SB150

215030-5

By Senators Orr, Livingston and Butler

RFD: Fiscal Responsibility and Economic Development

First Read: 01-FEB-22
ENROLLED, An Act,

Relating to industrial relations and labor; to amend Section 25-4-10, Code of Alabama 1975, to exclude certain marketplace contractors who work for certain marketplace platforms from the definition of employment; to repeal Section 3 of Act 2021-6, 2021 Regular Session, now appearing as Section 25-4-121, Code of Alabama 1975; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 25-4-10 and Section 25-5-1, Code of Alabama 1975, are amended to read as follows:

"§25-4-10.

"(a) Subject to other provisions of this chapter, "employment" means any of the following:

"(1) Any service performed prior to January 1, 1978, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, or services performed for remuneration after December 31, 1977, including service in interstate commerce, by any of the following:

"a. Any officer of a corporation; or"
"b. Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

c. Any individual other than an individual who is an employee under paragraphs a. or b. of this subdivision (1) who performs services for remuneration for any person:

1. As an agent-driver or commission-driver engaged in distributing meat products, bakery products, beverages (other than milk), or laundry or dry cleaning services for a principal; or

2. As a traveling or city salesman engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

"For purposes of paragraph c. of this subdivision, the term "employment" shall include services described in subparagraphs 1 and 2 of paragraph c. of this subdivision, performed after December 31, 1971, only if all of the following apply:
"(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual.

"(ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation) and

"(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are rendered.

"(2) Service performed:

"a. After December 31, 1971, but prior to January 1, 1978, by an individual in the employ of this state or any of its instrumentalities or political subdivisions or their instrumentalities (or in the employ of any of the foregoing and one or more other states or their instrumentalities or political subdivisions) for a hospital or institution of higher education located in this state; provided, however, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act, and is not excluded from "employment" under subsection (b) of this section; provided further, that such service in the employ of a political subdivision or any of its instrumentalities shall be deemed to be "employment"
within the meaning of this chapter only if the political subdivision or its instrumentalities has elected to become an employer subject to this chapter pursuant to Section 25-4-131 for all such service in the employ of the political subdivision and its instrumentalities and has not ceased to be an employer subject hereto pursuant to Section 25-4-130 or Section 25-4-131; and

"b. After December 31, 1977, in the employ of this state or any of its instrumentalities or of any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any one of the foregoing and one or more other states or political subdivisions, provided, however, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subsection (b) of this section.

"c. For the purposes of this chapter, the term "governmental entity" in reference to this state is defined as the entirety of state government, but for the purposes of reporting, accounting or other administrative procedures, such entity shall be divided into each department, agency, board, commission, and any other separately organized division or instrumentality of this state. The state Comptroller of this state shall make such payments to the secretary as are
required by the other provisions of this chapter as they pertain to the various organizational components of the state. The state Comptroller is hereby authorized to require of such components such payments as are necessary to discharge his or her responsibilities and shall enforce such payments under the provisions of subsection (b) of Section 25-4-51.

"d. The term "governmental entity" in reference to any political subdivision is defined as each county and its instrumentalities and each municipality and its instrumentalities, except that each instrumentality of a political subdivision which is separately incorporated or otherwise removed from the control of the governing body of the political subdivision shall be a separate governmental entity. Instrumentalities organized and operated jointly by any combination of two or more of the aforementioned entities shall be considered as constituting a separate governmental entity. The foregoing notwithstanding, each separate public school system shall constitute a separate governmental entity.

"(3) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization but only if all of the following conditions are met:

"a. The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act, and is not excluded from
"employment" under subdivisions (8) and (21) of subsection (b) of this section;

"b. The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

"(4)a. Service performed after December 31, 1977, by an individual in agricultural labor as defined in subdivision (b)(1) of subsection (b) of this section, when:

"1. Such service is performed for an employing unit which:

"(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1984, by an alien referred to in subparagraph 2.) of this paragraph a.; or

"(ii) For some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1984, by an alien referred to in subparagraph 2.) of this
paragraph a., 10 or more individuals, regardless of whether they were employed at the same moment of time.

"2. For the purposes of this paragraph a., such service is not considered to be performed in agricultural labor if performed before January 1, 1984, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

"3. For the purposes of this paragraph a., any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader.

"(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

"(ii) If such individual is not an employee of any other person within the meaning of subdivision (1) of this subsection.

