Amendment No. 005157

Signature of Sponsor

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AMEND Senate Bill No. 466* **House Bill No. 539**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-2-111, is amended by deleting the section and substituting instead the following:

(a) This chapter only applies to an individual if the individual performs services for an employer for wages and the services performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the following twenty (20) factors as described in the twenty-factor test of Internal Revenue Service Revenue Ruling 87-41, 1987-1 C.B. 296:

(1) **Instructions.** A worker who is required to comply with other persons' instructions about when, where, and how the worker is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions;

(2) **Training.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner;

(3) **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those

services must necessarily be subject to a certain amount of control by the owner of the business;

(4) **Services rendered personally.** If the services must be rendered personally, then presumably the persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results;

(5) **Hiring, supervising, and paying assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, then that factor generally shows control over the workers on the job. However, if one (1) worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, then this factor indicates an independent contractor status;

(6) **Continuing relationship.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals;

(7) **Set hours of work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control;

(8) **Full time required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, then the person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor is free to work when and for whom the independent contractor chooses;

(9) **Doing work on employer's premises.** If the work is performed on the premises of the person or persons for whom the services are performed, then

that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform those services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass territory within a certain time, or to work at specific places as required;

(10) **Order or sequence set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, then that factor shows that the worker is not free to follow the worker's own pattern of work but instead must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if the person or persons retain the right to do so;

(11) **Oral or written reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control;

(12) **Payment by hour, week, month.** Payment by the hour, week, or month generally points to an employer-employee relationship; provided, that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on straight commission generally indicates the worker is an independent contractor;

(13) **Payment of business or traveling expenses.** If the person or persons for whom the services are performed ordinarily pay the worker's business or traveling expenses, then the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities;

(14) **Furnishing of tools and materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship;

(15) **Significant investment.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees, such as the maintenance of an office rented at fair value from an unrelated party, then that factor tends to indicate that the worker is an independent contractor. However, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for the facilities and the existence of an employer-employee relationship;

(16) **Realization of profit or loss.** A worker who can realize a profit or suffer a loss as a result of the worker's services, in addition to the profit or loss ordinarily realized by employees, is generally an independent contractor but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, then that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for the worker's services is common to both independent contractors and employees and does not constitute sufficient economic risk to support treatment as an independent contractor;

(17) **Working for more than one firm at a time.** If a worker performs more than de minimis services for multiple unrelated persons or firms at the

same time, then that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one (1) person may be an employee of each of the persons, especially where such persons are part of the same service arrangement;

(18) **Making service available to general public.** The fact that a worker makes the worker's services available to the general public on a regular and consistent basis indicates an independent contractor relationship;

(19) **Right to discharge.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor cannot be fired so long as the independent contractor produces a result that meets the contract specifications; and

(20) **Right to terminate.** If the worker has the right to end the worker's relationship with the person for whom the services are performed at any time the worker wishes without incurring liability, then that factor indicates an employer-employee relationship.

(b) Notwithstanding subsection (a), this chapter does not apply to an individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing an interstate business while engaged in interstate commerce regardless of whether the common law relationship of master and servant exists.

SECTION 2. Tennessee Code Annotated, Section 50-3-103, is amended by deleting subdivision (7) and substituting instead the following:

(7) "Employee":

(A) Means an individual who performs services for an employer for wages under a contract of hire if the services performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the following

twenty (20) factors as described in the twenty-factor test of Internal Revenue Service Revenue Ruling 87-41, 1987-1 C.B. 296:

(i) **Instructions.** A worker who is required to comply with other persons' instructions about when, where, and how the worker is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions;

(ii) **Training.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner;

(iii) **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business;

(iv) **Services rendered personally.** If the services must be rendered personally, then presumably the persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results;

(v) **Hiring, supervising, and paying assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, then that factor generally shows control over the workers on the job. However, if one (1) worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, then this factor indicates an independent contractor status;

(vi) **Continuing relationship.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals;

(vii) **Set hours of work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control;

(viii) **Full time required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, then the person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor is free to work when and for whom the independent contractor chooses;

(ix) **Doing work on employer's premises.** If the work is performed on the premises of the person or persons for whom the services are performed, then that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform those services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass territory within a certain time, or to work at specific places as required;

