

CF 7r2331

By: Delegate Donoghue

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Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

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CHAPTER ____

1 AN ACT concerning

2 **Unemployment Insurance - Exemption From Covered Employment - Newspaper**
3 **Distribution**

4 FOR the purpose of establishing that certain work performed under certain
 5 circumstances by direct sellers engaged in the trade or business of delivering or
 6 distributing newspapers or shopping news is not covered employment for purposes
 7 of unemployment insurance; providing for the application of this Act; allowing
 8 certain wages that are paid for work that an individual engaged in the trade or
 9 business of delivering or distributing newspapers or shopping news performed
 10 through a certain date to be used in determining monetary eligibility for
 11 unemployment insurance benefits; and generally relating to direct sellers under the
 12 unemployment insurance law.

13 BY repealing and reenacting, with amendments,
 14 Article - Labor and Employment
 15 Section 8-206
 16 Annotated Code of Maryland
 17 (1991 Volume and 1996 Supplement)

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

20 **Article - Labor and Employment**

21 8-206.

22 (a) Work is not covered employment when performed by a licensed barber or
 23 licensed cosmetologist who leases a chair or booth from a holder of a barbershop permit,

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1 a beauty salon permit, or an owner-manager permit who operates a barbershop or beauty
2 salon, if the Secretary is satisfied that:

3 (1) the barber or cosmetologist as lessee and the permit holder have entered
4 into a written lease that is in effect;

5 (2) the lessee pays a stipulated amount for use of the chair or booth and is
6 not required to make any further accounting of income to the permit holder;

7 (3) the lessee has access to the premises at all hours and may set personal
8 work hours and prices; and

9 (4) the lease expressly states that the lessee knows:

10 (i) of the responsibility to pay State and federal income taxes and
11 make contributions to social security for self-employment; and

12 (ii) that the work is not covered employment.

13 (b) Work that a direct seller performs is not covered employment if the Secretary
14 is satisfied that:

15 (1) the direct seller is engaged in the trade or business of selling consumer
16 products:

17 (i) in the home or at any other location outside of a permanent retail
18 establishment; or

19 (ii) to a buyer on a buy-sell basis, a deposit-commission basis, or any
20 similar basis for resale by the buyer or any other person in the home or at any other
21 location outside of a permanent retail establishment;

22 (2) the direct seller and the person for whom the work is performed have
23 entered into a written agreement that is currently in effect;

24 (3) substantially all of the compensation for the employment is related
25 directly to sales or other output, including the performance of a service, rather than to the
26 number of hours worked; and

27 (4) the written agreement states that the direct seller will not be treated as
28 an employee for the purpose of State and federal income taxes with respect to the
29 employment performed under the agreement.

30 (C) ~~WORK THAT AN INDIVIDUAL ENGAGED IN THE TRADE OR BUSINESS OF~~
31 ~~DELIVERING OR DISTRIBUTING NEWSPAPERS OR SHOPPING NEWS, INCLUDING THE~~
32 ~~PERFORMANCE OF ANY SERVICES DIRECTLY RELATED TO THE DELIVERY OR~~
33 ~~DISTRIBUTION OF NEWSPAPERS OR SHOPPING NEWS, IS NOT COVERED~~
34 ~~EMPLOYMENT IF THE SECRETARY IS SATISFIED THAT THE INDIVIDUAL MEETS THE~~
35 ~~REQUIREMENTS FOR A DIRECT SELLER UNDER PARAGRAPHS (2), (3), AND (4) OF~~
36 ~~SUBSECTION (B) OF THIS SECTION PERFORMS IS NOT COVERED EMPLOYMENT, IF~~
37 THE SECRETARY IS SATISFIED THAT THE INDIVIDUAL:

38 (1) IS ENGAGED IN THE TRADE OR BUSINESS OF DELIVERING OR
39 DISTRIBUTING NEWSPAPERS OR SHOPPING NEWS, INCLUDING ANY SERVICES

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1 DIRECTLY RELATED TO THE DELIVERY OR DISTRIBUTION OF NEWSPAPERS OR
2 SHOPPING NEWS; AND

3 (2) MEETS THE REQUIREMENTS FOR A DIRECT SELLER UNDER
4 SUBSECTION (B)(2), (3), AND (4) OF THIS SECTION.

5 [(c)] (D) Work that a messenger service driver performs for a person who is
6 engaged in the messenger service business is not covered employment if the Secretary is
7 satisfied that:

8 (1) the driver and the person who is engaged in the messenger service
9 business have entered into a written agreement that is currently in effect;

10 (2) the driver personally provides the vehicle;

11 (3) compensation is by commission only;

12 (4) the driver may set personal work hours; and

13 (5) the written agreement states expressly and prominently that the driver
14 knows:

15 (i) of the responsibility to pay estimated social security taxes and State
16 and federal income taxes;

17 (ii) that the social security tax the driver must pay is higher than the
18 social security tax the driver would pay otherwise; and

19 (iii) that the work is not covered employment.

20 [(d)] (E) Work is not covered employment when performed by a taxicab driver
21 who uses a taxicab or taxicab equipment of a taxicab business that is carried on by the
22 holder of a taxicab permit if the Secretary is satisfied that:

23 (1) the driver and permit holder have entered into a written agreement that
24 is currently in effect for the use of the taxicab or taxicab equipment;

25 (2) the driver pays a stipulated amount for the use of the taxicab or taxicab
26 equipment and is not required to make any further accounting to the permit holder;

27 (3) the driver has access to the taxicab or taxicab equipment at all hours
28 and, subject to Article 78 of the Code may set personal work hours and places; and

29 (4) the agreement states expressly that the driver knows:

30 (i) of the responsibility to pay State and federal income taxes; and

31 (ii) that the work is not covered employment.

32 SECTION 2. AND BE IT FURTHER ENACTED, That Section 8-206(c) of the
33 Labor and Employment Article as enacted by this Act shall be construed retroactively and
34 shall be applied to and interpreted to affect all determinations by the Secretary of Labor,
35 Licensing, and Regulation of: (1) rates of contributions for employing units for all
36 calendar years beginning on or after January 1, 1996; and (2) benefit charges for
37 unemployment insurance claims for benefits based on work performed on or after

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1 January 1, 1996. Wages that are paid for work that an individual engaged in the trade or
2 business of delivering or distributing newspapers or shopping news performed through
3 September 30, 1997 which meet the requirements for a direct seller under the Labor and
4 Employment Article may be used in determining monetary eligibility for unemployment
5 insurance benefits.

6 SECTION ~~2~~ 3, AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 1997.