

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

8 SYNOPSIS: Under existing law, for purposes of wage  
9 reporting and taxation, workers are generally  
10 classified as either an employee of a business  
11 entity or an independent contractor.

12 Also under existing law, the term  
13 "employment" is defined, and various exclusions  
14 from the defined term are also included.

15 This bill would further provide for the  
16 definition of "employment" to exclude certain  
17 marketplace contractors who work for certain  
18 marketplace platforms, such as Uber, Grubhub, Lyft,  
19 Waitr, etc., to clarify that under state law, these  
20 workers are not employees, but instead operate as  
21 independent contractors.

22 This bill would repeal certain requirements  
23 imposed on the Department of Labor during a state  
24 of emergency.

25 This bill would also make nonsubstantive,  
26 technical revisions to update the existing code  
27 language to current style.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

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

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 "§25-4-10.

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

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

26 "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:

24           "(i) The contract of service contemplates that  
25 substantially all of the services are to be performed  
26 personally by such individual, ~~or.~~

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

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

9           "(2) Service performed:

10           "a. After December 31, 1971, but prior to January 1,  
11 1978, by an individual in the employ of this state or any of  
12 its instrumentalities or political subdivisions or their  
13 instrumentalities (or in the employ of any of the foregoing  
14 and one or more other states or their instrumentalities or  
15 political subdivisions) for a hospital or institution of  
16 higher education located in this state; provided, however,  
17 that such service is excluded from "employment" as defined in  
18 the Federal Unemployment Tax Act solely by reason of Section  
19 3306(c) (7) of that act, and is not excluded from "employment"  
20 under subsection (b) of this section; provided further, that  
21 such service in the employ of a political subdivision or any  
22 of its instrumentalities shall be deemed to be "employment"  
23 within the meaning of this chapter only if the political  
24 subdivision or its instrumentalities has elected to become an  
25 employer subject to this chapter pursuant to Section 25-4-131  
26 for all such service in the employ of the political  
27 subdivision and its instrumentalities and has not ceased to be

1 an employer subject hereto pursuant to Section 25-4-130 or  
2 Section 25-4-131; and

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

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

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

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

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

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

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

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

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

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

21           "2. For the purposes of this paragraph a., such  
22 service is not considered to be performed in agricultural  
23 labor if performed before January 1, 1984, by an individual  
24 who is an alien admitted to the United States to perform  
25 service in agricultural labor pursuant to Sections 214(c) and  
26 101(a) (15) (H) of the Immigration and Nationality Act.



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

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

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

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

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

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

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

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

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

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

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

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

26           "(5) The term "employment" shall include the service  
27 of an individual who is a citizen of the United States,

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

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

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

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

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

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

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

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

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

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

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

9            "4. A corporation organized under the laws of the  
10 United States or of any state.

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

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

25           "(7) Notwithstanding any other provisions of this  
26 section, service with respect to which a tax is required to be  
27 paid under any federal law imposing a tax against which credit

1 may be taken for contributions required to be paid into a  
2 state unemployment fund or which as a condition for full tax  
3 credit against the tax imposed by the Federal Unemployment Tax  
4 Act is required to be covered under this chapter.

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

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

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

18 "~~c.~~ b. Service shall be deemed to be localized  
19 within a state if the service is performed entirely within  
20 such state, or the service is performed both within and  
21 without such state, but the service performed without such  
22 state is incidental to the employee's service within the  
23 state; for example, service which is temporary or transitory  
24 in nature or consists of isolated transactions~~7.~~

25 "~~d.~~ c. The service shall be deemed to be localized  
26 in this state wherever such service is performed within the  
27 United States, as defined in paragraph (a) (5)e. ~~of subdivision~~

1 ~~(5) of this subsection~~, if such service is not covered under  
2 the unemployment compensation law of any other state, as  
3 defined in Section 25-4-14, and the place from which such  
4 service is directed or controlled is in this state.

