



THE “BE MY OWN BOSS” ACT

Voluntary Choice of Self-Employment

Abstract

This act would allow 50+ million Americans to choose to work as their own boss

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Background —

There’s a fundamental flaw in US labor law:

There is no way for a voluntarily self-employed American to acquire self-employed status for certain.

Details —

The Federal Fair Labor Standards Act of 1938—written in the Great Depression—**assumes all workers are employees**; all state laws must comply.

But the self-employed are both **employer** and **employee**; they have a **dual nature** FLSA misses.

Self-employment is

1. natural,
2. predates employment,
3. generates new jobs nearby,
4. allows flexible work styles, schedules and valuable specialties,
5. **30 percent of the US workforce, employing over 50 million in 2021,**
6. has grown steadily for a generation, and
7. directly benefits women, mothers, rural areas and low-income households.

The self-employed cannot **demonstrate their fully voluntary status** to their customers.

Buyer pull-back is growing nationwide as anti-self-employment laws are harsh (MA & CA) and threaten buyers with huge penalties.

Choosing self-employment status involves a **voluntary choice of law**, like marriage does.

Legal responsibility for classification of workers as contractors or employees falls to **lifelong employees—judges, bureaucrats, regulators, legislators, interest-group employees**—who rarely understand the entrepreneurial urge.

New Jobs proposes the “**Be-My-Own-Boss**” Act to allow acceptance of 10 responsibilities grasped by all voluntarily self-employed individuals.

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Note: **Yellow** highlighting in the following language shows new text for the FLSA

1 117TH CONGRESS
2 1ST SESSION

3 **H. R./S. 0000**

4 **The Be My Own Boss Act**

5 To amend the Fair Labor Standards Act of 1938 to allow individuals to voluntarily
6 self-classify as self-employed, and exempting those individuals from minimum
7 wage and maximum hours requirements while working as self-employed.

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9 IN THE HOUSE OF REPRESENTATIVES/SENATE

10 XXXX X, 2021

11 Mr./Ms. XXXX introduced the following bill; which was referred to the Committee on
12 XXXX

13 **A BILL**

14 To amend the Fair Labor Standards Act of 1938 to allow individuals to
15 voluntarily self-classify as self-employed, and exempting those individuals
16 from minimum wage and maximum hours requirements.

17 *Be it enacted by the Senate and House of Representatives of the United*
18 *State of America in Congress assembled,*

19 **SECTION 1. DEFINITION OF EMPLOYEE WITH RESPECT TO INDIVIDUALS**
20 **THAT VOLUNTARILY ELECT TO SELF-CLASSIFY AS SELF-**
21 **EMPLOYED.**

22 Section 203(e) of the Fair Labor Standards Act (29 U.S.C. 203(e)) is
23 amended by inserting after paragraph (5) the following:

24 **“(6) The term “employee” does not include individuals who**
25 **have registered with the Administrator of the Wage and Hour Division**

26 as voluntarily self-employed under section 213a. of this title and while
27 doing work they classified as self-employed work.”

28 **SECTION 2. EXEMPTION WITH RESPECT TO INDIVIDUALS THAT**
29 **VOLUNTARILY ELECT TO SELF-CLASSIFY AS SELF-**
30 **EMPLOYED.**

31 Section 213(a) of the Fair Labor Standards Act (29 U.S.C. 213(a)) is
32 amended by inserting after paragraph (19) the following:

33 “(20) individuals who have registered with the Administrator of
34 the Wage and Hour Division as voluntarily self-employed pursuant to
35 section 213a. of this title and while doing work they classified as self-
36 employed work.”

37 **SECTION 3. ABILITY OF INDIVIDUALS TO VOLUTARILY ELECT TO SELF-**
38 **CLASSIFY AS SELF-EMPLOYED.**

39 Section 213a. is added to the Fair Labor Standards Act (29 U.S.C. 213a.)
40 immediately following Section 213 per the following:

41 “213a.(a) The Administrator of the Wage and Hour Division
42 shall offer individuals the opportunity, through the Department of
43 Labor’s website, to voluntarily classify themselves as self-employed
44 when performing work designated by that individual. Self-
45 classification shall be effective immediately upon registration, and no
46 dues or fees shall be charged to the individual for such registration.
47 Upon registration, the Department of Labor shall issue the registrant a
48 Self-Employed Identification Number (SEIN), which shall consist of two
49 digits, followed by a hyphen, followed by seven subsequent digits. The
50 SEIN shall be valid in any federal, state or local jurisdiction in which the
51 individual chooses to work.

(b) In order for self-classification under subsection (a) of this section to be valid, the individual must sign the following declaration:

"I elect to accept the following rights and responsibilities of self-employment when working as [insert job description or title]:

- i. to employ myself under my SEIN as a voluntarily self-employed person;
- ii. to set my own schedule;
- iii. to choose the contracts or projects I work on;
- iv. to direct the performance of my work;
- v. to find work with which to employ myself;
- vi. to price my work;
- vii. to have the opportunity to make a profit or suffer a loss from my work based on my own initiative and investment;
- viii. to use my skills for the work I choose to undertake;
- ix. to equip myself to undertake work and complete it accordingly; and
- x. to engage others under my SEIN as employees or contractors or another lawful arrangement if I so choose.

My election to self-classify as self-employed when working as [insert job description or title] is made voluntarily under penalty of perjury."

(c) An individual's self-classification under subsection (b) shall be controlling and cannot be deemed invalid or perjurious absent clear and compelling evidence that it was wholly irrational."

(d) An individual who elects to self-classify as self-employed pursuant to this section shall not be considered an “employee” under any other federal statute. This section supersedes all other federal laws.

(e) The rights and responsibilities accepted by an individual who elects to self-classify as self-employed pursuant to this section shall not be infringed, eliminated, burdened, ignored, taxed or prohibited by any federal, state or local jurisdiction, regulation or court decision.”

SECTION 4. SELF-CLASSIFICATION AS SELF-EMPLOYED IN RELATION TO OTHER LAWS.

Section 218(a) of the Fair Labor Standards Act (29 U.S.C. 218(a)) is amended per the following:

“(a) Except as provided for by section 213a. of this title, no provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum work week established under this chapter, and no provision of this chapter relating to employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer

104 in increasing hours of employment maintained by him which are
105 shorter than the minimum hours applicable under this chapter.”

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