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119TH CONGRESS
2D SESSION

S. 4010

To clarify the classification of service provider payees as employees or independent contractors in Federal law.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2026

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To clarify the classification of service provider payees as employees or independent contractors in Federal law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "21st Century Worker Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CLASSIFICATION OF SERVICE PROVIDER PAYEES

Sec. 101. Definitions.
Sec. 102. Classification.

Sec. 103. Mandatory independent contractor classification.
Sec. 104. Mandatory employee classification.
Sec. 105. Elective classification service provider payees.
Sec. 106. Change in classification; periodic classification review.

TITLE II—APPLICATION TO OTHER LAWS

Sec. 201. Fair Labor Standards Act of 1938.
Sec. 202. National Labor Relations Act.
Sec. 203. Tax classification.
Sec. 204. GAO study on changes needed to other Federal laws.

TITLE I—CLASSIFICATION OF SERVICE PROVIDER PAYEES

SEC. 101. DEFINITIONS.

In this title:

(1) BONA FIDE SOLE PROPRIETOR.—The term ''bona fide sole proprietor'' means a service provider payee who—

(A) has entered into a written contract governing the terms of the goods or services provided to a service recipient payor and the contract is not an employment by agreement;

(B) is not required to provide the goods or services exclusively for the service recipient payor; and

(C) has not had a substantial economic relationship or employment by agreement with the service recipient payor as described in section 104 during the previous calendar year.

(2) BUSINESS ENTITY.—The term ''business entity''—

(A) means a corporation, limited liability company, limited partnership, limited liability partnership, limited liability limited partnership, statutory business trust, or a similar entity formed under the laws of the United States, under the law of a State or United States territory (including the District of Columbia), or under the laws of a foreign country; and

(B) includes a general partnership not described in subparagraph (A) that has registered to do business under State or local law.

(3) COMPENSATION.—

(A) IN GENERAL.—The term ''compensation''—

(i) means consideration paid by a service recipient payor to a service provider payee for goods or services provided; and

(ii) includes payments in money, payments in property, wages, salaries, benefits, and other types of payment.

(B) FAIR MARKET VALUE.—For purposes of determining the amount of compensation, the value of payments in a form other than legal tender shall be determined by the fair market value of the payment on the date of payment.

(4) DIRECT SALES SERVICE PROVIDER PAYEE.—The term ''direct sales service provider payee'' means a service provider payee who is a direct seller, as defined in section 3508(b) of the Internal Revenue Code of 1986.

(5) ELECTIVE CLASSIFICATION SERVICE PROVIDER PAYEE.—The term ''elective classification service provider payee'' means a service provider payee who is not classified as either—

(A) a mandatory independent contractor under section 103; or

(B) a mandatory employee under section 104.

(6) EMPLOYEE.—The term ''employee'' means an individual who—

(A) is a service provider payee; and

(B) is—

(i) classified as a mandatory employee under section 104; or

(ii) classified as an employee under section 105.

(7) EMPLOYER.—The term ''employer'' means a service recipient payor—

(A) that is in a substantial economic relationship with a service provider payee who is

classified as an employee under section 104 with respect to the service recipient payor;

(B) that has entered into employment by agreement under section 104 with a service provider payee; or

(C) for whom a service recipient payee has elected to be classified as an employee under section 105.

(8) EMPLOYMENT BY AGREEMENT.—The term ''employment by agreement'' means an agreement, whether written or otherwise, between a service recipient payor and a service provider payee that demonstrably expresses their mutual intent to form an employer-employee relationship.

(9) FORMAL BONA FIDE CONTRACTOR.—The term ''formal bona fide contractor'', when used with respect to a service provider payee providing goods or services to a service recipient payor, means a service provider payee who—

(A) is recognized as a contractor under applicable State law; or

(B) is not required to provide the goods or services exclusively for the service recipient payor and has—

(i) entered into a written contract governing the terms of the goods or services provided to the service recipient payor that is not designated as an employment by agreement;

(ii) incurred unreimbursed expenses related to providing the goods or services to the service recipient payor annually that exceed 5 percent of the total compensation made to the service provider payee by the service recipient payor; and

(iii) not had a substantial economic relationship or employment by agreement with the service recipient payor as described in section 104 during the previous calendar year.

(10) INDEPENDENT CONTRACTOR.—The term ''independent contractor'' means a service provider payee who—

(A) is classified as a mandatory independent contractor under section 103; or

(B) is classified as an independent contractor under section 105.