"4. For the purposes of this subdivision (4) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and
who is not treated as an employee of such crew leader under
subparagraph a.3. of this paragraph a.:

"(i) Such other person and not the crew leader shall
be treated as the employer of such individual; and

"(ii) Such other person shall be treated as having
paid cash remuneration to such individual in an amount equal
to the amount of cash remuneration paid to such individual by
the crew leader (either on his or her own behalf or on the
behalf of such other person) for the service in agricultural
labor performed for such other person.

"5. For the purposes of this paragraph a., the term
"crew leader" shall mean an individual who:

"(i) Furnishes individuals to perform service in
agricultural labor for any other persons;

"(ii) Pays (either on his or her own behalf or on
behalf of such other person) the individuals so furnished by
him or her for the service in agricultural labor performed by
them; and

"(iii) Has not entered into a written agreement with
the farm operator under which such crew leader is designated
as an employee of such farm operator.

"b. Domestic service after December 31, 1977, in a
private home, local college club, or local chapter of a
college fraternity or sorority performed for a person, their
his or her spouse, or estate who paid cash remuneration of one
thousand dollars ($1,000) or more in any calendar quarter in
the current calendar year or the preceding calendar year to
individuals employed in such domestic service.

"For the purposes of this paragraph b. the term "domestic service" includes all service for a person in the
operation and maintenance of a private household, local
college club, or local chapter of a college fraternity or
sorority as distinguished from service as an employee in the
pursuit of an employer's trade, occupation, profession,
enterprise, or vocation.

"(5) The term "employment" shall include the service
of an individual who is a citizen of the United States,
performed outside the United States after December 31, 1971,
(except in Canada or in the case of the Virgin Islands after
December 31, 1971, and prior to January 1 of the year
following the year in which the U.S. Secretary of Labor
approves the Unemployment Compensation Law of the Virgin
Islands under Section 3304(a) of the Internal Revenue Code of
1954) in the employ of an American employer (other than
service which is deemed "employment" under the provisions of
subdivision (8) or (9) of this subsection (a) or the parallel
provisions of another state's law), if:

"a. The employer's principal place of business in
the United States is located in this state; or
"b. The employer has no place of business in the United States, but:

"1. The employer is an individual who is a resident of this state; or

"2. The employer is a corporation which is organized under the laws of this state; or

"3. The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

"c. None of the criteria of paragraphs a. and b. of this subdivision (5) is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

"d. An "American employer," for the purpose of this subsection, means a person who is:

"1. An individual who is a resident of the United States; or

"2. A partnership, if two-thirds or more of the partners are residents of the United States; or

"3. A trust, if all of the trustees are residents of the United States; or

"4. A corporation organized under the laws of the United States or of any state.
"e. For the purposes of this subdivision (5), the term "United States" includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and in the case of the Virgin Islands, after December 31 of the year in which the U.S. Secretary of Labor approves the Virgin Islands' Unemployment Insurance Law for the first time.

"(6) Notwithstanding subdivision (8) of this subsection (a), all service performed by an officer or a member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

"(7) Notwithstanding any other provisions of this section, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

"(8) Subject to the other provisions of this section, the term "employment" shall include an employee's entire service, performed within or both within and without this state if:
"a.1. The service is localized in this state; or

"b. 2. The service is not localized in any state but some of the service is performed in this state and the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled is in this state, or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state;

"c. Service shall be deemed to be localized within a state if the service is performed entirely within such state, or the service is performed both within and without such state, but the service performed without such state is incidental to the employee's service within the state; for example, service which is temporary or transitory in nature or consists of isolated transactions.

"d. The service shall be deemed to be localized in this state wherever such service is performed within the United States, as defined in paragraph (a)(5)e. of subdivision (5) of this subsection, if such service is not covered under the unemployment compensation law of any other state, as defined in Section 25-4-14, and the place from which such service is directed or controlled is in this state.

"(9) Services not covered under subdivision (8) of this subsection (a) and performed entirely without the state,
with respect to no part of which contributions are required
and paid under an unemployment compensation law of any other
state or of the federal government, shall be deemed to be
employment subject to this chapter if the employee performing
such service is a resident of this state and the secretary
approves the election of the employing unit for whom such
services are performed. The entire service of such employee
shall be deemed to be "employment" subject to this chapter.

