

1 SB150
2 215030-4
3 By Senators Orr, Livingston and Butler
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 01-FEB-22

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3
4 ENGROSSED

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6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to industrial relations and labor; to amend
12 Section 25-4-10, Code of Alabama 1975, to exclude certain
13 marketplace contractors who work for certain marketplace
14 platforms from the definition of employment; to repeal Section
15 3 of Act 2021-6, 2021 Regular Session, now appearing as
16 Section 25-4-121, Code of Alabama 1975; and to make
17 nonsubstantive, technical revisions to update the existing
18 code language to current style.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 "§25-4-10.

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

25 "(1) Any service performed prior to January 1, 1978,
26 which was employment as defined in this section prior to such
27 date and, subject to the other provisions of this section, or

1 services performed for remuneration after December 31, 1977,
2 including service in interstate commerce, by any of the
3 following:

4 "a. Any officer of a corporation; ~~or.~~

5 "b. Any individual who, under the usual common law
6 rules applicable in determining the employer-employee
7 relationship, has the status of an employee; ~~or.~~

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

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

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

23 "For purposes of paragraph c. ~~of this subdivision,~~
24 the term "employment" shall include services described in
25 subparagraphs 1 and 2 ~~of paragraph c. of this subdivision,~~
26 performed after December 31, 1971, only if all of the
27 following apply:

1 "(i) The contract of service contemplates that
2 substantially all of the services are to be performed
3 personally by such individual~~7~~.1

4 "(ii) The individual does not have a substantial
5 investment in facilities used in connection with the
6 performance of the services (other than in facilities for
7 transportation)~~7~~and.

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

12 "(2) Service performed:

13 "a. After December 31, 1971, but prior to January 1,
14 1978, by an individual in the employ of this state or any of
15 its instrumentalities or political subdivisions or their
16 instrumentalities (or in the employ of any of the foregoing
17 and one or more other states or their instrumentalities or
18 political subdivisions) for a hospital or institution of
19 higher education located in this state; provided, however,
20 that such service is excluded from "employment" as defined in
21 the Federal Unemployment Tax Act solely by reason of Section
22 3306(c) (7) of that act, and is not excluded from "employment"
23 under subsection (b) of this section; provided further, that
24 such service in the employ of a political subdivision or any
25 of its instrumentalities shall be deemed to be "employment"
26 within the meaning of this chapter only if the political
27 subdivision or its instrumentalities has elected to become an

1 employer subject to this chapter pursuant to Section 25-4-131
2 for all such service in the employ of the political
3 subdivision and its instrumentalities and has not ceased to be
4 an employer subject hereto pursuant to Section 25-4-130 or
5 Section 25-4-131; and

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

16 "c. For the purposes of this chapter, the term
17 "governmental entity" in reference to this state is defined as
18 the entirety of state government, but for the purposes of
19 reporting, accounting, or other administrative procedures,
20 such entity shall be divided into each department, agency,
21 board, commission, and any other separately organized division
22 or instrumentality of this state. The state Comptroller ~~of~~
23 ~~this state~~ shall make such payments to the secretary as are
24 required by the other provisions of this chapter as they
25 pertain to the various organizational components of the state.
26 The state Comptroller is hereby authorized to require of such
27 components such payments as are necessary to discharge his or

1 her responsibilities and shall enforce such payments under the
2 provisions of subsection (b) of Section 25-4-51.

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

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

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

24 "b. The organization had four or more individuals in
25 employment for some portion of a day in each of 20 different
26 weeks, whether or not such weeks were consecutive, within

1 either the current or preceding calendar year, regardless of
2 whether they were employed at the same moment of time.

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

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

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

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

23 "2. For the purposes of this paragraph a., such
24 service is not considered to be performed in agricultural
25 labor if performed before January 1, 1984, by an individual
26 who is an alien admitted to the United States to perform

1 service in agricultural labor pursuant to Sections 214(c) and
2 101(a)(15)(H) of the Immigration and Nationality Act.

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

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

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

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

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

23 "(ii) Such other person shall be treated as having
24 paid cash remuneration to such individual in an amount equal
25 to the amount of cash remuneration paid to such individual by
26 the crew leader (either on his or her own behalf or on the

1 behalf of such other person) for the service in agricultural
2 labor performed for such other person.