(11) LICENSED PROFESSION, TRADE, OR OCCUPATION.—The term ''licensed profession, trade, or

occupation'' means a profession, trade, or occupation that may not be lawfully engaged in unless a license from a Federal, State, or local government is obtained.

(12) LIMITED ECONOMIC RELATIONSHIP.—The term ''limited economic relationship'' means an economic relationship between a service recipient payor and a service provider payee under which—

(A) the compensation to the service provider payee by the service recipient payor is based on a period of time worked;

(B) the period of time worked for which the service provider payee is compensated by the service recipient payor is less than 30 days per calendar quarter; and

(C) the service provider payee is not required to provide the goods or services exclusively for the service recipient payor.

(13) MONEY.—The term ''money'' means any legal tender as defined in section 5103 of title 31, United States Code.

(14) PERIOD OF TIME WORKED.—The term ''period of time worked'' includes any specified period of time worked, including hourly, daily, weekly,

bi-weekly, bi-monthly, monthly, quarterly, or annually periods of time.

(15) SALES COMMISSION.—The term ''sales commission'' means compensation based on sales made by the service provider payee or by individuals managed, supervised, advised, or recruited by the service provider payee.

(16) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(17) SERVICE PROVIDER PAYEE.—The term ''service provider payee'' means an individual providing goods or services to a service recipient payor in return for compensation paid to the individual by the service recipient payor.

(18) SERVICE RECIPIENT PAYOR.—The term ''service recipient payor'' means a person receiving goods or services from a service provider payee in return for compensation paid by the person to the service provider payee.

(19) SUBSTANTIAL ECONOMIC RELATIONSHIP.—The term ''substantial economic relationship'' means an economic relationship between a service recipient payor and a service provider payee where—

(A) the service provider payee is a natural person;

(B) more than 75 percent of the compensation to the service provider payee by the service recipient payor is based on a period of time worked;

(C) the service recipient payor determines the hours of work; and

(D) the service recipient payor requires the service provider payee to work substantially full-time for the service recipient payor for a period of 4 consecutive weeks or more.

(20) SUBSTANTIALLY FULL-TIME.—The term ''substantially full-time'' means an average of 30 or more hours per week during the relevant period of time worked.

(21) WRITTEN CONTRACT.—The term ''written contract'' means writing sufficient to indicate that a contract has been made between the parties that is legally enforceable in the jurisdiction or jurisdictions where the services by the service provider payee are performed or to be performed.

SEC. 102. CLASSIFICATION.

(a) BIFURCATED CLASSIFICATION.—For purposes of this title, a service provider payee shall be classified as

either an employee or an independent contractor in accordance with the following:

(1) MANDATORY INDEPENDENT CONTRACTORS.—A service provider payee meeting the requirements of section 103 shall be classified as an independent contractor.

(2) MANDATORY EMPLOYEE CLASSIFICATION.—A service provider payee meeting the requirements of section 104 shall be classified as an employee.

(3) ELECTIVE CLASSIFICATION SERVICE PROVIDER PAYEES.—A service provider payee that meets neither the requirements of section 103 nor the requirements of section 104 shall be classified as the service provider payee elects in accordance with section 105.

(b) RESPONSIBILITY FOR INITIAL DETERMINATION.—

(1) GENERAL RULE.—Subject to paragraph (2), the service recipient payor is responsible for determining whether a service provider payee is properly classified as a mandatory independent contractor, a mandatory employee, or an elective classification service provider payee, for purposes of subsection (a).

(2) EXCEPTIONS.—The service provider payee is responsible for determining whether the service provider payee is properly classified as a mandatory independent contractor if the classification of the service provider payee as an independent contractor is based on meeting the requirements of—

(A) section 103(2)(A) (relating to licensed professions, trades, or occupations);

(B) section 103(2)(B) (relating to business entities);

(C) section 103(2)(E) (relating to bona fide sole proprietors); or

(D) section 103(2)(F) (relating to formal bona fide contractors).

(3) TIMING.—The classification determination of a service provider payee shall be made by the service recipient payor or service provider payee (as required under this subsection) immediately upon entering into an economic relationship between the service recipient payor and the service provider payee.

(c) RECLASSIFICATIONS AND PERIODIC REVIEW.—A service provider payee or a service recipient payor, as applicable, shall reclassify or review the classification deter-

mination under this section in accordance with section 106.

SEC. 103. MANDATORY INDEPENDENT CONTRACTOR CLASSIFICATION.

