

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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.

SENATE
Amended 2nd Reading
March 8, 2018

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 ALL OF THE FOLLOWING CONDITIONS ARE
7 SATISFIED:

8 (I) THE SERVICES PERFORMED BY THE MARKETPLACE CONTRACTOR
9 ARE GOVERNED BY A WRITTEN CONTRACT EXECUTED BETWEEN THE
10 CONTRACTOR AND A MARKETPLACE PLATFORM THAT STATES THAT ___ ___
11 THE MARKETPLACE CONTRACTOR IS PROVIDING SERVICES AS AN
12 INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE;

13 (II) ALL OR SUBSTANTIALLY ALL OF THE PAYMENT MADE TO THE
14 MARKETPLACE CONTRACTOR FOR SERVICES RENDERED IS BASED ON A
15 FIXED OR CONTRACT RATE;

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

21 (IV) THE MARKETPLACE CONTRACTOR IS NOT REQUIRED TO
22 ACCEPT A MINIMUM NUMBER OF SERVICE REQUESTS;

23 (V) THE MARKETPLACE CONTRACTOR IS ABLE TO PERFORM
24 SERVICES FOR OTHER PARTIES;

25 (VI) THE MARKETPLACE PLATFORM DOES NOT PROVIDE ON-SITE

1 SUPERVISION DURING THE PERFORMANCE OF SERVICES BY THE
2 MARKETPLACE CONTRACTOR;

3 (VII) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE
4 MARKETPLACE CONTRACTOR TO OBTAIN TRAINING OR ATTEND
5 MANDATORY MEETINGS;

6 (VIII) THE MARKETPLACE CONTRACTOR BEARS ALL OR
7 SUBSTANTIALLY ALL OF ITS OWN EXPENSES THAT IT INCURRED IN
8 PERFORMING THE SERVICES;

9 (IX) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE
10 MARKETPLACE CONTRACTOR TO USE SPECIFIC MATERIALS, SUPPLIES, OR
11 EQUIPMENT IN PERFORMING SERVICES, OTHER THAN THE MARKETPLACE
12 PLATFORM'S ONLINE-ENABLED APPLICATION, SOFTWARE, WEBSITE, OR
13 SYSTEM;

14 (X) THE MARKETPLACE CONTRACTOR DOES NOT PERFORM SERVICE
15 REQUESTS AT OR FROM A PHYSICAL BUSINESS LOCATION THAT IS
16 OPERATED BY THE MARKETPLACE PLATFORM;

17 (XI) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE
18 MARKETPLACE CONTRACTOR TO WEAR A UNIFORM;

19 (XII) THE WRITTEN CONTRACT BETWEEN THE MARKETPLACE
20 PLATFORM AND THE MARKETPLACE CONTRACTOR STATES WHETHER THE
21 MARKETPLACE CONTRACTOR MAY HIRE, LEASE, OR CONTRACT OUT PART
22 OR ALL OF THE WORK, AND IF THE WRITTEN CONTRACT ALLOWS THE
23 MARKETPLACE CONTRACTOR TO HIRE, LEASE, OR CONTRACT OUT PART OR
24 ALL OF THE WORK, THE WRITTEN CONTRACT ALSO STATES THAT BEFORE
25 STARTING THE WORK, THE MARKETPLACE CONTRACTOR MUST COMPLY
26 WITH SECTION 8-41-401, IF APPLICABLE; AND

27 (XIII) THE WRITTEN CONTRACT BETWEEN THE MARKETPLACE

1 PLATFORM AND THE MARKETPLACE CONTRACTOR STATES, IN A
2 CONSPICUOUS MANNER, THAT THE MARKETPLACE CONTRACTOR IS NOT
3 ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ARTICLES 40 TO
4 47 OF THIS TITLE 8, AND THAT THE MARKETPLACE CONTRACTOR IS
5 RESPONSIBLE FOR PAYING APPLICABLE TAXES ON INCOME THE
6 CONTRACTOR EARNS PURSUANT TO THE CONTRACT RELATIONSHIP.

