO. 665

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BY REPRESENTATIVE SMITH

UNEMPLOYMENT COMP: Provides for an increase in the administrative penalties assessed for the misclassification of employees

AN ACT

2 To amend and reenact R.S. 23:1711(G)(1), relative to unemployment compensation; to 3 provide for the classification of employees; to increase the administrative penalties 4 for the misclassification of employees; to provide relative to the failure to pay 5 contributions; to increase penalties; and to provide for related matters. 6 Be it enacted by the Legislature of Louisiana: 7 Section 1. R.S. 23:1711(G) is hereby amended and reenacted to read as follows: 8 §1711. False statements or representations; failure to file reports or maintain 9 records; duties of officers and agents; presumptive proof; penalties 10 11 G. Misclassification of employees as independent contractors. 12 (1)(a) Written warning. Administrative penalties. 13 (a) If the administrator determines, after investigation, that an employer, or 14 any officer, agent, superintendent, foreman, or employee of the employer, failed to 15 properly classify an individual as an employee in accordance with this Chapter, and 16 failed to pay contributions required by this Chapter, but the failure was not knowing 17 or willful, the employer shall be issued a written warning as evidence that the 18 employer has been cited for a first offense of misclassification. Such warning shall 19 constitute a determination that any workers identified therein are employees, and all 20 resulting contributions, interest and penalties shall be due, and shall be appealable

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as provided in this Section. However, no administrative penalties shall be due. then, in addition to any contributions, interest, and penalties otherwise due, the administrator may assess an administrative penalty of not more than five thousand dollars.

- (b) Administrative penalties. If the administrator determines, after investigation, that an employer, or any officer, agent, superintendent, foreman, or employee of the employer, after June 30, 2013, and subsequent to the issuance of a written warning, failed to properly classify an individual as an employee and failed to pay contributions in accordance with this Chapter, then, in addition to any contributions, interest, and penalties otherwise due, the administrator may assess an administrative penalty of not more than two hundred fifty dollars ten thousand dollars per each such individual.
- (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 twenty-five thousand dollars per each such individual. In determining the amount of the administrative penalty imposed, the administrator shall consider factors including previous violations by the employer, the seriousness of the violation, the good faith of the employer, and the size of the employer's business.
- (c)(d) 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 classify an individual as an employee, the employer may also be subject to an additional fine of not less than one hundred dollars nor more than one thousand dollars fifty thousand dollars, or imprisoned for not less than thirty days nor more than ninety days, or both. For the purpose of this Subsection, each employee so misclassified shall constitute a separate offense.
- (d)(e) No such determination shall be final or effective, and no resulting administrative penalty shall be assessed, unless the administrator first provides the employer with written notification by certified mail of the determination, including

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the amount of the proposed contributions, interest, and penalties determined to be due and of the opportunity to request a fair hearing, of which a record shall be made within thirty days of the mailing of such notice. The hearing request may be made by mail, as evidenced by the official postmarked date, 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 effective, and the contributions, interest, and penalties due shall be assessed.

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## **DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 665 Original

2016 Regular Session

Smith

**Abstract:** Increases the administrative penalties for employers who misclassify employers and fail to pay unemployment insurance contributions.

<u>Present law</u> provides that when it is discovered that an employer has not properly classified employees and has failed to pay contributions, that he shall receive a written warning if there is evidence that his failure to properly classify and pay contributions was not knowing or willful.

<u>Proposed law</u> removes the provision for a written warning and the justification of lack of knowledge of the violation and provides that upon a first offense of misclassification, an employer shall pay a penalty of up to \$5,000 per employee, plus contributions, interest, and penalties owed.

<u>Present law</u> provides that upon a second offense of misclassification, the administrator shall assess a penalty of up to \$250 for each misclassified employee, in addition to the contributions, interest, and penalties owed.

<u>Proposed law</u> changes the penalty for a second offense <u>from</u> up to \$250 <u>to</u> up to \$10,000 per misclassified employee in addition to the contributions, interest, and penalties owed.

<u>Present law</u> provides that upon a third offense of misclassification, the administrator shall assess a penalty of up to \$500 for each misclassified employee, in addition to contributions, interest, and penalties previously owed.

<u>Proposed law</u> changes the penalty for a second offense <u>from</u> up to \$500 <u>to</u> up to \$25,000 per misclassified employee in addition to the contributions, interest, and penalties owed.

<u>Present law</u> requires that the administrator, in determining the amount of penalties, consider previous violations, the seriousness of the violation, the good faith of the employer, and the size of the business. <u>Proposed law</u> retains <u>present law</u>.

<u>Present law</u> provides that upon a subsequent offense of misclassification, the administrator shall assess a penalty between \$100 and \$1,000 or imprisonment between 30 and 90 days

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or both, for each misclassified employee, in addition to contributions, interest, and penalties previously owed.

<u>Proposed law</u> changes the penalty for a subsequent offense <u>from</u> a fine between \$100 and \$1,000 or imprisonment between 30 and 90 days or both <u>to</u> a fine up to \$50,000 and imprisonment of not more than 90 days, per misclassified employee in addition to the contributions, interest, and penalties owed.

(Amends R.S. 23:1711(G)(1))