

118TH CONGRESS
1ST SESSION

S. 637

To amend the Fair Labor Standards Act of 1938 to apply child labor laws to independent contractors, increase penalties for child labor law violations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2023

Mr. SCHATZ (for himself, Mr. FETTERMAN, Mr. DURBIN, Ms. CORTEZ MASTO, Ms. BALDWIN, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to apply child labor laws to independent contractors, increase penalties for child labor law violations, 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. SHORT TITLE.**

4 This Act may be cited as the “Child Labor Preven-
5 tion Act”.

1 **SEC. 2. AMENDMENTS TO THE FAIR LABOR STANDARDS**

2 **ACT OF 1938.**

3 (a) APPLICATION TO WORKERS.—The Fair Labor
4 Standards Act of 1938 (29 U.S.C. 201 et seq.) is amend-
5 ed—

6 (1) in section 3 (29 U.S.C. 203)—

7 (A) in subsection (d)—

8 (i) by striking “‘Employer’ includes”
9 and inserting “(1) ‘Employer’ includes”;

10 (ii) by inserting “(or, for purposes of
11 any child labor provision of this Act, in-
12 cluding paragraph (2), subsection (aa),
13 section 12, and any provision of this Act
14 administering or enforcing such a child
15 labor provision, a worker)” after “em-
16 ployee”; and

17 (iii) by adding at the end the fol-
18 lowing:

19 “(2) Notwithstanding any other provision in this sec-
20 tion, for purposes of any child labor provision of this Act,
21 including subsections (l) and (aa), section 12, and any
22 provision of this Act administering or enforcing such a
23 child labor provision, the term ‘employer’ includes any per-
24 son engaging an individual (including an independent con-
25 tractor) for the performance of work.”;

26 (B) in subsection (j)—

1 (i) by inserting “(or, for purposes of
2 any child labor provision of this Act, in-
3 cluding section 12 and any provision of
4 this Act administering or enforcing such a
5 child labor provision, worker)” after “em-
6 ployee” each place it appears; and

7 (ii) by inserting “(or, for purposes of
8 any child labor provision of this Act, in-
9 cluding section 12 and any provision of
10 this Act administering or enforcing such a
11 child labor provision, engaged for work)”
12 after “was employed”;

13 (C) in subsection (l)—

14 (i) by striking “employment under”
15 and inserting “work under”;

16 (ii) by striking “employee” each place
17 it appears and inserting “worker”;

18 (iii) by striking “is employed by” each
19 place it appears and inserting “performs
20 work for”;

21 (iv) by striking “employing” and in-
22 serting “engaging for work”;

23 (v) by striking “employment of” each
24 place it appears and inserting “engage-
25 ment for work of”;

1 (vi) by striking “employment in” and
 2 inserting “engagement for work in”;

3 (vii) by striking “employees” and in-
 4 serting “workers”; and

5 (viii) by striking “such employment”
 6 and inserting “such work”;

7 (D) in subsection (s), by inserting “(or, for
 8 purposes of any child labor provision of this
 9 Act, including section 12 and any provision of
 10 this Act administering or enforcing such a child
 11 labor provision, workers)” after “employees”
 12 each place it appears; and

13 (E) by adding at the end the following:

14 “(z) ‘Work’, for purposes of any child labor provision
 15 of this Act, including subsections (d)(2), (l), and (aa), sec-
 16 tion 12, and any provision of this Act administering or
 17 enforcing such a child labor provision, means the perform-
 18 ance of services for remuneration, including employment.

