

2022 Regular Session

HOUSE BILL NO. 1067 (Substitute for House Bill No. 241 by Representative Riser)

BY REPRESENTATIVE RISER

LABOR: Provides relative to the Fresh Start Proper Worker Classification Initiative and the Voluntary Disclosure Program

1 AN ACT

2 To amend and reenact the heading of Part XIII of Chapter 11 of Title 23 of the Louisiana
3 Revised Statutes of 1950, R.S. 23:1771, 1773, and 1775(B) and (C)(2), and R.S.
4 47:1508(B)(28), to enact R.S. 23:1775(F) and R.S. 47:1576.3 and 1576.4, and to
5 repeal R.S. 23:1772, 1774, and 1776, relative to the Fresh Start Proper Worker
6 Classification Initiative and the Voluntary Disclosure Program; to provide for
7 definitions; to provide for eligibility requirements for participation in the Voluntary
8 Disclosure Program; to provide for the payment of unemployment taxes and
9 penalties; to provide for withholding taxes, interest, and penalties; to provide for
10 compliance with federal laws and regulations; to provide for a safe harbor; to provide
11 for unemployment interest; to provide for a public records exception; to require the
12 Department of Revenue to promulgate rules and regulations; and to provide for
13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. The heading of Part XIII of Chapter 11 of Title 23 of the Louisiana
16 Revised Statutes of 1950, R.S. 23:1771, 1773, and 1775(B) and (C)(2) are hereby amended
17 and reenacted and R.S. 23:1775(F) is hereby enacted to read as follows:

18 PART XIII. ~~FRESH START PROPER WORKER CLASSIFICATION INITIATIVE~~
19 ~~AND~~ VOLUNTARY DISCLOSURE PROGRAM

20 §1771. Definitions

21 ~~A~~. For the purposes of this Part, the following terms have the meanings
22 ascribed to them:

1 (1) "Applicant" means any association, corporation, estate, firm, individual,
2 joint venture, limited liability company, partnership, receiver, syndicate, trust, or any
3 other entity, combination, or group that submits or arranges through a representative
4 for the submission of an application to request a voluntary disclosure agreement for
5 a tax administered by the ~~department~~ commission. ~~If the application is submitted~~
6 ~~through a representative, anonymity of the applicant can be maintained until the~~
7 ~~voluntary disclosure agreement is executed by the taxpayer and the secretary of the~~
8 ~~Louisiana Workforce Commission.~~

9 (2) "Application" means a completed application to request a voluntary
10 disclosure agreement and all supplemental information including but not limited to
11 cover letters, schedules, reports, and any other documents that provide evidence of
12 the applicant's qualification for a voluntary disclosure agreement. Supplemental
13 information requested by the ~~Department of Revenue and Louisiana Workforce~~
14 ~~Commission~~ commission and timely provided by the applicant shall be considered
15 part of the application.

16 (3) "Application date" means the date a fully completed application
17 requesting a voluntary disclosure agreement is received by the ~~department~~
18 commission. Supplemental information requested by the department and timely
19 provided by the applicant shall not extend or delay the application date.

20 (4) ~~"Delinquent penalty" means any specific penalty imposed as a result of~~
21 ~~the failure of the taxpayer to timely make any required return or payment~~
22 "Commission" means the Louisiana Workforce Commission.

23 (5) "Look-back period" means a period for which a qualified applicant
24 agrees to disclose and pay the tax and interest other amounts due. ~~The look-back~~
25 ~~period shall include the current calendar year up to the date of registration with the~~
26 ~~Department of Revenue and Louisiana Workforce Commission and the one~~
27 ~~immediately preceding calendar year. For discontinued, acquired, or merged entities,~~
28 ~~the look-back period shall include undisclosed liabilities in the last calendar year in~~
29 ~~which the qualified applicant had nexus within this state and the one immediately~~

1 ~~preceding calendar year~~ In accordance with the Federal Unemployment Tax Act
2 (FUTA), 26 U.S.C. 3303(a), the look-back period shall include the entire three-year
3 experience rating period for unemployment taxes for the commission.

4 (6) "Penalty" means any specific penalty imposed as a result of the failure
5 of the taxpayer to correctly classify a worker or class of workers, if not otherwise
6 specifically excluded.

7 (7) "Secretary" means the secretary of the Louisiana Workforce
8 Commission.