"(10) The term "employment" includes a person's
entire services if such service is deemed performed in this
state by virtue of reciprocal agreements pursuant to the
provisions of Section 25-4-120 and does not include any
service which by virtue of such agreement is deemed performed
in another state.

"(11) The term "employment" includes services in the
employ of an Indian tribe. The term "Indian tribe" has the
meaning given the term by Section 4(e) of the Indian
Self-Determination and Education Assistance Act, 25 U.S.C.
§ 5304, and includes any subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe.

"(b) The term "employment" shall not include:

"(1) Except as provided in paragraph (a)(4)a. of
subdivision (4) of subsection (a) of this section, service
performed by an individual in agricultural labor. For purposes
of this chapter, the term "agricultural labor" means any service performed prior to January 1, 1978, which was agricultural labor as defined in this section prior to such date, and remunerated service performed after December 31, 1977, if such service was performed:

"a. On a farm, in the employ of any employing unit, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

"b. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

"c. In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, Sec. 3; 12 U.S.C. § 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.
"d. In the employ of the operator of a farm, a group of operators of farms (or a cooperative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodities, but only if such operator or group of operators (or a cooperative organization of which such operators are members) produced more than one half of the commodity with respect to which service is performed; provided, however, the provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

"e. On a farm operated for profit if such service is not in the course of the employer's trade or business.

"As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.
"(2) Prior to January 1, 1978, domestic services in a private home, local college club, or local chapter of a college fraternity or sorority and after December 31, 1977, if the provisions of paragraph (a)(4)b. of subdivision (4) of subsection (a) of this section are not met.

"(3) Casual labor not in the usual course of the employer's trade or business performed after December 31, 1971, in any calendar quarter by an individual, unless the cash remuneration paid for such service is fifty dollars ($50) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purposes of this subdivision, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if either of the following apply:

"a. On each of some 24 days during such quarter such individual performs such service for some portion of the day or

"b. Such individual was regularly employed as determined under paragraph a. of this subdivision) by such employing unit in the performance of such service during the preceding calendar quarter.

"(4) Service performed by an individual in the employ of his or her son, daughter or spouse, and service
performed by an individual under the age of 21 in the employ
of his or her father or mother.

"(5) Prior to January 1, 1978, except to the extent
set forth in subdivision (a)(2) of subsection (a) of this
section, service performed in the employ of this state, or any
political subdivision thereof, or of any instrumentality of
this state or its political subdivisions.

"(6) Prior to January 1, 1978, except as provided in
subdivision (a)(2) of subsection (a) of this section, service
performed in the employ of any other state or any political
subdivisions thereof, or any instrumentality of any one or
more of the foregoing which is wholly owned by one or more
such states or political subdivisions, and any service
performed in the employ of any instrumentality of any one or
more other states or their political subdivisions to the
extent that the instrumentality is, with respect to such
service, immune, under the Constitution of the United States
from the tax imposed by Section 26 U.S.C. § 3301 of the
Federal Internal Revenue Code.

"(7) Service performed in the employ of the United
States government or of any instrumentality wholly owned by
the United States, except that if the Congress of the United
States shall permit states to require any instrumentalities of
the United States to make payments into an unemployment fund
under this chapter, then to the extent permitted by Congress

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and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units; provided, however, if this state should not be certified by the Secretary of Labor under Section 26 U.S.C. § 3304(c) of the Federal Internal Revenue Code for any year, then the payment required of such instrumentality with respect to such year shall be deemed to have been erroneously collected within the meaning of Article 3 of this chapter and shall be refunded by the secretary from the fund in accordance with the provisions of Section 25-4-137.

"(8) Except to the extent set forth in subdivision (a)(3) of subsection (a) of this section, service performed in the employ of a corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.
"(9) Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act of Congress (52 Stat. 1094, as amended) and services with respect to which unemployment compensation is payable under any other unemployment compensation system established by an act of Congress; provided, however, that the secretary is hereby authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in Section 25-4-111 for general rules to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter acquired rights to unemployment compensation under such act or acts of Congress, or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

"(10) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

"(11) Service performed, in the employ of a school, college, or university, if such service is performed by either of the following:
"a. By a student who is enrolled and is regularly attending classes at such school, college, or university; or

"b. By the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service, that:

"1. The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university; and

"2. Such employment will not be covered by any program of unemployment insurance.

