

**SUBSTITUTE AMENDMENT TO THE AMENDMENT IN  
THE NATURE OF A SUBSTITUTE TO H.R. 3459  
OFFERED BY Ms. WILSON**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Payroll Fraud Preven-  
3 tion Act of 2015”.

**4 SEC. 2. CLASSIFICATION OF EMPLOYEES AND NON-EM-  
5 PLOYEES.**

6       (a) DEFINITIONS.—Section 3 of the Fair Labor  
7 Standards Act of 1938 (29 U.S.C. 203) is amended by  
8 adding at the end the following:

9       “(z) ‘Non-employee’ means an individual who—

10           “(1) has been engaged, in the course of the  
11 trade or business of the person, for the performance  
12 of labor or services; and

13           “(2) is not an employee of the person.

14       “(aa) ‘Covered individual’ when used with respect to  
15 an employer or other person means—

16           “(1) an employee of the employer; or

17           “(2) a non-employee of the person (including a  
18 person who is an employer)—

1           “(A) whom the person has engaged, in the  
2 course of the trade or business of the person,  
3 for the performance of labor or services; and

4           “(B)(i) with respect to whom the person is  
5 required to file an information return under  
6 section 6041A(a) of the Internal Revenue Code  
7 of 1986; or

8           “(ii) who is providing labor or services to  
9 the person through an entity that is a trust, es-  
10 tate, partnership, association, company, or cor-  
11 poration (as such terms are used in section  
12 7701(a)(1) of the Internal Revenue Code of  
13 1986) if—

14           “(I) such individual has an ownership  
15 interest in the entity;

16           “(II) creation or maintenance of such  
17 entity is a condition for the provision of  
18 such labor or services to the person; and

19           “(III) the person would be required to  
20 file an information return for the entity  
21 under section 6041A(a) of the Internal  
22 Revenue Code of 1986 if the entity were  
23 an individual.”.

1 (b) CLASSIFICATION AS EMPLOYEES.—Section 11(c)  
2 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
3 211(c)) is amended—

4 (1) by striking “(c) Every employer subject to  
5 any provision of this Act or of any order issued  
6 under this Act” and inserting the following:

7 “(c) RECORDKEEPING; CLASSIFICATION; NOTICE.—

8 “(1) RECORDKEEPING.—Every person subject  
9 to any provision of this Act or of any order issued  
10 under this Act”; and

11 (2) by adding at the end the following:

12 “(2) CLASSIFICATION.—Every person (includ-  
13 ing every employer and enterprise), who employs any  
14 employee engaged in commerce or in the production  
15 of goods for commerce or engages any non-employee  
16 engaged in commerce or in the production of goods  
17 for commerce, shall accurately classify each covered  
18 individual as an employee or a non-employee (as the  
19 case may be).

20 “(3) NOTICE.—

21 “(A) IN GENERAL.—Every person subject  
22 to any provision of this Act or of any order  
23 issued under this Act shall provide the notice  
24 described in subparagraph (C) to each employee  
25 of the person and each individual classified by

1 the person as a non-employee under paragraph  
2 (2) and maintain a copy of such notice as a re-  
3 quired record under paragraph (1).

4 “(B) TIMING OF NOTICE.—

5 “(i) IN GENERAL.—The notice de-  
6 scribed in subparagraph (A) shall be pro-  
7 vided, at a minimum, to each covered indi-  
8 vidual not later than 6 months after the  
9 date of enactment of the Payroll Fraud  
10 Prevention Act of 2015, and thereafter—

11 “(I) for each new employee, upon  
12 employment; and

13 “(II) for each new non-employee,  
14 upon commencement of the labor or  
15 services provided by the non-employee.

16 “(ii) CHANGE IN STATUS.—Each per-  
17 son required to provide a notice under sub-  
18 paragraph (A) to a covered individual shall  
19 also provide such notice to such individual  
20 upon changing the status of such indi-  
21 vidual as an employee or a non-employee.

22 “(C) CONTENTS OF NOTICE.—The notice  
23 required under this paragraph shall be in writ-  
24 ing and shall—

1           “(i) inform the covered individual of  
2           the classification of such individual, by the  
3           person submitting the notice, as an em-  
4           ployee or a non-employee;

5           “(ii) include a statement directing  
6           such individual to the Department of  
7           Labor website established under section 3  
8           of the Payroll Fraud Prevention Act of  
9           2015, for the purpose of providing further  
10          information about the legal rights of an  
11          employee;

12          “(iii) include the address and tele-  
13          phone number for the applicable local of-  
14          fice of the Department of Labor; and

15          “(iv) include for each covered indi-  
16          vidual classified as a non-employee by the  
17          person providing the notice, the following  
18          statement: ‘Your rights to wage, hour, and  
19          other labor protections depend upon your  
20          proper classification as an employee or a  
21          non-employee. If you have any questions or  
22          concerns about how you have been classi-  
23          fied or suspect that you may have been  
24          misclassified, contact the U.S. Department  
25          of Labor.’.