9 §1773. Louisiana Voluntary Disclosure Program

10 A.(1) The Louisiana Voluntary Disclosure Program is established as a
11 process of reporting undisclosed liabilities for ~~withholding taxes administered by the~~
12 ~~Department of Revenue and~~ unemployment taxes administered by the Louisiana
13 Workforce Commission that would have been due for workers who were not
14 classified as employees. The Voluntary Disclosure Program authorizes taxpayers to
15 ~~anonymously~~ confidentially enter into agreements and voluntarily pay
16 unemployment taxes and penalties with no ~~penalty~~ interest.

17 (2) In order to be admitted to the program, an employer shall obtain and
18 produce a certificate proving he has obtained workers' compensation coverage for
19 his employees.

20 (3) The following employers shall not be eligible to participate in the
21 program:

22 (a) Employers who are currently under audit concerning the classification
23 of the classes of workers by the Internal Revenue Service, the United States
24 Department of Labor, or a state government entity.

25 (b) Employers who are contesting in court or in an administrative proceeding
26 the classification of the class or classes of workers from a previous audit by the
27 Internal Revenue Service, the United States Department of Labor, the Louisiana
28 Department of Revenue, or the Louisiana Workforce Commission.

1 schedule or, if applicable, within any extension of time granted by the administrator.
2 If payment of the full amount due has not been received at the expiration of such
3 time, the administrator may void the agreement.

4 * * *

5 F. Notwithstanding any other provisions of state or federal law to the
6 contrary, waiver of unemployment interest shall not be available for the Voluntary
7 Disclosure Program when the employer has engaged in, is under audit for, or has a
8 case on appeal pertaining to willfully misclassifying workers under Title 23 of the
9 Louisiana Revised Statutes of 1950 or when the employer is engaged in, under audit
10 for, or has a case on appeal pertaining to state unemployment tax act dumping
11 provided for in R.S. 23:1539.1. No waiver of penalties provided for in R.S. 23:1543
12 shall be made for either program. Additionally, under 26 U.S.C. 3304 of the Federal
13 Unemployment Tax Act, 42 U.S.C. 503, the state unemployment tax act Dumping
14 Prevention Act of 2004, as required in R.S. 23:1664, and as per the United States
15 Department of Labor's directive to the Louisiana Workforce Commission, employer
16 liability for SUTA dumping penalties and fraud penalties shall not be waived under
17 federal law under any circumstances.

18 Section 2. R.S. 47:1508(B)(28) is hereby amended and reenacted and R.S. 47:1576.3
19 and 1576.4 are hereby enacted to read as follows:

20 §1508. Confidentiality of tax records

21 * * *

22 B. Nothing herein contained shall be construed to prevent:

23 * * *

24 (28) The sharing or furnishing, in the discretion of the secretary, of
25 information to the Louisiana Workforce Commission for the purposes of
26 determining, investigating, or prosecuting fraud related to all areas administered by
27 the Louisiana Workforce Commission or for the purposes of reviewing and
28 considering applications for participation in the Fresh Start Proper Worker
29 Classification Initiative provided for in R.S. 47:1576.3. Any information shared or

1 furnished shall be considered and held confidential and privileged by the Louisiana
2 Workforce Commission to the same extent heretofore provided.

3 * * *

4 §1576.3. The Fresh Start Proper Worker Classification Initiative

5 A. For the purposes of this Section, the following terms have the meanings
6 ascribed to them:

7 (1) "Applicant" means any association, corporation, estate, firm, individual,
8 joint venture, limited liability company, partnership, receiver, syndicate, trust, or any
9 other entity, combination, or group that submits or arranges through a representative
10 for the submission of an application to request relief under the Fresh Start Proper
11 Worker Classification Initiative for a tax administered by the department.

12 (2) "Application" means a completed application to request relief under the
13 Fresh Start Proper Worker Classification Initiative and all supplemental information
14 including but not limited to cover letters, schedules, reports, and any other
15 documents that provide evidence of the applicant's qualification for the Fresh Start
16 Proper Worker Classification Initiative. Supplemental information requested by the
17 department and timely provided by the applicant shall be considered part of the
18 application.

19 (3) "Application date" means the date a fully completed application
20 requesting relief under the Fresh Start Proper Worker Classification Initiative is
21 received by the department. Supplemental information requested by the department
22 and timely provided by the applicant shall not extend or delay the application date.

23 (4) "Class of workers" means a group of workers who perform the same or
24 similar services.

25 (5) "Commission" means the Louisiana Workforce Commission.

26 (6) "Department" means the Department of Revenue.

27 (7) "Secretary" means the secretary of the Department of Revenue.

28 B. The Fresh Start Proper Worker Classification Initiative is optional and
29 provides a taxpayer with an opportunity to voluntarily reclassify his worker as an

1 employee for a future tax period. To be eligible, a taxpayer shall meet all of the
2 following requirements:

3 (1) Apply to the Fresh Start Proper Worker Classification Initiative between
4 January 1, 2023, and December 31, 2023.