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

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

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

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

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

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

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

13 "a. The employer's principal place of business in
14 the United States is located in this state; or

15 "b. The employer has no place of business in the
16 United States, but:

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

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

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

25 "c. None of the criteria of paragraphs a. and b. of
26 this subdivision (5) is met but the employer has elected
27 coverage in this state, or the employer having failed to elect

1 coverage in any state, the individual has filed a claim for
2 benefits, based on such service, under the law of this state.

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

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

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

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

11 "4. A corporation organized under the laws of the
12 United States or of any state.

13 "e. For the purposes of this subdivision (5), the
14 term "United States" includes the states of the United States,
15 the District of Columbia, the Commonwealth of Puerto Rico, and
16 in the case of the Virgin Islands, after December 31 of the
17 year in which the U.S. Secretary of Labor approves the Virgin
18 Islands' Unemployment Insurance Law for the first time.

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

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

8 "(8) Subject to the other provisions of this
9 section, the term "employment" shall include an employee's
10 entire service, performed within or both within and without
11 this state if:

12 "a.1. The service is localized in this state; or

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

21 "~~c.~~ b. Service shall be deemed to be localized
22 within a state if the service is performed entirely within
23 such state, or the service is performed both within and
24 without such state, but the service performed without such
25 state is incidental to the employee's service within the
26 state; for example, service which is temporary or transitory
27 in nature or consists of isolated transactions7.

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

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

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

24 "(11) The term "employment" includes services in the
25 employ of an Indian tribe. The term "Indian tribe" has the
26 meaning given the term by Section 4(e) of the Indian
27 Self-Determination and Education Assistance Act, ~~(25-50C~~

1 ~~450b(c))~~ 25 U.S.C. § 5304, and includes any subdivision,
2 subsidiary, or business enterprise wholly owned by the Indian
3 tribe.

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

5 "(1) Except as provided in paragraph (a)(4)a. ~~of~~
6 ~~subdivision (4) of subsection (a) of this section~~, service
7 performed by an individual in agricultural labor. For purposes
8 of this chapter, the term "agricultural labor" means any
9 service performed prior to January 1, 1978, which was
10 agricultural labor as defined in this section prior to such
11 date, and remunerated service performed after December 31,
12 1977, if such service was performed:

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

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

25 "c. In connection with the production or harvesting
26 of any commodity defined as an agricultural commodity in
27 Section 15(g) of the Agricultural Marketing Act, as amended

1 (46 Stat. 1550, Sec. 3; 12 U.S.C. § 1141j), or in connection
2 with the ginning of cotton, or in connection with the
3 operation or maintenance of ditches, canals, reservoirs, or
4 waterways, not owned or operated for profit, used exclusively
5 for supplying and storing water for farming purposes.

6 "d. In the employ of the operator of a farm, a group
7 of operators of farms (or a cooperative organization of which
8 such operators are members) in handling, planting, drying,
9 packing, packaging, processing, freezing, grading, storing, or
10 delivering to storage or to market or to a carrier for
11 transportation to market, in its unmanufactured state, any
12 agricultural or horticultural commodities, but only if such
13 operator or group of operators (or a cooperative organization
14 of which such operators are members) produced more than one
15 half of the commodity with respect to which service is
16 performed; provided, however, the provisions of this paragraph
17 shall not be deemed to be applicable with respect to service
18 performed in connection with commercial canning or commercial
19 freezing or in connection with any agricultural or
20 horticultural commodity after its delivery to a terminal
21 market for distribution for consumption.

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

24 "As used in this subdivision, the term "farm"
25 includes stock, dairy, poultry, fruit, fur-bearing animal and
26 truck farms, plantations, ranches, nurseries, ranges,
27 greenhouses, or other similar structures used primarily for

1 the raising of agricultural or horticultural commodities, and
2 orchards.

3 "(2) Prior to January 1, 1978, domestic services in
4 a private home, local college club, or local chapter of a
5 college fraternity or sorority and after December 31, 1977, if
6 the provisions of paragraph (a) (4)b. ~~of subdivision (4) of~~
7 ~~subsection (a) of this section~~ are not met.

