

1 SB150
2 215030-6
3 By Senators Orr, Livingston and Butler
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 01-FEB-22

1 SB150

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3
4 ENROLLED, An Act,

5 Relating to industrial relations and labor; to amend
6 Section 25-4-10, Code of Alabama 1975, to exclude certain
7 marketplace contractors who work for certain marketplace
8 platforms from the definition of employment; to repeal Section
9 3 of Act 2021-6, 2021 Regular Session, now appearing as
10 Section 25-4-121, Code of Alabama 1975; and to make
11 nonsubstantive, technical revisions to update the existing
12 code language to current style.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

16 "§25-4-10.

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

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

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

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

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

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

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

19 "For purposes of paragraph c. ~~of this subdivision,~~
20 the term "employment" shall include services described in
21 subparagraphs 1 and 2 ~~of paragraph c. of this subdivision,~~
22 performed after December 31, 1971, only if all of the
23 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.~~.

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"

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

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

18 "c. For the purposes of this chapter, the term
19 "governmental entity" in reference to this state is defined as
20 the entirety of state government, but for the purposes of
21 reporting, accounting, or other administrative procedures,
22 such entity shall be divided into each department, agency,
23 board, commission, and any other separately organized division
24 or instrumentality of this state. The state Comptroller ~~of~~
25 ~~this state~~ shall make such payments to the secretary as are

1 required by the other provisions of this chapter as they
2 pertain to the various organizational components of the state.
3 The state Comptroller is hereby authorized to require of such
4 components such payments as are necessary to discharge his or
5 her responsibilities and shall enforce such payments under the
6 provisions of subsection (b) of Section 25-4-51.

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

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

23 "a. The service is excluded from "employment" as
24 defined in the Federal Unemployment Tax Act solely by reason
25 of Section 3306(c)(8) of that act, and is not excluded from

1 "employment" under subdivisions (8) and (21) of subsection (b)
2 of this section, ~~and.~~

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

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

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

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

20 "(ii) For some portion of a day in each of 20
21 different calendar weeks, whether or not such weeks were
22 consecutive, in either the current or the preceding calendar
23 year, employed in agricultural labor (not taking into account
24 service in agricultural labor performed before January 1,
25 1984, by an alien referred to in subparagraph 2.) ~~of this~~

1 ~~paragraph a.~~, 10 or more individuals, regardless of whether
2 they were employed at the same moment of time.

3 "2. For the purposes of this paragraph a., such
4 service is not considered to be performed in agricultural
5 labor if performed before January 1, 1984, by an individual
6 who is an alien admitted to the United States to perform
7 service in agricultural labor pursuant to Sections 214(c) and
8 101(a)(15)(H) of the Immigration and Nationality Act.

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

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

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

22 "4. For the purposes of this subdivision (4) in the
23 case of any individual who is furnished by a crew leader to
24 perform service in agricultural labor for any other person and

1 who is not treated as an employee of such crew leader under
2 subparagraph a.3. ~~of this paragraph a.:~~

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

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

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

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

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

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

22 "b. Domestic service after December 31, 1977, in a
23 private home, local college club, or local chapter of a
24 college fraternity or sorority performed for a person, ~~their~~
25 his or her spouse, or estate who paid cash remuneration of one

1 thousand dollars (\$1,000) or more in any calendar quarter in
2 the current calendar year or the preceding calendar year to
3 individuals employed in such domestic service.

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

11 "(5) The term "employment" shall include the service
12 of an individual who is a citizen of the United States,
13 performed outside the United States after December 31, 1971,
14 (except in Canada or in the case of the Virgin Islands after
15 December 31, 1971, and prior to January 1 of the year
16 following the year in which the U.S. Secretary of Labor
17 approves the Unemployment Compensation Law of the Virgin
18 Islands under Section 3304(a) of the Internal Revenue Code of
19 1954) in the employ of an American employer (other than
20 service which is deemed "employment" under the provisions of
21 subdivision (8) or (9) ~~of this subsection (a)~~ or the parallel
22 provisions of another state's law), if:

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

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

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

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

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

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

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

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

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

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

24 "4. A corporation organized under the laws of the
25 United States or of any state.