1 “(D) PRESUMPTION.—

2 “(i) IN GENERAL.—For purposes of  
3 this Act and the regulations or orders  
4 issued under this Act, a covered individual  
5 to whom a person is required to provide a  
6 notice under subparagraph (A) shall be  
7 presumed to be an employee of the person  
8 if the person has not provided the indi-  
9 vidual with such notice within the time re-  
10 quired under subparagraph (B).

11 “(ii) REBUTTAL.—The presumption  
12 under clause (i) shall be rebutted only  
13 through the presentation of clear and con-  
14 vincing evidence that a covered individual  
15 described in such subparagraph is not an  
16 employee of the person.”.

17 (c) SPECIAL PROHIBITED ACTS.—Section 15(a) of  
18 the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a))  
19 is amended—

20 (1) by striking paragraph (3) and inserting the  
21 following:

22 “(3) to discharge or in any other manner dis-  
23 criminate against any covered individual (including  
24 an employee) because such individual has—

1           “(A) opposed any practice, filed any peti-  
2           tion or complaint, or instituted or caused to be  
3           instituted any proceeding—

4                   “(i) under or related to this Act (in-  
5                   cluding concerning the status of a covered  
6                   individual as an employee or a non-em-  
7                   ployee for purposes of this Act); or

8                   “(ii) concerning the status of a cov-  
9                   ered individual as an employee or a non-  
10                  employee for employment tax purposes  
11                  within the meaning of subtitle C of the In-  
12                  ternal Revenue Code of 1986;

13                  “(B) testified or is about to testify in any  
14                  proceeding described in subparagraph (A); or

15                  “(C) served, or is about to serve, on an in-  
16                  dustry committee;”;

17                  (2) in paragraph (5), by striking the period at  
18                  the end and inserting “; and”; and

19                  (3) by adding at the end the following:

20                   “(6) to wrongly classify an employee of the per-  
21                   son as a non-employee in accordance with section  
22                   11(c)(2).”.

23                  (d)       SPECIAL       PENALTY       FOR       CERTAIN  
24       MISCLASSIFICATION, RECORDKEEPING, AND NOTICE VIO-

1 LATIONS.—Section 16 of the Fair Labor Standards Act  
2 of 1938 (29 U.S.C. 216) is amended—

3 (1) in subsection (b)—

4 (A) in the sixth sentence, by striking “any  
5 employee” each place the term occurs and in-  
6 serting “any covered individual”;

7 (B) in the fourth sentence—

8 (i) by striking “employees” and in-  
9 serting “covered individual”; and

10 (ii) by striking “he gives his consent”  
11 and inserting “such covered individual con-  
12 sents”;

13 (C) in the third sentence—

14 (i) by striking “either of the preceding  
15 sentences” and inserting “any of the pre-  
16 ceding sentences”;

17 (ii) by striking “one or more employ-  
18 ees” and inserting “one or more covered  
19 individuals”; and

20 (iii) by striking “in behalf of himself  
21 or themselves and other employees” and  
22 inserting “on behalf of such covered indi-  
23 vidual or individuals and other covered in-  
24 dividuals”; and

1 (D) by inserting after the first sentence  
2 the following: “Such liquidated damages are  
3 doubled (subject to section 11 of the Portal-to-  
4 Portal Act of 1947 (29 U.S.C. 260)) where, in  
5 addition to violating the provisions of section 6  
6 or 7, the employer has violated the provisions of  
7 section 15(a)(6) with respect to such employee  
8 or employees.”; and

9 (2) in subsection (e), by striking paragraph (2)  
10 and inserting the following:

11 “(2) Any person who violates section 6, 7,  
12 11(c), or 15(a)(6) shall be subject to a civil penalty,  
13 for each employee or other individual who was the  
14 subject of such a violation, in an amount—

15 “(A) not to exceed \$1,100; or

16 “(B) in the case of a person who has re-  
17 peatedly or willfully committed such violation,  
18 not to exceed \$5,000.”.