8 "(3) Casual labor not in the usual course of the
9 employer's trade or business performed after December 31,
10 1971, in any calendar quarter by an individual, unless the
11 cash remuneration paid for such service is fifty dollars (\$50)
12 or more and such service is performed by an individual who is
13 regularly employed by such employing unit to perform such
14 service. For the purposes of this subdivision, an individual
15 shall be deemed to be regularly employed to perform service
16 not in the course of an employing unit's trade or business
17 during a calendar quarter only if either of the following
18 apply:

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

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

26 "(4) Service performed by an individual in the
27 employ of his or her son, daughter~~,~~ or spouse, and service

1 performed by an individual under the age of 21 in the employ
2 of his or her father or mother.

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

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

20 "(7) Service performed in the employ of the United
21 States government or of any instrumentality wholly owned by
22 the United States, except that if the Congress of the United
23 States shall permit states to require any instrumentalities of
24 the United States to make payments into an unemployment fund
25 under this chapter, then to the extent permitted by Congress
26 and from and after the date as of which such permission
27 becomes effective, ~~all of the provisions of~~ this chapter shall

1 be applicable to such instrumentalities and to services
2 performed by employees for such instrumentalities in the same
3 manner, to the same extent, and on the same terms as to all
4 other employers and employing units; provided, however, if
5 this state should not be certified by the Secretary of Labor
6 under ~~Section 26 U.S.C. § 3304(c) of the Federal Internal~~
7 ~~Revenue Code~~ for any year, then the payment required of such
8 instrumentality with respect to such year shall be deemed to
9 have been erroneously collected within the meaning of Article
10 3 of this chapter and shall be refunded by the secretary from
11 the fund in accordance with ~~the provisions of~~ Section
12 25-4-137.

13 "(8) Except to the extent set forth in subdivision
14 ~~(a) (3) of subsection (a) of this section,~~ service performed in
15 the employ of a corporation, community chest, fund, or
16 foundation organized and operated exclusively for religious,
17 charitable, scientific, literary, or educational purposes, or
18 for the prevention of cruelty to children or animals, no part
19 of the net earnings of which inures to the benefit of any
20 private shareholder or individual, and no substantial part of
21 the activities of which is carrying on propoganda, or
22 otherwise attempting to influence legislation.

23 "(9) Service performed after June 30, 1939, with
24 respect to which unemployment compensation is payable under
25 the Railroad Unemployment Insurance Act of Congress (52 Stat.
26 1094, as amended) and services with respect to which
27 unemployment compensation is payable under any other

1 unemployment compensation system established by an act of
2 Congress; provided, however, that the secretary is hereby
3 authorized and directed to enter into agreements with the
4 proper agencies under such act or acts of Congress, which
5 agreements shall become effective 10 days after publication
6 thereof in the manner provided in Section 25-4-111 for general
7 rules to provide reciprocal treatment to individuals who have,
8 after acquiring potential rights to benefits under this
9 chapter acquired rights to unemployment compensation under
10 such act or acts of Congress, or who have, after acquiring
11 potential rights to unemployment compensation under such act
12 or acts of Congress, acquired rights to benefits under this
13 chapter.

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

18 "(11) Service performed, in the employ of a school,
19 college, or university, if such service is performed by either
20 of the following:

21 "a. By a student who is enrolled and is regularly
22 attending classes at such school, college, or university; ~~or.~~

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

26 "1. The employment of such spouse to perform such
27 service is provided under a program to provide financial

1 assistance to such student by such school, college, or
2 university; and

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

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

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

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

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

10 "(16) Service performed by an officer or member of
11 the crew of a vessel which is not an American vessel. The term
12 "American vessel" means any vessel documented or numbered
13 under the law of the United States, and includes any vessel
14 which is neither documented nor numbered under the laws of the
15 United States nor documented under the laws of any foreign
16 country, if its crew is employed solely by one or more
17 citizens or residents of the United States or corporations
18 organized under the laws of the United States or of any state.

