

1 SB363
2 188685-1
3 By Senator Orr
4 RFD: Governmental Affairs
5 First Read: 06-MAR-18

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8 SYNOPSIS: This bill would authorize marketplace
9 platforms to provide portable benefit plans to
10 certain independent contractors that contract with
11 marketplace platforms.

12 This bill would define a marketplace
13 platform as a digital application that facilitates
14 the provision of services by contractors to
15 customers seeking such services.

16 This bill would authorize marketplace
17 platforms to offer portable benefit plans under
18 this act.

19 This bill would define the independent
20 contractor status between a marketplace platform
21 and a contractor who provides services through the
22 platform.

23 This bill would authorize the Department of
24 Labor to adopt rules.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to benefit plans; to authorize marketplace
4 platforms that facilitate the provision of services by
5 contractors to customers seeking those services to provide
6 portable benefit plans to its contractors; to define
7 marketplace platforms and other terms; to define the
8 independent contractor status between a marketplace platform
9 and a contractor who provides services through the platform;
10 and to authorize the Department of Labor to adopt rules.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. As used in this act, the following terms
13 have the following meanings:

14 (1) CONTRACTOR BENEFITS. One or more of the
15 following:

16 a. Health benefits to cover medical care, which may
17 include costs for hospitalization, and prescription drugs.

18 b. Benefits in the event of sickness, accident, or
19 disability.

20 c. Liability insurance.

21 d. Retirement benefits.

22 e. Life insurance.

23 f. Vision care.

24 g. Dental care.

25 h. Compensation during a period of leave, not to
26 exceed 12 weeks during a 12-month period, because of any of
27 the following:

- 1 1. The birth or adoption of a son or daughter.
- 2 2. To care for a spouse, son, daughter, or parent.
- 3 3. A serious health condition that makes the
- 4 marketplace contractor unable to work.

5 (2) CONTRACTOR FEE. The amount earned by a
6 marketplace contractor for each transaction, less any
7 gratuities and service fees charged by the marketplace
8 platform.

9 (3) CUSTOMER. A person who engages a marketplace
10 contractor to perform services through a marketplace platform.

11 (4) MARKETPLACE CONTRACTOR. A person who contracts
12 with a marketplace platform to use the platform's digital
13 application or digital platform to provide services to
14 customers seeking the services.

15 (5) MARKETPLACE CONTRACTOR BENEFIT PLAN or BENEFIT
16 PLAN. A plan, fund, or program that is funded by contributions
17 from a marketplace platform and is established and maintained
18 for the purpose of providing contractor benefits to
19 participants.

20 (6) MARKETPLACE PLATFORM or PLATFORM. A corporation,
21 limited liability company, partnership, sole proprietor, or
22 other entity that meets the following criteria:

23 a. Operates a digital website or digital smartphone
24 application that facilitates the provision of services by
25 marketplace contractors to customers seeking such services.

26 b. Does not accept service requests by telephone,
27 facsimile, or in person at physical retail locations.

1 c. Compensates marketplace contractors for each
2 transaction through a contractual relationship between the
3 marketplace contractor and the platform.

4 The term does not include a transportation network
5 company (TNC), as defined in Section 32-7C-1, Code of Alabama
6 1975.

7 (7) PARTICIPANT. A marketplace contractor who
8 receives contractor benefits under a marketplace contractor
9 benefit plan.

10 (8) PARTICIPATING MARKETPLACE PLATFORM. A
11 marketplace platform that has elected to contribute to a
12 benefit plan pursuant to Section 2.

13 (9) PLAN AGREEMENT. A written agreement between a
14 marketplace platform and a plan administrator that provides
15 for the establishment and administration of a marketplace
16 contractor benefit plan.

17 (10) TRANSACTION. The provision of services by a
18 marketplace contractor to a customer through the use of a
19 marketplace platform, for which the marketplace contractor is
20 compensated by the marketplace platform.

21 Section 2. (a) A marketplace platform may elect to
22 contribute to a marketplace contractor benefit plan
23 established to provide benefits to marketplace contractors
24 that provide services pursuant to a contract entered into with
25 the marketplace platform. To make an election, a marketplace
26 platform shall provide written notice to the Department of
27 Labor, on a form prescribed by the department, and pay a fee

1 of five hundred dollars (\$500) to the department. Fee proceeds
2 shall be used by the department to fund the administration of
3 this act.

4 (b) The contribution amount for each transaction may
5 be added to the invoice or billing submitted to the customer
6 for the covered services.

7 Section 3. (a) Each participating marketplace
8 platform shall enter into a written plan agreement with a plan
9 administrator. The plan agreement shall require the plan
10 administrator to establish and maintain a benefit plan to
11 provide benefits to the contractors who use the marketplace
12 platform.