5 (2) Produce a certificate of proof of workers' compensation coverage for the
6 employee.

7 (3) Enter into a closing agreement with the department.

8 C. The Fresh Start Proper Worker Classification Initiative applies to
9 taxpayers that are currently treating their workers as independent contractors or other
10 nonemployees and want to prospectively treat the workers as employees. To be
11 eligible, a taxpayer shall have consistently treated the workers for the previous three
12 years as nonemployees, and shall have filed any required Form 1099-MISC, Form
13 1099-NEC, or equivalent form with the Internal Revenue Service with respect to
14 those workers, consistent with the nonemployee treatment.

15 D.(1) An eligible taxpayer that participates in the Fresh Start Proper Worker
16 Classification Initiative agrees to prospectively treat the class or classes of workers
17 identified in the application as employees for future tax periods and is not liable for
18 any withholding tax or related interest and penalties with respect to any amounts paid
19 to any workers before the date on which the taxpayer is accepted for participation in
20 the Fresh Start Proper Worker Classification Initiative.

21 (2) An eligible taxpayer shall not be entitled to any relief from unemployment
22 tax, interest, or penalties pursuant to this Section, but may seek relief in accordance
23 with R.S. 23:1775.

24 (3) An eligible taxpayer may request that the commission develop with the
25 taxpayer a reasonable payment schedule for unemployment taxes owed for the look-
26 back period as defined in R.S. 23:1771. However, payment of all outstanding
27 unemployment liabilities shall not be required prior to acceptance of the taxpayer's
28 application.

1 E.(1) An eligible taxpayer that wishes to participate in the Fresh Start Proper
2 Worker Classification Initiative shall submit an application for participation in the
3 program to the department on a form prescribed by the secretary. The department
4 shall contact the taxpayer or authorized representative to complete the application
5 process once it has reviewed the application and verified the taxpayer's eligibility.

6 (2) An accepted application constitutes a joint closing agreement between
7 the taxpayer and the department.

8 (3)(a) The closing agreement shall constitute confirmation by the taxpayer
9 to treat the class or classes of workers identified in the application as employees and
10 to comply with any and all reporting and payment obligations related to withholding
11 tax, unemployment tax, and workers' compensation coverage for the period
12 subsequent to the effective date of the agreement.

13 (b) Notwithstanding any provision of law to the contrary, any reclassification
14 of a class or classes of workers performing the following services shall be limited to
15 withholding tax and shall not be eligible for reclassification as an employee for
16 purposes of unemployment tax:

17 (i) Any services that are statutorily excluded from the definition of
18 employment provided for in R.S. 23:1472.

19 (ii) Any service performed in the employ of a state, and political subdivision
20 of the state, or of an Indian tribe, or any instrumentality of the state, any political
21 subdivision of the state, or any Indian tribe, which is wholly owned by one or more
22 states, political subdivisions, or Indian tribes, but only if the service is excluded from
23 employment as defined in the Federal Unemployment Tax Act.

24 (iii) Any service performed by an individual in the employ of a religious,
25 charitable, educational, or other organization, but only if the service is excluded from
26 employment as defined in the Federal Unemployment Tax Act.

27 (4) The closing agreement shall become effective on the date that the
28 taxpayer receives notice from the department that the taxpayer's application is
29 accepted.

1 (5) Failure to comply with the terms of the closing agreement and this
2 Section may nullify the acceptance of the taxpayer's application. If an acceptance
3 is nullified, the taxpayer shall become liable for withholding tax, interest, and
4 penalties determined to be due for prior periods.

5 (6) The secretary may disclose any information provided in an application
6 or in support of an application to the commission in order to coordinate the review
7 and consideration of the application. Any information furnished shall be considered
8 confidential and privileged and held by the commission as provided for in R.S.
9 47:1508.

10 F. The following employers shall not be eligible to participate in the
11 program:

12 (1)(a) Employers that are currently under audit concerning the classification
13 of the classes of workers by the Internal Revenue Service, the United States
14 Department of Labor, or by a state government entity.

15 (b) Employers who are contesting in court the classification of the class or
16 classes of workers from a previous audit by the Internal Revenue Service, the United
17 States Department of Labor, the department, or the commission.

18 (c) Employers who have withheld state income taxes from the amounts paid
19 to any worker and who have not remitted the tax to the department.

20 (2) For the purposes of Subparagraphs (a) and (b) of this Paragraph, a
21 taxpayer that is a member of an affiliated group within the meaning of Section
22 1504(a) of the Internal Revenue Code shall be ineligible if any member of the
23 affiliated group is under an employment, withholding, or unemployment tax audit.