(x) **Order or sequence set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, then that factor shows that the worker is not free to follow the

worker's own pattern of work but instead must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if the person or persons retain the right to do so;

(xi) **Oral or written reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control;

(xii) **Payment by hour, week, month.** Payment by the hour, week, or month generally points to an employer-employee relationship; provided, that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on straight commission generally indicates the worker is an independent contractor;

(xiii) **Payment of business or traveling expenses.** If the person or persons for whom the services are performed ordinarily pay the worker's business or traveling expenses, then the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities;

(xiv) **Furnishing of tools and materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship;

(xv) **Significant investment.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees, such as the maintenance of an office rented at fair value from an unrelated party, then that factor tends to indicate that the worker is an independent contractor. However, lack of investment in facilities indicates

dependence on the person or persons for whom the services are performed for the facilities and the existence of an employer-employee relationship;

(xvi) **Realization of profit or loss.** A worker who can realize a profit or suffer a loss as a result of the worker's services, in addition to the profit or loss ordinarily realized by employees, is generally an independent contractor but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, then that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for the worker's services is common to both independent contractors and employees and does not constitute sufficient economic risk to support treatment as an independent contractor;

(xvii) **Working for more than one firm at a time.** If a worker performs more than de minimis services for multiple unrelated persons or firms at the same time, then that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one (1) person may be an employee of each of the persons, especially where such persons are part of the same service arrangement;

(xviii) **Making service available to general public.** The fact that a worker makes the worker's services available to the general public on a regular and consistent basis indicates an independent contractor relationship;

(xix) **Right to discharge.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor cannot be fired so long as the independent contractor produces a result that meets the contract specifications; and

(xx) **Right to terminate.** If the worker has the right to end the worker's relationship with the person for whom the services are performed at any time the worker wishes without incurring liability, then that factor indicates an employer-employee relationship; and

(B) Includes minors, whether lawfully or unlawfully employed; persons in executive positions; and county, metropolitan, and municipal government employees;

SECTION 3. Tennessee Code Annotated, Section 50-6-102(12)(D), is amended by deleting subdivision (i) and substituting instead the following:

(i) In a work relationship, in order to determine whether an individual is an "employee," or whether an individual is a "subcontractor" or an "independent contractor," an individual who performs services for an employer for wages is an employee of the employer for purposes of this chapter if the services performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the following twenty (20) factors as described in the twenty-factor test of Internal Revenue Service Revenue Ruling 87-41, 1987-1 C.B. 296:

(*a*) **Instructions.** A worker who is required to comply with other persons' instructions about when, where, and how the worker is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions;

(*b*) **Training.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner;

(*c*) **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those

services must necessarily be subject to a certain amount of control by the owner of the business;

(*d*) **Services rendered personally.** If the services must be rendered personally, then presumably the persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results;

(*e*) **Hiring, supervising, and paying assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, then that factor generally shows control over the workers on the job. However, if one (1) worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, then this factor indicates an independent contractor status;

(*f*) **Continuing relationship.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals;

(*g*) **Set hours of work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control;

(*h*) **Full time required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, then the person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor is free to work when and for whom the independent contractor chooses;

(*i*) **Doing work on employer's premises.** If the work is performed on the premises of the person or persons for whom the services are performed, then

that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform those services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass territory within a certain time, or to work at specific places as required;

(*j*) **Order or sequence set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, then that factor shows that the worker is not free to follow the worker's own pattern of work but instead must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if the person or persons retain the right to do so;

(*k*) **Oral or written reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control;

(*l*) **Payment by hour, week, month.** Payment by the hour, week, or month generally points to an employer-employee relationship; provided, that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on straight commission generally indicates the worker is an independent contractor;

(*m*) **Payment of business or traveling expenses.** If the person or persons for whom the services are performed ordinarily pay the worker's business or traveling expenses, then the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities;

(*n*) **Furnishing of tools and materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship;

(*o*) **Significant investment.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees, such as the maintenance of an office rented at fair value from an unrelated party, then that factor tends to indicate that the worker is an independent contractor. However, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for the facilities and the existence of an employer-employee relationship;

