BON23655 MT0 S.L.C.

118TH CONGRESS 1ST SESSION	S.	

To amend the Fair Labor Standards Act of 1938 and the National Labor Relations Act to clarify the standard for determining whether an individual is an employee, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr.	Scott of South Carolina (for himself, Mrs. Blackburn, Mr. Cramer,
	Mrs. Hyde-Smith, Mr. Braun, Mr. Wicker, and Mr. Thune) intro-
	duced the following bill; which was read twice and referred to the Com-
	mittee on

A BILL

To amend the Fair Labor Standards Act of 1938 and the National Labor Relations Act to clarify the standard for determining whether an individual is an employee, 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. CRITERIA FOR DETERMINING EMPLOYEE STA-
- 4 **TUS.**
- 5 (a) Criteria for Determining Employee Status
- 6 Under the Fair Labor Standards Act.—Section 3(e)

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1	of the Fair Labor Standards Act of 1938 (29 U.S.C.
2	203(e)) is amended—
3	(1) by redesignating paragraphs (2), (3), (4),
4	and (5) as paragraphs (3), (4), (5), and (6), respec-
5	tively;
6	(2) in paragraph (1), by striking "paragraphs
7	(2), (3), and (4)" and inserting "paragraphs (3),
8	(4), (5), and (6)"; and
9	(3) by inserting after paragraph (1) the fol-
10	lowing:
11	"(2)(A) An individual shall be determined to be
12	an independent contractor rather than an employee
13	of another person if—
14	"(i) such other person does not exercise
15	significant control over the details of the way
16	the work is performed by the individual, with-
17	out regard to any control the other person may
18	exercise over the final result of the work per-
19	formed; and
20	"(ii) while performing such work, the indi-
21	vidual has the opportunities and risks inherent
22	with entrepreneurship, such as the discretion to
23	exercise managerial skill, business acumen, or
24	professional judgment.

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1	"(B) The following factors may not be used in
2	determining that an individual is an employee of an-
3	other person:
4	"(i) Whether such other person requires
5	the individual to comply with legal, statutory,
6	or regulatory requirements.
7	"(ii) Whether such other person requires
8	the individual to comply with health and safety
9	standards that are more stringent than other-
10	wise applicable health and safety standards.
11	"(iii) Whether such other person requires
12	the individual to carry insurance of any kind.
13	"(iv) Whether such other person requires
14	the individual to meet contractually agreed-
15	upon performance standards, such as dead-
16	lines.".
17	SEC. 2. EMPLOYEE CLASSIFICATION UNDER THE NATIONAL
18	LABOR RELATIONS ACT.
19	Section 2(3) of the National Labor Relations Act (29
20	U.S.C. 152(3)) is amended—
21	(1) by striking "(3) The term 'employee' shall"
22	and inserting the following:
23	"(3)(A) The term 'employee' shall"; and
24	(2) by adding at the end the following:

1	"(B) Section 3(e)(2) of the Fair Labor
2	Standards Act of 1938 (29 U.S.C. $203(e)(2)$)
3	shall be used in determining under this Act
4	whether an individual is an independent con-
5	tractor or an employee of another person, ex-
6	cept that for purposes of this Act a reference
7	in such section to the term 'employee' or 'per-
8	son' shall be deemed a reference to such term
9	as defined in this section.".