

2016 Regular Session

HOUSE BILL NO. 665

BY REPRESENTATIVE SMITH

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

1 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~~

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

5 (b) ~~Administrative penalties.~~ If the administrator determines, after
6 investigation, that an employer, or any officer, agent, superintendent, foreman, or
7 employee of the employer, ~~after June 30, 2013, and subsequent to the issuance of a~~
8 ~~written warning,~~ failed to properly classify an individual as an employee and failed
9 to pay contributions in accordance with this Chapter, then, in addition to any
10 contributions, interest, and penalties otherwise due, the administrator may assess an
11 administrative penalty of not more than ~~two hundred fifty dollars~~ ten thousand
12 dollars per each such individual.

13 (c) Thereafter, any such failure by an employer to properly classify an
14 individual as an employee and pay contributions due shall be subject to an
15 administrative penalty of not more than ~~five hundred~~ twenty-five thousand dollars
16 per each such individual. In determining the amount of the administrative penalty
17 imposed, the administrator shall consider factors including previous violations by the
18 employer, the seriousness of the violation, the good faith of the employer, and the
19 size of the employer's business.

20 ~~(d)~~(d) If, ~~after an employer has been issued a written warning and is~~
21 ~~subsequently found, on two or more separate occasions, to have failed to properly~~
22 ~~classify an individual as an employee, the employer may also be subject to an~~
23 ~~additional fine of not less than one hundred dollars nor more than one thousand~~
24 ~~dollars~~ fifty thousand dollars, or imprisoned for not ~~less than thirty days nor more~~
25 ~~than ninety days, or both.~~ For the purpose of this Subsection, each employee so
26 misclassified shall constitute a separate offense.

27 ~~(e)~~(e) No such determination shall be final or effective, and no resulting
28 administrative penalty shall be assessed, unless the administrator first provides the
29 employer with written notification by certified mail of the determination, including

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

Proposed law changes the penalty for a subsequent offense from a fine between \$100 and \$1,000 or imprisonment between 30 and 90 days or both to 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))