2021 Regular Session



HOUSE BILL NO. 705 (Substitute for House Bill No. 151 by Representative Riser)

BY REPRESENTATIVE RISER AND SENATORS ALLAIN, BARROW, BOUDREAUX, BOUIE, CONNICK, FIELDS, HEWITT, JACKSON, LUNEAU, PRICE, SMITH, TARVER, AND WARD

1	AN ACT
2	To amend and reenact R.S. 23:1711(G)(1) and to enact R.S. 23:1711.1, relative to
3	unemployment compensation; to provide for the classification of employees; to
4	increase the administrative penalties for the misclassification of employees; to
5	provide relative to the failure to pay contributions; to provide criteria for classifying
6	employees as independent contractors; to provide for applicability; and to provide
7	for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 23:1711(G)(1) is hereby amended and reenacted and R.S. 23:1711.1
10	is hereby enacted to read as follows:
11	§1711. False statements or representations; failure to file reports or maintain
12	records; duties of officers and agents; presumptive proof; penalties
13	* * *
14	G. Misclassification of employees as independent contractors.
15	(1)(a) Written warning. If the administrator determines, after investigation,
16	that an employer, or any officer, agent, superintendent, foreman, or employee of the
17	employer, failed to properly classify an individual as an employee in accordance
18	with this Chapter, and failed to pay contributions required by this Chapter, but the
19	failure was not knowing or willful, the employer shall be issued a written warning
20	as evidence that the employer has been cited for a first offense of misclassification.

Page 1 of 6

1

2

3

4

Such warning shall constitute a determination that any workers identified therein are employees, and all resulting contributions, interest and penalties shall be due, and shall be appealable as provided in this Section. However, no administrative penalties shall be due.

5 Administrative penalties. If the administrator determines, after (b)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 five hundred dollars per 12 each such individual. If the employer becomes compliant within sixty days of the 13 citation, the penalty shall be waived for the first offense.

(b) After the first offense, the administrator shall assess an administrative
 penalty of one thousand dollars per individual misclassified.

16(c) Thereafter, any such failure by an employer to properly classify an17individual as an employee and pay contributions due shall be subject to an18administrative penalty of not more than five hundred two thousand five hundred19dollars per each such individual. In determining the amount of the administrative20penalty imposed, the administrator shall consider factors including previous21violations by the employer, the seriousness of the violation, the good faith of the22employer, and the size of the employer's business.

(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
 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, or imprisoned for not less than thirty days nor more than ninety days, or

Page 2 of 6

12

15

both. For the purpose of this Subsection, each employee so misclassified shall constitute a separate offense.

3 (d) No such determination shall be final or effective, and no resulting 4 administrative penalty shall be assessed, unless the administrator first provides the 5 employer with written notification by certified mail of the determination, including 6 the amount of the proposed contributions, interest, and penalties determined to be 7 due and of the opportunity to request a fair hearing, of which a record shall be made 8 within thirty days of the mailing of such notice. The hearing request may be made 9 by mail, as evidenced by the official postmarked date, or by otherwise timely 10 delivering such appeal. If the employer does not request a hearing within the thirty-11 day period the determination shall become final and effective, and the contributions, 12 interest, and penalties due shall be assessed.

 13
 (e) All administrative penalties assessed pursuant to this Section shall be

 14
 deposited into the state's unemployment trust fund.

16 <u>§1711.1.</u> Independent contractor; rebuttable presumption

17A.(1) Notwithstanding any provision of this Chapter to the contrary, there18shall be a rebuttable presumption of an independent contractor relationship with the19contracting party for whom the independent contractor performs work, if an20individual or entity controls the performance, methods, or processes used to perform21services and meets at least six of the following criteria:

(a) The individual or entity operates an independent business that provides
 services for or in connection with the contracting party.

(b) The individual or entity represents the provided services as self employment available to others, including through the use of a platform application
 to obtain work opportunities or as a lead generation service.

27 (c) The individual or entity accepts responsibility for all tax liability
 28 associated with payments received from or through the contracting party.

Page 3 of 6

1	(d) The individual or entity is responsible for obtaining and maintaining any
2	required registration, licenses, or other authorization necessary for the legal
3	performance of the services rendered by him as the contractor.
4	(e) The individual or entity is not insured under the contracting party's health
5	insurance or workers' compensation insurance coverage and is not covered for
6	unemployment insurance benefits.
7	(f) The individual or entity has the right to accept or decline requests for
8	services by or through the contracting party and is able to perform services for or
9	through other parties or can accept work from and perform work for other businesses
10	and individuals besides the contracting party even if the individual voluntarily
11	chooses not to exercise this right or is temporarily restricted from doing so.
12	(g) The contracting party has the right to impose quality standards or a
13	deadline for completion of services performed, or both, but the individual or entity
14	determines the days worked and the time periods of work.
15	(h) The individual or entity furnishes the major tools or items of equipment
16	needed to perform the work.
17	(i) The individual or entity is paid a fixed or contract rate for the work
18	performed and the contracting party does not pay the individual or entity a salary or
19	wages based on an hourly rate.
20	(j) The individual or entity is responsible for the majority of expenses
21	incurred in performing the services, unless the expenses are reimbursed under an
22	express provision of a written contract between the parties or the expenses
23	reimbursed are commonly reimbursed under industry practice.
24	(k) The individual or entity can use assistants as deemed proper for the
25	performance of the work and is directly responsible for supervision and
26	compensation.
27	(2) Any contracting party or independent contractor may rely on the
28	provisions of this Section for the purpose of establishing an employment or
29	independent contractor relationship.

Page 4 of 6

	HB NO. 705 ENROLLED
1	B. The provisions of this Section shall not apply to any of the following:
2	(1) A motor carrier who pursuant to a contract with an owner operator as
3	defined in R.S. 23:1021(10) undertakes the performance of services as a motor
4	carrier.
5	(2) Any service excluded from the term "employment" as provided in R.S.
6	<u>23:1472(12)(H).</u>
7	(3) Any service performed in the employ of a state, any political subdivision
8	of the state, or of an Indian tribe, or any instrumentality of the state, any political
9	subdivision of the state, or any Indian tribe, which is wholly owned by one or more
10	states, political subdivisions, or Indian tribes, but only if the service is excluded from
11	employment as defined in the Federal Unemployment Tax Act.
12	(4) Any service performed by an individual in the employ of a religious,
13	charitable, educational, or other organization, but only if the service is excluded from
14	employment as defined in the Federal Unemployment Act.
15	Section 2. The legislature finds and declares the following:
16	(A) It is in the best interests of workers, businesses, and government entities to have
17	clear and certain criteria in identifying an independent contractor relationship as compared
18	to an employment relationship.
19	(B) These criteria will reduce unnecessary and costly litigation, as well as confusion
20	in the workforce industry, amongst agencies, and within the court systems.
21	(C) To this end, this Act is to ensure that employees will be properly classified as
22	such and afforded the legal protections and obligations that apply to that status while
23	workers who desire to be independent contractors know the criteria for that designation.
24	Section 3. The provisions of this Act shall not apply to any person or organization
25	licensed by the Department of Insurance, any securities broker-dealer, or any investment
26	adviser or their agents and representatives who are registered with the Securities and
27	Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the state
28	of Louisiana.

Page 5 of 6

- 1 Section 4. This Act shall be known and may be cited as "The Ernest C. Stephens
- 2 Act".

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____