"(12) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except this paragraph subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

"(13) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital,
defined in subsection (e) of this section, or service
performed as a student nurse in the employ of a hospital or a
nurses' training school by an individual who is enrolled and
is regularly attending classes in a nurses' training school
chartered or approved pursuant to state laws, and service
performed as an intern in the employ of a hospital by an
individual who has completed a four-year course in a medical
school chartered or approved pursuant to state law.

"(14) Service performed by an individual under the
age of 18 in the delivery or distribution of newspapers or
shopping news, not including delivery or distribution to any
point for subsequent delivery or distribution.

"(15) Except as provided in subdivisions (2) and (3)
of subsection (a) of this section, any employment or service
which is excluded by the express statutory provisions of
Section 26 U.S.C. § 3306 of the Federal Internal Revenue Code
as amended.

"(16) Service performed by an officer or member of
the crew of a vessel which is not an American vessel. The term
"American vessel" means any vessel documented or numbered
under the law of the United States, and includes any vessel
which is neither documented nor numbered under the laws of the
United States nor documented under the laws of any foreign
country, if its crew is employed solely by one or more
citizens or residents of the United States or corporations
organized under the laws of the United States or of any state.
"(17) Service performed by an individual in (or as
an officer or member of the crew of a vessel while it is
engaged in) the catching, taking, harvesting, cultivating, or
farming of any kind of fish, shellfish, crustacea, sponges,
seaweeds, or other aquatic forms of animal and vegetable life
(including service performed by any such individual as an
ordinary incident to any such activity), except:
"a. Service performed in connection with the
catching or taking of salmon or halibut for commercial
purposes; and
"b. Service performed on or in connection with a
vessel of more than 10 net tons (determined in the manner
provided for determining the register tonnage of merchant
vessels under the laws of the United States).
"(18) Service performed in the employ of a foreign
government (including service as a consular or other officer
or employee or a nondiplomatic representative).
"(19) Service performed in the employ of an
instrumentality wholly owned by a foreign government if both
of the following apply:
"a. The service is of a character similar to that
performed in foreign countries by employees of the United
States government or of an instrumentality thereof; and,
"b. The secretary finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

"(20) Except to the extent set forth in subdivision (a)(3) of subsection (a) of this section, service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 26 U.S.C. § 501(a) of the Federal Internal Revenue Code (other than organizations described in Section 26 U.S.C. § 401(a)) or under Section 26 U.S.C. § 521 of such Code, if the remuneration for such service is less than fifty dollars ($50).

"(21) Services performed for any governmental entity, institution, or organization described in subdivisions (2) and (3) of subsection (a) of this section:

"a. In the employ of either of the following:

"1. A church or convention or association of churches; or

"2. An organization that is operated primarily for religious purposes and which is either operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
"b. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order; or

c. Except as provided in subdivision (a)(7) of subsection (a) of Section 25-4-8:

1. Prior to January 1, 1978, in the employ of a school which is not an institution of higher education;

2. After December 31, 1977, in the employ of a governmental entity referred to in paragraph (a)(2)b. of subdivision (2) of subsection (a) of this section, if such service is performed by an individual in the exercise of any of the following duties:

   (i) As an elected official

   (ii) As a member of a legislative body, or a member of the judiciary of this state or any of its political subdivisions or of an Indian tribe

   (iii) As a member of the State National Guard or Air National Guard

   (iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency (this exclusion does not apply to permanent employees whose usual responsibilities include emergency situations).
"(v) In a position which, under or pursuant to the laws of this state or of an Indian tribe, is designated as a major nontenured policymaking or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week;

d. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; provided however, if an individual's employment is otherwise characterized as employment under subsection (a) and the individual is performing work under the Javits Wagner O'Day Act or a similar set-aside program under the laws of the United States, the individual's employment shall be considered employment under subsection (a) as of the date of such written election.

e. As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; or
"f. For a hospital in a state prison or other state correctional institution prior to January 1, 1978, by an inmate of the prison or correctional institution and, after December 31, 1977, by an inmate of a custodial or penal institution.

