SB 363

188685-1

By Senator Orr

RFD: Governmental Affairs

First Read: 06-MAR-18
SYNOPSIS: This bill would authorize marketplace platforms to provide portable benefit plans to certain independent contractors that contract with marketplace platforms.

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

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

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

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

A BILL

TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

c. Liability insurance.

d. Retirement benefits.

e. Life insurance.

f. Vision care.

g. Dental care.

h. Compensation during a period of leave, not to exceed 12 weeks during a 12-month period, because of any of the following:
1. The birth or adoption of a son or daughter.
2. To care for a spouse, son, daughter, or parent.
3. A serious health condition that makes the marketplace contractor unable to work.

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

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

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

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

(6) MARKETPLACE PLATFORM or PLATFORM. A corporation, limited liability company, partnership, sole proprietor, or other entity that meets the following criteria:
   a. Operates a digital website or digital smartphone application that facilitates the provision of services by marketplace contractors to customers seeking such services.
   b. Does not accept service requests by telephone, facsimile, or in person at physical retail locations.
c. Compensates marketplace contractors for each transaction through a contractual relationship between the marketplace contractor and the platform.

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

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

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

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

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

Section 2. (a) A marketplace platform may elect to contribute to a marketplace contractor benefit plan established to provide benefits to marketplace contractors that provide services pursuant to a contract entered into with the marketplace platform. To make an election, a marketplace platform shall provide written notice to the Department of Labor, on a form prescribed by the department, and pay a fee
of five hundred dollars ($500) to the department. Fee proceeds shall be used by the department to fund the administration of this act.

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

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

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

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

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

(3) Except as provided in subsection (c), maintain an account for each participant and deposit into the account the contributions paid by the platform attributable to the participant's aggregate contractor fees for the relevant period, less reasonable administrative costs.
(4) Provide a mechanism for participants to transfer accrued benefits to another marketplace contractor benefit plan established pursuant to this act.

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

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

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

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

(d) A benefit plan may do the following:

(1) Be established or maintained to provide benefits to contractors of multiple participating marketplace platforms.
(2) Include any other provision for the establishment or maintenance of the benefit plan not inconsistent with this act.

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

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

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

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

(e) Under no circumstance shall a marketplace platform be responsible, liable, or subject to suit for any
action or omission of any marketplace contractor or customer of the marketplace platform.

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

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

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

(b) A participating marketplace platform's election to provide education and training as provided in this section may not be considered and is inadmissible for the purpose of determining the independent contractor or employment status of
a marketplace contractor that offers services through the
platform.

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

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