

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 685

(Senator Astle, *et al.*)

Finance

Economic Matters

Unemployment Insurance - Messenger Service Drivers - Delivery

This bill expands the exemption from unemployment insurance (UI) coverage offered to messenger service drivers. Work performed by a messenger service driver for a messenger service business is not covered for purposes of UI if that individual is delivering individually addressed mail, messages, and documents in a paper or magnetic format, to the public or commercial establishments on foot, by bicycle, or by motor vehicle. Additionally, work performed by a messenger service driver for a messenger service business may be exempt from UI coverage if the driver is delivering emergency medical supplies, records, parcels, or similar items as long as the business provides specified information to the Secretary of Labor, Licensing, and Regulation. The bill defines a messenger service business and specifies additional conditions that must be met for work performed by a messenger service driver to be exempt from UI coverage.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: None. The Department of Labor, Licensing, and Regulation (DLLR) can implement the bill with existing budgeted resources.

Unemployment Insurance Trust Fund (UITF): UITF revenues decrease by \$969,800 in FY 2012 as UI taxes are not assessed to employers of messenger service drivers. Future years reflect inflation. UITF expenditures decrease by \$35,100 in FY 2011 for decreased UI benefits payments. Future years reflect increases in average weekly benefit amounts and annualization.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
UITF Revenues	\$0	(\$969,800)	(\$979,500)	(\$989,300)	(\$999,200)
UITF Expenditures	(35,100)	(455,600)	(469,300)	(483,400)	(497,900)
Net Effect	\$35,100	(\$514,200)	(\$510,200)	(\$505,900)	(\$501,300)

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “messenger service business” is defined as a business that principally and primarily offers and provides to the public or commercial establishments expedited, time critical, and same day as requested delivery service. A messenger service business does not make, produce, sell, or distribute what it delivers and does not have an exclusive contractual delivery arrangement with an individual or a commercial establishment. The bill specifies that a written agreement between a messenger service driver and a messenger service business may not prohibit the driver from performing for more than one person who is engaged in the messenger service business and that a driver is free to accept or reject delivery jobs from the messenger service business.

A messenger service driver may deliver certain items specified in the bill as long as the messenger service business provides a determination from the Internal Revenue Service (IRS) or other evidence that the messenger service driver is excluded from coverage under the Federal Unemployment Tax Act (FUTA) to the Secretary of Labor, Licensing, and Regulation.

Current Law: The Code of Maryland Regulations (COMAR 09.32.01.18-1) defines a “messenger service business” as a business that is primarily engaged in the hand delivery of individually addressed mail, messages, or documents, either in paper or magnetic media format, to the public or to industrial or commercial establishments, generally involving travel on foot, by bicycle, or by motor vehicle. The definition established through regulation does not allow for delivery of supplies, records, parcels, or other objects, as defined in the bill.

Work performed by a messenger service driver for a person who is engaged in the messenger service business is not considered covered employment for UI purposes so long as certain conditions are met:

- the driver and the person engaged in the messenger business have entered into a written agreement that is in effect;
- the driver personally provides the vehicle;
- compensation is by commission only;
- the driver may set personal work hours; and

- the written agreement must state that the driver is responsible for all State and federal income taxes and that the work is not covered employment for UI purposes.

“Covered employment” is defined as work performed by an individual for an employing unit. Work performed by an individual that meets the definition of an independent contractor is not considered covered employment for UI purposes.

Independent contractors working under any contract of hire are not covered under UI if three conditions are met. First, the individual who performs the work has to be free from control and direction over his or her performance both in fact and under the contract. Second, the individual customarily has to be engaged in an independent business or occupation of the same nature as that involved in the work. Third, the work has to be outside of the usual course of business of the person for whom the work is performed or performed outside of any place of business of the person for whom the work is performed.

Background: Unemployment benefits are funded through Maryland employers’ State UI taxes. All private business employers and nonprofit employers employing one or more persons, at any time, are subject to the Maryland Unemployment Insurance Law. An employer’s tax rate is based on the employer’s unemployment history and ranges within a certain percentage of the total taxable wages of the employer’s employees. The taxes are deposited in UITF and can be used only to pay benefits to eligible unemployed individuals.

