

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0985.01 Christy Chase x2008

SENATE BILL 18-171

SENATE SPONSORSHIP

Holbert and Williams A., Jahn

HOUSE SPONSORSHIP

Pabon and Sias, Hansen

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF A TEST TO DETERMINE WHETHER A
102 MARKETPLACE CONTRACTOR THAT PROVIDES SERVICES ON A
103 MARKETPLACE PLATFORM IS COVERED UNDER CERTAIN
104 EMPLOYMENT-RELATED LAWS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill establishes a test for determining whether a marketplace contractor is considered an "employee" under the "Workers' Compensation Act of Colorado" and whether services provided by a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

marketplace contractor are considered "employment" under the "Colorado Employment Security Act".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 8-40-301, **add** (10)
3 as follows:

4 **8-40-301. Scope of term "employee" - definitions.**

5 (10) (a) "EMPLOYEE" EXCLUDES ANY PERSON PROVIDING SERVICES AS A
6 MARKETPLACE CONTRACTOR IF THE SERVICES PERFORMED BY THE
7 CONTRACTOR ARE GOVERNED BY A WRITTEN CONTRACT EXECUTED
8 BETWEEN THE CONTRACTOR AND A MARKETPLACE PLATFORM, WHICH
9 CONTRACT PROVIDES ALL OF THE FOLLOWING:

10 (I) THAT THE MARKETPLACE CONTRACTOR IS PROVIDING SERVICES
11 AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE;

12 (II) THAT ALL OR SUBSTANTIALLY ALL OF THE PAYMENT MADE TO
13 THE MARKETPLACE CONTRACTOR IS BASED ON THE PERFORMANCE OF
14 SERVICES OR OTHER OUTPUT;

15 (III) THAT THE MARKETPLACE CONTRACTOR IS ALLOWED TO WORK
16 ANY HOURS OR SCHEDULES THE CONTRACTOR CHOOSES; EXCEPT THAT, IF
17 THE CONTRACTOR ELECTS TO WORK SPECIFIED HOURS OR SCHEDULES, THE
18 CONTRACT MAY REQUIRE THE CONTRACTOR TO PERFORM WORK DURING
19 THE SELECTED HOURS OR SCHEDULES;

20 (IV) THAT THE MARKETPLACE PLATFORM SHALL NOT RESTRICT
21 THE ABILITY OF THE MARKETPLACE CONTRACTOR TO PERFORM SERVICES
22 FOR OTHER PARTIES;

23 (V) THAT THE MARKETPLACE PLATFORM SHALL NOT PROVIDE
24 ON-SITE SUPERVISION DURING THE PERFORMANCE OF SERVICES BY THE
25 MARKETPLACE CONTRACTOR;

1 (VI) THAT THE MARKETPLACE PLATFORM SHALL NOT REQUIRE THE
2 MARKETPLACE CONTRACTOR TO OBTAIN TRAINING;

3 (VII) THAT THE MARKETPLACE CONTRACTOR BEARS ALL OR
4 SUBSTANTIALLY ALL OF ITS OWN EXPENSES THAT IT INCURRED IN
5 PERFORMING THE SERVICES;

6 (VIII) THAT THE MARKETPLACE PLATFORM SHALL NOT REQUIRE
7 THE MARKETPLACE CONTRACTOR TO USE SPECIFIC MATERIALS, SUPPLIES,
8 OR EQUIPMENT IN PERFORMING SERVICES; AND

9 (IX) THAT THE MARKETPLACE CONTRACTOR IS NOT ENTITLED TO
10 WORKERS' COMPENSATION BENEFITS UNDER ARTICLES 40 TO 47 OF THIS
11 TITLE 8, AND THAT THE MARKETPLACE CONTRACTOR IS RESPONSIBLE FOR
12 PAYING APPLICABLE TAXES ON INCOME THE CONTRACTOR EARNS
13 PURSUANT TO THE CONTRACT RELATIONSHIP.

14 (b) NOTHING IN THIS SUBSECTION (10) PROHIBITS A MARKETPLACE
15 CONTRACTOR FROM BEING TREATED AS AN INDEPENDENT CONTRACTOR
16 AND NOT AS AN EMPLOYEE UNDER ANY OTHER PROVISIONS OF LAW
17 MERELY BECAUSE THE CONDITIONS IN SUBSECTION (10)(a) OF THIS
18 SECTION ARE NOT SATISFIED.

