

**Independent Contractor Legislation
Side-by-side Comparison of House and Senate Bills**

Component	“Taxpayer Responsibility, Accountability and Consistency Act of 2008” (H.R. 5804)	“Independent Contractor Proper Classification Act of 2007” (S. 2044)
Section 530 (of the 1978 The Revenue Act) Safe Harbor	Terminated after one year following enactment of legislation.	Allows prospective reclassifications by the Secretary of Treasury, effectively terminating the Section 530 safe harbor.
	No Provision	Removes present-law ban on Internal Revenue Service (IRS) issuing regulations or revenue rulings on employee/independent contractor status.
	No Provision	Eliminates present-law use of industry practice as basis for claiming safe harbor for classifying employees.
	No Provision	Allows anyone who performs services for a taxpayer to petition the Department of the Treasury for a determination of their status as either employee or independent contractor. If a reclassification results, Treasury Secretary shall perform employment tax audit on tax payer and inform the Department of Labor about the misclassification, among other provisions.
Reporting	Secretary of Treasury shall issue annual report on worker misclassification to include (1) Number and type of enforcement actions against, and examinations of, employers who have misclassified workers, (2) Relief obtained as a result of such actions or audits of employers who misclassified, (3) Overall estimate of number of employers misclassifying workers, number of workers affected and industries involved, and (4) impact of misclassification on federal tax system.	Secretaries of Treasury and Labor shall issue reports annually on the following: (1) Informational on number and type of classification enforcement actions, (2) Description of relief obtained as a result of such actions, (3) Overall estimate of number of misclassifications by number of workers and industries involved, (4) Impact of such misclassification on federal budget and (5) Aggregate number of misclassification cases referred to other secretary and outcome of those referrals.
Enforcement	No Provision	Secretary of Labor shall identify and track misclassification complaints and actions.
	No Provision	Secretary of Labor shall investigate industries in which misclassification is present according to information from Secretary of Treasury, other federal agencies and state workforce, labor and revenue agencies.
Information Sharing	No Provision	Secretaries of Treasury and Labor shall exchange information on misclassification cases and provide information to relevant state agencies.

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Notices	No Provision	Secretary of Labor shall provide for placement of information on any poster required under the Fair Labor Standards Act informing workers of their rights to seek a status determination from the IRS.
	No Provision	Employers shall notify independent contractors of federal tax obligations of an independent contractor, labor and employment law protections that do not apply to independent contractors and the right of independent contractor to seek a status determination.
Employer Records	No Provision	Employers must maintain for three years a list of independent contractors including name, address, SSN and federal tax identification number and shall make such records available during investigations.
Determination of Individual as Independent Contractor	Establishes standards for determining whether or not an individual cannot be considered an employee. A reasonable basis for such a determination is allowed only if (1) the taxpayer relied on a written IRS determination or concluded examination on the specific individual under question; <i>and</i> (2) the taxpayer has not treated any other individual holding a substantially similar position as an employee for purposes of employment taxes for any period beginning after 12/31/77. Determinations under criterion (1) above, as provided by the IRS, may only be relied upon for 7 years before a new, written determination must be obtained.	No Provision
	The burden is on the taxpayer to show that the individual should not be treated as an employee.	No Provision
	Directs Secretary of Treasury to establish procedures by which any individual can petition for a review of their status for employment tax purposes. Legislation does <i>not</i> prevent Treasury/IRS from assessing fees for such determinations.	No Provision
	Prohibits retaliation by business taxpayer on an individual for filing a petition to determine their contractor/employee status.	No Provision
	If a misclassification has occurred then the Secretary of Treasury shall inform the Secretary of Labor and notify the individual of eligibility for a refund of self-employment taxes.	No Provision

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	Penalties for filing incorrect returns are increased from present-law \$50 per return and a \$250,000 annual cap to \$250 per return and a \$3,000,000 annual cap.	No Provision
Penalties	For incorrect returns that are corrected within 30 days, the reduced penalty for each return is increased from \$15 to \$50 and the total penalty cap for a year is increased from \$75,000 to \$500,000.	No Provision
	For incorrect returns that are corrected before Aug 1, the reduced penalty is increased for each return is increased from \$30 to \$100 and the total penalty cap for a year is increased from \$150,000 to \$1,500,000.	No Provision
	The lower limitations on the above penalties for small business (gross receipts less than \$5M) are increased from \$100,000, \$25,000 and \$50,000 to \$1,000,000, \$175,000 and \$500,000, respectively.	No Provision
	The penalty for intentional disregard of the filing requirement is increased from present-law \$100 to \$500 per return.	No Provision
	The penalties for failing to furnish the correct payee statements are increased from present-law \$50 per statement with an annual cap of \$100,000 to \$250 and \$1,000,000 respectively.	No Provision
	The penalties for intentional disregard of furnishing the correct payee statements is increased from present-law \$100 per return to \$500.	No Provision
	The penalties for failing to comply with other information reporting requirements are increased from present-law \$50 per failure with an annual cap of \$100,000 to \$250 and \$1,000,000 respectively.	No Provision