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

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

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

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

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

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

10 "~~c.~~ b. Service shall be deemed to be localized
11 within a state if the service is performed entirely within
12 such state, or the service is performed both within and
13 without such state, but the service performed without such
14 state is incidental to the employee's service within the
15 state; for example, service which is temporary or transitory
16 in nature or consists of isolated transactions~~7.~~

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

24 "(9) Services not covered under subdivision (8) ~~of~~
25 ~~this subsection (a)~~ and performed entirely without the state,

1 with respect to no part of which contributions are required
2 and paid under an unemployment compensation law of any other
3 state or of the federal government, shall be deemed to be
4 employment subject to this chapter if the employee performing
5 such service is a resident of this state and the secretary
6 approves the election of the employing unit for whom such
7 services are performed. The entire service of such employee
8 shall be deemed to be "employment" subject to this chapter.

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

15 "(11) The term "employment" includes services in the
16 employ of an Indian tribe. The term "Indian tribe" has the
17 meaning given the term by Section 4(e) of the Indian
18 Self-Determination and Education Assistance Act, ~~(25 USC~~
19 ~~450b(c))~~ 25 U.S.C. § 5304, and includes any subdivision,
20 subsidiary, or business enterprise wholly owned by the Indian
21 tribe.

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

23 "(1) Except as provided in paragraph (a)(4)a. ~~of~~
24 ~~subdivision (4) of subsection (a) of this section,~~ service
25 performed by an individual in agricultural labor. For purposes

1 of this chapter, the term "agricultural labor" means any
2 service performed prior to January 1, 1978, which was
3 agricultural labor as defined in this section prior to such
4 date, and remunerated service performed after December 31,
5 1977, if such service was performed:

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

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

18 "c. In connection with the production or harvesting
19 of any commodity defined as an agricultural commodity in
20 Section 15(g) of the Agricultural Marketing Act, as amended
21 (46 Stat. 1550, Sec. 3; 12 U.S.C. § 1141j), or in connection
22 with the ginning of cotton, or in connection with the
23 operation or maintenance of ditches, canals, reservoirs, or
24 waterways, not owned or operated for profit, used exclusively
25 for supplying and storing water for farming purposes.

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

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

19 "As used in this subdivision, the term "farm"
20 includes stock, dairy, poultry, fruit, fur-bearing animal and
21 truck farms, plantations, ranches, nurseries, ranges,
22 greenhouses, or other similar structures used primarily for
23 the raising of agricultural or horticultural commodities, and
24 orchards.

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

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

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

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

24 "(4) Service performed by an individual in the
25 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

1 and from and after the date as of which such permission
2 becomes effective, ~~all of the provisions of~~ this chapter shall
3 be applicable to such instrumentalities and to services
4 performed by employees for such instrumentalities in the same
5 manner, to the same extent, and on the same terms as to all
6 other employers and employing units; provided, however, if
7 this state should not be certified by the Secretary of Labor
8 under ~~Section 26 U.S.C. § 3304(c) of the Federal Internal~~
9 ~~Revenue Code~~ for any year, then the payment required of such
10 instrumentality with respect to such year shall be deemed to
11 have been erroneously collected within the meaning of Article
12 3 of this chapter and shall be refunded by the secretary from
13 the fund in accordance with ~~the provisions of~~ Section
14 25-4-137.

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

1 "(9) Service performed after June 30, 1939, with
2 respect to which unemployment compensation is payable under
3 the Railroad Unemployment Insurance Act of Congress (52 Stat.
4 1094, as amended) and services with respect to which
5 unemployment compensation is payable under any other
6 unemployment compensation system established by an act of
7 Congress; provided, however, that the secretary is hereby
8 authorized and directed to enter into agreements with the
9 proper agencies under such act or acts of Congress, which
10 agreements shall become effective 10 days after publication
11 thereof in the manner provided in Section 25-4-111 for general
12 rules to provide reciprocal treatment to individuals who have,
13 after acquiring potential rights to benefits under this
14 chapter acquired rights to unemployment compensation under
15 such act or acts of Congress, or who have, after acquiring
16 potential rights to unemployment compensation under such act
17 or acts of Congress, acquired rights to benefits under this
18 chapter.

