

HOUSE BILL 1372

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By: **Delegates Myers, Beitzel, Elliott, Jennings, Kelly, McKee, Shank, Shewell, and Stifler**

Introduced and read first time: February 8, 2008

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance – Exemption from Covered Employment –**
3 **Teachers Providing Music Lessons**

4 FOR the purpose of establishing that certain work performed under certain
5 circumstances by public or private school teachers who provide music lessons at
6 a certain place is not covered employment for purposes of unemployment
7 insurance; providing for the application of this Act; and generally relating to
8 teachers providing music lessons under the 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 2007 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;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

(ii) that the work is not covered employment.

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

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

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

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

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

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

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

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

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

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

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

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

(2) the driver personally provides the vehicle;

(3) compensation is by commission only;

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

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

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

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

(iii) that the work is not covered employment.

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

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

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

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

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

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

(ii) that the work is not covered employment.

(f) (1) (i) This subsection applies to an individual who is an owner operator of:

1 1. a Class F (tractor) vehicle, described in § 13–923 of
2 the Transportation Article; or

3 2. except as provided in subparagraph (ii) of this
4 paragraph, a Class E (truck) vehicle, as described in § 13–916 of the Transportation
5 Article, including a Class E (truck) vehicle described in § 13–919 of the Transportation
6 Article.

7 (ii) This subsection does not apply to an individual who is an
8 owner operator of a vehicle registered as a Class T (tow truck) vehicle under § 13–920
9 of the Transportation Article.

10 (2) Work is not covered employment when performed by an owner
11 operator if the Secretary is satisfied that:

12 (i) the owner operator and a motor carrier have entered into a
13 written agreement that is currently in effect for permanent or trip leasing;

14 (ii) under the agreement:

15 1. there is no intent to create an employer–employee
16 relationship; and

17 2. the owner operator is paid rental compensation;

18 (iii) for federal tax purposes, the owner operator qualifies as an
19 independent contractor; and

20 (iv) the owner operator:

21 1. owns the vehicle or holds it under a bona fide lease
22 arrangement;

23 2. is responsible for the maintenance of the vehicle;

24 3. bears the principal burden of the operating costs of
25 the vehicle, including fuel, repairs, supplies, vehicle insurance, and personal expenses
26 while the vehicle is on the road;

27 4. is responsible for supplying the necessary personnel
28 in connection with the operation of the vehicle; and

29 5. generally determines the details and means of
30 performing the services under the agreement, in conformance with regulatory
31 requirements, operating procedures of the motor carrier, and specifications of the
32 shipper.

1 **(G) (1) THIS SUBSECTION APPLIES TO A TEACHER WHO:**

2 **(I) IS EMPLOYED AS A PUBLIC OR PRIVATE SCHOOL**
3 **TEACHER; AND**

4 **(II) INDEPENDENT FROM THE DUTIES AS A TEACHER,**
5 **PROVIDES MUSIC LESSONS AT A PLACE OF BUSINESS THAT SELLS MUSICAL**
6 **PRODUCTS AND SERVICES.**

7 **(2) WORK IS NOT COVERED EMPLOYMENT WHEN PERFORMED BY**
8 **A TEACHER WHO LEASES SPACE FROM AN OWNER OF A BUSINESS THAT SELLS**
9 **MUSICAL PRODUCTS AND SERVICES IF THE SECRETARY IS SATISFIED THAT:**

10 **(I) THE TEACHER AS LESSEE AND THE OWNER HAVE**
11 **ENTERED INTO A WRITTEN LEASE THAT IS IN EFFECT;**

12 **(II) THE LESSEE PAYS A STIPULATED AMOUNT FOR USE OF**
13 **THE SPACE AND IS NOT REQUIRED TO MAKE ANY FURTHER ACCOUNTING OF**
14 **INCOME TO THE OWNER;**

15 **(III) THE LESSEE HAS ACCESS TO THE PREMISES AT**
16 **REASONABLE HOURS AND MAY SET PERSONAL WORK HOURS AND PRICES; AND**

17 **(IV) THE LEASE EXPRESSLY STATES THAT THE LESSEE**
18 **KNOWS:**

19 **1. OF THE RESPONSIBILITY TO PAY STATE AND**
20 **FEDERAL INCOME TAXES AND MAKE CONTRIBUTIONS TO SOCIAL SECURITY FOR**
21 **SELF-EMPLOYMENT; AND**

22 **2. THAT THE WORK IS NOT COVERED EMPLOYMENT.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That § 8–206(g) of the Labor
24 and Employment Article, as enacted by Section 1 of this Act, shall be construed
25 retroactively and shall be applied to and interpreted to affect all determinations by the
26 Secretary of Labor, Licensing, and Regulation of: (1) rates of contributions for
27 employing units for all calendar years beginning on or after January 1, 2006; and (2)
28 benefit charges for unemployment insurance claims for benefits based on work
29 performed on or after January 1, 2006. Wages that are paid for work that a teacher
30 performed through June 30, 2008, may be used in determining monetary eligibility for
31 unemployment insurance benefits.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 July 1, 2008.