

110TH CONGRESS  
1ST SESSION

# S. 2044

To provide procedures for the proper classification of employees and independent contractors, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2007

Mr. OBAMA (for himself, Mr. DURBIN, Mr. KENNEDY, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide procedures for the proper classification of employees and independent contractors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Con-  
5 tractor Proper Classification Act of 2007”.

6 **SEC. 2. REFORMATION OF SAFE HARBOR TO CLOSE ITS USE**  
7 **AS A TAX LOOPHOLE.**

8 (a) ALLOWANCE OF PROSPECTIVE RECLASSIFICA-  
9 TIONS.—

1           (1) IN GENERAL.—Section 530(a) of the Rev-  
2           enue Act of 1978, as amended by section 269(c)(1)  
3           of the Tax Equity and Fiscal Responsibility Act of  
4           1982, is amended by adding at the end the following  
5           new paragraph:

6           “(5) ALLOWANCE OF RECLASSIFICATIONS.—  
7           Paragraph (1) shall not apply with respect to the  
8           treatment by a taxpayer of any individual for em-  
9           ployment tax purposes for any period beginning  
10          after a determination by the Secretary of the Treas-  
11          ury that the individual should be treated as an em-  
12          ployee of the taxpayer.”.

13          (2) EFFECTIVE DATE.—The amendment made  
14          by this subsection shall apply to determinations  
15          made after the date of the enactment of this Act.

16          (b) ELIMINATION OF BAN ON IRS ISSUING REGULA-  
17          TIONS OR REVENUE RULINGS ON EMPLOYEE/INDE-  
18          PENDENT CONTRACTOR STATUS.—

19          (1) IN GENERAL.—Section 530 of the Revenue  
20          Act of 1978, as amended by section 269(c)(2) of the  
21          Tax Equity and Fiscal Responsibility Act of 1982,  
22          section 1706(a) of the Tax Reform Act of 1986, sec-  
23          tion 1122(a) of the Small Business Job Protection  
24          Act of 1996, and section 864(a) of the Pension Pro-  
25          tection Act of 2006, is amended by striking sub-

1 section (b) and by redesignating subsections (c), (d),  
2 (e), and (f) as subsections (b), (c), (d), and (e), re-  
3 spectively.

4 (2) EFFECTIVE DATE.—The amendments made  
5 by this subsection shall take effect on the date of the  
6 enactment of this Act.

7 (c) ELIMINATION OF ABILITY OF EMPLOYERS TO  
8 RELY ON INDUSTRY PRACTICE AS A BASIS FOR CLAIMING  
9 SAFE HARBOR.—

10 (1) IN GENERAL.—Section 530(a)(2) of the  
11 Revenue Act of 1978 is amended—

12 (A) by striking the semicolon at the end of  
13 subparagraph (A) and inserting “; or”,

14 (B) by striking the semicolon at the end of  
15 subparagraph (B) and inserting a period, and

16 (C) by striking subparagraph (C).

17 (2) CONFORMING AMENDMENTS.—

18 (A) Section 530(d)(2) of the Revenue Act  
19 of 1978, as redesignated by subsection (b)(1),  
20 is amended—

21 (i) by striking the comma at the end  
22 of subparagraph (A) and inserting a pe-  
23 riod,

24 (ii) by striking subparagraphs (B) and  
25 (C), and

1 (iii) by striking “subsection (a)(2)” in  
 2 the matter preceding subparagraph (A)  
 3 and all that follows through “a taxpayer”  
 4 and inserting “subsection (a)(2), a tax-  
 5 payer”.

6 (B) Section 530(d)(4)(B) of such Act (as  
 7 so redesignated) is amended by striking “sub-  
 8 paragraph (A), (B), or (C)” and inserting “sub-  
 9 paragraph (A) or (B)”.

10 (3) EFFECTIVE DATE.—The amendments made  
 11 by this subsection shall apply to periods beginning  
 12 after the date which is 60 days after the date of the  
 13 enactment of this Act.

