

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0985.01 Christy Chase x2008

**SENATE BILL 18-171**

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**SENATE SPONSORSHIP**

**Holbert and Williams A., Jahn**

**HOUSE SPONSORSHIP**

**Pabon and Sias, Hansen**

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**Senate Committees**

Business, Labor, & Technology

**House Committees**

Judiciary

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**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.**

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**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  
3rd Reading Unamended  
March 13, 2018

SENATE  
Amended 2nd Reading  
March 8, 2018

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

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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 CONTRACTOR OR ITS EMPLOYEES WHO  
18 HAVE BEEN PREVIOUSLY CLEARED THROUGH THE MARKETPLACE  
19 PLATFORM'S APPLICATION AND VENDOR APPROVAL PROCESS PERFORM THE  
20 SERVICE REQUESTS RECEIVED THROUGH A MARKETPLACE PLATFORM, AND  
21 THE CONTRACTOR DOES NOT SUBCONTRACT THE SERVICE REQUESTS TO  
22 ANOTHER SUBCONTRACTOR;

23 (XII) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE  
24 MARKETPLACE CONTRACTOR TO WEAR A UNIFORM;

25 (XIII) THE WRITTEN CONTRACT BETWEEN THE MARKETPLACE  
26 PLATFORM AND THE MARKETPLACE CONTRACTOR STATES WHETHER THE  
27 MARKETPLACE CONTRACTOR MAY HIRE, LEASE, OR CONTRACT OUT PART

1 OR ALL OF THE WORK, AND IF THE WRITTEN CONTRACT ALLOWS THE  
2 MARKETPLACE CONTRACTOR TO HIRE, LEASE, OR CONTRACT OUT PART OR  
3 ALL OF THE WORK, THE WRITTEN CONTRACT ALSO STATES THAT BEFORE  
4 STARTING THE WORK, THE MARKETPLACE CONTRACTOR MUST COMPLY  
5 WITH SECTION 8-41-401, IF APPLICABLE; AND

6 (XIV) THE WRITTEN CONTRACT BETWEEN THE MARKETPLACE  
7 PLATFORM AND THE MARKETPLACE CONTRACTOR STATES, IN A  
8 CONSPICUOUS MANNER, THAT THE MARKETPLACE CONTRACTOR IS NOT  
9 ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ARTICLES 40 TO  
10 47 OF THIS TITLE 8, AND THAT THE MARKETPLACE CONTRACTOR IS  
11 RESPONSIBLE FOR PAYING APPLICABLE TAXES ON INCOME THE  
12 CONTRACTOR EARNS PURSUANT TO THE CONTRACT RELATIONSHIP.

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

18 (A) THE INDIVIDUAL IS FREE FROM CONTROL AND DIRECTION IN  
19 THE PERFORMANCE OF THE SERVICE, BOTH UNDER THE TERMS OF THE  
20 CONTRACT FOR PERFORMANCE OF SERVICE AND IN FACT; AND

21 (B) THE INDIVIDUAL IS CUSTOMARILY ENGAGED IN AN  
22 INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR BUSINESS RELATED  
23 TO THE SERVICE PERFORMED.

24 (II) FOR PURPOSES OF THIS SUBSECTION (10)(b):

25 (A) THE DEGREE OF CONTROL EXERCISED BY THE MARKETPLACE  
26 PLATFORM FOR WHOM THE SERVICE IS PERFORMED OVER THE  
27 PERFORMANCE OF THE SERVICE OR OVER THE INDIVIDUAL PERFORMING

1 THE SERVICE MUST NOT BE CONSIDERED IF THE CONTROL IS EXERCISED  
2 PURSUANT TO THE REQUIREMENTS OF ANY STATE OR FEDERAL STATUTE,  
3 RULE, OR REGULATION; AND

4 (B) THE PROVISION OF BENEFITS, OTHER THAN WORKERS'  
5 COMPENSATION BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE 8, BY  
6 A MARKETPLACE PLATFORM TO A MARKETPLACE CONTRACTOR MUST NOT  
7 BE CONSIDERED IN A DETERMINATION OF THE MARKETPLACE  
8 CONTRACTOR'S EMPLOYMENT STATUS.