19 "(17) Service performed by an individual in (or as
20 an officer or member of the crew of a vessel while it is
21 engaged in) the catching, taking, harvesting, cultivating, or
22 farming of any kind of fish, shellfish, crustacea, sponges,
23 seaweeds, or other aquatic forms of animal and vegetable life
24 (including service performed by any such individual as an
25 ordinary incident to any such activity), except:

1 "a. Service performed in connection with the
2 catching or taking of salmon or halibut for commercial
3 purposes; and

4 "b. Service performed on or in connection with a
5 vessel of more than 10 net tons (determined in the manner
6 provided for determining the register tonnage of merchant
7 vessels under the laws of the United States).

8 "(18) Service performed in the employ of a foreign
9 government (including service as a consular or other officer
10 or employee or a nondiplomatic representative).

11 "(19) Service performed in the employ of an
12 instrumentality wholly owned by a foreign government if both
13 of the following apply:

14 "a. The service is of a character similar to that
15 performed in foreign countries by employees of the United
16 States government or of an instrumentality thereof; ~~and.~~

17 "b. The secretary finds that the United States
18 Secretary of State has certified to the United States
19 Secretary of the Treasury that the foreign government, with
20 respect to whose instrumentality exemption is claimed, grants
21 an equivalent exemption with respect to similar service
22 performed in the foreign country by employees of the United
23 States government and of instrumentalities thereof.

24 "(20) Except to the extent set forth in subdivision
25 (a) (3) ~~of subsection (a) of this section~~, service performed in
26 any calendar quarter in the employ of any organization exempt
27 from income tax under Section 26 U.S.C. § 501(a) ~~of the~~

1 ~~Federal Internal Revenue Code~~ (other than organizations
2 described in ~~Section 26 U.S.C. § 401(a)~~) or under ~~Section 26~~
3 ~~U.S.C. § 521 of such Code~~, if the remuneration for such
4 service is less than fifty dollars (\$50).

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

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

9 "1. A church or convention or association of
10 churches; ~~or~~.

11 "2. An organization that is operated primarily for
12 religious purposes and which is either operated, supervised,
13 controlled, or principally supported by a church or convention
14 or association of churches; or

15 "b. By a duly ordained, commissioned, or licensed
16 minister of a church in the exercise of his or her ministry or
17 by a member of a religious order in the exercise of duties
18 required by such order; or

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

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

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

1 "(i) As an elected official~~;~~.

2 "(ii) As a member of a legislative body, or a member
3 of the judiciary of this state or any of its political
4 subdivisions or of an Indian tribe~~;~~.

5 "(iii) As a member of the State National Guard or
6 Air National Guard~~;~~.

7 "(iv) As an employee serving on a temporary basis in
8 case of fire, storm, snow, earthquake, flood, or similar
9 emergency (this exclusion does not apply to permanent
10 employees whose usual responsibilities include emergency
11 situations)~~;~~.

12 "(v) In a position which, under or pursuant to the
13 laws of this state or of an Indian tribe, is designated as a
14 major nontenured policymaking or advisory position or a
15 policymaking or advisory position the performance of the
16 duties of which ordinarily does not require more than 8 hours
17 per week~~;~~or.

18 "d. In a facility conducted for the purpose of
19 carrying out a program of rehabilitation for individuals whose
20 earning capacity is impaired by age or physical or mental
21 deficiency or injury or providing remunerative work for
22 individuals who because of their impaired physical or mental
23 capacity cannot be readily absorbed in the competitive labor
24 market by an individual receiving such rehabilitation or
25 remunerative work; provided however, if an individual's
26 employment is otherwise characterized as employment under
27 subsection (a) and the individual is performing work under the

1 Javits Wagner O'Day Act or a similar set-aside program under
2 the laws of the United States, the individual's employment
3 shall be considered employment under subsection (a) as of the
4 date of such written election.

5 "e. As part of an unemployment work relief or work
6 training program assisted or financed in whole or in part by
7 any federal agency or an agency of a state or political
8 subdivision thereof or of an Indian tribe, by an individual
9 receiving such work relief or work training; or

10 "f. For a hospital in a state prison or other state
11 correctional institution prior to January 1, 1978, by an
12 inmate of the prison or correctional institution and, after
13 December 31, 1977, by an inmate of a custodial or penal
14 institution.

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

20 "a. Such individual is a licensed real estate agent,
21 ~~and~~.

