

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 735*

AMENDMENT NO. A3
(to be filled in by
Principal Clerk)

S735-ATM-34 [v.4]

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Amends Title [NO]
Fourth Edition

Date _____, 2018

Representative Saine

1 moves to amend the bill on page 31, lines 10-12, by rewriting the line to read:

2 **"PART VIII. WORKER CLASSIFICATION FOR DIGITAL PLATFORMS**

3 **SECTION 8.(a)** G.S. 95-25.2 reads as rewritten:

4 **"§ 95-25.2. Definitions.**

5 In this Article, unless the context otherwise requires:

6 ...

7 (19) "Marketplace contractor" means a person that enters into an agreement with a
8 marketplace platform to use the platform's online-enabled application,
9 software, Web site, or system to receive service requests from third parties
10 and does not perform any of the service requests at or from a physical business
11 location operated by the marketplace platform.

12 (20) "Marketplace platform" means a person that operates an online-enabled
13 application, software, Web site, or system that facilitates the provision of
14 services by marketplace contractors to individuals or entities seeking such
15 services and accepts service requests from the public only through its
16 online-enabled application, software, Web site, or system."

17 **SECTION 8.(b)** G.S. 95-25.14(a) reads as rewritten:

18 **"§ 95-25.14. Exemptions.**

19 (a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and
20 G.S. 95-25.5 (Youth Employment), and the provisions of G.S. 95-25.15(b) (Record Keeping) as
21 they relate to these exemptions, do not apply to:

22 ...

23 (9) Any marketplace contractor where an employer-employee relationship is
24 deemed not to exist pursuant to G.S. 95-25.24B(a)."

25 **SECTION 8.(c)** Article 2A of Chapter 95 of the General Statutes is amended by
26 adding a new section to read:

27 **"§ 95-25.24B. Marketplace contractor status.**

28 (a) A marketplace contractor shall not be deemed to be an employee of a marketplace
29 platform if the marketplace contractor enters into a written contract with the marketplace
30 platform that provides for all of the following:

31 (1) The marketplace contractor shall be an independent contractor with respect to
32 the marketplace platform.



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(2) The marketplace platform shall not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third-party individuals or entities submitted through the marketplace platform's online-enabled application, software, Web site, or system.

(3) The marketplace platform shall not prohibit the marketplace contractor from using any online-enabled application, software, Web site, or system offered by other marketplace platforms.

(4) The marketplace platform shall not restrict the contractor from engaging in any other occupation or business.

(5) The marketplace contractor shall bear all or substantially all of the contractor's own expenses that are incurred by the contractor in performing the services.

(6) The marketplace platform shall not provide on-site supervision during the performance of the services by the marketplace contractor.

(7) The marketplace contractor shall not require the contractor to use specific materials, supplies, or equipment in performing the services.

(8) The marketplace contractor is obligated to pay federal and State income tax on any moneys earned pursuant to the contract relationship.

(b) Nothing in this section shall be construed to prohibit a marketplace platform from establishing that an employer-employee relationship does not exist with a marketplace contractor pursuant to any other provision of law if the conditions of subsection (a) of this section are not met.

(c) Subsection (a) of this section shall not apply to a marketplace contractor where the services performed by the marketplace contractor are performed at or from a physical business location operated by the marketplace platform or when the services performed consist of transporting freight, sealed and closed envelopes, boxes, parcels, or other sealed and closed containers for compensation.

(d) Nothing in this section shall be construed to affect the assessment, collection, or reporting of sales or income tax from a marketplace contractor or marketplace platform."

SECTION 8.(e) G.S. 97-13 reads as rewritten:

"§ 97-13. Exceptions from provisions of Article.

...

(e) Marketplace Contractors. – This Article shall not apply to marketplace contractors where an employer-employee relationship is deemed not to exist pursuant to G.S. 95-25.24B(a)."

SECTION 8.(f) This section becomes effective July 1, 2018.

PART IX. EFFECTIVE DATE

SECTION 9. Except as otherwise provided, this act is effective when it becomes law."

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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and vote information, is available in the
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