7 (b) (I) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
8 SUBSECTION (10), AN INDIVIDUAL MARKETPLACE CONTRACTOR THAT
9 PERFORMS SERVICES FOR PAY FOR A MARKETPLACE PLATFORM SHALL BE
10 DEEMED TO BE AN EMPLOYEE, REGARDLESS OF WHETHER THE
11 COMMON-LAW RELATIONSHIP OF MASTER AND SERVANT EXISTS, UNLESS:

12 (A) THE INDIVIDUAL IS FREE FROM CONTROL AND DIRECTION IN
13 THE PERFORMANCE OF THE SERVICE, BOTH UNDER THE TERMS OF THE
14 CONTRACT FOR PERFORMANCE OF SERVICE AND IN FACT; AND

15 (B) THE INDIVIDUAL IS CUSTOMARILY ENGAGED IN AN
16 INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR BUSINESS RELATED
17 TO THE SERVICE PERFORMED.

18 (II) FOR PURPOSES OF THIS SUBSECTION (10)(b), THE DEGREE OF
19 CONTROL EXERCISED BY THE MARKETPLACE PLATFORM FOR WHOM THE
20 SERVICE IS PERFORMED OVER THE PERFORMANCE OF THE SERVICE OR OVER
21 THE INDIVIDUAL PERFORMING THE SERVICE MUST NOT BE CONSIDERED IF
22 THE CONTROL IS EXERCISED PURSUANT TO THE REQUIREMENTS OF ANY
23 STATE OR FEDERAL STATUTE, RULE, OR REGULATION.

24 (c) COMPLIANCE BY THE PARTIES WITH THE CONDITIONS SPECIFIED
25 IN SUBSECTION (10)(a) OF THIS SECTION CREATES A REBUTTABLE
26 PRESUMPTION OF AN INDEPENDENT CONTRACTOR RELATIONSHIP BETWEEN
27 THE MARKETPLACE PLATFORM AND THE MARKETPLACE CONTRACTOR

1 THAT MAY BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE.

2 (d) NOTHING IN THIS SUBSECTION (10) PROHIBITS A MARKETPLACE
3 CONTRACTOR FROM BEING TREATED AS AN INDEPENDENT CONTRACTOR
4 AND NOT AS AN EMPLOYEE UNDER ANY OTHER PROVISIONS OF LAW. ==

5 (e) AS USED IN THIS SUBSECTION (10):

6 (I) (A) "MARKETPLACE CONTRACTOR" OR "CONTRACTOR" MEANS
7 A PERSON THAT ENTERS INTO A WRITTEN AGREEMENT WITH A
8 MARKETPLACE PLATFORM TO USE THE PLATFORM'S ONLINE-ENABLED
9 APPLICATION, SOFTWARE, WEBSITE, OR SYSTEM TO RECEIVE SERVICE
10 REQUESTS FROM THIRD PARTIES SEEKING THE TYPES OF SERVICES OFFERED
11 BY THE CONTRACTOR.

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

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

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

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

24 SECTION 2. In Colorado Revised Statutes, 8-40-202, amend
25 (2)(b)(IV) as follows:

26 8-40-202. Employee. (2) (b) (IV) If the parties use a written
27 document pursuant to this paragraph (b), such SUBSECTION (2)(b), THE

1 document must be signed by both parties and may be the contract for
2 performance of service or a separate document. ~~Such~~ THE document ~~shall~~
3 ~~create~~ CREATES a rebuttable presumption of an independent contractor
4 relationship between the parties, WHICH PRESUMPTION MAY BE OVERCOME
5 ONLY BY CLEAR AND CONVINCING EVIDENCE, where ~~such~~ THE document
6 contains a disclosure, in type ~~which~~ THAT is larger than the other
7 provisions in the document or in bold-faced or underlined type, that the
8 independent contractor is not entitled to workers' compensation benefits
9 and that the independent contractor is obligated to pay federal and state
10 income tax on any moneys earned pursuant to the contract relationship.
11 All signatures on ~~any such~~ THE document must be duly notarized.

12 SECTION 3. In Colorado Revised Statutes, 8-41-401, ~~amend~~ (7)
13 as follows:

14 8-41-401. Lessor contractor-out deemed employer - liability
15 - recovery. (7) This section ~~shall~~ DOES not apply to any person excluded
16 from the definition of "employee" pursuant to section 8-40-301 (5), ~~or~~ (7),
17 ~~OR~~ (10).