A service provider payee shall be classified as an independent contractor if the service provider payee—

(1) is not classified as an employee pursuant to section 104; and

(2) meets one or more of the following requirements:

(A) LICENSED PROFESSION, TRADE, OR OCCUPATION.—The service provider payee—

(i) is engaged in a licensed profession, trade, or occupation; and

(ii) holds himself or herself out as providing services to the public.

(B) BUSINESS ENTITY.—The service provider payee is a business entity.

(C) LIMITED ECONOMIC RELATIONSHIP.—The economic relationship between a service recipient payor and a service provider payee is a limited economic relationship.

(D) DIRECT SALES.—The service provider payee is a direct sales service provider payee.

(E) BONA FIDE SOLE PROPRIETOR.—The service provider payee is a bona fide sole proprietor.

(F) FORMAL BONA FIDE CONTRACTOR.—The service provider payee is a formal bona fide contractor.

SEC. 104. MANDATORY EMPLOYEE CLASSIFICATION.

A service provider payee shall be classified as an employee if the service provider payee meets one or more of the following requirements:

(1) SUBSTANTIAL ECONOMIC RELATIONSHIP.—The economic relationship between a service recipient payor and a service provider payee is a substantial economic relationship.

(2) EMPLOYMENT BY AGREEMENT.—There is employment by agreement.

SEC. 105. ELECTIVE CLASSIFICATION SERVICE PROVIDER PAYEES.

(a) ELECTIVE CLASSIFICATION SERVICE PROVIDER PAYEES; ELECTION REQUIRED.—A service provider payee that does not meet either of the requirements of section 103 or section 104 is an elective classification service provider payee. Each elective classification service provider payee shall elect whether to be classified as an employee

or an independent contractor in accordance with this section.

(b) METHOD OF ELECTION.—The elective classification service provider payee shall make the election required by this section in writing upon entering into an economic relationship with a service recipient payor. Subject to subsection (c), the election need not be in any particular form as long as the election—

(1) clearly indicates the service provider payee's intent regarding whether to be classified as an independent contractor or an employee;

(2) is dated;

(3) is signed by the elective classification service provider payee; and

(4) is countersigned by the service recipient payor.

(c) SERVICE RECIPIENT PAYOR COUNTER SIGNATURE REQUIRED.—The elective classification service provider payee shall secure the counter-signature of the service recipient payor acknowledging that the service recipient payor knows the classification election made by the service provider payee. The election required under subsection (a) is not effective until the counter-signature of the service recipient payor is secured, subject to subsection (f).

(d) TIMING OF ELECTION.—The election required under subsection (a) shall be made by the elective classification service provider payee upon entering into an economic relationship with a service recipient payor. Failure by the elective classification service provider payee to make the election required by subsection (a) within 14 days of entering into an economic relationship with a service recipient payor shall be subject to a penalty under subsection (g)(1), subject to subsection (f).

(e) RECORD-KEEPING RETENTION REQUIREMENT.—Both the elective classification service provider payee and the service recipient payor are required to maintain a copy of the countersigned election required under subsection (b) for a period of 3 years following its countersignature. Failure by the elective classification service provider payee or the service recipient payor to maintain a copy of the countersigned election required by this section shall be subject to a penalty under subsection (g)(2).

(f) ABSENCE OF COUNTERSIGNATURE; DEFAULT RULE.—In the event that an elective classification service provider payee makes the election required under subsection (a) except that the elective classification service provider payee requests, but does not receive, the countersignature required by subsection (c) within 14 days of entering into an economic relationship with a service recipi-

ent payor, the elective classification service provider payee shall be classified as an independent contractor and shall not be in violation of subsection (g)(1).

(g) PENALTIES.—

(1) PENALTY FOR FAILURE TO MAKE ELECTION.—The Secretary shall impose a penalty not to exceed $100 on an elective classification service provider payee who fails to make the election required by subsection (a) within 14 days of entering into an economic relationship with a service recipient payor.

(2) PENALTY FOR FAILURE TO KEEP RECORDS RELATING TO ELECTION.—The Secretary shall impose a penalty not to exceed $100 on elective classification service provider payees or service recipient payors who fail to maintain the records required by subsection (e).

(3) WILLFUL OR RECKLESS MISCLASSIFICATION.—The Secretary shall impose a penalty on a service recipient payor or service provider payee responsible for a classification determination under this section who willfully or recklessly misclassifies a service provider payee as an independent contractor in an amount equal to 15 percent of the compensation paid to the independent contractor.