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

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

21 "(11) The term "employment" includes services in the  
22 employ of an Indian tribe. The term "Indian tribe" has the  
23 meaning given the term by Section 4(e) of the Indian  
24 Self-Determination and Education Assistance Act, ~~(25-USE~~  
25 ~~450b(c))~~ 25 U.S.C. § 5304, and includes any subdivision,  
26 subsidiary, or business enterprise wholly owned by the Indian  
27 tribe.

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

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

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

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

22            "c. In connection with the production or harvesting  
23 of any commodity defined as an agricultural commodity in  
24 Section 15(g) of the Agricultural Marketing Act, as amended  
25 (46 Stat. 1550, Sec. 3; 12 U.S.C. § 1141j), or in connection  
26 with the ginning of cotton, or in connection with the  
27 operation or maintenance of ditches, canals, reservoirs, or

1 waterways, not owned or operated for profit, used exclusively  
2 for supplying and storing water for farming purposes.

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

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

21 "As used in this subdivision, the term "farm"  
22 includes stock, dairy, poultry, fruit, fur-bearing animal and  
23 truck farms, plantations, ranches, nurseries, ranges,  
24 greenhouses, or other similar structures used primarily for  
25 the raising of agricultural or horticultural commodities, and  
26 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~~r~~  
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  
26 performed by an individual under the age of 21 in the employ  
27 of his or her father or mother.

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

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

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

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

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

21 "(9) Service performed after June 30, 1939, with  
22 respect to which unemployment compensation is payable under  
23 the Railroad Unemployment Insurance Act of Congress (52 Stat.  
24 1094, as amended) and services with respect to which  
25 unemployment compensation is payable under any other  
26 unemployment compensation system established by an act of  
27 Congress; provided, however, that the secretary is hereby

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

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

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

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

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

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

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

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

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

25           "(14) Service performed by an individual under the  
26 age of 18 in the delivery or distribution of newspapers or

1 shopping news, not including delivery or distribution to any  
2 point for subsequent delivery or distribution.

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

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

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

24 "a. Service performed in connection with the  
25 catching or taking of salmon or halibut for commercial  
26 purposes; and

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

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

8            "(19) Service performed in the employ of an  
9 instrumentality wholly owned by a foreign government if both  
10 of the following apply:

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

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

21            "(20) Except to the extent set forth in subdivision  
22 (a) (3) ~~of subsection (a) of this section~~, service performed in  
23 any calendar quarter in the employ of any organization exempt  
24 from income tax under Section 26 U.S.C. § 501(a) ~~of the~~  
25 ~~Federal Internal Revenue Code~~ (other than organizations  
26 described in Section 26 U.S.C. § 401(a)) or under Section 26

1 U.S.C. § 521 ~~of such Code~~, if the remuneration for such  
2 service is less than fifty dollars (\$50).

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

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

7 "1. A church or convention or association of  
8 churches; ~~or~~.

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

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

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

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

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

26 "(i) As an elected official; ~~or~~.



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

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

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

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

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

1 the laws of the United States, the individual's employment  
2 shall be considered employment under subsection (a) as of the  
3 date of such written election.

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

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

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

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

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

26 "c. The services performed by the individual are  
27 performed pursuant to a written contract between such

1 individual and the person for whom the services are performed  
2 and such contract provides that the individual will not be  
3 treated as an employee with respect to such services for  
4 federal tax purposes.

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

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

11 "1. Buy-sell basis, or

12 "2. Deposit-commission basis, or

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

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

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

26 "d. The services performed by such individual are  
27 performed pursuant to a written contract between such

1 individual and the person for whom the services are performed  
2 and such contract provides that the individual will not be  
3 treated as an employee with respect to such services for  
4 federal tax purposes.

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

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

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

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

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

26 "a. For the purposes of this chapter, "marketplace  
27 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 and must accept service requests  
25 from third-party individuals or entities submitted solely  
26 through the online-enabled application, software, website, or  
27 system of the marketplace platform.

