

House Bill 789

By: Representatives Fleming of the 121st, Werkheiser of the 157th, and Shaw of the 176th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to provide for marketplace contractors to be treated as independent
3 contractors under state and local laws; to provide for definitions; to provide for conditions
4 and exceptions; to specifically provide that as independent contractors of a marketplace
5 platform marketplace contractors are not engaged in employment for purposes of the
6 "Employment Security Law" and are not employees for purposes of workers' compensation;
7 to provide for related matters; to provide an effective date; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
12 is amended by revising Code Section 34-1-1, designated as reserved, as follows:

13 "34-1-1.

14 (a) As used in this Code section, the term:

15 (1) 'Customer' means a person that uses a marketplace platform to connect with a
16 marketplace contractor to obtain services.

17 (2) 'Digital network' means a website or smartphone application.

18 (3)(A) 'Marketplace contractor' means a person that:

19 (i) Enters into an agreement with a marketplace platform to use such platform's
20 digital network to receive connections to customers seeking services; and

21 (ii) Offers or provides services to such customers for compensation.

22 (B) The term shall not include any person performing services that consist of
23 transporting freight or sealed or closed containers, envelopes, or boxes for
24 compensation.

25 (4)(A) 'Marketplace platform' means a person operating in this state that:

- 26 (i) Uses a digital network to connect customers to a marketplace contractor for the
27 purpose of providing services to customers for compensation; and
- 28 (ii) Accepts service requests from customers only through such platform's digital
29 network and does not accept service requests in person at physical retail locations, by
30 telephone, or by facsimile.
- 31 (B) The term shall not include any person whose digital platform accepts service
32 requests for transporting freight or sealed or closed containers, envelopes, or boxes.
- 33 (5) 'Person' means an individual, corporation, partnership, sole proprietorship, or other
34 entity.
- 35 (b) A marketplace contractor shall be treated as an independent contractor of a
36 marketplace platform, and not as an employee, for all purposes under state and local laws,
37 rules, regulations, ordinances, and resolutions if all of the following conditions are met:
- 38 (1) The marketplace platform and marketplace contractor agree in writing that the
39 marketplace contractor is an independent contractor with respect to the marketplace
40 platform;
- 41 (2) The marketplace platform does not unilaterally prescribe specific hours during which
42 the marketplace contractor must be available to accept service requests submitted by
43 customers through the marketplace platform's digital network;
- 44 (3) The marketplace platform does not prohibit the marketplace contractor from using
45 any digital network offered by other marketplace platforms;
- 46 (4) The marketplace platform does not restrict the marketplace contractor from engaging
47 in any other occupation or business;
- 48 (5) The marketplace contractor bears all or substantially all of its own expenses that are
49 incurred in performing its services; and
- 50 (6) The marketplace platform does not restrict the marketplace contractor to a specific
51 territory or geographic area; provided, however, that the marketplace platform may
52 require the marketplace contractor to complete a registration process to provide services
53 in a new territory or geographic area.
- 54 (c) This Code section shall not apply to:
- 55 (1) Services performed by a marketplace contractor in the employ of a marketplace
56 platform that is a state, a political subdivision of a state, an Indian tribe, or wholly owned
57 by one or more states, political subdivisions, or Indian tribes, provided that such services
58 are excluded from employment as such term is defined in the Federal Unemployment Tax
59 Act by Section 3306(c)(7) of such Act, as it existed on February 1, 2018; or
- 60 (2) Services performed by a marketplace contractor in the employ of a marketplace
61 platform that is a religious, charitable, educational, or other organization, provided that
62 such services are excluded from employment as such term is defined in the Federal

63 Unemployment Tax Act by Section 3306(c)(8) of such Act, as it existed on
 64 February 1, 2018.

65 (d) Nothing in this Code section shall be construed to prohibit a marketplace contractor
 66 from being treated as an independent contractor and not as an employee under any other
 67 provision of law if the conditions of subsection (b) of this Code section are not met."

68 **SECTION 2.**

69 Said title is further amended in Code Section 34-8-35, relating to the definition of
 70 employment applicable to the "Employment Security Law," by revising paragraphs (17) and
 71 (18) of subsection (n) and adding a new paragraph to read as follows:

72 "(17) Services performed for a common carrier of property, persons, or property and
 73 persons by an individual consisting of the pickup, transportation, and delivery of
 74 property, persons, or property and persons; provided that:

75 (A) The individual is free to accept or reject assignments from the common carrier;

76 (B) Remuneration for the individual is on the basis of commissions, trips, or deliveries
 77 accomplished;

78 (C) Such individual personally provides the vehicle used in the pickup, transportation,
 79 and delivery of the property, persons, or property and persons;

80 (D) Such individual has a written contract with the common carrier;

81 (E) The written contract states expressly and prominently that the individual knows:

82 (i) Of the responsibility to pay estimated social security taxes and state and federal
 83 income taxes;

84 (ii) That the social security tax the individual must pay is higher than the social
 85 security tax the individual would pay if he or she were an employee; and

86 (iii) That the work is not covered by the unemployment compensation laws of
 87 Georgia; and

88 (F) The written contract does not prohibit such individual from the pickup,
 89 transportation, or delivery of property, persons, or property and persons for more than
 90 one common carrier or any other person or entity; ~~or~~

91 (18) Services performed by a direct seller, provided that:

92 (A) Such individual:

93 (i) Is engaged in the trade or business of selling or soliciting the sale of consumer
 94 products, including services or other intangibles, to any buyer on a buy-sell basis, a
 95 deposit-commission basis, or any similar basis for resale by the buyer or any other
 96 person in the home or otherwise than in a permanent retail establishment; or

- 97 (ii) Is engaged in the trade or business of selling or soliciting the sale of consumer
 98 products, including services or other intangibles, in the home or otherwise than in a
 99 permanent retail establishment;
- 100 (B) Substantially all the remuneration, whether or not paid in cash, for the performance
 101 of the services described in subparagraph (A) of this paragraph is directly related to
 102 sales or other output, including the performance of services, rather than to the number
 103 of hours worked; and
- 104 (C) The services performed by the individual are performed pursuant to a written
 105 contract between such individual and the person for whom the services are performed
 106 and such contract provides that the individual will not be treated as an employee for
 107 federal and state tax purposes; or
- 108 (19) Services performed by a marketplace contractor treated as an independent contractor
 109 of a marketplace platform pursuant to Code Section 34-1-1."

