

House Bill 389 (COMMITTEE SUBSTITUTE)

By: Representatives Jones of the 25th, Burchett of the 176th, Holly of the 111th, Gilligan of the 24th, Park of the 101st, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
2 employment security, so as to change the definition of employment to include services
3 performed by an individual for wages unless the Department of Labor makes a contrary
4 determination based upon evidence that such individual has been, and will continue to be,
5 free from control or direction over the performance of such services; to provide
6 considerations as to whether an individual has been, and will continue to be, free from
7 control and direction over the performance of services performed for wages; to provide for
8 the Department of Labor to consider evidence submitted in response to an investigation when
9 making a determination as to whether an employing unit has properly classified an
10 individual's service as employment; to provide for an exception to the definition of
11 employment for certain network companies under certain conditions; to provide for
12 definitions; to provide for civil penalties for improper classifications under certain
13 circumstances; to provide for the deposit and use of any such civil penalties collected; to
14 provide for related matters; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 389 (SUB)

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SECTION 1.

Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment security, is amended in Code Section 34-8-35, relating to the definition of employment applicable to the "Employment Security Law," by revising subsection (f), adding a new paragraph to subsection (n), and adding two new subsections to read as follows:

"(f) ~~Except as otherwise provided in this Code section, services~~ ~~Services~~ performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown that:

(1)(A) Such individual has been, and will continue to be, free from control or direction over the performance of such services, both under the individual's contract of service and in fact, as demonstrated by whether the individual:

(i) Is not prohibited from working for other companies or holding other employment contemporaneously;

(ii) Is free to accept or reject work assignments without consequence;

(iii) Is not prescribed minimum hours to work or, in the case of sales, does not have a minimum number of orders to be obtained;

(iv) Has the discretion to set his or her own work schedule;

(v) Receives only minimal instructions and no direct oversight or supervision regarding the services to be performed, such as the location where the services are to be performed and any requested deadlines;

(vi) When applicable, has no territorial or geographic restrictions; and

(vii) Is not required to perform, behave, or act or, alternatively, is compelled to perform, behave, or act in a manner related to the performance of services for wages which is determined by the Commissioner to demonstrate employment, in accordance with this Code section and such rules and regulations as the Commissioner may prescribe; and

42 (B) Such individual is customarily engaged in an independently established trade,
43 occupation, profession, or business; or

44 (2) Such individual and the services performed for wages are the subject of an SS-8
45 determination by the Internal Revenue Service, which decided against employee status."

46 "(16.1)(A) Services performed by or facilitated through a network company, provided
47 that the network company has a written contract with the individual, with which said
48 network company is in compliance, that expressly states that the network company shall
49 not:

50 (i) Unilaterally prescribe specific dates, times of day, or a minimum number of hours
51 during which an individual is required to be logged into the network company's online
52 enabled application or platform;

53 (ii) Terminate such contract for not accepting, and shall not require an individual to
54 accept, any specific transportation service request or delivery service request for
55 services as a condition of maintaining access to the network company's online enabled
56 application or platform; provided, however, that such network company may require,
57 as part of such contract, a certain percentage of transportation service requests or
58 delivery service requests to be accepted;

59 (iii) Restrict an individual from performing transportation or delivery services
60 through other network companies, except while the individual is performing services
61 through the network company; and

62 (iv) Contractually restrict an individual from working in any other lawful occupation
63 or business.

64 (B) As used in this paragraph, the term:

65 (i) 'Ride share network service' shall have the same meaning as provided in Code
66 Section 40-1-190.

67 (ii) 'Network company' means a ride share network service or a business entity that
68 maintains an online enabled application or platform used to facilitate delivery services
69 in this state."

70 "(o) When determining whether an employing unit has properly classified an individual's
71 service as 'employment' as defined in this Code section, the department shall make a
72 determination demonstrated by evidence timely submitted in response to an investigation
73 conducted by the department. The department shall make such determination based upon
74 the totality of the circumstances as applied to the provisions of this Code section that
75 include and exclude certain services as 'employment.'

76 (p) This Code section shall not apply to Chapter 9 of this title."

77 **SECTION 2.**

78 Said chapter is further amended by adding a new Code section to read as follows:

79 "34-8-257.

80 (a) Notwithstanding any other provision of law and in addition to any other penalties,
81 finances, or offenses prescribed under this chapter, an employing unit that fails to properly
82 classify an individual as required by subsection (f) of Code Section 34-8-35 shall pay to
83 the Commissioner a civil penalty. For employing units with less than 100 employees, as
84 determined by the Commissioner, the civil penalty shall be in an amount not to exceed
85 \$2,500.00 for each individual such employer has not properly classified. For employing
86 units with 100 or more employees, as determined by the Commissioner, the civil penalty
87 shall be in an amount not to exceed \$7,500.00 for each individual such employer has not
88 properly classified. In determining the amount of the civil penalty to be imposed, the
89 Commissioner shall consider such factors as the number of individuals not properly
90 classified and the frequency of improper classifications by such employing unit.

91 (b) The Commissioner shall be authorized to deposit all funds received pursuant to
92 subsection (a) of this Code section into the general fund of the state treasury in compliance

93 with Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act.' It is the intention of the
94 General Assembly, subject to the appropriations process, that an amount equal to the
95 amount deposited into the general fund of the state treasury as provided in this subsection
96 be appropriated each year to the department for the purpose of enforcing subsection (f) of
97 Code Section 34-8-35.

98 (c) The department may assess the employing unit found to be in violation of
99 subsection (f) of Code Section 34-8-35:

100 (1) An amount sufficient to cover the reasonable expense of investigation conducted by
101 the department; and

102 (2) Interest at the rate of 1 percent per month on any delinquent fine or assessment until
103 such fine or assessment has been paid. Such interest shall commence on the day the fine
104 or assessment becomes delinquent.

105 (d) The Commissioner may waive any penalty, fine, or assessment provided for in this
106 Code section."

107 **SECTION 3.**

108 All laws and parts of laws in conflict with this Act are repealed.