An individual performing services for a business in return for compensation in the form of wages is likely covered for UI purposes. The employer reports the wages to the Division of Unemployment Insurance and pays UI taxes on those wages. If a person is not a covered employee, the person’s wages are not reported, and the employer does not pay UI taxes for those services.

FUTA requires all services performed by employees of state and local governments, certain nonprofit organizations, and federally recognized Indian tribes, to be considered covered employment by state law unless they are specifically exempted by federal law. Most exemptions from covered employment under Maryland law mirror FUTA exemptions. Maryland has enacted State-only exemptions not included in FUTA (e.g., yacht salespersons, Class E and F truck drivers, recreational sports officials, and messenger service drivers), but they do not apply to State and local governments or certain nonprofit organizations. If State law does not cover services performed for State and local governmental entities, federally recommended Indian tribes, and certain nonprofit organizations, as required by FUTA, the result is the loss of certification for all employers in the State.

The U.S. Bureau of Labor and Statistics indicates couriers and messenger drivers held approximately 122,400 jobs across the United States in 2008. Approximately 17% worked in health care, 12% worked in the local messengers and local delivery industry; 12% were employed by couriers and express delivery services; and 9% worked in legal services. About 19% of couriers and messengers were self-employed independent contractors; they provide their own vehicles and, to a certain extent, set their own schedules. However, they are like employees in some respects, because they often contract with one company.

Unemployment Insurance Trust Fund Effect:

Trust Fund Revenues

In general, UITF revenues decrease for each employee exempted from UI coverage as employers no longer make UI contributions for exempt employees. UITF revenues also decrease from a reduction in employer charge-backs, which an employer would be charged to repay a portion of UI benefits paid to former employees.

Businesses that meet the definition of a messenger service business under the bill include couriers and express delivery services, and local messengers and local delivery, as classified by North American Industry Classification System (NAICS). DLLR advises that the NAICS classification used by large delivery services was not included in this estimate because employees of these businesses do not fit the proposed exemption under their current structure.

Based on employer filings for the past three years, DLLR estimates approximately 1,630 workers that are clearly classified as couriers and express delivery services and local messengers and local delivery through NAICS. The taxable wage base of employers that will no longer be subject to UI taxes is estimated to be \$13.9 million. Based on an average tax rate of 7.0%, exempting delivery messenger drivers will reduce employer contributions and thus decrease UITF revenues by \$969,837 in fiscal 2012. UITF revenues decrease by \$979,535 in fiscal 2013, reflecting 1% inflation in employer charge-backs.

Under the bill, in order for a messenger service driver delivering specified items to be exempt from UI coverage the messenger service business must receive determination from the IRS that its drivers are excluded from coverage under FUTA. This determination is made based on 20 factors used to determine if the employer-employee relationship exists. Based on these factors, messenger service drivers exempt from UI coverage under State law would almost certainly be determined by the IRS to be excluded from FUTA. Therefore, the above estimate assumes all messenger service drivers identified through NAICS classification would be exempt from UI under the bill.

Trust Fund Expenditures

Based on UI claims data for the past three years, DLLR estimates UI benefits paid to employees that will qualify as messenger service drivers average \$442,376 annually. Since workers who are exempt from UI coverage will no longer be eligible to receive UI benefits, UITF expenditures decrease by \$35,148 in fiscal 2011, taking into account the June 1, 2011 effective date of the bill. Expenditures decrease by \$455,647 in fiscal 2012, a full year of implementation. This estimate assumes the average weekly benefit amount increases by 3% each year.

Small Business Effect: For employers with employees that are exempt from UI coverage under State law, State UI tax liability will decrease; however, as these services are not exempt under federal law, federal unemployment tax liabilities will increase. If an employer has paid all State taxes due on services, then the employer is allowed a federal unemployment tax credit under which the employer pays 0.8% of the first \$7,000 in wages of each employee or \$56 per employee per year. If State UI taxes are not paid on these employees, then the tax credits are not allowed and the employer must pay the full federal tax of 6.2% or \$434 per employee per year.

Additional Information

Prior Introductions: House Bill 1341 of 2010, a similar bill, was withdrawn after a hearing in the House Economic Matters Committee.

Cross File: HB 589 (Delegate Davis, *et al.*) - Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; U.S. Bureau of Labor and Statistics; Department of Legislative Services

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