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

1 "c. The services performed by the individual are
2 performed pursuant to a written contract between such
3 individual and the person for whom the services are performed
4 and such contract provides that the individual will not be
5 treated as an employee with respect to such services for
6 federal tax purposes.

7 "(23) Services performed by an individual as a
8 direct seller. For the purposes of this chapter the term
9 "direct seller" shall mean any individual who:

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

13 "1. Buy-sell basis, or

14 "2. Deposit-commission basis, or

15 "3. Any similar basis which the U.S. Secretary of
16 the Treasury prescribes by regulations, for resale (by the
17 buyer or any other individual), in the home or otherwise than
18 in a permanent retail establishment; or

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

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

1 "d. The services performed by such individual are
2 performed pursuant to a written contract between such
3 individual and the person for whom the services are performed
4 and such contract provides that the individual will not be
5 treated as an employee with respect to such services for
6 federal tax purposes.

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

11 "a. Is engaged in the trade or business of
12 demonstrating, exhibiting, or soliciting the purchase of food,
13 food-related products offered for sale, or other consumer
14 products offered for sale to any buyer on the premises of a
15 grocery store, dry good store, or similar retail
16 establishment, or trade show7.

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

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

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

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

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

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

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

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

20 "1. The marketplace contractor and the marketplace
21 platform agree in writing that the marketplace contractor is
22 an independent contractor with respect to the marketplace
23 platform.

24 "2. The marketplace platform does not unilaterally
25 prescribe specific hours during which the marketplace
26 contractor must be available to accept service requests from
27 third-party individuals or entities submitted solely through

1 the online-enabled application, software, website, or system
2 of the marketplace platform.

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

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

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

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

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

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

4 "(1) Admits as regular students only individuals
5 having a certificate of graduation from a high school, or the
6 recognized equivalent of such a certificate~~7.~~

7 "(2) Is legally authorized in this state to provide
8 a program of education beyond high school~~7.~~

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

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

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

26 "(2) It is approved, licensed, or issued a permit to
27 operate as a school by the State Department of Education or

1 other government agency that is authorized within the state to
2 approve, license, or issue a permit for the operation of a
3 school.

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

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

15 "(e) "Hospital" means an institution which has been
16 licensed, certified, or approved by the State Board of Health
17 or the State Department of Mental Health as a hospital or a
18 similar institution operated by the state or any of its
19 political subdivisions or by an instrumentality of either of
20 the foregoing.

21 "(f) If the services performed during one half or
22 more of any pay period by an employee for the employing unit
23 employing him or her constitute employment, all of the
24 services of such employee for such period shall be deemed to
25 be employment, but if the services performed during more than
26 one half of any such pay period by an employee for the
27 employing unit employing him or her do not constitute

1 employment, then none of the services of such employee for
2 such period shall be deemed to be employment. As used in this
3 subsection the term "pay period" means a period ~~(of not more~~
4 than 31 consecutive days) for which a payment or remuneration
5 is ordinarily made to the employee by the employing unit
6 employing the employee.

7 "§25-5-1.

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

12 "(1) COMPENSATION. The money benefits to be paid on
13 account of injury or death, as provided in Articles 3 and 4.
14 The recovery which an employee may receive by action at law
15 under Article 2 of this chapter is termed "recovery of civil
16 damages," as provided for in Sections 25-5-31 and 25-5-34.

17 "Compensation" does not include medical and surgical treatment
18 and attention, medicine, medical and surgical supplies, and
19 crutches and apparatus furnished an employee on account of an
20 injury.

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

1 who was supported by and a member of the family of the
2 deceased grandparent at the time of the accident.

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

6 "(4) EMPLOYER. Every person who employs another to
7 perform a service for hire and pays wages directly to the
8 person. The term shall include a service company for a
9 self-insurer or any person, corporation, copartnership, or
10 association, or group thereof, and shall, if the employer is
11 insured, include his or her insurer, the insurer being
12 entitled to the employer's rights, immunities, and remedies
13 under this chapter, as far as applicable. The inclusion of an
14 employer's insurer within the term shall not provide the
15 insurer with immunity from liability to an injured employee,
16 or his or her dependent in the case of death to whom the
17 insurer would otherwise be subject to liability under Section
18 25-5-11. Notwithstanding the provisions of this chapter, in no
19 event shall a common carrier by motor vehicle operating
20 pursuant to a certificate of public convenience and necessity
21 be deemed the "employer" of a leased-operator or
22 owner-operator of a motor vehicle or vehicles under contract
23 to the common carrier. Pursuant to Section 25-4-10(b)(26), a
24 marketplace platform shall not be considered to be an employer
25 for purposes of this chapter.