19 **SEC. 3. EMPLOYEE RIGHTS WEBSITE.**

20 Not later than 180 days after the date of enactment  
21 of this Act, the Secretary of Labor shall establish a single  
22 webpage on the Department of Labor website that sum-  
23 marizes in plain language the rights of employees and non-  
24 employees under the Fair Labor Standards Act of 1938

1 (29 U.S.C. 201 et seq.), including the rights described in  
2 the amendments made by section 2.

3 **SEC. 4. MISCLASSIFICATION OF EMPLOYEES FOR UNEM-**  
4 **PLOYMENT COMPENSATION PURPOSES.**

5 (a) IN GENERAL.—Section 303(a) of the Social Secu-  
6 rity Act (42 U.S.C. 503(a)) is amended—

7 (1) in paragraph (11)(B), by striking the period  
8 and inserting “; and”;

9 (2) in paragraph (12), by striking the period  
10 and inserting “; and”; and

11 (3) by adding after paragraph (12) the fol-  
12 lowing:

13 “(13)(A) Such auditing and investigative proce-  
14 dures as may be necessary to identify employers that  
15 have not registered under the State law or that are  
16 paying unreported wages, where these actions or  
17 omissions by the employers have the effect of exclud-  
18 ing employees from unemployment compensation  
19 coverage; and

20 “(B) The making of quarterly reports to the  
21 Secretary of Labor (in such form as the Secretary  
22 of Labor may require) describing the results of the  
23 procedures under subparagraph (A); and

24 “(14) The establishment of administrative pen-  
25 alties for misclassifying employees, or paying unre-

1       ported wages to employees without proper record-  
2       keeping, for unemployment compensation pur-  
3       poses.”.

4       (b) REVIEW OF AUDITING PROGRAMS.—The Sec-  
5       retary of Labor shall include, in the Department of La-  
6       bor’s system for measuring the performance of States in  
7       conducting unemployment compensation tax audits, a spe-  
8       cific measure of the effectiveness of States in identifying  
9       the under reporting of wages and the underpayment of  
10      unemployment compensation contributions (including the  
11      effectiveness of States in identifying instances of such  
12      under reporting or underpayments despite the absence of  
13      cancelled checks, original time sheets, or other similar doc-  
14      umentation).

15      (c) EFFECTIVE DATE.—

16           (1) IN GENERAL.—Except as provided in para-  
17      graph (2), the amendments made by subsection (a)  
18      shall take effect 12 months after the date of enact-  
19      ment of this Act.

20           (2) EXCEPTION.—If the Secretary of Labor  
21      finds that legislation is necessary for the unemploy-  
22      ment compensation law of a State to comply with  
23      the amendments made by subsection (a), such  
24      amendments shall not apply with respect to such law  
25      until the later of—

1 (A) the day after the close of the first reg-  
2 ular session of the legislature of such State that  
3 begins after the date of enactment of this Act;

4 or

5 (B) 12 months after the date of enactment  
6 of this Act.

7 (d) DEFINITION OF STATE.—For purposes of this  
8 section, the term “State” has the meaning given the term  
9 in section 3306(j) of the Internal Revenue Code of 1986.

10 **SEC. 5. DEPARTMENT OF LABOR COORDINATION, REFER-**  
11 **RAL, AND REGULATIONS.**

12 (a) COORDINATION AND REFERRAL.—Notwith-  
13 standing any other provision of law, any office, adminis-  
14 tration, or division of the Department of Labor that, while  
15 in the performance of its official duties, obtains informa-  
16 tion regarding the misclassification by a person subject to  
17 the provisions of the Fair Labor Standards Act of 1938  
18 (29 U.S.C. 201 et seq.), or any order issued under such  
19 Act of any individual regarding whether such individual  
20 is an employee or a non-employee engaged in the perform-  
21 ance of labor or services for purposes of section 6 or 7  
22 of such Act (29 U.S.C. 206, 207), or in records required  
23 under section 11(c) of such Act (29 U.S.C. 211(c)), shall  
24 report such information to the Wage and Hour Division  
25 of the Department of Labor. The Wage and Hour Division

1 may report such information to the Internal Revenue  
2 Service as the Wage and Hour Division considers appro-  
3 priate.

4 (b) REGULATIONS.—The Secretary of Labor shall  
5 promulgate regulations to carry out this Act and the  
6 amendments made by this Act.

7 **SEC. 6. TARGETED AUDITS.**

8 The audits of employers subject to the Fair Labor  
9 Standards Act of 1938 (29 U.S.C. 201 et seq.) that are  
10 conducted by the Wage and Hour Division of the Depart-  
11 ment of Labor shall include certain industries with fre-  
12 quent incidence of misclassifying employees as non-em-  
13 ployees, as determined by the Secretary of Labor.

