

House Bill 789 (COMMITTEE SUBSTITUTE)

By: Representatives Fleming of the 121<sup>st</sup>, Werkheiser of the 157<sup>th</sup>, and Shaw of the 176<sup>th</sup>

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"; to provide for related matters; to provide an effective date; to  
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

12 "34-1-1.

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

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

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

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

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

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

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

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

25 (i) Uses a digital network to connect customers to a marketplace contractor for the  
26 purpose of providing services to customers for compensation; and

27 (ii) Accepts service requests from customers only through such platform's digital  
28 network and does not accept service requests in person at physical retail locations, by  
29 telephone, or by facsimile.

30 (B) The term shall not include any person whose digital platform accepts service  
31 requests for transporting freight or sealed or closed containers, envelopes, or boxes.

32 (5) 'Person' means an individual, corporation, partnership, sole proprietorship, or other  
33 entity.

34 (b) A marketplace contractor shall be treated as an independent contractor of a  
35 marketplace platform, and not as an employee, for all purposes under state and local laws,  
36 rules, regulations, ordinances, and resolutions, except for purposes of workers'  
37 compensation pursuant to Chapter 9 of this title, 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;

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; and

54 (7) The marketplace platform does not permit the marketplace contractor to perform any  
55 of the service requests at or from a physical business location operated by the  
56 marketplace platform.

57 (c) This Code section shall not apply to:

58 (1) Services performed by a marketplace contractor in the employ of a marketplace  
59 platform that is a state, a political subdivision of a state, an Indian tribe, or wholly owned  
60 by one or more states, political subdivisions, or Indian tribes, provided that such services  
61 are excluded from employment as such term is defined in the Federal Unemployment Tax  
62 Act by Section 3306(c)(7) of such Act, as it existed on February 1, 2018; or

63 (2) Services performed by a marketplace contractor in the employ of a marketplace  
 64 platform that is a religious, charitable, educational, or other organization, provided that  
 65 such services are excluded from employment as such term is defined in the Federal  
 66 Unemployment Tax Act by Section 3306(c)(8) of such Act, as it existed on  
 67 February 1, 2018.

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

71 **SECTION 2.**

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

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

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

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

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

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

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

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

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

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

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

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

95 (A) Such individual:

96 (i) Is engaged in the trade or business of selling or soliciting the sale of consumer  
 97 products, including services or other intangibles, to any buyer on a buy-sell basis, a

98 deposit-commission basis, or any similar basis for resale by the buyer or any other  
99 person in the home or otherwise than in a permanent retail establishment; or  
100 (ii) Is engaged in the trade or business of selling or soliciting the sale of consumer  
101 products, including services or other intangibles, in the home or otherwise than in a  
102 permanent retail establishment;

103 (B) Substantially all the remuneration, whether or not paid in cash, for the performance  
104 of the services described in subparagraph (A) of this paragraph is directly related to  
105 sales or other output, including the performance of services, rather than to the number  
106 of hours worked; and

107 (C) The services performed by the individual are performed pursuant to a written  
108 contract between such individual and the person for whom the services are performed  
109 and such contract provides that the individual will not be treated as an employee for  
110 federal and state tax purposes; or

111 (19) Services performed by a marketplace contractor treated as an independent contractor  
112 of a marketplace platform pursuant to Code Section 34-1-1."

113 **SECTION 3.**

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

116 **SECTION 4.**

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