19 “(aa) ‘Worker’, for purposes of any child labor provi-
 20 sion of this Act, including subsection (l), section 12, and
 21 any provision of this Act administering or enforcing such
 22 a child labor provision, means any individual (including
 23 an independent contractor or an employee) engaged for
 24 work by an employer.”;

25 (2) in section 11 (29 U.S.C. 211)—

1 (A) in subsection (a)—

2 (i) by inserting “(or, for purposes of
3 any child labor provision of this Act, in-
4 cluding section 12 and any provision of
5 this Act administering or enforcing such a
6 child labor provision, work)” after “em-
7 ployment”; and

8 (ii) by inserting “(or, for purposes of
9 any child labor provision of this Act, in-
10 cluding section 12 and any provision of
11 this Act administering or enforcing such a
12 child labor provision, workers)” after
13 “such employees”; and

14 (B) in subsection (c)—

15 (i) by inserting “or, for purposes of
16 any child labor provision of this Act, in-
17 cluding section 12 and any provision of
18 this Act administering or enforcing such a
19 child labor provision, the persons working
20 for the employer” after “employed by
21 him”; and

22 (ii) by inserting “(or, for purposes of
23 any such child labor provision of this Act,
24 work)” after “employment”;

25 (3) in section 12 (29 U.S.C. 212)—

1 (A) in subsection (b), by striking “employ-
2 ment of” and inserting “engagement for work
3 of”; and

4 (B) in subsection (d), by striking “em-
5 ployee” and inserting “worker”;

6 (4) in section 13 (29 U.S.C. 213)—

7 (A) in subsection (c)—

8 (i) in paragraph (1)—

9 (I) in the matter preceding sub-
10 paragraph (A)—

11 (aa) by striking “employee”
12 each place it appears and insert-
13 ing “worker”;

14 (bb) by striking “employed
15 in” and inserting “engaged for
16 work in”; and

17 (cc) by striking “so em-
18 ployed” and inserting “so en-
19 gaged”;

20 (II) in subparagraph (A)—

21 (aa) by striking “employed
22 by” and inserting “engaged for
23 work by”;

1 (bb) by striking “is em-
 2 ployed with” by inserting “is en-
 3 gaged for work with”; and

4 (cc) by striking “employees”
 5 and inserting “workers”; and

6 (III) in subparagraph (B)—

7 (aa) by striking “such em-
 8 ployment” and inserting “such
 9 engagement for work”;

10 (bb) by striking “employed”
 11 and inserting “engaged for
 12 work”; and

13 (cc) by striking “employee”
 14 and inserting “worker”;

15 (ii) in paragraph (2)—

16 (I) by striking “employee” each
 17 place it appears and inserting “work-
 18 er”;

19 (II) by striking “employed in”
 20 and inserting “engaged for work in”;

21 (III) by striking “employment
 22 of” and inserting “engagement for
 23 work of”; and

24 (IV) by striking “employed by”
 25 and inserting “so engaged by”;

(iii) in paragraph (3), by striking “employed” and inserting “engaged for work”;

(iv) in paragraph (4)—

(I) in subparagraph (A)—

(aa) in the matter preceding clause (i)—

(AA) by striking “employment” and inserting “engagement for work”; and

(BB) by striking “employed” and inserting “engaged for work”;

(bb) in clause (ii), by striking “employment” and inserting “engagement for work”;

(cc) in clause (iv), by striking “employment” and inserting “engagement for work”; and

(dd) in clause (v), by striking “employed” and inserting “engaged for work”; and

(II) in subparagraph (B), by striking “employed” each place it ap-

1 pears and inserting “engaged for
2 work”;

3 (v) in paragraph (5)—

4 (I) by striking “employee” each
5 place it appears and inserting “work-
6 er”;

7 (II) by striking “employees” each
8 place it appears and inserting “work-
9 ers”; and

10 (III) in subparagraph (C)—

11 (aa) in clause (i), by striking
12 “employee’s” each place it ap-
13 pears and inserting “worker’s”;
14 and

15 (bb) in clause (iii)(I), by
16 striking “employment” and in-
17 serting “work”;

18 (vi) in paragraph (6)—

19 (I) in the matter preceding sub-
20 paragraph (A)—

21 (aa) by striking “employees
22 who are under” and inserting
23 “workers who are under”; and

1 (bb) by striking “Employee
2 who are 17” and inserting
3 “Workers who are 17”;

4 (II) by striking “employee” each
5 place it appears and inserting “work-
6 er”;