"(22) Services performed by an individual as a qualified real estate agent. For the purposes of this chapter the term "qualified real estate agent" shall mean an individual who is a sales person if all of the following apply:

"a. Such individual is a licensed real estate agent and

"b. Substantially all of the remuneration for services performed as a real estate agent (whether or not paid in cash) is directly related to sales or other output (including the performance of services), rather than the number of hours worked; and

"c. The services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes.
"(23) Services performed by an individual as a 
direct seller. For the purposes of this chapter the term
"direct seller" shall mean any individual who:

"a. Is engaged in the trade or business of selling
(or soliciting the sale of) consumer products to any buyer on
a:

"1. Buy-sell basis, or
"2. Deposit-commission basis, or
"3. Any similar basis which the U.S. Secretary of
the Treasury prescribes by regulations, for resale (by the
buyer or any other individual), in the home or otherwise than
in a permanent retail establishment; or

"b. Is engaged in the trade or business of selling
(or soliciting the sale of) consumer products to a consumer in
the home or otherwise than in a permanent retail
establishment, and

"c. Substantially all of the remuneration for the
services performed by such individual as a direct seller
(whether or not paid in cash) is directly related to sales or
output (including the performance of services) rather than to
the number of hours worked, and

"d. The services performed by such individual are
performed pursuant to a written contract between such
individual and the person for whom the services are performed
and such contract provides that the individual will not be

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treated as an employee with respect to such services for federal tax purposes.

"(24) Services performed by an individual as a product demonstrator. For the purposes of this chapter, the term "product demonstrator" shall mean any individual who satisfies both of the following requirements:

"a. Is engaged in the trade or business of demonstrating, exhibiting, or soliciting the purchase of food, food-related products offered for sale, or other consumer products offered for sale to any buyer on the premises of a grocery store, dry good store, or similar retail establishment, or trade show.

"b. Who performs those services pursuant to a written contract between the individual and a person whose principal business is providing demonstrators to third parties for such purposes and the contract provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

"(25) Services performed by an individual committed to a penal institution.

"(26) A marketplace contractor that interfaces with a marketplace platform in the provision of some service to the public.

"a. For the purposes of this chapter, "marketplace contractor" means a person or entity that enters into an
agreement with a marketplace platform to use its digital network or mobile application to receive connections to third-party individuals or entities seeking services.

"b. For purposes of this chapter, "marketplace platform" means a person or entity that does either of the following:

1. Offers a digital network or mobile application that connects marketplace contractors to third-party individuals or entities seeking the type of services offered by a marketplace contractor.

2. Accepts service requests from the public exclusively through its digital network or mobile application and does not accept service requests by telephone, facsimile, or in person at a physical retail location.

"c. A marketplace contractor shall not be deemed to be an employee of a marketplace platform for any purpose under this chapter so long as all of the following apply:

1. The marketplace contractor and the marketplace platform agree in writing that the marketplace contractor is an independent contractor with respect to the marketplace platform.

2. The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third-party individuals or entities submitted solely through
the online-enabled application, software, website, or system
of the marketplace platform.

"3. The marketplace platform does not contractually
prohibit the marketplace contractor from using any
online-enabled application, software, website, or system
offered by another marketplace platform, except while
performing services through the marketplace platform's
online-enabled application or platform.

"4. The marketplace platform does not restrict the
marketplace contractor from engaging in another occupation or
business.

"5. The marketplace contractor bears all or
substantially all of the expenses incurred by the marketplace
contractor in performing the services. Automobile liability
insurance premiums will not be considered an expense to be
evaluated under this subparagraph.

"6. The marketplace platform does not mandate
furnished equipment or tools essential for the performance of
the work, unless otherwise required by law or for safety
purposes.

"d. For services performed by a marketplace
contractor prior to August 1, 2022, the marketplace contractor
shall be treated as an independent contractor of the
marketplace platform and not an employee of the marketplace
platform if the requirements set forth in paragraph c. were
met at the time the services were performed.

"(c) "Institution of higher education," for the
purposes of this chapter, means an educational institution to
which all of the following applies:

"(1) Admits as regular students only individuals
having a certificate of graduation from a high school, or the
recognized equivalent of such a certificate.

"(2) Is legally authorized in this state to provide
a program of education beyond high school.

"(3) Provides an educational program for which it
awards a bachelor's or higher degree, or provides a program
which is acceptable for full credit toward such a degree, or a
program of postgraduate or postdoctoral studies, or a program
of training to prepare students for gainful employment in a
recognized occupation.

