

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader - Revised

House Bill 700
 Economic Matters

(Delegate Davis, *et al.*)

Unemployment Insurance - Exemption From Covered Employment - Nail Technicians

This bill specifies that work is not covered employment when performed by a holder of a limited license to provide nail technician services who leases or otherwise agrees to the use of a chair, booth, or space from a holder of an applicable permit who operates a barbershop or beauty salon under specified conditions.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Unemployment Insurance Trust Fund (UITF) Effect: UITF revenues decrease by \$397,500 in FY 2017 and by approximately \$530,100 annually thereafter from reduced employer taxes, as discussed below. UITF expenditures decrease by \$2.0 million in FY 2017 and by \$2.6 million annually thereafter from reduced benefits paid, as discussed below.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
UITF Rev.	(\$397,500)	(\$530,100)	(\$530,100)	(\$530,100)	(\$530,100)
UITF Exp.	(\$1,957,700)	(\$2,610,300)	(\$2,610,300)	(\$2,610,300)	(\$2,610,300)
Net Effect	\$1,560,200	\$2,080,300	\$2,080,300	\$2,080,300	\$2,080,300

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful, as discussed below.

Analysis

Bill Summary: Work is not covered employment when performed by a holder of a limited license to provide nail technician services who leases or otherwise agrees to the use of a chair, booth, or space from a holder of a barbershop permit, a beauty salon permit, or an owner-manager permit who operates a barbershop or beauty salon if the Secretary of Labor, Licensing, and Regulation is satisfied that:

- the holder of a limited license to provide nail technician services and the permit holder have entered into a written lease or other written agreement that is in effect;
- the holder of a limited license to provide nail technician services (1) pays a stipulated amount or commission for use of the chair, booth, or space; (2) is not required to make any further accounting of income to the permit holder; and (3) has access to the premises at all hours and may set personal work hours and prices; and
- the lease or other written agreement expressly states that the holder of a limited license to provide nail technician services knows of the responsibility to pay State and federal income taxes and make contributions to Social Security for self-employment and that the work is not covered employment.

Current Law/Background: Unemployment insurance (UI) provides temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Both the federal and state governments have responsibilities for UI programs. Funding for the program is provided by employers through UI taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their UI trust funds. Using federal tax revenues, the UI program is administered pursuant to state law by state employees. Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

States must be in conformity with certain provisions of the Federal Unemployment Tax Act (FUTA) in order to receive administrative funding for their state UI programs and for the states' employers to receive federal UI tax credits. The Maryland UI program is 100% federally funded. Employers' FUTA taxes are 6.0% of each employee's first \$7,000 in wages (\$420 annually per employee); however, employers typically receive a credit for most of that amount (5.4%), making the effective tax rate 0.6% (which translates into \$42 annually per employee).

Covered Employment

Employment is presumed to be covered employment if:

- regardless of whether the employment is based on the common law relation of master and servant, the employment is performed for wages or under a contract of hire that is written or oral or express or implied; and
- the employment is performed either in the State or partly in the State, or in connection with the State, subject to specified conditions.

To overcome the presumption of employment, an employer must establish that the person performing services is either an independent contractor or is specifically exempted under the law.

Independent Contractors

Work that an individual performs under any contract of hire is not covered employment if the Secretary is satisfied that:

- the individual who performs the work is free from control and direction over its performance both in fact and under the contract;
- the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and
- the work is (1) outside of the usual course of business of the person for whom the work is performed or (2) performed outside of any place of business of the person for whom the work is performed.

Specific Exemptions from Covered Employment

There are several exemptions in State law for certain types of employment. For example, work is not covered employment when performed by a licensed barber or licensed cosmetologist who leases a chair or booth from a holder of a barbershop permit, a beauty salon permit, or an owner-manager permit who operates a barbershop or beauty salon, if the Secretary is satisfied that:

- the barber or cosmetologist as lessee and the permit holder have entered into a written lease that is in effect;
- 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;
- the lessee has access to the premises at all hours and may set personal work hours and prices; and

- the lease expressly states that the lessee knows of the responsibility to pay State and federal income taxes and make contributions to Social Security for self-employment and that the work is not covered employment.

There are other exemptions for specific individuals and circumstances, including newspaper delivery, messenger services, taxicab drivers, and referees.

There are also federal exemptions for certain types of employment under FUTA. The federal exemptions are included in the State UI law. If a certain type of employment is exempt under State UI law but not federal UI law, an employer is subject to the loss of federal UI tax credits.

Nail Technicians

Generally, a person may not practice, attempt to practice, or offer to practice cosmetology in the State unless licensed by the State Board of Cosmetologists in the Department of Labor, Licensing, and Regulation (DLLR). Licensed cosmetologists can provide hair, esthetic, and nail technician services. However, an individual can provide nail technician services under a limited license that restricts the scope of practice to solely nail services. DLLR advises that there are approximately 7,300 nail technician licensees.

UITF Effect:

UITF Revenues

In general, UITF revenues decrease for each employee exempted from UI coverage as employers no longer make UI contributions for exempt employees. Based on employer filings for the past three years, DLLR estimates the taxable wage base of employers of nail technicians to be \$53.0 million. Based on an average State UI tax rate of 1.0% for the industry, exempting nail technicians reduces employer contributions and, thus, decreases UITF revenues by \$397,545 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. UITF revenues decrease by approximately \$530,100 annually thereafter. This estimate assumes 6,236 nail technicians are actively working in the State and are currently eligible for UI benefits – the actual amount may vary from this estimate.

UITF Expenditures

Based on UI claims data for the past three years, DLLR estimates UI benefits paid to nail technicians average \$2.6 million annually. Since workers who are exempt from UI coverage are no longer eligible to receive UI benefits, UITF expenditures decrease by \$2.0 million in fiscal 2017, taking into account the October 1, 2016 effective date of the

bill. Expenditures decrease by \$2.6 million annually thereafter. This estimate is based on the following:

- 10% of working nail technicians file for UI benefits annually;
- the average weekly benefit amount is \$249 and remains constant; and
- each benefit recipient receives on average 17 weeks of unemployment benefits.

As noted above, the actual amount may vary from this estimate.

Small Business Effect: If a certain type of employment is exempt under State UI law but not federal UI law, an employer is subject to the loss of federal UI tax credits. Employers' FUTA taxes are 6.0% of each employee's first \$7,000 in wages (\$420 annually per employee). Employers typically receive a credit for most of that amount (5.4%), making the effective tax rate 0.6% (which translates into \$42 annually per employee). If the bill causes any Maryland employer to be in conflict with federal UI law, that employer's FUTA tax increases due to the loss of the federal credit, which may partially or wholly offset any savings from the exemption. As the bill establishes, but does not require, a process to exempt certain work performed by nail technicians from covered employment, it is assumed that individual nail salon owners choose the most beneficial option for their individual circumstances.

Additional Information

Prior Introductions: None.

Cross File: SB 679 (Senator Astle, *et al.*) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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