13 (b) A marketplace contractor benefit plan shall
14 satisfy all of the following:

15 (1) Be governed by a written instrument that
16 provides a procedure for carrying out the objectives of the
17 benefit plan and the basis on which payments are made to and
18 from the benefit plan.

19 (2) Provide that the benefit plan be administered
20 for the exclusive purpose of providing benefits to
21 participants and their beneficiaries and defraying reasonable
22 expenses of administering the benefit plan.

23 (3) Except as provided in subsection (c), maintain
24 an account for each participant and deposit into the account
25 the contributions paid by the platform attributable to the
26 participant's aggregate contractor fees for the relevant
27 period, less reasonable administrative costs.

1 (4) Provide a mechanism for participants to transfer
2 accrued benefits to another marketplace contractor benefit
3 plan established pursuant to this act.

4 (5) Provide a mechanism for participants to withdraw
5 the monetary value of the accrued benefits, less a reasonable
6 administrative fee and less a withdrawal penalty of 25 percent
7 of the total monetary value of the accrued benefits.

8 (6) Provide for one or more named fiduciaries who
9 jointly and severally shall have the authority to control and
10 manage the operation and administration of the benefit plan.

11 (7) Ensure that all insurance and retirement
12 policies and plans comply with applicable federal and state
13 requirements.

14 (c) A benefit plan may require a participant to earn
15 a minimum amount in contractor fees, not to exceed five
16 hundred dollars (\$500), in order to be eligible to receive
17 contractor benefits. A benefit plan with a minimum contractor
18 fee threshold shall provide a mechanism to distribute the
19 contributions paid by the platform attributable to
20 nonqualifying contractors' aggregate contractor fees to the
21 participants who qualified for benefits during the year in
22 which the contributions were paid.

23 (d) A benefit plan may do the following:

24 (1) Be established or maintained to provide benefits
25 to contractors of multiple participating marketplace
26 platforms.

1 (2) Include any other provision for the
2 establishment or maintenance of the benefit plan not
3 inconsistent with this act.

4 Section 4. (a) A marketplace contractor that offers
5 to provide or provides services through a marketplace platform
6 shall not be treated as an employee, agent, or servant of the
7 marketplace platform for any purpose under any state or local
8 law, including, but not limited to, Chapter 5 of Title 25,
9 Code of Alabama 1975.

10 (b) A platform's election to contribute to a benefit
11 plan or to discontinue contributions to a benefit plan does
12 not create any presumption of an employment relationship and
13 are inadmissible in the courts of this state to establish the
14 existence of an employment relationship.

15 (c) Any supervision or control exercised by a
16 participating marketplace platform to establish a benefit plan
17 or to comply with the requirements of this act may not be
18 considered and are inadmissible for the purpose of determining
19 the employment status of a marketplace contractor that offers
20 services through the platform.

21 (d) A marketplace platform shall not have respondeat
22 superior or vicarious liability for any actions or omissions
23 of any marketplace contractor nor shall it have respondeat
24 superior or vicarious liability for the actions or omissions
25 of any customer of a marketplace platform.

26 (e) Under no circumstance shall a marketplace
27 platform be responsible, liable, or subject to suit for any

1 action or omission of any marketplace contractor or customer
2 of the marketplace platform.

3 (f) Under no circumstance shall a marketplace
4 platform ever be responsible, liable, or subject to suit by a
5 marketplace contractor for any injury or harm suffered by a
6 marketplace contractor while engaged to perform services for a
7 customer of the marketplace platform or suffered in connection
8 with use of the marketplace platform.

9 (g) Under no circumstance shall the marketplace
10 platform ever be responsible, liable, or subject to suit by a
11 customer of the marketplace platform or by any officer, agent,
12 or employee of the marketplace platform, for any injury or
13 harm sustained as a result of any act or omission of any
14 marketplace contractor while engaged to perform services for a
15 customer of the marketplace platform.

16 Section 5. (a) A participating marketplace platform
17 may provide education and training, whether directly or
18 through a third-party provider, including by a plan
19 administrator, to marketplace contractors that use the
20 participating marketplace platform on the use of the platform
21 or on standards and methods for providing the services offered
22 through the platform, provided that the education and training
23 is offered to the marketplace contractor on a voluntary basis.

24 (b) A participating marketplace platform's election
25 to provide education and training as provided in this section
26 may not be considered and is inadmissible for the purpose of
27 determining the independent contractor or employment status of

1 a marketplace contractor that offers services through the
2 platform.

3 Section 6. The Department of Labor may adopt rules
4 in accordance with the Administrative Procedure Act to
5 implement this act.

6 Section 7. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.