
By: **Senator Middleton**

Introduced and read first time: February 4, 2005

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER _____

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) the driver personally provides the vehicle;

7 (3) compensation is by commission only;

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

9 (5) the written agreement states expressly and prominently that the
10 driver knows:

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

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

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

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

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

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

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

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

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

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

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

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

1 2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
2 PARAGRAPH, A CLASS E (TRUCK) VEHICLE, AS DESCRIBED IN § 13-916 OF THE
3 TRANSPORTATION ARTICLE, INCLUDING A CLASS E (TRUCK) VEHICLE DESCRIBED IN
4 § 13-919 OF THE TRANSPORTATION ARTICLE.

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

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

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

13 (II) UNDER THE AGREEMENT:

14 1. THERE IS NO INTENT TO CREATE AN
15 EMPLOYER-EMPLOYEE RELATIONSHIP; AND

16 2. THE OWNER OPERATOR IS PAID RENTAL COMPENSATION;
17 ~~AND~~

18 (III) FOR FEDERAL TAX PURPOSES, THE OWNER OPERATOR
19 QUALIFIES AS AN INDEPENDENT CONTRACTOR; ~~AND~~

20 (IV) THE OWNER OPERATOR:

21 1. OWNS THE VEHICLE OR HOLDS IT UNDER A BONA FIDE
22 LEASE ARRANGEMENT;

23 2. IS RESPONSIBLE FOR THE MAINTENANCE OF THE
24 VEHICLE;

25 3. BEARS THE PRINCIPAL BURDEN OF THE OPERATING
26 COSTS OF THE VEHICLE, INCLUDING FUEL, REPAIRS, SUPPLIES, VEHICLE
27 INSURANCE, AND PERSONAL EXPENSES WHILE THE VEHICLE IS ON THE ROAD;

28 4. IS RESPONSIBLE FOR SUPPLYING THE NECESSARY
29 PERSONNEL IN CONNECTION WITH THE OPERATION OF THE VEHICLE; AND

30 5. GENERALLY DETERMINES THE DETAILS AND MEANS OF
31 PERFORMING THE SERVICES UNDER THE AGREEMENT, IN CONFORMANCE WITH
32 REGULATORY REQUIREMENTS, OPERATING PROCEDURES OF THE MOTOR CARRIER,
33 AND SPECIFICATIONS OF THE SHIPPER.

34 SECTION 2. AND BE IT FURTHER ENACTED, That Section 8-206(f) of the
35 Labor and Employment Article, as enacted by Section 1 of this Act, shall be applied to
36 and interpreted to affect all determinations by the Secretary of Labor, Licensing, and

1 Regulation of: (1) rates of contributions for employing units for all calendar years
2 beginning on or after January 1, 2006; and (2) benefit charges for unemployment
3 insurance claims for benefits based on work performed on or after January 1, 2006.
4 Contributions paid or benefits charges collected prior to January 1, 2006, that would
5 be affected by the enactment of Section 1 of this Act, are not subject to refund.

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