110 **SECTION 3.**

111 Said title is further amended in Code Section 34-9-1, relating to definitions applicable to
 112 workers' compensation, by revising paragraph (2) as follows:

113 "(2) 'Employee' means every person in the service of another under any contract of hire
 114 or apprenticeship, written or implied, except a person whose employment is not in the
 115 usual course of the trade, business, occupation, or profession of the employer; and, except
 116 as otherwise provided in this chapter, minors are included even though working in
 117 violation of any child labor law or other similar statute; provided, however, that nothing
 118 contained in this chapter shall be construed as repealing or altering any such law or
 119 statute. Any reference to any employee who has been injured shall, if the employee dies,
 120 include such employee's legal representatives, dependents, and other persons to whom
 121 compensation may be payable pursuant to this chapter. All firefighters, law enforcement
 122 personnel, and personnel of emergency management or civil defense agencies, emergency
 123 medical services, and rescue organizations whose compensation is paid by the state or
 124 any county or municipality, regardless of the method of appointment, and all full-time
 125 county employees and employees of elected salaried county officials are specifically
 126 included in this definition. There shall also be included within such term any volunteer
 127 firefighter of any county or municipality of this state, but only for services rendered in
 128 such capacity which are not prohibited by Code Section 38-3-36 and only if the
 129 governing authority of the county or municipality for which such services are rendered
 130 shall provide by appropriate resolution for inclusion of such volunteer firefighters; any
 131 volunteer law enforcement personnel of any county or municipality of this state who are
 132 certified by the Georgia Peace Officer Standards and Training Council, for volunteer law

133 enforcement services rendered in such capacity which are not prohibited by Code Section
134 38-3-36 and only if the governing authority of the county or municipality for which such
135 services are rendered shall provide by appropriate resolution for inclusion of such
136 volunteer law enforcement personnel; any person who is a volunteer member or worker
137 of an emergency management or civil defense organization, emergency medical service,
138 or rescue organization, whether governmental or not, of any county or municipality of
139 this state for volunteer services, which are not prohibited by Code Section 38-3-36,
140 rendered in such capacity and only if the governing authority of the county or
141 municipality for which such services are rendered shall provide by appropriate resolution
142 for inclusion of such volunteer members or workers; and any person certified by the
143 Department of Public Health or the Georgia Composite Medical Board and registered
144 with any county or municipality of this state as a medical first responder for any
145 volunteer first responder services rendered in such capacity, which are not prohibited by
146 Code Section 38-3-36 and only if the governing authority of the county or municipality
147 for which such services are rendered shall provide by appropriate resolution for inclusion
148 of such responders. The various elected county officers and elected members of the
149 governing authority of an individual county shall also be included in this definition, if the
150 governing authority of such county shall provide therefor by appropriate resolution. For
151 the purposes of workers' compensation coverage, employees of county and district health
152 agencies established under Chapter 3 of Title 31 are deemed and shall be considered
153 employees of the State of Georgia and employees of community service boards
154 established under Chapter 2 of Title 37 shall be considered to be employees of the state.
155 For the purpose of workers' compensation coverage, members of the Georgia National
156 Guard and the State Defense Force serving on state active duty pursuant to an order by
157 the Governor are deemed and shall be considered to be employees of this state. A person
158 shall be an independent contractor and not an employee if such person has a written
159 contract as an independent contractor and if such person buys a product and resells it,
160 receiving no other compensation, or provides an agricultural service or such person
161 otherwise qualifies as an independent contractor. Notwithstanding the foregoing
162 provisions of this paragraph, any officer of a corporation may elect to be exempt from
163 coverage under this chapter by filing written certification of such election with the insurer
164 or, if there is no insurer, the State Board of Workers' Compensation as provided in Code
165 Section 34-9-2.1. For purposes of this chapter, an owner-operator as such term is defined
166 in Code Section 40-2-87 shall be deemed to be an independent contractor. Inmates or
167 persons participating in a work release program, community service program, or similar
168 program as part of the punishment for violation of a municipal ordinance pursuant to
169 Code Section 36-32-5 or a county ordinance or a state law shall not be deemed to be an

170 employee while participating in work or training or while going to and from the work site
171 or training site, unless such inmate or person is employed for private gain in violation of
172 Code Section 42-1-5 or Code Section 42-3-50 or unless the municipality or county had
173 voluntarily established a policy, on or before January 1, 1993, to provide workers'
174 compensation benefits to such individuals. Individuals who are parties to a franchise
175 agreement as set out by the Federal Trade Commission franchise disclosure rule, 16
176 C.F.R. 436.1 through 436.11, shall not be deemed employees for purposes of this chapter.
177 A person that is a marketplace contractor treated as an independent contractor of a
178 marketplace platform pursuant to Code Section 34-1-1 or that otherwise qualifies as an
179 independent contractor shall not be deemed an employee for purposes of this chapter."

180 **SECTION 4.**

181 This Act shall become effective upon its approval by the Governor or upon its becoming law
182 without such approval.

183 **SECTION 5.**

184 All laws and parts of laws in conflict with this Act are repealed.