CHAPTER 210

HOUSE BILL 2652

AN ACT

AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; RELATING TO EMPLOYMENT RELATIONSHIPS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 23, Arizona Revised Statutes, is amended by adding chapter 10, to read:

CHAPTER 10
EMPLOYMENT RELATIONSHIPS
ARTICLE 1. GENERAL PROVISIONS

23-1601. Qualified marketplace contractors; definitions

A. A QUALIFIED MARKETPLACE CONTRACTOR SHALL BE TREATED AS AN INDEPENDENT CONTRACTOR FOR ALL PURPOSES UNDER STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES, INCLUDING EMPLOYMENT SECURITY LAWS PRESCRIBED IN CHAPTER 4 OF THIS TITLE AND WORKERS' COMPENSATION LAWS PRESCRIBED IN CHAPTER 6 OF THIS TITLE, IF ALL OF THE FOLLOWING APPLY:

1. ALL OR SUBSTANTIALLY ALL OF THE PAYMENT FOR THE SERVICES PERFORMED BY THE QUALIFIED MARKETPLACE CONTRACTOR IS RELATED TO THE PERFORMANCE OF SERVICES OR OTHER OUTPUT.

2. THE SERVICES PERFORMED BY THE QUALIFIED MARKETPLACE CONTRACTOR ARE GOVERNED BY A WRITTEN CONTRACT EXECUTED BETWEEN THE QUALIFIED MARKETPLACE CONTRACTOR AND A QUALIFIED MARKETPLACE PLATFORM.

3. THE WRITTEN CONTRACT REQUIRED BY PARAGRAPH 2 OF THIS SUBSECTION PROVIDES FOR ALL OF THE FOLLOWING:
   (a) THAT THE QUALIFIED MARKETPLACE CONTRACTOR IS PROVIDING SERVICES AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE.
   (b) THAT, PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION, ALL OR SUBSTANTIALLY ALL OF THE PAYMENT PAID TO THE CONTRACTOR SHALL BE BASED ON THE PERFORMANCE OF SERVICES OR OTHER OUTPUT.
   (c) THAT THE QUALIFIED MARKETPLACE CONTRACTOR IS ALLOWED TO WORK ANY HOURS OR SCHEDULES THE QUALIFIED MARKETPLACE CONTRACTOR CHOOSES. IF THE QUALIFIED MARKETPLACE CONTRACTOR ELECTS TO WORK SPECIFIED HOURS OR SCHEDULES, A CONTRACT MAY REQUIRE THE QUALIFIED MARKETPLACE CONTRACTOR TO PERFORM WORK DURING THE SELECTED HOURS OR SCHEDULES.
   (d) THAT THE QUALIFIED MARKETPLACE CONTRACT DOES NOT RESTRICT THE CONTRACTOR'S ABILITY TO PERFORM SERVICES FOR OTHER PARTIES.
   (e) THAT THE QUALIFIED MARKETPLACE CONTRACTOR BEARS ALL OR SUBSTANTIALLY ALL OF THE QUALIFIED MARKETPLACE CONTRACTOR'S OWN EXPENSES THAT ARE INCURRED BY THE QUALIFIED MARKETPLACE CONTRACTOR IN PERFORMING THE SERVICES.
   (f) THAT THE QUALIFIED MARKETPLACE CONTRACTOR IS RESPONSIBLE FOR THE TAXES ON THE QUALIFIED MARKETPLACE CONTRACTOR'S OWN INCOME.
   (g) THAT THE CONTRACT AND THE ASSOCIATION CREATED BY THE CONTRACT MAY BE TERMINATED WITHOUT CAUSE BY EITHER PARTY TO THE CONTRACT AT ANY TIME ON REASONABLE NOTICE GIVEN TO THE OTHER PARTY.

B. FOR SERVICES PERFORMED BY A QUALIFIED MARKETPLACE CONTRACTOR BEFORE THE EFFECTIVE DATE OF THIS SECTION, THE QUALIFIED MARKETPLACE CONTRACTOR SHALL BE TREATED AS AN INDEPENDENT CONTRACTOR FOR ALL PURPOSES UNDER STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES, INCLUDING EMPLOYMENT SECURITY
LAWS PRESCRIBED IN CHAPTER 4 OF THIS TITLE AND WORKERS' COMPENSATION LAWS
PRESCRIBED IN CHAPTER 6 OF THIS TITLE, IF BOTH OF THE FOLLOWING APPLY:

1. ALL OR SUBSTANTIALLY ALL OF THE PAYMENT FOR THE SERVICES PERFORMED
   BY THE QUALIFIED MARKETPLACE CONTRACTOR IS RELATED TO THE PERFORMANCE OF
   SERVICES OR OTHER OUTPUT.