26 "(5) EMPLOYEE or WORKER. The terms are used
27 interchangeably, have the same meaning throughout this

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

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

26 "(7) ACCIDENT. The term, as used in the phrases
27 "personal injuries due to accident" or "injuries or death

1 caused by accident" shall be construed to mean an unexpected
2 or unforeseen event, happening suddenly and violently, with or
3 without human fault, and producing at the time injury to the
4 physical structure of the body or damage to an artificial
5 member of the body by accidental means.

6 "(8) INJURIES BY AN ACCIDENT ARISING OUT OF AND IN
7 THE COURSE OF THE EMPLOYMENT. Without otherwise affecting
8 either the meaning or interpretation of the clause, the clause
9 does not cover workers except while engaged in or about the
10 premises where their services are being performed or where
11 their service requires their presence as a part of service at
12 the time of the accident and during the hours of service as
13 workers.

14 "(9) INJURY. "Injury and personal injury" shall mean
15 only injury by accident arising out of and in the course of
16 the employment, and shall not include a disease in any form,
17 except for an occupational disease or where it results
18 naturally and unavoidably from the accident. Injury shall
19 include physical injury caused either by carpal tunnel
20 syndrome disorder or by other cumulative trauma disorder if
21 either disorder arises out of and in the course of the
22 employment, and breakage or damage to eyeglasses, hearing
23 aids, dentures, or other prosthetic devices which function as
24 part of the body, when injury to them is incidental to an
25 on-the-job injury to the body. Injury does not include an
26 injury caused by the act of a third person or fellow employee
27 intended to injure the employee because of reasons personal to

1 him or her and not directed against him or her as an employee
2 or because of his or her employment. Injury does not include a
3 mental disorder or mental injury that has neither been
4 produced nor been proximately caused by some physical injury
5 to the body.

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

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

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

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

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

22 "(15) PREVAILING. The most commonly occurring
23 reimbursements for health services, other than those provided
24 by federal and state programs for the elderly (Medicare) and
25 economically disadvantaged (Medicaid). "Prevailing" shall
26 include not only amounts per procedure code, but also commonly
27 used adjudication rules as applied to multiple procedures,

1 global procedures, use of assistant surgeons, and others as
2 appropriate. For hospitals, "prevailing" rate of reimbursement
3 or payment shall be established by the method contained in
4 Section 25-5-77.

5 "(16) PARTICIPATING AND NONPARTICIPATING HOSPITALS.
6 Those hospitals that have a negotiated rate of reimbursement
7 or payment with the Department of Labor. "Nonparticipating
8 hospitals" means those hospitals that have not negotiated a
9 rate of reimbursement or payment with the Department of Labor.

10 "(17) HOSPITAL. A hospital, ambulatory surgical
11 center, outpatient rehabilitation center licensed by the State
12 of Alabama, and diagnostic facilities accredited by the
13 Commission on Accreditation of Rehabilitation Facilities.

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

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

24 "(20) BILL SCREENING. The evaluation and
25 adjudication of provider bills for appropriateness of
26 reimbursement relative to medical necessity and prevailing
27 rates of reimbursement, duplicate charges, unbundling of

1 charges, relativeness of services to injury or illness,
2 necessity of assistant surgeons, adjudication of multiple
3 procedures, number of modalities, global procedures, and any
4 other prevailing adjudication issues that may apply.

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

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

17 Section 2. Section 3 of Act 2021-6, 2021 Regular
18 Session, now appearing as Section 25-4-121, Code of Alabama
19 1975, imposing certain requirements on the Department of Labor
20 during a state of emergency, is repealed.

21 Section 3. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 01-FEB-22

Read for the second time and placed on the calen-
dar..... 09-FEB-22

Read for the third time and passed as amended 15-FEB-22

Yeas 27
Nays 0

Patrick Harris,
Secretary.