

The Senate Committee on Insurance and Labor offered the following substitute to HB 789:

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 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, if all of the following conditions are met:

37 (1) The marketplace platform and marketplace contractor agree in writing that the
38 marketplace contractor is an independent contractor with respect to the marketplace
39 platform;

40 (2) The marketplace platform does not unilaterally prescribe specific hours during which
41 the marketplace contractor must be available to accept service requests submitted by
42 customers through the marketplace platform's digital network;

43 (3) The marketplace platform does not prohibit the marketplace contractor from using
44 any digital network offered by other marketplace platforms;

45 (4) The marketplace platform does not restrict the marketplace contractor from engaging
46 in any other occupation or business;

47 (5) The marketplace contractor bears all or substantially all of its own expenses that are
48 incurred in performing its services;

49 (6) The marketplace platform does not restrict the marketplace contractor to a specific
50 territory or geographic area; provided, however, that the marketplace platform may
51 require the marketplace contractor to complete a registration process to provide services
52 in a new territory or geographic area;

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

56 (8) The marketplace platform does not supply materials or tools to the marketplace
57 contractor doing the work; provided, however, that a marketplace platform may provide
58 to a marketplace contractor a device by which the marketplace contractor may connect
59 to the marketplace platform and customers; and

60 (9) The marketplace platform notifies customers seeking services, in language
61 substantially similar to the following, that its marketplace contractors are independent
62 contractors:

63 'The marketplace contractors performing services arranged through the
 64 marketplace platform's digital network are independent contractors and are not
 65 agents or employees of the marketplace platform. Unless otherwise expressly
 66 stated in the marketplace platform's terms and conditions of use, marketplace
 67 contractors are responsible for their own actions and the marketplace platform will
 68 not be liable for the acts or omissions of any such marketplace contractor.'

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

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

75 (2) Services performed by a marketplace contractor in the employ of a marketplace
 76 platform that is a religious, charitable, educational, or other organization, provided that
 77 such services are excluded from employment as such term is defined in the Federal
 78 Unemployment Tax Act by Section 3306(c)(8) of such Act, as it existed on
 79 February 1, 2018; or

80 (3) Chapter 9 of this title.

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

84 **SECTION 2.**

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

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

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

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

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

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

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

- 98 (i) Of the responsibility to pay estimated social security taxes and state and federal
 99 income taxes;
- 100 (ii) That the social security tax the individual must pay is higher than the social
 101 security tax the individual would pay if he or she were an employee; and
- 102 (iii) That the work is not covered by the unemployment compensation laws of
 103 Georgia; and
- 104 (F) The written contract does not prohibit such individual from the pickup,
 105 transportation, or delivery of property, persons, or property and persons for more than
 106 one common carrier or any other person or entity; ~~or~~
- 107 (18) Services performed by a direct seller, provided that:
- 108 (A) Such individual:
- 109 (i) Is engaged in the trade or business of selling or soliciting the sale of consumer
 110 products, including services or other intangibles, to any buyer on a buy-sell basis, a
 111 deposit-commission basis, or any similar basis for resale by the buyer or any other
 112 person in the home or otherwise than in a permanent retail establishment; or
- 113 (ii) Is engaged in the trade or business of selling or soliciting the sale of consumer
 114 products, including services or other intangibles, in the home or otherwise than in a
 115 permanent retail establishment;
- 116 (B) Substantially all the remuneration, whether or not paid in cash, for the performance
 117 of the services described in subparagraph (A) of this paragraph is directly related to
 118 sales or other output, including the performance of services, rather than to the number
 119 of hours worked; and
- 120 (C) The services performed by the individual are performed pursuant to a written
 121 contract between such individual and the person for whom the services are performed
 122 and such contract provides that the individual will not be treated as an employee for
 123 federal and state tax purposes; or
- 124 (19) Services performed by a marketplace contractor treated as an independent contractor
 125 of a marketplace platform pursuant to Code Section 34-1-1."

126 **SECTION 3.**

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

129 **SECTION 4.**

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