Regular Session, 2011

HOUSE BILL NO. 535

BY REPRESENTATIVE LAFONTA

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LABOR: Creates the Workplace Fraud Prevention Act

1   AN ACT

2   To enact Part II-A of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950, to be

3   comprised of R.S. 23:931 through 934, and R.S. 38:2181, relative to the

4   classification of construction employees; to provide for definitions; to provide with

5   respect to the duty to properly classify workers; to provide for penalties for failure

6   to properly classify; to provide relative to contracts with the state; and to provide for

7   related matters.

8   Be it enacted by the Legislature of Louisiana:

9   Section 1. Part II-A of Chapter 9 of Title 23 of the Louisiana Revised Statutes of

10   1950, comprised of R.S. 23:931 through 934, is hereby enacted to read as follows:

11   PART II-A WORKPLACE FRAUD PREVENTION ACT

12   §931. Short title; legislative declaration

13   A. This part shall be known and may be cited as the "Workplace Fraud

14   Prevention Act".

15   B. The legislature hereby declares that employers in the construction

16   industry who improperly classify employees as independent contractors deprive

17   these workers of proper social security benefits, worker's compensation, and other

18   benefits, while reducing the employers' state and federal tax withholding and related

19   obligations. This practice puts businesses that bear higher costs for complying with

20   the law at a competitive disadvantage.

1   §932. Definitions

2   For purposes of this Part, the following terms shall have the meaning ascribed

3   to them in this Section, unless the context clearly indicates otherwise:

4   (1) "Commission" shall mean the Louisiana Workforce Commission.

5   (2) "Construction" means work related to the erection, improvement,

6   alteration, repair, renovation, maintenance, or remodeling of a building, structure,

7   appurtenance, road, highway, bridge, dam, levee, canal, jetty, or other improvement

8   to or on real property, including moving, demolishing, dredging, shoring,

9   scaffolding, drilling, blasting, and excavating real property.

10   (3) "Contractor" means a person who contracts to perform construction

11   services, including a subcontractor.

12   (4) "Employee" and "Independent Contractor" shall be determined as

13   provided in R.S. 23:1472.

14   (5) "Performing service" means the performance of construction service for

15   payment.

16   §933. Violations; penalties

17   A.   A contractor shall properly classify an individual who performs

18   construction services as an employee.

19   B.(1) It shall be unlawful for a contractor to fail to properly designate an

20   individual as an employee of the contractor.

21   (2) Whoever fails to properly designate an individual as an employee of the

22   contractor shall pay to the commission, upon first violation, five hundred dollars per

23   individual not properly classified and upon second violation, five thousand dollars

24   per individual not properly classified.

25   C.(1) It shall be unlawful for an individual to knowingly form or assist in the

26   formation of a corporation, partnership, limited liability corporation, or other

27   business entity, or pay or collect a fee for use of a corporation, partnership, limited

28   liability corporation, or other business entity, for fraudulent purposes.

1   (2) Whoever knowingly forms or assists in the formation of a corporation,

2   partnership, limited liability corporation, or other business entity, or pays or collects

3   a fee for use of a corporation, partnership, limited liability corporation, or other

4   business entity, for fraudulent purposes shall pay to the commission a fine of two

5   thousand five hundred dollars upon first violation, and a fine of ten thousand dollars

6   for each subsequent violation.

7   D.(1) It shall be unlawful for an individual to knowingly assist, aid, or

8   conspire with any person in violation of this Subsection.

9   (2) Whoever knowingly assists, aids, or conspires with any person in

10   violation of this Subsection shall pay to the commission a fine of two thousand five

11   hundred dollars upon first violation, and a fine of ten thousand dollars for each

12   subsequent violation.

13   E. Any penalty issued to a business entity pursuant to this Section shall apply

14   to any successor business entity that has one or more officers in common with the

15   original entity and is engaged in the same or similar business activity.

16   F. Any fines collected as a result of a violation of this Section shall be

17   deposited into the penalty and interest account established in R.S. 23:1513.

18   G. In addition to any fines assessed, if the commission determines that a

19   contractor or other person has violated the provisions of this Section, the commission

20   shall initiate enforcement proceedings to collect unpaid unemployment taxes plus

21   interest and notify the Louisiana Department of Revenue, the Louisiana Office of

22   Workers Compensation fraud and financial and compliance units, the attorney

23   general, and any other appropriate prosecuting authority of any violations.

