

Chapter 697

(Senate Bill 777)

AN ACT concerning

**Unemployment Insurance – Exemption From Covered Employment – Messenger Service Business**

FOR the purpose of altering the definition of “messenger service business” for purposes of a certain exemption from covered employment for certain unemployment benefits; specifying that commission includes certain payment arrangements for purposes of the exemption; providing for the application of this Act; and generally relating to messenger service businesses.

BY repealing and reenacting, with amendments,  
Article – Labor and Employment  
Section 8–206(d)  
Annotated Code of Maryland  
(2008 Replacement Volume and 2015 Supplement)

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

**Article – Labor and Employment**

8–206.

(d) (1) In this subsection, “messenger service business” means a business that:

(i) principally and primarily offers and provides to the public or commercial establishments expedited, time critical, and same day as requested delivery service; **AND**

(ii) does not make, produce, sell, or distribute what it delivers[]; and

(iii) does not have an exclusive contractual delivery arrangement with an individual or a commercial establishment].

(2) 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:

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

(ii) the written agreement under item (i) of this paragraph does not prohibit the driver from performing for more than one person who is engaged in the messenger service business;

(iii) the driver is free to accept or reject delivery jobs from the person who is engaged in the messenger service business;

(iv) the driver personally provides the vehicle;

(v) compensation is by commission only, **WHICH ~~INCLUDES~~, MAY INCLUDE, FOR THE PURPOSES OF THIS SUBSECTION, ANY ~~ONE~~ OF THE FOLLOWING:**

**1. A SCHEDULE OF COMPENSATION THAT IS CALCULATED FROM A PERCENTAGE OF REVENUE OR SOME OTHER MEASURE OF REVENUE THAT THE DRIVER GENERATES FOR THE MESSENGER SERVICE BUSINESS;**

**2. A FIXED AMOUNT OF COMPENSATION FOR THE COMPLETION OF A SPECIFIC DELIVERY JOB; AND**

**3. A GUARANTEED MINIMUM AMOUNT OF COMPENSATION FOR THE DRIVER REMAINING AVAILABLE TO PROVIDE DELIVERY SERVICE;**

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

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

1. of the responsibility to pay estimated Social Security taxes and State and federal income taxes;

2. that the Social Security tax the driver must pay is higher than the Social Security tax the driver would pay otherwise; and

3. that the work is not covered employment.

(3) A messenger service driver for a messenger service business whose work is not covered employment under paragraph (2) of this subsection may deliver to the public or commercial establishments on foot, by bicycle, or by motor vehicle:

(i) individually addressed mail, messages, and documents in paper or magnetic format; and

(ii) emergency medical supplies, records, parcels, or similar items if the messenger service business provides to the Secretary evidence of a worker status

determination from the Internal Revenue Service or other evidence that the messenger service driver is excluded from coverage under the Federal Unemployment Tax Act.

SECTION 2. AND BE IT FURTHER ENACTED, That § 8-206(d) of the Labor and Employment Article, as enacted by Section 1 of this Act, shall be construed to apply retroactively and shall be applied to and interpreted to affect all determinations by the Secretary of Labor, Licensing, and Regulation of:

(1) rates of contributions for employing units for all calendar years beginning on or after January 1, 2013; and

(2) benefit charges for unemployment insurance claims for benefits based on work performed on or after January 1, 2013.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2016.

**Enacted under Article II, § 17(c) of the Maryland Constitution, May 28, 2016.**