

HOUSE BILL No. 6011

July 22, 1992, Introduced by Rep. Nye and referred to the Committee on Labor.

A bill to amend section 43 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," as amended by Act No. 70 of the Public Acts of 1986, being section 421.43 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 43 of Act No. 1 of the Public Acts of
2 the Extra Session of 1936, as amended by Act No. 70 of the Public
3 Acts of 1986, being section 421.43 of the Michigan Compiled Laws,
4 is amended to read as follows:

5 Sec. 43. Except as otherwise provided in section 42(6), the
6 term "employment" ~~shall~~ DOES not include:

7 (a) Before January 1, 1980, agricultural service performed
8 by an individual who is an alien admitted to the United States to
9 perform that service pursuant to sections 214(c) and

1 101(a)(15)(H) of the immigration and nationality act,
2 8 U.S.C. 1184 and 8 U.S.C. 1101.

3 (b) Service performed in the employ of another state or ANY
4 OF its political subdivisions, or of an instrumentality of
5 another state or ANY OF its political subdivisions, except as
6 otherwise provided in section 42(9); and service performed in the
7 employ of the United States government or an instrumentality of
8 the United States exempt under the constitution of the United
9 States from the contributions imposed by this act. However, to
10 the extent that the congress of the United States permits states
11 to require instrumentalities of the United States to make pay-
12 ments into an unemployment fund under a state unemployment com-
13 pensation law, this act ~~shall apply~~ APPLIES to the instrumen-
14 talities ~~—~~ and to services performed for the instrumentalities
15 ~~—~~ in the same manner, to the same extent, and on the same terms
16 as to all other employers, employing units, individuals, and
17 services. If this state is not certified for any year by the
18 appropriate agency of the United States under section 3304(c) of
19 the FEDERAL UNEMPLOYMENT TAX ACT, CHAPTER 23 OF THE internal rev-
20 enue code OF 1986, 26 U.S.C. 3304, the payments required of the
21 instrumentalities with respect to the year shall be refunded by
22 the commission from the fund in the same manner and within the
23 same period as provided in section 16 with respect to contribu-
24 tions erroneously collected.

25 (c) Service with respect to which unemployment compensation
26 is payable under an unemployment compensation system established
27 by an act of congress. However, the commission shall enter into

1 agreements with the proper agencies under the act of congress,
2 which agreements shall ~~become effective~~ TAKE EFFECT 10 days
3 after publication of the agreements in the manner provided in
4 section 4 for regulations ~~—~~ to provide reciprocal treatment to
5 individuals who have, after acquiring potential rights to bene-
6 fits under this act, acquired rights to unemployment compensation
7 under the act of congress, or who have, after acquiring potential
8 rights to unemployment compensation under the act of congress,
9 acquired rights to benefits under this act.

10 (d) "Agricultural labor" which ~~shall comprise~~ IS COMPRISED
11 OF all service performed:

12 (1) On a farm, in the employ of any person, in connection
13 with cultivating the soil, or in connection with raising or har-
14 vesting an agricultural or horticultural commodity, including the
15 raising, shearing, feeding, caring for, training, and management
16 of livestock, bees, poultry, and fur-bearing animals and
17 wildlife.

18 (2) In the employ of the owner or tenant or another operator
19 of a farm in connection with the operation, management, conserva-
20 tion, improvement, or maintenance of a farm and its tools and
21 equipment, or in salvaging timber or clearing land of brush and
22 other debris left by a hurricane, if the major part of the serv-
23 ice is performed on a farm.

24 (3) In connection with the production or harvesting of a
25 commodity defined as an agricultural commodity in section 15(g)
26 of the agricultural marketing act, CHAPTER 24, 46 STAT. 11,
27 12 U.S.C. 1141j, ~~or~~ in connection with the ginning of cotton,

1 or the operation or maintenance of ditches, canals, reservoirs,
2 or waterways not owned or operated for profit, used exclusively
3 for supplying and storing water for farming purposes.

4 (4) In the employ of the operator of a farm in handling,
5 planting, drying, packing, packaging, processing, freezing, grad-
6 ing, storing, or delivering to storage, ~~or~~ to market, or to a
7 carrier for transportation to market, in its unmanufactured
8 state, an agricultural or horticultural commodity, if the opera-
9 tor produced more than 1/2 of the commodity with respect to which
10 the service is performed.

11 (5) In the employ of a group of operators of farms or a
12 cooperative organization of which the operators are members, in
13 the performance of service described in subparagraph (4), but
14 only if the operators produced more than 1/2 of the commodity
15 with respect to which the services are performed.

16 (6) On a farm operated for profit if the service is not in
17 the course of the employer's trade or business.