19 (c) AS USED IN THIS SUBSECTION (10):

20 (I) (A) "MARKETPLACE CONTRACTOR" OR "CONTRACTOR" MEANS
21 A PERSON THAT: ENTERS INTO A WRITTEN AGREEMENT WITH A
22 MARKETPLACE PLATFORM TO USE THE PLATFORM'S ONLINE-ENABLED
23 APPLICATION, SOFTWARE, WEBSITE, OR SYSTEM TO RECEIVE SERVICE
24 REQUESTS FROM THIRD PARTIES SEEKING THE TYPES OF SERVICES OFFERED
25 BY THE CONTRACTOR; AND DOES NOT PERFORM ANY OF THE SERVICE
26 REQUESTS AT OR FROM A PHYSICAL BUSINESS LOCATION THAT IS
27 OPERATED BY THE MARKETPLACE PLATFORM.

1 (B) "MARKETPLACE CONTRACTOR" DOES NOT INCLUDE A PERSON
2 RECEIVING OR PERFORMING A SERVICE REQUEST THAT CONSISTS OF
3 TRANSPORTING FOR COMPENSATION: FREIGHT; SEALED ENVELOPES,
4 BOXES, OR PARCELS; OR OTHER SEALED OR CLOSED CONTAINERS.

5 (II) "MARKETPLACE PLATFORM" MEANS A CORPORATION,
6 PARTNERSHIP, SOLE PROPRIETORSHIP, OR OTHER ENTITY OPERATING IN
7 THIS STATE THAT OFFERS AN ONLINE-ENABLED APPLICATION, SOFTWARE,
8 WEBSITE, OR SYSTEM THAT:

9 (A) ENABLES THE PROVISION OF SERVICES BY MARKETPLACE
10 CONTRACTORS TO THIRD PARTIES SEEKING THE SERVICES; AND

11 (B) ACCEPTS SERVICE REQUESTS FROM THE PUBLIC ONLY THROUGH
12 ITS ONLINE-ENABLED APPLICATION, SOFTWARE, WEBSITE, OR SYSTEM.

13 **SECTION 2.** In Colorado Revised Statutes, **add 8-70-140.9** as
14 follows:

15 **8-70-140.9. "Employment" does not include - marketplace**
16 **contractors - definitions.** (1) "EMPLOYMENT" DOES NOT INCLUDE
17 SERVICES PERFORMED BY A MARKETPLACE CONTRACTOR IF THE SERVICES
18 PERFORMED BY THE CONTRACTOR ARE GOVERNED BY A WRITTEN
19 CONTRACT EXECUTED BETWEEN THE CONTRACTOR AND A MARKETPLACE
20 PLATFORM, WHICH CONTRACT PROVIDES FOR ALL OF THE FOLLOWING:

21 (a) THAT THE MARKETPLACE CONTRACTOR IS PROVIDING SERVICES
22 AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE;

23 (b) THAT ALL OR SUBSTANTIALLY ALL OF THE PAYMENT MADE TO
24 THE MARKETPLACE CONTRACTOR IS BASED ON THE PERFORMANCE OF
25 SERVICES OR OTHER OUTPUT;

26 (c) THAT THE MARKETPLACE CONTRACTOR IS ALLOWED TO WORK
27 ANY HOURS OR SCHEDULES THE CONTRACTOR CHOOSES; EXCEPT THAT, IF

1 THE CONTRACTOR ELECTS TO WORK SPECIFIED HOURS OR SCHEDULES, THE
2 CONTRACT MAY REQUIRE THE CONTRACTOR TO PERFORM WORK DURING
3 THE SELECTED HOURS OR SCHEDULES;

4 (d) THAT THE MARKETPLACE PLATFORM SHALL NOT RESTRICT THE
5 ABILITY OF THE MARKETPLACE CONTRACTOR TO PERFORM SERVICES FOR
6 OTHER PARTIES;

7 (e) THAT THE MARKETPLACE PLATFORM SHALL NOT PROVIDE
8 ON-SITE SUPERVISION DURING THE PERFORMANCE OF SERVICES BY THE
9 MARKETPLACE CONTRACTOR;

