

# SENATE BILL 777

K2

6lr1964  
CF HB 1334

---

By: **Senators Astle and Hershey**  
Introduced and read first time: February 5, 2016  
Assigned to: Finance

---

Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 18, 2016

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Unemployment Insurance – Exemption From Covered Employment – Messenger**  
3 **Service Business**

4 FOR the purpose of altering the definition of “messenger service business” for purposes of  
5 a certain exemption from covered employment for certain unemployment benefits;  
6 specifying that commission includes certain payment arrangements for purposes of  
7 the exemption; providing for the application of this Act; and generally relating to  
8 messenger service businesses.

9 BY repealing and reenacting, with amendments,  
10 Article – Labor and Employment  
11 Section 8–206(d)  
12 Annotated Code of Maryland  
13 (2008 Replacement Volume and 2015 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
15 That the Laws of Maryland read as follows:

16 **Article – Labor and Employment**

17 8–206.

18 (d) (1) In this subsection, “messenger service business” means a business that:

---

### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (i) principally and primarily offers and provides to the public or  
 2 commercial establishments expedited, time critical, and same day as requested delivery  
 3 service; **AND**

4 (ii) does not make, produce, sell, or distribute what it delivers]; and

5 (iii) does not have an exclusive contractual delivery arrangement  
 6 with an individual or a commercial establishment].

7 (2) Work that a messenger service driver performs for a person who is  
 8 engaged in the messenger service business is not covered employment if the Secretary is  
 9 satisfied that:

10 (i) the driver and the person who is engaged in the messenger  
 11 service business have entered into a written agreement that is currently in effect;

12 (ii) the written agreement under item (i) of this paragraph does not  
 13 prohibit the driver from performing for more than one person who is engaged in the  
 14 messenger service business;

15 (iii) the driver is free to accept or reject delivery jobs from the person  
 16 who is engaged in the messenger service business;

17 (iv) the driver personally provides the vehicle;

18 (v) compensation is by commission only, **WHICH ~~INCLUDES~~, MAY**  
 19 **INCLUDE, FOR THE PURPOSES OF THIS SUBSECTION, ANY ~~ONE~~ OF THE FOLLOWING:**

20 **1. A SCHEDULE OF COMPENSATION THAT IS**  
 21 **CALCULATED FROM A PERCENTAGE OF REVENUE OR SOME OTHER MEASURE OF**  
 22 **REVENUE THAT THE DRIVER GENERATES FOR THE MESSENGER SERVICE BUSINESS;**

23 **2. A FIXED AMOUNT OF COMPENSATION FOR THE**  
 24 **COMPLETION OF A SPECIFIC DELIVERY JOB; AND**

25 **3. A GUARANTEED MINIMUM AMOUNT OF**  
 26 **COMPENSATION FOR THE DRIVER REMAINING AVAILABLE TO PROVIDE DELIVERY**  
 27 **SERVICE;**

28 (vi) the driver may set personal work hours; and

29 (vii) the written agreement states expressly and prominently that the  
 30 driver knows:

31 1. of the responsibility to pay estimated Social Security taxes  
 32 and State and federal income taxes;

1                                   2.     that the Social Security tax the driver must pay is higher  
2 than the Social Security tax the driver would pay otherwise; and

3                                   3.     that the work is not covered employment.

4                   (3)    A messenger service driver for a messenger service business whose  
5 work is not covered employment under paragraph (2) of this subsection may deliver to the  
6 public or commercial establishments on foot, by bicycle, or by motor vehicle:

7                           (i)    individually addressed mail, messages, and documents in paper  
8 or magnetic format; and

9                           (ii)   emergency medical supplies, records, parcels, or similar items if  
10 the messenger service business provides to the Secretary evidence of a worker status  
11 determination from the Internal Revenue Service or other evidence that the messenger  
12 service driver is excluded from coverage under the Federal Unemployment Tax Act.

13                   SECTION 2. AND BE IT FURTHER ENACTED, That § 8-206(d) of the Labor and  
14 Employment Article, as enacted by Section 1 of this Act, shall be construed to apply  
15 retroactively and shall be applied to and interpreted to affect all determinations by the  
16 Secretary of Labor, Licensing, and Regulation of:

17                           (1)   rates of contributions for employing units for all calendar years  
18 beginning on or after January 1, 2013; and

19                           (2)   benefit charges for unemployment insurance claims for benefits based  
20 on work performed on or after January 1, 2013.

21                   SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 July 1, 2016.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
President of the Senate.

\_\_\_\_\_  
Speaker of the House of Delegates.