18 SECTION 4. In Colorado Revised Statutes, ~~add~~ 8-70-140.9 as
19 follows:

20 8-70-140.9. "Employment" does not include - marketplace
21 contractors - definitions. (1) "EMPLOYMENT" DOES NOT INCLUDE
22 SERVICES PERFORMED BY A MARKETPLACE CONTRACTOR IF THE
23 FOLLOWING CONDITIONS ARE SATISFIED:

24 (a) THE SERVICES PERFORMED BY THE CONTRACTOR ARE
25 GOVERNED BY A WRITTEN CONTRACT EXECUTED BETWEEN THE
26 CONTRACTOR AND A MARKETPLACE PLATFORM THAT STATES THAT THE
27 MARKETPLACE CONTRACTOR IS PROVIDING SERVICES AS AN INDEPENDENT

1 CONTRACTOR AND NOT AS AN EMPLOYEE;

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

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

10 (d) THE MARKETPLACE CONTRACTOR IS ABLE TO PERFORM
11 SERVICES FOR OTHER PARTIES;

12 (e) THE MARKETPLACE PLATFORM DOES NOT PROVIDE ON-SITE
13 SUPERVISION DURING THE PERFORMANCE OF SERVICES BY THE
14 MARKETPLACE CONTRACTOR;

15 (f) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE
16 MARKETPLACE CONTRACTOR TO OBTAIN TRAINING;

17 (g) THE MARKETPLACE CONTRACTOR BEARS ALL OR
18 SUBSTANTIALLY ALL EXPENSES THAT THE CONTRACTOR INCURS IN
19 PERFORMING THE SERVICES;

20 (h) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE
21 MARKETPLACE CONTRACTOR TO USE SPECIFIC MATERIALS, SUPPLIES, OR
22 EQUIPMENT IN PERFORMING SERVICES, OTHER THAN THE MARKETPLACE
23 PLATFORM'S ONLINE-ENABLED APPLICATION, SOFTWARE, WEBSITE, OR
24 SYSTEM;

25 (i) THE MARKETPLACE CONTRACTOR DOES NOT PERFORM SERVICE
26 REQUESTS AT OR FROM A PHYSICAL BUSINESS LOCATION THAT IS
27 OPERATED BY THE MARKETPLACE PLATFORM; AND

1 (j) THE WRITTEN CONTRACT BETWEEN THE MARKETPLACE
2 PLATFORM AND THE MARKETPLACE CONTRACTOR STATES, IN A
3 CONSPICUOUS MANNER, THAT THE MARKETPLACE CONTRACTOR IS NOT
4 ENTITLED TO UNEMPLOYMENT BENEFITS UNDER ARTICLES 70 TO 82 OF THIS
5 TITLE 8, AND THAT THE MARKETPLACE CONTRACTOR IS RESPONSIBLE FOR
6 PAYING APPLICABLE TAXES ON INCOME THE CONTRACTOR EARNS
7 PURSUANT TO THE CONTRACT RELATIONSHIP.

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

13 (3) AS USED IN THIS SECTION:

14 (a) (I) "MARKETPLACE CONTRACTOR" OR "CONTRACTOR" MEANS
15 A PERSON THAT ENTERS INTO A WRITTEN AGREEMENT WITH A
16 MARKETPLACE PLATFORM TO USE THE PLATFORM'S ONLINE-ENABLED
17 APPLICATION, SOFTWARE, WEBSITE, OR SYSTEM TO RECEIVE SERVICE
18 REQUESTS FROM THIRD PARTIES SEEKING THE TYPES OF SERVICES OFFERED
19 BY THE CONTRACTOR.

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

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

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

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

5 **SECTION 5.** In Colorado Revised Statutes, 8-70-103, **amend** the
6 introductory portion and (11) as follows:

7 **8-70-103. Definitions.** As used in articles 70 to 82 of this title 8,
8 unless the context otherwise requires:

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

12 **SECTION 6. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part will not take effect
19 unless approved by the people at the general election to be held in
20 November 2018 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.