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

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

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

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

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

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

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

(III) THAT THE MARKETPLACE CONTRACTOR IS ALLOWED TO WORK ANY HOURS OR SCHEDULES THE CONTRACTOR Chooses; EXCEPT THAT, IF THE CONTRACTOR ELECTS TO WORK SPECIFIED HOURS OR SCHEDULES, THE CONTRACT MAY REQUIRE THE CONTRACTOR TO PERFORM WORK DURING THE SELECTED HOURS OR SCHEDULES;

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

(V) THAT THE MARKETPLACE PLATFORM SHALL NOT PROVIDE ON-SITE SUPERVISION DURING THE PERFORMANCE OF SERVICES BY THE MARKETPLACE CONTRACTOR;
(VI) That the marketplace platform shall not require the marketplace contractor to obtain training;

(VII) That the marketplace contractor bears all or substantially all of its own expenses that it incurred in performing the services;

(VIII) That the marketplace platform shall not require the marketplace contractor to use specific materials, supplies, or equipment in performing services; and

(IX) That the marketplace contractor is not entitled to workers' compensation benefits under articles 40 to 47 of this title 8, and that the marketplace contractor is responsible for paying applicable taxes on income the contractor earns pursuant to the contract relationship.

(b) Nothing in this subsection (10) prohibits a marketplace contractor from being treated as an independent contractor and not as an employee under any other provisions of law merely because the conditions in subsection (10)(a) of this section are not satisfied.

(c) As used in this subsection (10):

(I) (A) "Marketplace contractor" or "contractor" means a person that: Enters into a written agreement with a marketplace platform to use the platform's online-enabled application, software, website, or system to receive service requests from third parties seeking the types of services offered by the contractor; and does not perform any of the service requests at or from a physical business location that is operated by the marketplace platform.
(B) "MARKETPLACE CONTRACTOR" DOES NOT INCLUDE A PERSON RECEIVING OR PERFORMING A SERVICE REQUEST THAT CONSISTS OF TRANSPORTING FOR COMPENSATION: FREIGHT; SEALED ENVELOPES, BOXES, OR PARCELS; OR OTHER SEALED OR CLOSED CONTAINERS.

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

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

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

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

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

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

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

(c) THAT THE MARKETPLACE CONTRACTOR IS ALLOWED TO WORK ANY HOURS OR SCHEDULES THE CONTRACTOR CHOOSES; EXCEPT THAT, IF
THE CONTRACTOR ELECTS TO WORK SPECIFIED HOURS OR SCHEDULES, THE CONTRACT MAY REQUIRE THE CONTRACTOR TO PERFORM WORK DURING THE SELECTED HOURS OR SCHEDULES;

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

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

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

(g) THAT THE MARKETPLACE CONTRACTOR BARES ALL OR SUBSTANTIALLY ALL EXPENSES THAT THE CONTRACTOR INCURS IN PERFORMING THE SERVICES;

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

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

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

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

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

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

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

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

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

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

(11) "Employment" has the meaning set forth in sections 8-70-115 to 8-70-125, exclusive of the exceptions set forth in sections 8-70-126 to
8-70-140.7 8-70-140.9.

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