(*p*) **Realization of profit or loss.** A worker who can realize a profit or suffer a loss as a result of the worker's services, in addition to the profit or loss ordinarily realized by employees, is generally an independent contractor but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, then that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for the worker's services is common to both independent contractors and employees and does not constitute sufficient economic risk to support treatment as an independent contractor;

(*q*) **Working for more than one firm at a time.** If a worker performs more than de minimis services for multiple unrelated persons or firms at the

same time, then that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one (1) person may be an employee of each of the persons, especially where such persons are part of the same service arrangement;

(*r*) **Making service available to general public.** The fact that a worker makes the worker's services available to the general public on a regular and consistent basis indicates an independent contractor relationship;

(*s*) **Right to discharge.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor cannot be fired so long as the independent contractor produces a result that meets the contract specifications; and

(*t*) **Right to terminate.** If the worker has the right to end the worker's relationship with the person for whom the services are performed at any time the worker wishes without incurring liability, then that factor indicates an employer-employee relationship; and

SECTION 4. Tennessee Code Annotated, Section 50-7-207, is amended by deleting subdivision (b)(2)(B) and substituting instead the following:

(B) Any individual who performs services for an employer for wages if the services are performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the following twenty (20) factors as described in the twenty-factor test of Internal Revenue Service Revenue Ruling 87-41, 1987-1 C.B. 296:

(i) **Instructions.** A worker who is required to comply with other persons' instructions about when, where, and how the worker is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions;

(ii) **Training.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner;

(iii) **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business;

(iv) **Services rendered personally.** If the services must be rendered personally, then presumably the persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results;

(v) **Hiring, supervising, and paying assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, then that factor generally shows control over the workers on the job. However, if one (1) worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, then this factor indicates an independent contractor status;

(vi) **Continuing relationship.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals;

(vii) **Set hours of work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control;

(viii) **Full time required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, then the person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor is free to work when and for whom the independent contractor chooses;

(ix) **Doing work on employer's premises.** If the work is performed on the premises of the person or persons for whom the services are performed, then that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform those services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass territory within a certain time, or to work at specific places as required;

(x) **Order or sequence set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, then that factor shows that the worker is not free to follow the worker's own pattern of work but instead must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order

infrequently. It is sufficient to show control, however, if the person or persons retain the right to do so;

(xi) **Oral or written reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control;

(xii) **Payment by hour, week, month.** Payment by the hour, week, or month generally points to an employer-employee relationship; provided, that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on straight commission generally indicates the worker is an independent contractor;

(xiii) **Payment of business or traveling expenses.** If the person or persons for whom the services are performed ordinarily pay the worker's business or traveling expenses, then the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities;

(xiv) **Furnishing of tools and materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship;

(xv) **Significant investment.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees, such as the maintenance of an office rented at fair value from an unrelated party, then that factor tends to indicate that the worker is an independent contractor. However, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for the facilities and the existence of an employer-employee relationship;

(xvi) **Realization of profit or loss.** A worker who can realize a profit or suffer a loss as a result of the worker's services, in addition to the profit or loss

ordinarily realized by employees, is generally an independent contractor but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, then that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for the worker's services is common to both independent contractors and employees and does not constitute sufficient economic risk to support treatment as an independent contractor;

(xvii) **Working for more than one firm at a time.** If a worker performs more than de minimis services for multiple unrelated persons or firms at the same time, then that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one (1) person may be an employee of each of the persons, especially where such persons are part of the same service arrangement;

(xviii) **Making service available to general public.** The fact that a worker makes the worker's services available to the general public on a regular and consistent basis indicates an independent contractor relationship;

(xix) **Right to discharge.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor cannot be fired so long as the independent contractor produces a result that meets the contract specifications; and

(xx) **Right to terminate.** If the worker has the right to end the worker's relationship with the person for whom the services are performed at any time the worker wishes without incurring liability, then that factor indicates an employer-employee relationship;

SECTION 5. Tennessee Code Annotated, Section 50-7-207(e), is amended by deleting subdivisions (1)-(3) and substituting instead the following:

(1) Services performed by an individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier conducting an interstate business while engaged in interstate commerce are deemed to be an excluded service for the purposes of this section, regardless of whether the common law relationship of master and servant exists. However, this subdivision (e)(1) does not apply to services performed under subdivision (b)(3) or (b)(4); and

(2) It is the legislative intent that no elected official is eligible for benefits based upon service as an elected official.