1           "3. The marketplace platform does not prohibit the  
2 marketplace contractor from using any online-enabled  
3 application, software, website, or system offered by another  
4 marketplace platform.

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

8           "5. The marketplace contractor bears all or  
9 substantially all of the expenses incurred by the marketplace  
10 contractor in performing the services.

11           "6. The marketplace platform does not furnish  
12 mandated equipment or tools for the person doing the work.

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

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

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

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

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

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

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

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

23           "(3) The courses of study or training which it  
24 offers may be academic, technical, trade, or preparation for  
25 gainful employment in a recognized occupation, as opposed to  
26 study or training in the social graces or skills or whose

1 primary purpose is to provide baby-sitting or day care  
2 services although some learning activities may be included.

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

8 "(e) "Hospital" means an institution which has been  
9 licensed, certified, or approved by the State Board of Health  
10 or the State Department of Mental Health as a hospital or a  
11 similar institution operated by the state or any of its  
12 political subdivisions or by an instrumentality of either of  
13 the foregoing.

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

27 "§25-5-1.



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

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

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

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

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

25           "(4) EMPLOYER. Every person who employs another to  
26 perform a service for hire and pays wages directly to the  
27 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  
26 including all employees of Tannehill Furnace and Foundry  
27 Commission. Any reference in this chapter to a "worker" or

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

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

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

25 "(8) INJURIES BY AN ACCIDENT ARISING OUT OF AND IN  
26 THE COURSE OF THE EMPLOYMENT. Without otherwise affecting  
27 either the meaning or interpretation of the clause, the clause

1 does not cover workers except while engaged in or about the  
2 premises where their services are being performed or where  
3 their service requires their presence as a part of service at  
4 the time of the accident and during the hours of service as  
5 workers.

6 "(9) INJURY. "Injury and personal injury" shall mean  
7 only injury by accident arising out of and in the course of  
8 the employment, and shall not include a disease in any form,  
9 except for an occupational disease or where it results  
10 naturally and unavoidably from the accident. Injury shall  
11 include physical injury caused either by carpal tunnel  
12 syndrome disorder or by other cumulative trauma disorder if  
13 either disorder arises out of and in the course of the  
14 employment, and breakage or damage to eyeglasses, hearing  
15 aids, dentures, or other prosthetic devices which function as  
16 part of the body, when injury to them is incidental to an  
17 on-the-job injury to the body. Injury does not include an  
18 injury caused by the act of a third person or fellow employee  
19 intended to injure the employee because of reasons personal to  
20 him or her and not directed against him or her as an employee  
21 or because of his or her employment. Injury does not include a  
22 mental disorder or mental injury that has neither been  
23 produced nor been proximately caused by some physical injury  
24 to the body.

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

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

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

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

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

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

25           "(16) PARTICIPATING AND NONPARTICIPATING HOSPITALS.  
26 Those hospitals that have a negotiated rate of reimbursement  
27 or payment with the Department of Labor. "Nonparticipating

1 hospitals" means those hospitals that have not negotiated a  
2 rate of reimbursement or payment with the Department of Labor.

3 "(17) HOSPITAL. A hospital, ambulatory surgical  
4 center, outpatient rehabilitation center licensed by the State  
5 of Alabama, and diagnostic facilities accredited by the  
6 Commission on Accreditation of Rehabilitation Facilities.

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

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

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

25 "(21) ADJUDICATION. The review of claims to apply  
26 prevailing rules that adjust reimbursements for the amount of  
27 work required when multiple procedures are performed at the

1 same time, when assisting surgeons are present, to eliminate  
2 duplicate billing from the unbundling of global fees, and to  
3 adjust for the most commonly occurring method adopted for  
4 total reimbursement.

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

10 Section 2. Section 3 of Act 2021-6, 2021 Regular  
11 Session, now appearing as Section 25-4-121, Code of Alabama  
12 1975, imposing certain requirements on the Department of Labor  
13 during a state of emergency, is repealed.

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