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

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

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

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

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

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

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

24 "(13) Service performed in the employ of a hospital,
25 if such service is performed by a patient of the hospital, as

1 defined in subsection (e) ~~of this section~~, or service
2 performed as a student nurse in the employ of a hospital or a
3 nurses' training school by an individual who is enrolled and
4 is regularly attending classes in a nurses' training school
5 chartered or approved pursuant to state laws, and service
6 performed as an intern in the employ of a hospital by an
7 individual who has completed a four-year course in a medical
8 school chartered or approved pursuant to state law.

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

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

18 "(16) Service performed by an officer or member of
19 the crew of a vessel which is not an American vessel. The term
20 "American vessel" means any vessel documented or numbered
21 under the law of the United States, and includes any vessel
22 which is neither documented nor numbered under the laws of the
23 United States nor documented under the laws of any foreign
24 country, if its crew is employed solely by one or more

1 citizens or residents of the United States or corporations
2 organized under the laws of the United States or of any state.

3 "(17) Service performed by an individual in (or as
4 an officer or member of the crew of a vessel while it is
5 engaged in) the catching, taking, harvesting, cultivating, or
6 farming of any kind of fish, shellfish, crustacea, sponges,
7 seaweeds, or other aquatic forms of animal and vegetable life
8 (including service performed by any such individual as an
9 ordinary incident to any such activity), except:

10 "a. Service performed in connection with the
11 catching or taking of salmon or halibut for commercial
12 purposes; and

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

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

20 "(19) Service performed in the employ of an
21 instrumentality wholly owned by a foreign government if both
22 of the following apply:

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

1 "b. The secretary finds that the United States
2 Secretary of State has certified to the United States
3 Secretary of the Treasury that the foreign government, with
4 respect to whose instrumentality exemption is claimed, grants
5 an equivalent exemption with respect to similar service
6 performed in the foreign country by employees of the United
7 States government and of instrumentalities thereof.

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

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

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

20 "1. A church or convention or association of
21 churches; ~~or.~~

22 "2. An organization that is operated primarily for
23 religious purposes and which is either operated, supervised,
24 controlled, or principally supported by a church or convention
25 or association of churches; or

1 "b. By a duly ordained, commissioned, l or licensed
2 minister of a church in the exercise of his or her ministry or
3 by a member of a religious order in the exercise of duties
4 required by such order; or

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

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

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

14 "(i) As an elected official ;

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

18 "(iii) As a member of the State National Guard or
19 Air National Guard ;

20 "(iv) As an employee serving on a temporary basis in
21 case of fire, storm, snow, earthquake, flood, or similar
22 emergency (this exclusion does not apply to permanent
23 employees whose usual responsibilities include emergency
24 situations) ;

1 "(v) In a position which, under or pursuant to the
2 laws of this state or of an Indian tribe, is designated as a
3 major nontenured policymaking or advisory position or a
4 policymaking or advisory position the performance of the
5 duties of which ordinarily does not require more than 8 hours
6 per week;~~or.~~

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

21 "e. As part of an unemployment work relief or work
22 training program assisted or financed in whole or in part by
23 any federal agency or an agency of a state or political
24 subdivision thereof or of an Indian tribe, by an individual
25 receiving such work relief or work training; or

1 "f. For a hospital in a state prison or other state
2 correctional institution prior to January 1, 1978, by an
3 inmate of the prison or correctional institution and, after
4 December 31, 1977, by an inmate of a custodial or penal
5 institution.

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

11 "a. Such individual is a licensed real estate agent~~7~~
12 and.

13 "b. Substantially all of the remuneration for
14 services performed as a real estate agent (whether or not paid
15 in cash) is directly related to sales or other output
16 (including the performance of services), rather than the
17 number of hours worked,~~7~~and.

18 "c. The services performed by the individual are
19 performed pursuant to a written contract between such
20 individual and the person for whom the services are performed
21 and such contract provides that the individual will not be
22 treated as an employee with respect to such services for
23 federal tax purposes.

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

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

7 "1. Buy-sell basis, or

8 "2. Deposit-commission basis, or

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

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

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

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

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

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

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

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

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

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

24 "a. For the purposes of this chapter, "marketplace
25 contractor" means a person or entity that enters into an

1 agreement with a marketplace platform to use its digital
2 network or mobile application to receive connections to
3 third-party individuals or entities seeking services.