24 G. A finding that a taxpayer failed to provide information or documentation
25 to reveal a fact material to an eligibility determination or made a material
26 misrepresentation as to any eligibility requirement shall immediately nullify the
27 acceptance of the taxpayer's application.

1 H. The department shall have the authority to promulgate rules and
2 regulations for the administration of the Fresh Start Proper Worker Classification
3 Initiative. Additionally, the department shall promulgate rules and regulations no
4 later than July 1, 2023, establishing a voluntary disclosure program for reporting
5 undisclosed liabilities for withholding taxes that would have been due for workers
6 who were not classified as employees.

7 §1576.4. Safe harbor

8 Any putative employer meeting the requirements provided for in this Section
9 shall not owe withholding tax, interest, or penalties otherwise due for the workers to
10 whom these requirements apply:

11 (1) Reporting consistency. The putative employer timely filed all required
12 federal tax and information returns for independent contractors who were paid six
13 hundred dollars or more, such as Form 1099-MISC or Form 1099-NEC. Relief is not
14 available for any worker for whom the employer did not file the required information
15 return.

16 (2) Substantive consistency. The putative employer and any predecessor
17 always treated the worker as an independent contractor; however, if any similar
18 worker was treated as an employee, relief is not available.

19 (3)(a) Reasonable basis. The putative employer had a reasonable basis for
20 not treating the worker as an employee including any of the following:

21 (i) The putative employer relied on a court case or Internal Revenue Service
22 ruling.

23 (ii) The putative employer was previously audited and the Internal Revenue
24 Service considered employment taxes but did not reclassify the workers.

25 (iii) Independent contractor treatment is common in the putative employer's
26 industry for workers providing similar services.

27 (iv) The putative employer and any predecessor always treated the worker
28 as an independent contractor.

29 (v) The putative employer relied on legal advice or advice of an accountant.

- 1 (b) Notwithstanding any contrary provision of this Paragraph, if any similar
 2 worker was treated as an employee, relief is not available.
 3 Section 3. R.S. 23:1772, 1774, and 1776 are hereby repealed in their entirety.

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 1067 Reengrossed

2022 Regular Session

Riser

Abstract: Provides relative to the Fresh Start Proper Worker Classification Initiative and the Voluntary Disclosure Program.

VOLUNTARY DISCLOSURE PROGRAM

Present law provides definitions for applicant, application date, delinquent penalty, and look-back period.

Proposed law deletes the definition for delinquent penalty and adds definitions for commission, penalty, and secretary.

Present law provides that the Louisiana Voluntary Disclosure Program (the program) is established as a process of reporting undisclosed liabilities for withholding taxes administered by the La. Dept. of Revenue and unemployment taxes by the La. Workforce Commission (LWC) that would have been due for workers who were not classified as employees.

Proposed law deletes provisions relative to the reporting undisclosed liabilities for withholding taxes administered by the La. Dept. of Revenue.

Present law provides that the program authorizes taxpayers to anonymously enter into agreements and voluntarily pay taxes with no penalty.

Proposed law provides that the program authorizes taxpayers to confidentially enter into agreements and voluntarily pay unemployment taxes with no interest and without certain penalties.

Proposed law provides that the following employers shall not be eligible to participate in the program:

- (1) Employers who are currently under audit concerning the classification of the classes of workers by the Internal Revenue Service (IRS), the U.S. Dept. of Labor, or by a state government entity.
- (2) Employers who are contesting in court or in an administrative proceeding the classification of the class or classes of workers from a previous audit by the IRS, the U.S. Dept. of Labor, or the La. Dept. of Revenue, or LWC.

Proposed law provides that no worker that performs services that are statutorily excluded from the definition of covered employment provided for in present law shall be eligible for reclassification as an employee.

Proposed law provides that the provisions of proposed law shall not apply to any of the following:

- (1) Any service performed in the employ of a state, and political subdivision of the state, or of an Indian tribe, or any instrumentality of the state, any political subdivision of the state, or any Indian tribe, which is wholly owned by one or more states, political subdivisions, or Indian tribes, but only if the service is excluded from employment as defined in federal law.
- (2) Any service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from employment as defined in federal law.

Present law provides that after all unemployment tax and interest due for the look-back period have been paid, the delinquent penalties shall be waived.

Proposed law provides that after all unemployment tax and penalties due for the look-back period have been paid, interest due provided for in present law shall be waived to the extent permitted by law. Proposed law further provides that no penalties provided for in present law or penalties related to fraud shall be waived.