SECTION 6. Tennessee Code Annotated, Section 50-9-103, is amended by deleting subdivision (9) and substituting instead the following:

(9) "Employee" means any individual who performs services for a covered employer for wages if the services performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the following twenty (20) factors as described in the twenty-factor test of Internal Revenue Service Revenue Ruling 87-41, 1987-1 C.B. 296:

(A) **Instructions.** A worker who is required to comply with other persons' instructions about when, where, and how the worker is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions;

(B) **Training.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner;

(C) **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business;

(D) **Services rendered personally.** If the services must be rendered personally, then presumably the persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results;

(E) **Hiring, supervising, and paying assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, then that factor generally shows control over the workers on the job. However, if one (1) worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, then this factor indicates an independent contractor status;

(F) **Continuing relationship.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals;

(G) **Set hours of work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control;

(H) **Full time required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, then the person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work.

An independent contractor is free to work when and for whom the independent contractor chooses;

(I) **Doing work on employer's premises.** If the work is performed on the premises of the person or persons for whom the services are performed, then that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform those services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass territory within a certain time, or to work at specific places as required;

(J) **Order or sequence set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, then that factor shows that the worker is not free to follow the worker's own pattern of work but instead must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if the person or persons retain the right to do so;

(K) **Oral or written reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control;

(L) **Payment by hour, week, month.** Payment by the hour, week, or month generally points to an employer-employee relationship; provided, that this

method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on straight commission generally indicates the worker is an independent contractor;

(M) **Payment of business or traveling expenses.** If the person or persons for whom the services are performed ordinarily pay the worker's business or traveling expenses, then the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities;

(N) **Furnishing of tools and materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship;

(O) **Significant investment.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees, such as the maintenance of an office rented at fair value from an unrelated party, then that factor tends to indicate that the worker is an independent contractor. However, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for the facilities and the existence of an employer-employee relationship;

(P) **Realization of profit or loss.** A worker who can realize a profit or suffer a loss as a result of the worker's services, in addition to the profit or loss ordinarily realized by employees, is generally an independent contractor but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, then that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for the worker's services is common to both independent

contractors and employees and does not constitute sufficient economic risk to support treatment as an independent contractor;

(Q) **Working for more than one firm at a time.** If a worker performs more than de minimis services for multiple unrelated persons or firms at the same time, then that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one (1) person may be an employee of each of the persons, especially where such persons are part of the same service arrangement;

(R) **Making service available to general public.** The fact that a worker makes the worker's services available to the general public on a regular and consistent basis indicates an independent contractor relationship;

(S) **Right to discharge.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor cannot be fired so long as the independent contractor produces a result that meets the contract specifications; and

(T) **Right to terminate.** If the worker has the right to end the worker's relationship with the person for whom the services are performed at any time the worker wishes without incurring liability, then that factor indicates an employer-employee relationship;

SECTION 7. This act shall take effect January 1, 2020, the public welfare requiring it, and applies only to actions occurring on or after that date.

Amendment No. 005595

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 815 House Bill No. 856*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-1-502, is amended by deleting subdivision (3) and substituting instead the following:

(3) "Employer" means a private employer and a state or local governmental entity.

SECTION 2. Tennessee Code Annotated, Section 50-1-504, is amended by deleting the section and substituting instead the following:

(a) Notwithstanding § 29-20-205, if an employer adopts the model policy created by TACIR pursuant to § 50-1-503(a) or adopts a policy that conforms to the requirements set out in § 50-1-503(b), then the employer is immune from suit for any employee's abusive conduct that results in negligent or intentional infliction of mental anguish. Nothing in this section limits the personal liability of an employee for any abusive conduct in the workplace.

(b) Nothing in this section creates a cause of action against an employer who does not adopt the model policy created by TACIR pursuant to § 50-1-503(a) or adopt a policy conforming to the requirements set out in § 50-1-503(b).

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.