14 **SEC. 3. REVIEW OF CLASSIFICATION STATUS.**

15 (a) IN GENERAL.—Section 530 of the Revenue Act  
 16 of 1978, as amended by section 2(b)(1), is amended by  
 17 adding at the end the following new subsections:

18 “(f) PETITIONS FOR REVIEW OF STATUS.—

19 “(1) IN GENERAL.—Under procedures estab-  
 20 lished by the Secretary of the Treasury not later  
 21 than 90 days after the date of the enactment of this  
 22 subsection, any individual who performs services for  
 23 a taxpayer may petition (either personally or  
 24 through a designated representative or attorney) for

1 a determination of the individual's status for em-  
2 ployment tax purposes.

3 “(2) ADMINISTRATIVE PROCEDURES.—The pro-  
4 cedures established under paragraph (1) shall pro-  
5 vide for—

6 “(A) a determination of status not later  
7 than 90 days after the filing of the petition  
8 with respect to employment in any industry  
9 (such as the construction industry) in which  
10 employment is transient, casual, or seasonal,

11 “(B) an administrative appeal of any de-  
12 termination that an individual is not an em-  
13 ployee of the taxpayer,

14 “(C) the award of expenses, including ex-  
15 pert witness fees and reasonable attorneys' fees  
16 for the individual against the taxpayer in any  
17 case in which the individual achieves reclassi-  
18 fication, and

19 “(D) the assessment of such expenses  
20 against the taxpayer by the Secretary of the  
21 Treasury on behalf of such individual.

22 “(3) PROHIBITION AGAINST RETALIATION.—

23 “(A) IN GENERAL.—No taxpayer may dis-  
24 charge an individual, refuse to contract with an  
25 individual, or otherwise discriminate against an

1 individual with respect to compensation, terms,  
2 conditions, or privileges of the services provided  
3 by the individual because the individual (or any  
4 designated representative or attorney on behalf  
5 of such individual) filed a petition under para-  
6 graph (1).

7 “(B) ENFORCEMENT ACTION.—An indi-  
8 vidual who alleges discharge or other discrimi-  
9 nation by any taxpayer in violation of subpara-  
10 graph (A) may seek relief under the procedures  
11 and remedies established under section 42121  
12 of title 49, United States Code.

13 “(C) RIGHTS RETAINED BY INDIVIDUAL.—  
14 Nothing in this paragraph shall be deemed to  
15 diminish the rights, privileges, or remedies of  
16 any individual under any Federal or State law,  
17 or under any collective bargaining agreement.

18 “(g) RESULTS OF MISCLASSIFICATION DETERMINA-  
19 TIONS.—In any case in which the Secretary of the Treas-  
20 ury determines that a taxpayer has misclassified an indi-  
21 vidual as not an employee for employment tax purposes,  
22 the Secretary of the Treasury shall—

23 “(1) if necessary, perform an employment tax  
24 audit of such taxpayer,

1           “(2) inform the Department of Labor about  
2 such misclassification,

3           “(3) notify the individual of any eligibility for  
4 the refund of self-employment taxes under chapter 2  
5 of the Internal Revenue Code of 1986, and

6           “(4) apply the provisions of section 3509 of the  
7 Internal Revenue Code of 1986 and direct the tax-  
8 payer to take affirmative action to abate the viola-  
9 tion.”.

10       (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall take effect on the date of the enactment  
12 of this Act.

13 **SEC. 4. COORDINATION, ENFORCEMENT, AND COMPLI-**  
14 **ANCE.**

15       (a) ANNUAL REPORTS.—The Secretary of the Treas-  
16 ury and the Secretary of Labor shall each issue annual  
17 reports on worker misclassification, including—

18           (1) information on the number and type of en-  
19 forcement actions against, and audits of, employers  
20 who have misclassified workers,

21           (2) relief obtained as a result of such actions  
22 against, and audits of, employers who have  
23 misclassified workers,

1           (3) an overall estimate of the number of em-  
 2           ployers misclassifying workers, the number of work-  
 3           ers affected, and the industries involved,

4           (4) the impact of such misclassification on the  
 5           Federal tax system, and

6           (5) the aggregate number of worker  
 7           misclassification cases with respect to which each  
 8           Secretary has provided information to the other Sec-  
 9           retary and the outcome of actions taken, if any, by  
 10          each Secretary in each worker misclassification case  
 11          with respect to which the Secretary has received  
 12          such information.

