

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 509

To amend title 10, United States Code, to ensure proper classification as employees and independent contractors of persons awarded Federal procurement contracts.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 1995

Mr. LANTOS (for himself and Mr. SHAYS) introduced the following bill; which was referred to the Committee on National Security

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## A BILL

To amend title 10, United States Code, to ensure proper classification as employees and independent contractors of persons awarded Federal procurement contracts.

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. CLASSIFICATION OF PERSONS AS EMPLOYEES**  
4 **AND INDEPENDENT CONTRACTORS UNDER**  
5 **DEFENSE CONTRACTS.**

6 (a) IN GENERAL.—Chapter 137 of title 10, United  
7 States Code, is amended by adding at the end the follow-  
8 ing new section:

1 **“§ 2332. Classification of persons as employees and**  
2 **independent contractors**

3 “(a) INELIGIBILITY FOR DEFENSE CONTRACTS AND  
4 SUBCONTRACTS.—

5 “(1) IN GENERAL.—A person (including any  
6 subsidiary, successor, or related entity of a person)  
7 shall not be eligible for any defense contract during  
8 the two-year period beginning on the date of the is-  
9 suance of any final determination under Federal law  
10 that the person (including any subsidiary or related  
11 entity of the person) willfully misclassified an indi-  
12 vidual for purposes of any employment tax.

13 “(2) FINAL DETERMINATION.—For purposes of  
14 this subsection, a determination is final if all rights  
15 to appeal the determination, or to request a review,  
16 rehearing, or redetermination of the matter that is  
17 the subject of the determination, have been ex-  
18 hausted or have lapsed.

19 “(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY  
20 EMPLOYMENT TAXES.—A person who submits a bid or  
21 proposal for a defense contract shall certify that the  
22 amount of the bid or proposal is adequate to pay all em-  
23 ployment taxes with respect to all work to be performed  
24 under the contract by employees of the person.

25 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-  
26 TORS.—Each defense contract shall include a requirement

1 that the contractor shall provide, to each person who per-  
2 forms work under the contract and who is treated by the  
3 contractor as an independent contractor for purposes of  
4 employment taxes, a notification regarding—

5           “(1) all obligations of the independent contrac-  
6 tor under Federal and State law to withhold and pay  
7 employment taxes with respect to work performed  
8 under the contract by the independent contractor  
9 (including work performed by employees of the inde-  
10 pendent contractor); and

11           “(2) all statutory rights and protections that  
12 are available under Federal and State law to em-  
13 ployees of the contractor and are not available to the  
14 independent contractor (including employees of the  
15 independent contractor), including protections and  
16 benefits under Federal laws relating to fair labor  
17 standards, occupational health and safety, civil  
18 rights, unemployment insurance, and worker’s com-  
19 pensation.

20           “(d) RIGHT OF ACTION.—A person who submits a  
21 bid or proposal for a defense contract and who suffers  
22 damages as a result of the award of the contract to a per-  
23 son who knowingly and willfully submits a certification  
24 under subsection (b) with respect to the contract that is  
25 false, may bring an action for damages against the person

1 awarded the contract in any district court of the United  
2 States in which the defendant is located.

3 “(e) DEFINITIONS.—For purposes of this section:

4 “(1) EMPLOYMENT TAX.—The term ‘employ-  
5 ment tax’ means any tax imposed by subtitle C of  
6 the Internal Revenue Code of 1986.

7 “(2) DEFENSE CONTRACT.—The term ‘defense  
8 contract’ means a contract awarded by the Depart-  
9 ment of Defense, and all subcontracts under such a  
10 contract.

11 “(3) MISCLASSIFY.—The term ‘misclassify’  
12 means to treat as an independent contractor an indi-  
13 vidual who is an employee.”.

14 (b) CLERICAL AMENDMENT.—The table of sections  
15 at the beginning of such chapter is amended by adding  
16 at the end the following new item:

“2332. Classification of persons as employees and independent contractors.”.

17 **SEC. 2. APPLICABILITY.**

18 Section 2332 of title 10, United States Code, as  
19 added by section 301, shall apply to—

20 (1) defense contracts entered into after the ex-  
21 piration of the 180-day period beginning on the date  
22 of the enactment of this Act;

23 (2) subcontracts under contracts covered by  
24 paragraph (1); and

1           (3) options exercised under any defense con-  
2           tract after the expiration of the 180-day period be-  
3           ginning on the date of the enactment of this Act.

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