Proposed law provides that waiver of unemployment interest shall not be available for the program when the employer has engaged in, is under audit for, or has a case on appeal pertaining to willfully misclassifying workers or when the employer is engaged in, under audit for, or has a case on appeal pertaining to State Unemployment Tax Act (SUTA) dumping provided for in present law.

Proposed law provides that employer liability for SUTA dumping penalties and fraud penalties shall not be waived under federal law under any circumstances.

FRESH START PROPER WORKER CLASSIFICATION INITIATIVE

Present law provides that the sharing or furnishing, in the discretion of the secretary of the La. Dept. of Revenue, of information to the LWC for the purposes of determining, investigating, or prosecuting fraud related to all areas administered by the LWC. Present law further provides that any information shared or furnished shall be considered and held confidential and privileged by the LWC.

Proposed law extends present law to include information that is disclosed on applications for the initiative to be considered and held confidential and privileged. Proposed law otherwise retains present law.

Proposed law provides definitions for applicant, application, application date, class of workers, commission, department, and secretary.

Proposed law provides that the Fresh Start Proper Worker Classification Initiative (the initiative) is optional and provides a taxpayer with an opportunity to voluntarily reclassify a worker as an employee for a future tax period. Proposed law further provides that in order to be eligible, a taxpayer shall meet all of the following requirements:

- (1) Apply to the Fresh Start Proper Worker Classification Initiative between Jan. 1, 2023, and Dec. 31, 2023.
- (2) Produce a certificate of proof of workers' compensation coverage for the employee.
- (3) Enter into a closing agreement with the La. Dept. of Revenue.

Proposed law provides that an eligible taxpayer that participates in the initiative agrees to prospectively treat the class of classes of workers identified in the application as employees for future tax periods and is not liable for any withholding tax or related interest and penalties with respect to any amounts paid to any workers before the date on which the taxpayer is accepted for participation in the initiative.

Proposed law provides that an eligible taxpayer shall not be entitled to any relief from unemployment tax, interest, or penalties pursuant to proposed law, but may seek relief in accordance with present law.

Proposed law provides that an eligible taxpayer may request that the LWC develop with the taxpayer a reasonable payment schedule for unemployment taxes owed for the look-back period. Proposed law further provides that payment of all outstanding unemployment liabilities shall not be required prior to acceptance of the taxpayer's application.

Proposed law provides that an eligible taxpayer that wishes to participate in the initiative shall submit an application for participation in the program to the department on a form prescribed by the secretary of the La. Dept. of Revenue. Proposed law further provides that La. Dept. of Revenue shall contact the taxpayer or authorized representative to complete the process once it has reviewed the application and verified the taxpayer's eligibility.

Proposed law provides that an accepted application constitutes a joint closing agreement between the taxpayer and the La. Dept. of Revenue.

Proposed law provides that the closing agreement shall become effective on the date that the taxpayer receives notice from the La. Dept. of Revenue that the taxpayer's application is accepted.

Proposed law provides that failure to comply with the terms of the closing agreement and proposed law may nullify the acceptance of the taxpayer's application. Proposed law further provides that if an acceptance is nullified, the taxpayer shall become liable for withholding tax, interest, and penalties determined to be due for prior periods.

Proposed law provides that the following employers shall not be eligible to participate in the program:

- (1) Employers who are currently under audit concerning the classification of the classes of workers by the IRS, the U.S. Dept. of Labor, or by a state government entity.
- (2) Employers who are contesting in court the classification of the class or classes of workers from a previous audit by the IRS, the U.S. Dept. of Labor, the La. Dept. of Revenue, or LWC.
- (3) Employers who have withheld state income taxes from the amounts paid to any worker and who have not remitted the tax to the La. Dept. of Revenue.
- (4) For the purposes of proposed law, a taxpayer that is a member of an affiliated group defined under federal law shall be ineligible if any member of the affiliated group is under an employment, withholding, or unemployment tax audit.

Proposed law provides that the La. Dept. of Revenue shall have the authority to promulgate rules and regulations for the administration of the initiative. Proposed law further provides that the La. Dept. of Revenue shall promulgate rules and regulations establishing a voluntary disclosure program for reporting undisclosed liabilities for withholding taxes no later than July 1, 2023.

(Amends the heading of Part XIII of Chapter 11 of Title 23 of the La. Revised Statutes of 1950, R.S. 23:1771, 1773, 1775(B) and (C)(2) and R.S. 47:1508(B)(28); Adds R.S. 23:1775(F) and R.S. 47:1576.3 and 1576.4; Repeals R.S. 23:1772, 1774, and 1776)