
By: **Senator Middleton**

Introduced and read first time: February 4, 2005

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance - Exemption from Covered Employment - Owner**
3 **Operators of Class F (Tractor) and Class E (Truck) Vehicles**

4 FOR the purpose of clarifying that work performed by certain owner operators of
5 Class F (tractor) and Class E (truck) vehicles is not covered employment for the
6 purposes of unemployment insurance; requiring that certain contributions and
7 benefit charges collected are not subject to refund; providing for the application
8 of this Act; and generally relating to unemployment insurance law.

9 BY repealing and reenacting, with amendments,
10 Article - Labor and Employment
11 Section 8-206
12 Annotated Code of Maryland
13 (1999 Replacement Volume and 2004 Supplement)

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

16 **Article - Labor and Employment**

17 8-206.

18 (a) Work is not covered employment when performed by a licensed barber or
19 licensed cosmetologist who leases a chair or booth from a holder of a barbershop
20 permit, a beauty salon permit, or an owner-manager permit who operates a
21 barbershop or beauty salon, if the Secretary is satisfied that:

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

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

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

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

2 (i) of the responsibility to pay State and federal income taxes and
3 make contributions to Social Security for self-employment; and

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

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

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

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

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

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

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

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

22 (c) Work that an individual performs is not covered employment if the
23 Secretary is satisfied that the individual:

24 (1) is engaged in the trade or business of delivering or distributing
25 newspapers or shopping news, including any services directly related to the delivery
26 or distribution of newspapers or shopping news; and

27 (2) meets the requirements for a direct seller under subsection (b)(2), (3),
28 and (4) of this section.

29 (d) Work that a messenger service driver performs for a person who is engaged
30 in the messenger service business is not covered employment if the Secretary is
31 satisfied that:

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

34 (2) the driver personally provides the vehicle;

35 (3) compensation is by commission only;

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

2 (5) the written agreement states expressly and prominently that the
3 driver knows:

4 (i) of the responsibility to pay estimated Social Security taxes and
5 State and federal income taxes;

6 (ii) that the Social Security tax the driver must pay is higher than
7 the Social Security tax the driver would pay otherwise; and

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

9 (e) Work is not covered employment when performed by a taxicab driver who
10 uses a taxicab or taxicab equipment of a taxicab business that is carried on by the
11 holder of a taxicab permit if the Secretary is satisfied that:

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

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

17 (3) the driver has access to the taxicab or taxicab equipment at all hours
18 and, subject to the Public Utility Companies Article, may set personal work hours and
19 places; and

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

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

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

23 (F) (1) (I) THIS SUBSECTION APPLIES TO AN INDIVIDUAL WHO IS AN
24 OWNER OPERATOR OF:

25 1. A CLASS F (TRACTOR) VEHICLE, DESCRIBED IN § 13-923 OF
26 THE TRANSPORTATION ARTICLE; OR

27 2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
28 PARAGRAPH, A CLASS E (TRUCK) VEHICLE, AS DESCRIBED IN § 13-916 OF THE
29 TRANSPORTATION ARTICLE, INCLUDING A CLASS E (TRUCK) VEHICLE DESCRIBED IN
30 § 13-919 OF THE TRANSPORTATION ARTICLE.

31 (II) THIS SUBSECTION DOES NOT APPLY TO AN INDIVIDUAL WHO IS
32 AN OWNER OPERATOR OF A VEHICLE REGISTERED AS A CLASS T (TOW TRUCK)
33 VEHICLE UNDER § 13-920 OF THE TRANSPORTATION ARTICLE.

34 (2) WORK IS NOT COVERED EMPLOYMENT WHEN PERFORMED BY AN
35 OWNER OPERATOR IF THE SECRETARY IS SATISFIED THAT:

1 (I) THE OWNER OPERATOR AND A MOTOR CARRIER HAVE
2 ENTERED INTO A WRITTEN AGREEMENT THAT IS CURRENTLY IN EFFECT FOR
3 PERMANENT OR TRIP LEASING;

4 (II) UNDER THE AGREEMENT:

5 1. THERE IS NO INTENT TO CREATE AN
6 EMPLOYER-EMPLOYEE RELATIONSHIP; AND

7 2. THE OWNER OPERATOR IS PAID RENTAL COMPENSATION;
8 AND

9 (III) FOR FEDERAL TAX PURPOSES, THE OWNER OPERATOR
10 QUALIFIES AS AN INDEPENDENT CONTRACTOR.

11 SECTION 2. AND BE IT FURTHER ENACTED, That Section 8-206(f) of the
12 Labor and Employment Article, as enacted by Section 1 of this Act, shall be applied to
13 and interpreted to affect all determinations by the Secretary of Labor, Licensing, and
14 Regulation of: (1) rates of contributions for employing units for all calendar years
15 beginning on or after January 1, 2006; and (2) benefit charges for unemployment
16 insurance claims for benefits based on work performed on or after January 1, 2006.
17 Contributions paid or benefits charges collected prior to January 1, 2006, that would
18 be affected by the enactment of Section 1 of this Act, are not subject to refund.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2005.