13 As part of the annual report, the Secretary of the Treas-  
 14          ury shall include information on the outcomes of the peti-  
 15          tions filed under section 530(f) of the Revenue Act of  
 16          1978 and the Secretary of Labor shall include information  
 17          on the outcomes of the complaints and actions described  
 18          in subsection (b)(1)(A) and the investigations required in  
 19          subsection (b)(1)(B).

20          (b) ENFORCEMENT ACTIVITIES.—

21                 (1) DEPARTMENT OF LABOR.—

22                         (A) WAGE AND HOUR ENFORCEMENT.—

23                         The Secretary of Labor shall identify and track  
 24                         complaints and enforcement actions involving  
 25                         misclassification of independent contractors for



1 the purposes of the laws enforced by the Wage  
2 and Hour Division of the Department of Labor.

3 (B) INVESTIGATIONS OF INDUSTRIES WITH  
4 WORKER MISCLASSIFICATIONS.—The Secretary  
5 of Labor shall conduct investigations of indus-  
6 tries in which worker misclassification is  
7 present as determined by information (other  
8 than return information (as defined in section  
9 6103(b)(2)) received from the Secretary of the  
10 Treasury and any other relevant information,  
11 including reports from other Federal agencies  
12 and State workforce, labor, and revenue agen-  
13 cies.

14 (2) AUTHORIZATION OF APPROPRIATIONS.—  
15 There is authorized such sums as are necessary for  
16 the Department of the Treasury and the Depart-  
17 ment of Labor to carry out the purposes of the pro-  
18 visions of, and amendments made by, this Act.

19 (3) INFORMATION SHARING.—The Secretary of  
20 the Treasury and the Secretary of Labor shall ex-  
21 change information on worker misclassification cases  
22 and shall provide such information with relevant  
23 State agencies. Upon receipt of such information,  
24 the Secretary of the Treasury and the Secretary of

1 Labor shall determine whether further investigation  
2 is warranted in each case.

3 **SEC. 5. NOTICE TO EMPLOYEES AND INDEPENDENT CON-**  
4 **TRACTORS AND MAINTENANCE OF INFORMA-**  
5 **TION REGARDING INDEPENDENT CONTRAC-**  
6 **TORS.**

7 (a) NOTICE OF RIGHT TO CHALLENGE CLASSIFICA-  
8 TION.—The Secretary of Labor shall provide for the place-  
9 ment of information on any poster required under the Fair  
10 Labor Standards Act informing workers of their right to  
11 seek a status determination from the Internal Revenue  
12 Service.

13 (b) EMPLOYER NOTICES TO INDEPENDENT CON-  
14 TRACTORS.—Each employer shall notify any individual  
15 who is hired by the employer as an independent contractor  
16 within the scope of the employer's trade or business, at  
17 the time of hire, of the Federal tax obligations of an inde-  
18 pendent contractor, the labor and employment law protec-  
19 tions that do not apply to independent contractors, and  
20 the right of such independent contractor to seek a status  
21 determination from the Internal Revenue Service. The  
22 Secretary of the Treasury and the Secretary of Labor shall  
23 develop model materials for providing such notice.

24 (c) MAINTENANCE OF INFORMATION REGARDING  
25 INDEPENDENT CONTRACTORS.—Each employer shall

1 maintain for 3 years a list of the independent contractors  
2 retained by the employer, including name, address, Social  
3 Security number and Federal tax identification number,  
4 and shall make the records available for inspection during  
5 investigations.

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