



Legislative Council Staff

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FISCAL NOTE

Drafting Number:	LLS 18-0985	Date:	February 26, 2018
Prime Sponsors:	Sen. Holbert; Williams A. Rep. Pabon; Sias	Bill Status:	Senate Business
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Bill Topic: MARKETPLACE CONTRACTOR WORKERS' COMP UNEMPLOYMENT

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue (<i>potential, minimal</i>) <input checked="" type="checkbox"/> State Expenditure (<i>potential, minimal</i>) <input type="checkbox"/> State Transfer	<input type="checkbox"/> TABOR Refund <input type="checkbox"/> Local Government <input checked="" type="checkbox"/> Statutory Public Entity
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This bill establishes a test to determine whether a marketplace contractor is an employee or an independent contractor for the purposes of workers' compensation and unemployment insurance benefits. It will have an ongoing potential and minimal impact on state revenue and expenditures.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Summary of Legislation

This bill establishes a multifactor test to determine whether a marketplace contractor is an employee or an independent contractor for the purposes of workers' compensation and unemployment insurance benefits, which are administered by the Colorado Department of Labor and Employment (CDLE). The bill defines a marketplace contractor as a person who enters into a written agreement with a marketplace platform to use its online system to connect to service requests from a third-party seeking services, and excludes individuals transporting items for compensation.

Background

Employment Security Act. The Colorado Unemployment Insurance (UI) program is administered by the Division of Unemployment Insurance in CDLE. The program provides temporary and partial wage replacement to employees who have become unemployed through no fault of their own. UI benefits are paid from the UI Trust Fund, which is funded through premium and surcharge rates charged to employers on the first \$11,800 of each employee's wages each year. The UI Trust Fund is a TABOR-exempt enterprise.

Worker's Compensation Act. The Colorado Worker's Compensation program is administered by the Division of Workers' Compensation in CDLE. The program requires employers to provide every part-time and full-time worker with workers' compensation insurance

coverage, either self-funded or purchased from an insurance company, including Pinnacol Assurance, which is a political subdivision of the state that is required to write insurance policies for all businesses regardless of their industry risk or claims history.

State Revenue and Expenditures

The bill is anticipated to have a minimal effect on state revenue and expenditures. Under current law, independent contractors are not eligible for UI benefits nor covered by an employer's workers' compensation policy, and the fiscal note assumes that employers already consider marketplace contractors to be independent contractors. The fiscal note also assumes that employers will comply with this clarification to the state law regarding temporary employees.

Unemployment Insurance. Because employers who believe an individual is an independent contractor do not generally contribute to, or cause benefits to be paid from, state UI funds on behalf of that contractor, changes in independent contractor determinations change state revenue only to the extent that these employers are audited or otherwise compelled to take corrective action. Only a large increase in the number of employers liable for failure to provide UI coverage would cause a significant change in state revenue and expenditures. Given the history of a high rate of employer liability, a significant increase in UI revenue and expenditures is not likely to occur under this bill.

To the extent additional resources are required, they will be requested through the annual budget process.

Statutory Public Entity Impact

Similar to the state, Pinnacol Assurance policies are anticipated to be generally unaffected by the bill.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

Departmental Difference

The CDLE estimates a reduction in revenue from premiums and interest earnings to the UI Trust Fund as well as UI tax charge reductions to other UI accounts totaling about \$22.6 million per year. This estimate is based on the CDLE's assumption that the bill will reclassify 5 percent of the 2.25 million private UI-covered employees in the state to non-covered status. CDLE also estimates an increase in expenditures of approximately \$235,000 per year for an additional 3.0 FTE of an Auditor II to perform an estimated 10 percent increase in audits of marketplace platform businesses, which have not been under previous CDLE review. The fiscal note assumes that employers who believe an employee is an independent contractor do not generally contribute to, or cause benefits to be paid from, state UI funds and that employers are in compliance with UI law; therefore, these impacts have been excluded from this analysis.

State and Local Government Contacts

Labor

Law