"(d) For the purposes of this chapter, the term
"educational institution" means an educational institution,
including an institution of higher education as defined in
subsection (c) of this section, in which all of the following
apply:

"(1) Participants, trainees, or students are offered
an organized course of study or training designed to transfer
to them knowledge, skills, information, doctrines, attitudes,
or abilities from, by, or under the guidance of an
instructor(s) or teacher(s) one or more instructors or teachers.

"(2) It is approved, licensed, or issued a permit to operate as a school by the State Department of Education or other government agency that is authorized within the state to approve, license, or issue a permit for the operation of a school.

"(3) The courses of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation, as opposed to study or training in the social graces or skills or whose primary purpose is to provide baby-sitting or day care services although some learning activities may be included.

"In any particular case, the question of whether or not an institution is an educational institution (other than an institution of higher education) within the meaning of the criteria described above will depend on what that particular institution actually does.

"(e) "Hospital" means an institution which has been licensed, certified, or approved by the State Board of Health or the State Department of Mental Health as a hospital or a similar institution operated by the state or any of its political subdivisions or by an instrumentality of either of the foregoing.
"(f) If the services performed during one half or more of any pay period by an employee for the employing unit employing him or her constitute employment, all of the services of such employee for such period shall be deemed to be employment, but if the services performed during more than one half of any such pay period by an employee for the employing unit employing him or her do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period of not more than 31 consecutive days for which a payment or remuneration is ordinarily made to the employee by the employing unit employing the employee.

"§25-5-1.

"Throughout this chapter, the following words and phrases as used therein shall be considered to have the following meanings, respectively, unless the context shall clearly indicate a different meaning in the connection used:

"(1) COMPENSATION. The money benefits to be paid on account of injury or death, as provided in Articles 3 and 4. The recovery which an employee may receive by action at law under Article 2 of this chapter is termed "recovery of civil damages," as provided for in Sections 25-5-31 and 25-5-34. "Compensation" does not include medical and surgical treatment and attention, medicine, medical and surgical supplies, and
crutches and apparatus furnished an employee on account of an injury.

"(2) CHILD or CHILDREN. The terms include posthumous children and all other children entitled by law to inherit as children of the deceased; stepchildren who were members of the family of the deceased, at the time of the accident, and were dependent upon him or her for support; a grandchild of the deceased employee, whose father is dead or is an invalid, and who was supported by and a member of the family of the deceased grandparent at the time of the accident.

"(3) DEPENDENT CHILD or ORPHAN. An unmarried child under the age of 18 years or one over that age who is physically or mentally incapacitated from earning.

"(4) EMPLOYER. Every person who employs another to perform a service for hire and pays wages directly to the person. The term shall include a service company for a self-insurer or any person, corporation, copartnership, or association, or group thereof, and shall, if the employer is insured, include his or her insurer, the insurer being entitled to the employer's rights, immunities, and remedies under this chapter, as far as applicable. The inclusion of an employer's insurer within the term shall not provide the insurer with immunity from liability to an injured employee, or his or her dependent in the case of death to whom the insurer would otherwise be subject to liability under Section
25-5-11. Notwithstanding the provisions of this chapter, in no event shall a common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity be deemed the "employer" of a leased-operator or owner-operator of a motor vehicle or vehicles under contract to the common carrier. Pursuant to Section 25-4-10(b)(26), a marketplace platform shall not be considered to be an employer for purposes of this chapter.

"(5) EMPLOYEE or WORKER. The terms are used interchangeably, have the same meaning throughout this chapter, and shall be construed to mean the same. The terms include the plural and all ages and both sexes. The terms include every person in the service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of this state, and also including all employees of Tannehill Furnace and Foundry Commission. Any reference in this chapter to a "worker" or "employee" shall, if the worker or employee is dead, include his or her dependent, as defined in this chapter, if the context so requires. Pursuant to Section 25-4-10(b)(26), a marketplace contractor shall not be considered to be an employee for purposes of this chapter.

"(6) WAGES or WEEKLY WAGES. The terms shall in all cases be construed to mean "average weekly earnings", based on
those earnings subject to federal income taxation and
reportable on the Federal W-2 tax form which shall include
voluntary contributions made by the employee to a
tax-qualified retirement program, voluntary contributions to a
Section 125 cafeteria program, and fringe benefits as defined
herein. Average weekly earnings shall not include fringe
benefits if and only if the employer continues the benefits
during the period of time for which compensation is paid.
"Fringe benefits" shall mean only the employer's portion of
health, life, and disability insurance premiums.