10 (f) THAT THE MARKETPLACE PLATFORM SHALL NOT REQUIRE THE
11 MARKETPLACE CONTRACTOR TO OBTAIN TRAINING;

12 (g) THAT THE MARKETPLACE CONTRACTOR BEARS ALL OR
13 SUBSTANTIALLY ALL EXPENSES THAT THE CONTRACTOR INCURS IN
14 PERFORMING THE SERVICES;

15 (h) THAT THE MARKETPLACE PLATFORM SHALL NOT REQUIRE THE
16 MARKETPLACE CONTRACTOR TO USE SPECIFIC MATERIALS, SUPPLIES, OR
17 EQUIPMENT IN PERFORMING SERVICES; AND

18 (i) THAT THE MARKETPLACE CONTRACTOR IS NOT ENTITLED TO
19 UNEMPLOYMENT BENEFITS UNDER ARTICLES 70 TO 82 OF THIS TITLE 8, AND
20 THAT THE MARKETPLACE CONTRACTOR IS RESPONSIBLE FOR PAYING
21 APPLICABLE TAXES ON INCOME THE CONTRACTOR EARNS PURSUANT TO
22 THE CONTRACT RELATIONSHIP.

23 (2) NOTHING IN THIS SECTION PROHIBITS A MARKETPLACE
24 CONTRACTOR FROM BEING TREATED AS AN INDEPENDENT CONTRACTOR
25 AND NOT AS AN EMPLOYEE UNDER ANY OTHER PROVISIONS OF LAW
26 MERELY BECAUSE THE CONDITIONS IN SUBSECTION (1) OF THIS SECTION
27 ARE NOT SATISFIED.

1 (3) AS USED IN THIS SECTION:

2 (a) (I) "MARKETPLACE CONTRACTOR" OR "CONTRACTOR" MEANS
3 A PERSON THAT: ENTERS INTO A WRITTEN AGREEMENT WITH A
4 MARKETPLACE PLATFORM TO USE THE PLATFORM'S ONLINE-ENABLED
5 APPLICATION, SOFTWARE, WEBSITE, OR SYSTEM TO RECEIVE SERVICE
6 REQUESTS FROM THIRD PARTIES SEEKING THE TYPES OF SERVICES OFFERED
7 BY THE CONTRACTOR; AND DOES NOT PERFORM ANY OF THE SERVICE
8 REQUESTS AT OR FROM A PHYSICAL BUSINESS LOCATION THAT IS
9 OPERATED BY THE MARKETPLACE PLATFORM.

10 (II) "MARKETPLACE CONTRACTOR" DOES NOT INCLUDE A PERSON
11 RECEIVING OR PERFORMING A SERVICE REQUEST THAT CONSISTS OF
12 TRANSPORTING FOR COMPENSATION: FREIGHT; SEALED ENVELOPES,
13 BOXES, OR PARCELS; OR OTHER SEALED OR CLOSED CONTAINERS.

14 (b) "MARKETPLACE PLATFORM" MEANS A CORPORATION,
15 PARTNERSHIP, SOLE PROPRIETORSHIP, OR OTHER ENTITY OPERATING IN
16 THIS STATE THAT OFFERS AN ONLINE-ENABLED APPLICATION, SOFTWARE,
17 WEBSITE, OR SYSTEM THAT:

18 (I) ENABLES THE PROVISION OF SERVICES BY MARKETPLACE
19 CONTRACTORS TO THIRD PARTIES SEEKING THE SERVICES; AND

20 (II) ACCEPTS SERVICE REQUESTS FROM THE PUBLIC ONLY THROUGH
21 ITS ONLINE-ENABLED APPLICATION, SOFTWARE, WEBSITE, OR SYSTEM.

22 **SECTION 3.** In Colorado Revised Statutes, 8-70-103, **amend** the
23 introductory portion and (11) as follows:

24 **8-70-103. Definitions.** As used in articles 70 to 82 of this title 8,
25 unless the context otherwise requires:

26 (11) "Employment" has the meaning set forth in sections 8-70-115
27 to 8-70-125, exclusive of the exceptions set forth in sections 8-70-126 to

1 ~~8-70-140.7~~ **8-70-140.9.**

2 **SECTION 4. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part will not take effect
9 unless approved by the people at the general election to be held in
10 November 2018 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.