9 (c) COMPLIANCE BY THE PARTIES WITH THE CONDITIONS SPECIFIED  
10 IN SUBSECTION (10)(a) OF THIS SECTION CREATES A REBUTTABLE  
11 PRESUMPTION OF AN INDEPENDENT CONTRACTOR RELATIONSHIP BETWEEN  
12 THE MARKETPLACE PLATFORM AND THE MARKETPLACE CONTRACTOR.

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

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

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

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

27 (C) "MARKETPLACE CONTRACTOR" DOES NOT INCLUDE A PERSON

1 WHO: RECEIVES REFERRALS TO PERFORM SERVICES THROUGH A HIRING  
2 HALL RELATED TO A LABOR UNION ORGANIZATION; IS PERFORMING  
3 SERVICES FOR A PUBLIC WORKS PROJECT FUNDED IN WHOLE OR IN PART BY  
4 THE STATE OR A POLITICAL SUBDIVISION OF THE STATE; IS PERFORMING  
5 SERVICES THAT CONSIST OF ERECTION, CONSTRUCTION, ALTERATION,  
6 STRUCTURAL REPAIR, OR STRUCTURAL IMPROVEMENT OF A BUILDING,  
7 STRUCTURE, OR OTHER IMPROVEMENT ON LAND ON COMMERCIAL OR  
8 INDUSTRIAL PROJECTS; IS PERFORMING SERVICES FOR THE INSTALLATION  
9 OF HVAC SYSTEMS AND HOT WATER HEATERS IN SINGLE-FAMILY OR  
10 MULTI-FAMILY RESIDENTIAL STRUCTURES; OR IS PROVIDING SERVICES AS  
11 A LICENSED, CERTIFIED, OR REGISTERED PROFESSIONAL REGULATED BY  
12 THE DEPARTMENT OF REGULATORY AGENCIES UNDER TITLE 12.

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

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

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

21

22 **SECTION 2.** In Colorado Revised Statutes, 8-41-401, amend (7)  
23 as follows:

24 **8-41-401. Lessor contractor-out deemed employer - liability**  
25 **- recovery. (7) This section shall DOES not apply to any person excluded**  
26 **from the definition of "employee" pursuant to section 8-40-301 (5), or (7),**  
27 **OR (10).**

1           **SECTION 3.** In Colorado Revised Statutes, **add** 8-70-140.9 as  
2 follows:

3           **8-70-140.9. "Employment" does not include - marketplace**  
4 **contractors - definitions.** (1) "EMPLOYMENT" DOES NOT INCLUDE  
5 SERVICES PERFORMED BY A MARKETPLACE CONTRACTOR IF THE  
6 FOLLOWING CONDITIONS ARE SATISFIED:

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

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

15           (c) THE MARKETPLACE CONTRACTOR IS ALLOWED TO WORK ANY  
16 HOURS OR SCHEDULES THE CONTRACTOR CHOOSES; EXCEPT THAT, IF THE  
17 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           (d) THE MARKETPLACE CONTRACTOR IS ABLE TO PERFORM  
21 SERVICES FOR OTHER PARTIES;

22           (e) THE MARKETPLACE PLATFORM DOES NOT PROVIDE ON-SITE  
23 SUPERVISION DURING THE PERFORMANCE OF SERVICES BY THE  
24 MARKETPLACE CONTRACTOR;

25           (f) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE  
26 MARKETPLACE CONTRACTOR TO OBTAIN TRAINING;

27           (g) THE MARKETPLACE CONTRACTOR BEARS ALL OR

1 SUBSTANTIALLY ALL EXPENSES THAT THE CONTRACTOR INCURS IN  
2 PERFORMING THE SERVICES;

3 (h) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE  
4 MARKETPLACE CONTRACTOR TO USE SPECIFIC MATERIALS, SUPPLIES, OR  
5 EQUIPMENT IN PERFORMING SERVICES, OTHER THAN THE MARKETPLACE  
6 PLATFORM'S ONLINE-ENABLED APPLICATION, SOFTWARE, WEBSITE, OR  
7 SYSTEM;

