

**AMENDMENT TO H.R. 842, AS INTRODUCED
OFFERED BY MR. RICE OF SOUTH CAROLINA**

Page 4, strike lines 6 through 22 and insert the following:

1 (b) EMPLOYEE.—

2 (1) IN GENERAL.—Section 2(3) of the National
3 Labor Relations Act (29 U.S.C. 152(3)) is amended
4 by adding at the end the following: “An individual
5 performing any service shall be considered an em-
6 ployee (except as provided in the previous sentence)
7 and not an independent contractor, unless the indi-
8 vidual is not treated as an employee under the rules
9 of section 2A.”.

10 (2) REQUIREMENTS.—The National Labor Re-
11 lations Act is amended by inserting after section 2
12 the following new section:

13 **“SEC. 2A. REQUIREMENTS RELATING TO EMPLOYMENT.**

14 “(a) IN GENERAL.—For purposes of section 2 (and
15 notwithstanding any provision of this Act not contained
16 in this section to the contrary), if the requirements of sub-
17 sections (b), (c), and (d) are met with respect to any serv-
18 ice performed by a service provider, then with respect to

1 such service the service provider shall not be treated as
2 an employee.

3 “(b) GENERAL SERVICE PROVIDER REQUIRE-
4 MENTS.—

5 “(1) IN GENERAL.—The requirements of this
6 subsection are met with respect to any service if the
7 service provider either—

8 “(A) meets the requirements of paragraph
9 (2) with respect to such service, or

10 “(B) in the case of a service provider en-
11 gaged in the trade or business of selling (or so-
12 liciting the sale of) goods or services, meets the
13 requirements of paragraph (3) with respect to
14 such service.

15 “(2) GENERAL REQUIREMENTS.—

16 “(A) IN GENERAL.—The requirements of
17 this paragraph are met with respect to any
18 service if the service provider, in connection
19 with performing the service—

20 “(i) incurs expenses—

21 “(I) which are deductible under
22 section 162 of the Internal Revenue
23 Code of 1986, and

24 “(II) a significant portion of
25 which are not reimbursed,

1 “(ii) agrees to perform the service for
2 a particular amount of time, to achieve a
3 specific result, or to complete a specific
4 task, and

5 “(iii) satisfies not less than one of the
6 factors described in subparagraph (B).

7 “(B) FACTORS.—The factors described in
8 this subparagraph are the following:

9 “(i) The service provider has a signifi-
10 cant investment in assets or training which
11 are applicable to the service performed.

12 “(ii) The service provider is not re-
13 quired to perform services exclusively for
14 the service recipient or payor.

15 “(iii) The service provider has not
16 been treated as an employee by the service
17 recipient or payor for substantially the
18 same services during the 1-year period
19 ending with the date of the commencement
20 of services under the contract described in
21 subsection (d).

22 “(iv) The service provider is not com-
23 pensated on a basis which is tied primarily
24 to the number of hours actually worked.

1 “(3) ALTERNATIVE REQUIREMENTS WITH RE-
2 SPECT TO SALES PERSONS.—In the case of a service
3 provider engaged in the trade or business of selling
4 (or soliciting the sale of) goods or services, the re-
5 quirements of this paragraph are met with respect
6 to any service provided in the ordinary course of
7 such trade or business if—

8 “(A) the service provider is compensated
9 primarily on a commission basis, and

10 “(B) substantially all the compensation for
11 such service is directly related to sales of goods
12 or services rather than to the number of hours
13 worked.

14 “(c) PLACE OF BUSINESS OR OWN EQUIPMENT RE-
15 QUIREMENT.—The requirement of this subsection is met
16 with respect to any service if the service provider—

17 “(1) has a principal place of business,

18 “(2) does not provide the service primarily in
19 the service recipient’s place of business,

20 “(3) pays a fair market rent for use of the serv-
21 ice recipient’s or payor’s place of business, or

22 “(4) provides the service primarily using equip-
23 ment supplied by the service provider.

24 “(d) WRITTEN CONTRACT REQUIREMENT.—The re-
25 quirements of this subsection are met with respect to any

1 service if such service is performed pursuant to a written
2 contract between the service provider and the service re-
3 cipient or payor, whichever is applicable, which meets the
4 following requirements:

5 “(1) The contract includes each of the fol-
6 lowing:

7 “(A) The service provider’s name, taxpayer
8 identification number, and address.

9 “(B) A statement that the service provider
10 will not be treated as an employee with respect
11 to the services provided pursuant to the con-
12 tract for purposes of this title.

