

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.

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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) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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)

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.



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.”.