24   §934. Notice; complaints

25   A. Employers shall post a notice in English and Spanish, in a conspicuous

26   location on the job site, which specifies that every individual who works for the

27   contractor has the right to be properly classified an employee or independent

28   contractor if the individual meets the requirements pursuant to the Workplace Fraud

29   Prevention Act. The notice shall also provide that if any worker believes that he or

1   another individual has not been properly classified as an employee or independent

2   contractor pursuant to the Workplace Fraud Prevention Act, he should contact the

3   Louisiana Workforce Commission.

4   B.(1) The commission shall provide a toll-free telephone number and

5   website for the public to confidentially report violations.

6   (2) The commission shall promptly investigate any credible complaint that

7   contains all of the following information:

8   (a) The name and contact information for the party alleged to have

9   committed the violation.

10   (b) The job site location at which the violation is said to have occurred.

11   (c) A description of the violation.

12   C. Beginning on January first and annually thereafter, the commission shall

13   issue a report to the governor and to the legislature regarding compliance with and

14   enforcement of this Section. The report shall include the following:

15   (1) The total number of complaints received.

16   (2) The number of complaints investigated and the findings of the

17   investigations.

18   (3) The amount of unemployment taxes, interest, administrative penalties,

19   and fines collected pursuant to R.S. 23:933.

20   (4) The number of referrals to other agencies as provided by R.S. 23:933 and

21   the outcome of those referrals.

22   Section 2. R.S. 38:2181 is hereby enacted to read as follows:

23   §2181. Workplace Fraud Prevention Act; compliance; penalties

24   A. Any contract between a contractor performing construction services and

25   the state or any political subdivision of this state shall specify compliance with the

26   Workplace Fraud Prevention Act as provided in R.S. 23:931 through 934 and shall

27   require the contractor to submit an affidavit attesting that:

28   (1) Each individual performing services for the contractor has been properly

29   classified as either an employee or an independent contractor.

1   (2) The contractor is in compliance with the requirements of R.S. 46:236.1.4.

2   (3) The contractor is not barred from contracting with this state or any

3 political subdivision of this state.

4   B. Any contractor who knowingly swears to a false affidavit as provided by

5 Subsection A of this Section shall be guilty of perjury as provided in R.S. 14:123,

6 and upon a second violation, shall be barred from contracting with this state or a

7 political subdivision for three years.

8   C. Any contractor who violates the provisions of this Section may have his

9 contract rescinded by the state or political subdivision.

10   Section 3 . The provisions of Section 2 of this Act shall apply only to contracts

11 entered into after August 15, 2011.

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)]

LaFonta   HB No. 535

Abstract: Creates the Workplace Fraud Prevention Act to ensure the proper classification of employees in construction work.

Proposed law creates the Workplace Fraud Prevention Act.

Proposed law sets forth legislative intent that employers in the construction industry properly classify employees and independent contractors so that the appropriate taxes and benefits are paid and applied.

Proposed law provides definitions.

Proposed law requires that employers properly classify workers as employees or as independent contractors and provides that failure to do so will result in a fine of $500 per individual not properly classified on first violation, and a fine of $5,000 per individual not properly classified upon any second violation.

Proposed law provides that it shall be unlawful for any person to form, or assist anyone in the formation of a business entity for fraudulent purposes, or assist any person in improperly classifying workers and that the penalty for doing so is a fine of $2,500 for the first violation and $10,000 for any subsequent violation.

Proposed law provides that the fines shall be collected by the commission and shall be deposited into the penalty and interest account.

Proposed law provides that in addition to any fines assessed, the commission shall initiate enforcement proceedings to collect any unpaid taxes plus interest.

Proposed law further provides that the commission shall notify the LA Dept. of Revenue, the LA Office of Workers' Comp., the attorney general, and any other appropriate prosecuting authority of any violations.

Proposed law requires construction employers to post a notice on the job site, in English and Spanish, notifying workers that they are entitled to be classified as employees or independent contractors as per the Workplace Fraud Prevention Act, and that any worker should contact the commission if he knows of any violation.

Proposed law requires the commission to provide a toll-free phone number and website for confidential reports of violations.

Proposed law requires the commission to investigate violations and report the number of investigated complaints to the governor and legislature annually.

Proposed law provides that all contracts with the state shall comply with the Workplace Fraud Prevention Act.

Proposed law requires all contractors who contract with the state to execute an affidavit providing that each worker has been properly classified and that the employer is in compliance with present law, R.S. 46:236.1.4 (family and child support programs).

Proposed law provides that any contractor not in compliance is subject to rescission of the state contract.

Proposed law provides that the provisions of proposed law shall apply only to contracts entered into after Aug. 15, 2011.

(Adds R.S. 23:931-934 and R.S. 38:2181)