8 (i) THE MARKETPLACE CONTRACTOR OR ITS EMPLOYEES WHO HAVE  
9 BEEN PREVIOUSLY CLEARED THROUGH THE MARKETPLACE PLATFORM'S  
10 APPLICATION AND VENDOR APPROVAL PROCESS PERFORM THE SERVICE  
11 REQUESTS RECEIVED THROUGH A MARKETPLACE PLATFORM, AND THE  
12 CONTRACTOR DOES NOT SUBCONTRACT THE SERVICE REQUESTS TO  
13 ANOTHER SUBCONTRACTOR;

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

17 (k) THE WRITTEN CONTRACT BETWEEN THE MARKETPLACE  
18 PLATFORM AND THE MARKETPLACE CONTRACTOR STATES, IN A  
19 CONSPICUOUS MANNER, THAT THE MARKETPLACE CONTRACTOR IS NOT  
20 ENTITLED TO UNEMPLOYMENT BENEFITS UNDER ARTICLES 70 TO 82 OF THIS  
21 TITLE 8, AND THAT THE MARKETPLACE CONTRACTOR IS RESPONSIBLE FOR  
22 PAYING APPLICABLE TAXES ON INCOME THE CONTRACTOR EARNS  
23 PURSUANT TO THE CONTRACT RELATIONSHIP.

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



1 ARE NOT SATISFIED.

2 (3) AS USED IN THIS SECTION:

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

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

13 (III) "MARKETPLACE CONTRACTOR" DOES NOT INCLUDE A PERSON  
14 WHO:

15 (A) RECEIVES REFERRALS TO PERFORM SERVICES THROUGH A  
16 HIRING HALL RELATED TO A LABOR UNION ORGANIZATION;

17 (B) IS PERFORMING SERVICES FOR A PUBLIC WORKS PROJECT  
18 FUNDED IN WHOLE OR IN PART BY THE STATE OR A POLITICAL SUBDIVISION  
19 OF THE STATE;

20 (C) IS PERFORMING SERVICES THAT CONSIST OF ERECTION,  
21 CONSTRUCTION, ALTERATION, STRUCTURAL REPAIR, OR STRUCTURAL  
22 IMPROVEMENT OF A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT ON  
23 LAND ON COMMERCIAL OR INDUSTRIAL PROJECTS;

24 (D) IS PERFORMING SERVICES FOR THE INSTALLATION OF HVAC  
25 SYSTEMS AND HOT WATER HEATERS IN SINGLE-FAMILY OR MULTI-FAMILY  
26 RESIDENTIAL STRUCTURES; OR

27 (E) IS PROVIDING SERVICES AS A LICENSED, CERTIFIED, OR

1 REGISTERED PROFESSIONAL REGULATED BY THE DEPARTMENT OF  
2 REGULATORY AGENCIES UNDER TITLE 12.

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

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

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

11 **SECTION 4.** In Colorado Revised Statutes, 8-70-103, **amend** the  
12 introductory portion and (11) as follows:

13 **8-70-103. Definitions.** As used in articles 70 to 82 of this title 8,  
14 unless the context otherwise requires:

15 (11) "Employment" has the meaning set forth in sections 8-70-115  
16 to 8-70-125, exclusive of the exceptions set forth in sections 8-70-126 to  
17 ~~8-70-140.7~~ **8-70-140.9.**

18 **SECTION 5. Act subject to petition - effective date.** This act  
19 takes effect at 12:01 a.m. on the day following the expiration of the  
20 ninety-day period after final adjournment of the general assembly (August  
21 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
22 referendum petition is filed pursuant to section 1 (3) of article V of the  
23 state constitution against this act or an item, section, or part of this act  
24 within such period, then the act, item, section, or part will not take effect  
25 unless approved by the people at the general election to be held in  
26 November 2018 and, in such case, will take effect on the date of the  
27 official declaration of the vote thereon by the governor.