(h) NO REQUIREMENT TO ENTER INTO ECONOMIC RELATIONSHIP.—Nothing in this title shall be read as a requirement by a service provider payee or a service recipient payor to enter into an economic relationship.

SEC. 106. CHANGE IN CLASSIFICATION; PERIODIC CLASSIFICATION REVIEW.

(a) MAJOR CHANGE IN THE NATURE OF THE ECONOMIC RELATIONSHIP.—

(1) IN GENERAL.—If there is a major change in the nature of the economic relationship between a service provider payee and a service recipient payor, then a new classification determination shall be made by the service recipient payor or service provider payee responsible for classification determination pursuant to section 102(b) upon the major change in the nature of the economic relationship.

(2) MAJOR CHANGE DESCRIBED.—For purposes of this section, a major change in the nature of the economic relationship means an increase or decrease of 25 percent or more in the hours worked by, or the compensation paid to, the service provider payee by the service recipient payor in the most recent calendar quarter compared to the previous calendar quarter.

(3) EFFECTIVE DATE.—If a reclassification determination is made, it shall be effective beginning on the first day of the first month that immediately follows the determination.

(b) CHANGE IN CLASSIFICATION FOR OTHER REASONS.—

(1) IN GENERAL.—If there is a change in the nature of the economic relationship between a service provider payee and a service recipient payor other than a major change in the nature of the economic relationship described in subsection (a) that a reasonable person should anticipate could change the classification of a service provider payee, then the service recipient payor or service provider payee responsible for classification determination pursuant to section 102(b) shall make a classification determination upon the change in the nature of the economic relationship.

(2) EXAMPLES.—Changes in the nature of the economic relationship included under paragraph (1) include, without limitation—

(A) the loss of a license by a service recipient payee;

(B) the forfeiture of a business entity charter by a service recipient payee;

(C) a change in the relative importance of sales commissions in compensating a direct sales service provider payee; or

(D) a change in the requirement, or lack thereof, to perform services exclusively for the service recipient payor.

(3) RECLASSIFICATION TIMING.—If a reclassification determination is made, then it shall be made effective with respect to the calendar quarter that begins immediately after the date on which the event giving rise to the change in the nature of the economic relationship occurred.

(c) PERIODIC REVIEW REQUIREMENT; FREQUENCY.—

(1) IN GENERAL.—The service recipient payor or service provider payee responsible for a classification determination under subsection (a) or (b) shall make annual determinations for any continuing economic relationships with service recipient payors or service provider payees, as the case may be. These periodic reviews shall be completed by January 31 with respect to continuing economic relationships as of December 31 of the previous calendar year.

(2) EFFECTIVE DATE OF DETERMINATION CHANGES.—If a reclassification determination is

made as a result of this review, it shall be made effective beginning on the first day of the first month that immediately follows the determination.

(d) EXEMPTION.—For purposes of this section, if a service provider payee does not have more than 100 hours worked or been compensated more than a total of $10,000 during a calendar quarter in which the reclassification determination is made, then the service provider payor or service provider payee, as the case may be, is exempt from the requirements of this section.

TITLE II—APPLICATION TO OTHER LAWS

SEC. 201. FAIR LABOR STANDARDS ACT OF 1938.

Section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203) is amended—

(1) by striking subsection (d) and inserting the following:

''(d) 'Employer'—

''(1) except as otherwise provided in this subsection, has the meaning given the term in section 101 of the 21st Century Worker Act;

''(2) includes any person (including a public agency) acting directly or indirectly in the interest of an employer in relation to an employee; and

''(3) does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.'';

(2) by striking paragraph (1) of subsection (e) and inserting the following:

''(1) Except as provided in paragraphs (2), (3), (4), and (5), the term 'employee' has the meaning given the term 'employee' in section 101 of the 21st Century Worker Act.''; and

(3) by striking subsection (g) and inserting the following:

''(g)(1) 'Employ' includes to suffer or permit to work under a substantial economic relationship (as defined in section 101 of the 21st Century Worker Act) between an employer and employee.

''(2) 'Employment' means the provision of goods or services by an employee for an employer.''.

SEC. 202. NATIONAL LABOR RELATIONS ACT.

Section 2 of the National Labor Relations Act (29 U.S.C. 152) is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) The term 'employer'—

''(A) except as otherwise provided in this paragraph, has the meaning given the term in section 101 of the 21st Century Worker Act;

''(B) includes any person acting as an agent of an employer, directly or indirectly; and

''(C) does not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.'';

(2) in paragraph (3), by striking ''shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall'' and inserting '', except as otherwise provided in this paragraph, has the meaning given the term 'employee' in section 101 of the 21st Century Worker Act. The term shall include any employee, and shall not be limited to the employees of a particular employer. The term shall''; and

(3) by adding at the end the following:

''(15) The term 'employment' means the provision of goods or services by an employee for an employer.''.