7 (III) by striking “employee’s”
8 each place it appears and inserting
9 “worker’s”;

10 (IV) by striking “of employment”
11 each place it appears and inserting
12 “of work”;

13 (V) in subparagraph (F), by
14 striking “employees of” each place it
15 appears and inserting “workers of”;
16 and

17 (VI) in subparagraph (G), by
18 striking “employment” and inserting
19 “engagement for work”; and
20 (vii) in paragraph (7)—

21 (I) in subparagraph (A)(i), by
22 striking “employed” and inserting
23 “engaged for work”; and

24 (II) in subparagraph (B), in the
25 matter preceding clause (i), by strik-

1 ing “employment” and inserting “en-
2 gagement for work”;

3 (B) in subsection (d), by inserting “(or, for
4 purposes of section 12, worker)” after “any em-
5 ployee”; and

6 (C) in subsection (f), by inserting “(or, for
7 purposes of section 11 (with respect to any
8 child labor provision of this Act) and 12, work-
9 er)” after “any employee”;

10 (5) in section 16(e)(1)(A) (29 U.S.C.
11 216(e)(1)(A)), by striking “employee” and inserting
12 “worker”; and

13 (6) in section 18C (29 U.S.C. 218c)—

14 (A) by inserting “(or, for purposes of any
15 child labor provision of this Act, including sec-
16 tion 12 and any provision of this Act admin-
17 istering or enforcing such a child labor provi-
18 sion, worker)” after “employee” each place it
19 appears; and

20 (B) by inserting “(or, for purposes of any
21 child labor provision of this Act, including sec-
22 tion 12 and any provision of this Act admin-
23 istering or enforcing such a child labor provi-
24 sion, of work)” after “employment” each place
25 it appears.

1 (b) CIVIL PENALTIES.—Section 16(e)(1) of the Fair
 2 Labor Standards Act of 1938 (29 U.S.C. 216(e)(1)), as
 3 amended by subsection (a)(5), is further amended—

4 (1) in subparagraph (A)—

5 (A) in the matter preceding clause (i), by
 6 striking “not to exceed” and inserting “of an
 7 amount (subject to subparagraph (C)) that is”;

8 (B) in clause (i), by striking “\$11,000”
 9 and inserting “not less than \$5,000 and not
 10 more than \$132,270”; and

11 (C) in clause (ii), by striking “\$50,000”
 12 and inserting “not less than \$25,000 and not
 13 more than \$601,150”; and

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

15 “(C) The dollar amounts referred to in clauses
 16 (i) and (ii) of subparagraph (A) shall be increased
 17 annually, for fiscal year 2024 and every fiscal year
 18 thereafter, by the percent increase, if any, in the
 19 consumer price index for all urban consumers (all
 20 items; United States city average) for the most re-
 21 cent 12-month period for which applicable data is
 22 available.”.

23 (c) CRIMINAL PENALTIES.—Section 16(a) of the Fair
 24 Labor Standards Act of 1938 (29 U.S.C. 216(a)) is
 25 amended—

1 (1) by striking “Any” and inserting “(1) Any”;

2 (2) by inserting “(other than subsection (a)(4)
3 of such section)” after “section 15”;

4 (3) by striking “subsection” each place it ap-
5 pears and inserting “paragraph”; and

6 (4) by adding at the end the following:

7 “(2) Any person who repeatedly or willfully violates
8 section 15(a)(4) shall upon conviction thereof be subject
9 to a fine of not more than \$50,000, or to imprisonment
10 for not more than 1 year, or both.”.

11 **SEC. 3. EFFECTIVE DATES.**

12 (a) APPLICATION TO ALL WORKERS.—The amend-
13 ments made by section 2(a) shall take effect on the date
14 that is 90 days after the date of enactment of this Act.

15 (b) PENALTIES.—The amendments made by sub-
16 sections (b) and (c) of section 2 shall apply with respect
17 to violations alleged to have occurred on or after the date
18 of the enactment of this Act.

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