"(7) ACCIDENT. The term, as used in the phrases
"personal injuries due to accident" or "injuries or death
caused by accident" shall be construed to mean an unexpected
or unforeseen event, happening suddenly and violently, with or
without human fault, and producing at the time injury to the
physical structure of the body or damage to an artificial
member of the body by accidental means.

"(8) INJURIES BY AN ACCIDENT ARISING OUT OF AND IN
THE COURSE OF THE EMPLOYMENT. Without otherwise affecting
either the meaning or interpretation of the clause, the clause
does not cover workers except while engaged in or about the
premises where their services are being performed or where
their service requires their presence as a part of service at
the time of the accident and during the hours of service as
workers.
"(9) INJURY. "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except for an occupational disease or where it results naturally and unavoidably from the accident. Injury shall include physical injury caused either by carpal tunnel syndrome disorder or by other cumulative trauma disorder if either disorder arises out of and in the course of the employment, and breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body, when injury to them is incidental to an on-the-job injury to the body. Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him or her and not directed against him or her as an employee or because of his or her employment. Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body.

"(10) SINGULAR and PLURAL. Wherever the singular is used, the plural shall be included.

"(11) GENDER. Where the masculine gender is used, the feminine and neuter shall be included.

"(12) LOSS OF HAND OR FOOT. Amputation between the elbow and wrist shall be considered as the equivalent to the
loss of a hand, and the amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot.

"(13) PROVIDERS. A medical clinic, pharmacist, dentist, chiropractor, psychologist, podiatrist, physical therapist, pharmaceutical supply company, rehabilitation service, or other person or entity providing treatment, service, or equipment, or person or entity providing facilities at which the employee receives treatment.

"(14) MEDICAL. All services, treatment, or equipment provided by a provider.

"(15) PREVAILING. The most commonly occurring reimbursements for health services, other than those provided by federal and state programs for the elderly (Medicare) and economically disadvantaged (Medicaid). "Prevailing" shall include not only amounts per procedure code, but also commonly used adjudication rules as applied to multiple procedures, global procedures, use of assistant surgeons, and others as appropriate. For hospitals, "prevailing" rate of reimbursement or payment shall be established by the method contained in Section 25-5-77.

"(16) PARTICIPATING AND NONPARTICIPATING HOSPITALS. Those hospitals that have a negotiated rate of reimbursement or payment with the Department of Labor. "Nonparticipating hospitals" means those hospitals that have not negotiated a rate of reimbursement or payment with the Department of Labor.
"(17) HOSPITAL. A hospital, ambulatory surgical center, outpatient rehabilitation center licensed by the State of Alabama, and diagnostic facilities accredited by the Commission on Accreditation of Rehabilitation Facilities.

"(18) THE COURT. The circuit court that would have jurisdiction in an ordinary civil action involving a claim for the injuries or death in question, and "the judge" means a judge of that court.

"(19) UTILIZATION REVIEW. The determination of medical necessity for medical and surgical in-hospital, out-patient, and alternative settings treatments for acute and rehabilitation care. It includes precertification for elective treatments. Concurrent review and, if necessary, retrospective review are required for emergency cases.

"(20) BILL SCREENING. The evaluation and adjudication of provider bills for appropriateness of reimbursement relative to medical necessity and prevailing rates of reimbursement, duplicate charges, unbundling of charges, relativeness of services to injury or illness, necessity of assistant surgeons, adjudication of multiple procedures, number of modalities, global procedures, and any other prevailing adjudication issues that may apply.

"(21) ADJUDICATION. The review of claims to apply prevailing rules that adjust reimbursements for the amount of work required when multiple procedures are performed at the
same time, when assisting surgeons are present, to eliminate
duplicate billing from the unbundling of global fees, and to
adjust for the most commonly occurring method adopted for
total reimbursement.

"(22) OMBUDSMAN. An individual who assists injured
or disabled employees, persons claiming death benefits,
employers, and other persons in protecting their rights and
obtaining information available under the workers'
compensation law."

Section 2. Section 3 of Act 2021-6, 2021 Regular
Session, now appearing as Section 25-4-121, Code of Alabama
1975, imposing certain requirements on the Department of Labor
during a state of emergency, is repealed.

Section 3. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB150
Senate 15-FEB-22
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 15-MAR-22

By: Senator Orr