SEC. 203. TAX CLASSIFICATION.

(a) EMPLOYEE AND EMPLOYER.—Section 7701(a)(20) of the Internal Revenue Code of 1986 is amended to read as follows:

''(20) EMPLOYEE AND EMPLOYER.—The terms 'employee' and 'employer' have the same meaning given such terms in section 101 of the 21st Century Worker Act.''.

(b) EMPLOYMENT.—Section 3121(b) of the Internal Revenue Code of 1986 is amended to read as follows:

''(b) The term 'employment' means any services performed by an employee for an employer.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 3121 of the Internal Revenue Code of 1986 is amended by striking subsection (d).

(2) Section 3306(a) of such Code is amended by striking paragraph (3).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 204. GAO STUDY ON CHANGES NEEDED TO OTHER FEDERAL LAWS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to Congress a report that identifies—

(1) all covered Federal laws that utilize the terms ''employee'', ''employer'', ''employ'', and ''employment'' in ways that do not correspond with the definitions of the terms ''employee'' and ''employer'' under section 101 of this Act; and

(2) how harmonizing the definitions of ''employee'', ''employer'', ''employ'', and ''employment'' across all covered Federal laws would alter each covered Federal law.

(b) DEFINITION OF COVERED FEDERAL LAW.—In this section, the term ''covered Federal law'' means each of the following:

(1) The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), including subsections (b) and (f) of section 11, and section 15(a), of such Act (29 U.S.C. 630(b) and (f); 29 U.S.C. 633a(a)).

(2) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including paragraphs (4) and (5) of section 101, and section 510,

of such Act (42 U.S.C. 12111(4) and (5); 42 U.S.C. 12209).

(3) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), including subsections (b) and (f) of section 701, and section 717(a), of such title (42 U.S.C. 2000e(b) and (f); 42 U.S.C. 2000e–16(a)).

(4) Section 304(a) of the Civil Rights Act of 1991 (42 U.S.C. 2000e–16c(a)).

(5) The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.), including section 201 of such Act (2 U.S.C. 1311).

(6) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.), including section 2(2) of such Act (29 U.S.C. 2001(2)).

(7) The Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), including paragraphs (5) and (6) of section 3 of such Act (29 U.S.C. 1002(5), (6)) and part 6 of subtitle B of title I of such Act (relating to health insurance continuation by employees) (29 U.S.C. 1161 et seq.).

(8) The Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), including paragraphs (3) and (4) of section 101 of such Act (29 U.S.C. 2611(3) and (4)).

(9) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), including section 603(h) of such Act (15 U.S.C. 1681a(h)).

(10) Title II of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff et seq.), including section 201(2) of such Act (42 U.S.C. 2000ff(2)).

(11) The Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16a et seq.).

(12) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(13) The Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.), including subsections (e) and (f) of section 3 of such Act (29 U.S.C. 402(e) and (f)).

(14) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), including paragraphs (5) and (6) of section 3 of such Act (29 U.S.C. 652(5) and (6)).

(15) Subtitle B of title I of the Patient Protection and Affordable Care Act (42 U.S.C. 18001 et seq.).

(16) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), including section 501 of such Act (29 U.S.C. 791).

(17) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.), including section 2(a) of such Act (29 U.S.C. 2101(a)).

(18) Section 1977A of the Revised Statutes (42 U.S.C. 1981a).

(19) Section 411 of title 3, United States Code.

(20) Chapter 81 of title 5, United States Code (commonly known as the ''Federal Employees' Compensation Act''), including paragraphs (1) and (12) of section 8101 of such title.

(21) Subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'').

(22) Chapter 43 of title 38, United States Code (commonly known as the ''Uniformed Services Employment and Reemployment Rights Act''), including paragraphs (3) and (4) of section 4303 of such title.

(23) Chapter 37 of title 40, United States Code (commonly known as the ''Contract Work Hours and Safety Standards Act''), including section 3701(b)(2) of such title.

(24) Chapter 67 of title 41, United States Code (commonly known as the ''McNamara-O'Hara Service Contract Act''), including section 6701(3) of such title.

(25) Chapter 81 of title 41, United States Code (commonly referred to as the ''Drug-Free Workplace Act''), including section 8101(a)(6) of such title.

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