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

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

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

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

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

22 "2. The marketplace platform does not unilaterally
23 prescribe specific hours during which the marketplace
24 contractor must be available to accept service requests from
25 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

1 platform if the requirements set forth in paragraph c. were
2 met at the time the services were performed.

3 "e. This subdivision shall not apply to services
4 performed for state and local government entities, or
5 federally recognized Indian tribes provided such services are
6 excluded from employment as defined in 26 U.S.C. §§ 3301 to
7 3311, or services performed in the employment of a religious,
8 charitable, educational, or other 26 U.S.C. § 501(c) (3)
9 organization, all as described in 26 U.S.C. § 3306 (c) (7) or
10 (8).

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

14 "(1) Admits as regular students only individuals
15 having a certificate of graduation from a high school, or the
16 recognized equivalent of such a certificate7.

17 "(2) Is legally authorized in this state to provide
18 a program of education beyond high school7.

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

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

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

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

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

23 "In any particular case, the question of whether or
24 not an institution is an educational institution (other than
25 an institution of higher education) within the meaning of the

1 criteria described above will depend on what that particular
2 institution actually does.

3 "(e) "Hospital" means an institution which has been
4 licensed, certified, or approved by the State Board of Health
5 or the State Department of Mental Health as a hospital or a
6 similar institution operated by the state or any of its
7 political subdivisions or by an instrumentality of either of
8 the foregoing.

9 "(f) If the services performed during one half or
10 more of any pay period by an employee for the employing unit
11 employing him or her constitute employment, all of the
12 services of such employee for such period shall be deemed to
13 be employment, but if the services performed during more than
14 one half of any such pay period by an employee for the
15 employing unit employing him or her do not constitute
16 employment, then none of the services of such employee for
17 such period shall be deemed to be employment. As used in this
18 subsection the term "pay period" means a period ~~(of not more~~
19 ~~than 31 consecutive days)~~ for which a payment or remuneration
20 is ordinarily made to the employee by the employing unit
21 employing the employee.

22 "§25-5-1.

23 "Throughout this chapter, the following words and
24 phrases as used therein shall be considered to have the

1 following meanings, respectively, unless the context shall
2 clearly indicate a different meaning in the connection used:

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

8 "Compensation" does not include medical and surgical treatment
9 and attention, medicine, medical and surgical supplies, and
10 crutches and apparatus furnished an employee on account of an
11 injury.

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

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

23 "(4) EMPLOYER. Every person who employs another to
24 perform a service for hire and pays wages directly to the
25 person. The term shall include a service company for a

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

18 "(5) EMPLOYEE or WORKER. The terms are used
19 interchangeably, have the same meaning throughout this
20 chapter, and shall be construed to mean the same. The terms
21 include the plural and all ages and both sexes. The terms
22 include every person in the service of another under any
23 contract of hire, express or implied, oral or written,
24 including aliens and also including minors who are legally
25 permitted to work under the laws of this state, and also

1 including all employees of Tannehill Furnace and Foundry
2 Commission. Any reference in this chapter to a "worker" or
3 "employee" shall, if the worker or employee is dead, include
4 his or her dependent, as defined in this chapter, if the
5 context so requires. Pursuant to Section 25-4-10(b)(26), a
6 marketplace contractor shall not be considered to be an
7 employee for purposes of this chapter.

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

20 "(7) ACCIDENT. The term, as used in the phrases
21 "personal injuries due to accident" or "injuries or death
22 caused by accident" shall be construed to mean an unexpected
23 or unforeseen event, happening suddenly and violently, with or
24 without human fault, and producing at the time injury to the

1 physical structure of the body or damage to an artificial
2 member of the body by accidental means.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Section 2. Section 3 of Act 2021-6, 2021 Regular
22 Session, now appearing as Section 25-4-121, Code of Alabama
23 1975, imposing certain requirements on the Department of Labor
24 during a state of emergency, is repealed.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

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

Senate 30-MAR-22
I hereby certify that the within Act originated in and passed
the Senate, as amended by Executive Amendment.

Patrick Harris,
Secretary.

House of Representatives
Passed: 15-MAR-22
House of Representatives
Passed: 31-MAR-22, as amended by Executive Amendment.

By: Senator Orr