13 “(C) A statement that the service recipient
14 or payor will withhold upon and report to the
15 Internal Revenue Service the compensation pay-
16 able pursuant to the contract consistent with
17 the requirements of this title.

18 “(D) A statement that the service provider
19 is responsible for payment of Federal, State,
20 and local taxes, including self-employment
21 taxes, on compensation payable pursuant to the
22 contract.

23 “(E) A statement that the contract is in-
24 tended to be considered a contract described in
25 this subsection.

1 The contract shall not fail to meet the requirements
2 of this paragraph merely because the information
3 described in subparagraph (A) is collected at the
4 time payment is made for the services and not in ad-
5 vance, or because the contract provides that an
6 agent of the service recipient or payor will fulfill any
7 of the responsibilities of the service recipient or
8 payor described in the preceding subparagraphs.

9 “(2) The term of the contract does not exceed
10 2 years. The preceding sentence shall not prevent
11 one or more subsequent written renewals of the con-
12 tract from satisfying the requirements of this sub-
13 section if the term of each such renewal does not ex-
14 ceed 2 years and if the information required under
15 paragraph (1)(A) is updated in connection with each
16 such renewal.

17 “(3) The contract (or renewal) is signed (which
18 may include signatures in electronic form) by the
19 service recipient or payor and the service provider
20 not later than the date on which the aggregate pay-
21 ments made by the service recipient or payor to the
22 service provider exceeds \$1,000 for the year covered
23 by the contract (or renewal).

24 “(e) REPORTING REQUIREMENTS.—

1 “(1) IN GENERAL.—For purposes of making
2 any determination with respect to the liability of a
3 service recipient or payor for any tax during any
4 taxable year with respect to a service provider, the
5 application of this section shall be conditioned on ei-
6 ther the service recipient or the payor satisfying the
7 reporting requirements applicable to such service re-
8 cipient or payor under section 6041(a), 6041A(a), or
9 6050W of the Internal Revenue Code of 1986 with
10 respect to such service provider for such period.

11 “(2) REASONABLE CAUSE.—For purposes of
12 paragraph (1), such reporting requirements shall be
13 treated as met if the failure to satisfy such require-
14 ments is due to reasonable cause and not willful ne-
15 glect.

16 “(f) EXCEPTION FOR SERVICES PROVIDED BY
17 OWNER.—This section shall not apply with respect to any
18 service provided by a service provider to a service recipient
19 or payor if the service provider owns any interest in the
20 service recipient or the payor with respect to the service
21 provided. The preceding sentence shall not apply in the
22 case of a service recipient or payor the stock of which is
23 regularly traded on an established securities market.

24 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed as—

1 “(1) limiting the ability or right of a service
2 provider, service recipient, or payor to apply any
3 other provision of the Internal Revenue Code of
4 1986, section 530 of the Revenue Act of 1978, or
5 any common law rules for determining whether an
6 individual is an employee, or

7 “(2) establishing a prerequisite for the applica-
8 tion of any provision of law described in paragraph
9 (1).

10 “(h) DEFINITIONS.—For purposes of this section—

11 “(1) SERVICE PROVIDER.—

12 “(A) IN GENERAL.—The term ‘service pro-
13 vider’ means any qualified person who performs
14 service for another person.

15 “(B) QUALIFIED PERSON.—The term
16 ‘qualified person’ means—

17 “(i) any natural person, or

18 “(ii) any entity if any of the services
19 referred to in subparagraph (A) are per-
20 formed by one or more natural persons
21 who directly own interests in such entity.

22 “(2) SERVICE RECIPIENT.—The term ‘service
23 recipient’ means the person for whom the service
24 provider performs such service.

25 “(3) PAYOR.—

1 “(A) IN GENERAL.—The term ‘payor’
2 means—

3 “(i) any person, including the service
4 recipient, who pays the service provider for
5 performing such service, or

6 “(ii) any marketplace platform.

7 “(B) MARKETPLACE PLATFORM.—For
8 purposes of subparagraph (A)(ii), the term
9 ‘marketplace platform’ means any person
10 who—

11 “(i) operates a digital website, mobile
12 application, or similar system that facili-
13 tates the provision of goods or services by
14 providers to recipients,

15 “(ii) enters into an agreement with
16 each provider stating that such provider
17 will not be treated as an employee with re-
18 spect to such goods or services,

19 “(iii) provides standards and mecha-
20 nisms for settling such facilitated trans-
21 actions, and

22 “(iv) guarantees each provider of
23 goods or services pursuant to such agree-

1 ment that the provider will be paid for
2 such facilitated transaction.”.

