

**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**

---

**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:

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

12 (II) THE FOLLOWING CONDITIONS ARE SATISFIED:

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

16 (B) 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 (C) THE MARKETPLACE CONTRACTOR IS ABLE TO PERFORM  
22 SERVICES FOR OTHER PARTIES;

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

1           (E) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE  
2 MARKETPLACE CONTRACTOR TO OBTAIN TRAINING;

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

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

9           (H) THE MARKETPLACE CONTRACTOR IS NOT ENTITLED TO  
10 WORKERS' COMPENSATION BENEFITS UNDER ARTICLES 40 TO 47 OF THIS  
11 TITLE 8, AND     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:

18 (I) THE SERVICES PERFORMED BY THE CONTRACTOR ARE  
19 GOVERNED BY A WRITTEN CONTRACT EXECUTED BETWEEN THE  
20 CONTRACTOR AND A MARKETPLACE PLATFORM THAT STATES THAT THE  
21 MARKETPLACE CONTRACTOR IS PROVIDING SERVICES AS AN INDEPENDENT  
22 CONTRACTOR AND NOT AS AN EMPLOYEE; AND

23 (b) THE FOLLOWING CONDITIONS ARE SATISFIED:

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

27 (II) THE MARKETPLACE CONTRACTOR IS ALLOWED TO WORK ANY

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

5 (III) THE MARKETPLACE CONTRACTOR IS ABLE TO PERFORM  
6 SERVICES FOR OTHER PARTIES;

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

10 (V) THE MARKETPLACE PLATFORM DOES NOT REQUIRE THE  
11 MARKETPLACE CONTRACTOR TO OBTAIN TRAINING;

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

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

18 (VIII) THE MARKETPLACE CONTRACTOR IS NOT ENTITLED TO  
19 UNEMPLOYMENT BENEFITS UNDER ARTICLES 70 TO 82 OF THIS TITLE 8, AND  
20        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.