2. THE SERVICES PERFORMED BY THE QUALIFIED MARKETPLACE CONTRACTOR ARE
   GOVERNED BY A WRITTEN CONTRACT EXECUTED BETWEEN THE QUALIFIED MARKETPLACE
   CONTRACTOR AND A QUALIFIED MARKETPLACE PLATFORM THAT CONFORMS TO THE
   REQUIREMENTS OF SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.

C. COMPLIANCE WITH THIS SECTION IS NOT MANDATORY IN ORDER TO ESTABLISH
   THE EXISTENCE OF AN INDEPENDENT CONTRACTOR RELATIONSHIP. THE EXCLUSION OF
   ANY CONTRACTOR OR DIGITAL PLATFORM FROM THIS SECTION DOES NOT CREATE ANY
   PRESUMPTIONS AND IS NOT ADMISSIBLE TO DENY THE EXISTENCE OF AN INDEPENDENT
   CONTRACTOR RELATIONSHIP.

D. THIS SECTION DOES NOT APPLY TO:

1. SERVICE PERFORMED IN THE EMPLOY OF A STATE, OR ANY POLITICAL
   SUBDIVISION OF THE STATE, OR IN THE EMPLOY OF AN INDIAN TRIBE, OR ANY
   INSTRUMENTALITY OF A STATE, ANY POLITICAL SUBDIVISION OF A STATE OR ANY
   INDIAN TRIBE THAT IS WHOLLY OWNED BY ONE OR MORE STATES OR POLITICAL
   SUBDIVISIONS OR INDIAN TRIBES, PROVIDED THAT SUCH SERVICE IS EXCLUDED FROM
   EMPLOYMENT AS DEFINED IN THE FEDERAL UNEMPLOYMENT TAX ACT (26 UNITED STATES
   CODE SECTIONS 3301 AND 3306(c)(7)).

2. SERVICE PERFORMED IN THE EMPLOY OF A RELIGIOUS, CHARITABLE,
   EDUCATIONAL OR OTHER ORGANIZATION THAT IS EXCLUDED FROM EMPLOYMENT AS DEFINED
   IN THE FEDERAL UNEMPLOYMENT TAX ACT (26 UNITED STATES CODE SECTIONS 3301
   THROUGH 3311), SOLELY BY REASON OF 26 UNITED STATES CODE SECTION 3306(c)(8).

E. FOR THE PURPOSES OF THIS SECTION:

1. "QUALIFIED MARKETPLACE CONTRACTOR" MEANS ANY PERSON OR
   ORGANIZATION, INCLUDING AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY
   COMPANY, PARTNERSHIP, SOLE PROPRIETOR OR OTHER ENTITY, THAT ENTERS INTO AN
   AGREEMENT WITH A QUALIFIED MARKETPLACE PLATFORM TO USE THE QUALIFIED
   MARKETPLACE PLATFORM'S DIGITAL PLATFORM TO PROVIDE SERVICES TO THIRD-PARTY
   INDIVIDUALS OR ENTITIES SEEKING THOSE SERVICES. QUALIFIED MARKETPLACE
   CONTRACTOR DOES NOT INCLUDE ANY CONTRACTOR WHEN THE SERVICES PERFORMED
   CONSIST OF TRANSPORTING FREIGHT, SEALED AND CLOSED ENVELOPES, BOXES OR
   PARCELS OR OTHER SEALED AND CLOSED CONTAINERS FOR COMPENSATION.

2. "QUALIFIED MARKETPLACE PLATFORM" MEANS AN ORGANIZATION, INCLUDING,
   BUT NOT LIMITED TO, A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP,
   SOLE PROPRIETOR OR ANY OTHER ENTITY, THAT BOTH:
   (a) OPERATES A DIGITAL WEBSITE OR DIGITAL SMARTPHONE APPLICATION THAT
       FACILITATES THE PROVISION OF SERVICES BY QUALIFIED MARKETPLACE CONTRACTORS TO
       INDIVIDUALS OR ENTITIES SEEKING SUCH SERVICES.
   (b) ACCEPTS SERVICE REQUESTS FROM THE PUBLIC ONLY THROUGH ITS DIGITAL
       WEBSITE OR DIGITAL SMARTPHONE APPLICATION, AND DOES NOT ACCEPT SERVICE
REQUESTS BY TELEPHONE, BY FACSIMILE OR IN PERSON AT PHYSICAL RETAIL LOCATIONS.

QUALIFIED MARKETPLACE PLATFORM DOES NOT INCLUDE ANY DIGITAL WEBSITE OR SMARTPHONE APPLICATION WHERE THE SERVICES FACILITATED CONSIST OF TRANSPORTING FREIGHT, SEALED AND CLOSED ENVELOPES, BOXES OR PARCELS OR OTHER SEALED AND CLOSED CONTAINERS FOR COMPENSATION.

APPROVED BY THE GOVERNOR MAY 12, 2016.