18 (7) Subparagraphs (4) and (5) ~~shall~~ DO not apply with
19 respect to service performed in connection with commercial can-
20 ning or commercial freezing or in connection with an agricultural
21 or horticultural commodity after its delivery to a terminal
22 market for distribution for consumption.

23 As used in this subdivision, ~~the term~~ "farm" includes
24 stock, dairy, poultry, fruit, fur-bearing animals, truck farms,
25 plantations, ranches, nurseries, ranges, and greenhouses, or
26 other similar structures used primarily for the raising of
27 agricultural or horticultural commodities.

1 Agricultural labor ~~performed after December 31, 1977 shall~~
2 ~~not be~~ IS NOT excluded from the term employment when the labor
3 is performed for an employer as defined in section 41(5).

4 (e) Domestic service in a private home, local college club,
5 or local chapter of a college fraternity or sorority not operated
6 for profit.

7 Domestic service ~~performed after December 31, 1977 shall~~
8 ~~not be~~ IS NOT excluded from the term employment when performed
9 for an employer as defined in section 41(6).

10 (f) Service as an officer or member of a crew of an American
11 vessel performed on or in connection with the vessel, except a
12 vessel of less than 200 horsepower, if the operating office from
13 which the operations of the vessel operating on navigable waters
14 within or without the United States are ordinarily and regularly
15 supervised, managed, directed, and controlled ~~—~~ is without this
16 state; and service performed by an individual in or as an officer
17 or member of the crew of a vessel while it is engaged in the
18 catching, taking, or harvesting of any kind of fish including
19 service performed by an individual as an ordinary incident to
20 ~~such an~~ THAT activity, except service performed on or in con-
21 nection with a vessel of more than 10 net tons determined in the
22 manner provided for determining the register tonnage of merchant
23 vessels under the laws of the United States.

24 (g) Service performed by an individual in the employ of the
25 individual's son, daughter, or spouse, and service performed by a
26 child ~~under the age of~~ LESS THAN 18 YEARS OF AGE in the employ
27 of the child's parent.

1 (h) Service performed by real estate salespersons, sales
2 representatives of investment companies, and agents or solicitors
3 of insurance companies who are compensated principally or wholly
4 on a commission basis.

5 (i) Service performed within this state by an individual who
6 is not a citizen of the United States or service performed within
7 this state for an employer other than an American employer as
8 defined in section 42(12)(d), if the service is incidental to the
9 individual's service in a foreign country in which the base of
10 operation is maintained or from which the service is directed or
11 controlled.

12 (j) Service covered by an arrangement between the commission
13 and the agency charged with the administration of another state
14 or federal unemployment compensation law pursuant to which all
15 service performed by an individual for an employing unit during
16 the period covered by the employing unit's ~~July~~ approved
17 election. Service described in this subdivision is considered to
18 be performed entirely within the agency's state or under federal
19 law.

20 (k) Service performed by an individual in a calendar quarter
21 in the employ of an organization exempt from income tax under
22 section 501(a) of the internal revenue code OF 1986, 26
23 U.S.C. 501, other than an organization described in
24 section 401(a) of the internal revenue code OF 1986, 26
25 U.S.C. 401 or under section 521 of the internal revenue code OF
26 1986, 26 U.S.C. 521, if the remuneration earned is less than
27 \$50.00.

1 (l) Service performed in the employ of a school, college, or
2 university, AS APPLICABLE, if the service is performed:

3 (i) By a person who is primarily a student at the school,
4 college, or university. For the purpose of this subdivision, a
5 person is considered to be "primarily a student" if the individ-
6 ual is enrolled in an institution, is pursuing a course of study
7 for academic credit, and while ~~thus~~ enrolled normally works 30
8 hours or less per week for the institution.

9 (ii) By a spouse of a student, if given written notice at
10 the start of the service that the employment is under a program
11 to provide financial assistance to the student ~~—~~ and that the
12 employment will not be covered by a program of unemployment
13 compensation.

14 (iii) BY A PERSON AS AN ATHLETIC COACH UNDER CONTRACT WITH A
15 K TO 12 SCHOOL DISTRICT.

16 (m) Service performed by an individual less than 22 years of
17 age who is enrolled ~~—~~ at a nonprofit or public educational
18 institution ~~which~~ THAT normally maintains a regular faculty and
19 curriculum and normally has a regularly organized body of stu-
20 dents in attendance at the place where its educational activities
21 are carried on, as a student in a full-time program, taken for
22 credit at the institution, which combines academic instruction
23 with work experience, if the service is an integral part of the
24 program ~~—~~ and the institution has certified that fact to the
25 employer. This subdivision ~~shall~~ DOES not apply to service
26 performed in a program established for or on behalf of an
27 employer or group of employers.

1 (n) Service performed in the employ of a hospital, if the
2 service is performed by a patient of the hospital ~~—~~ as defined
3 in section 53(1).

4 (o) For ~~the~~ purposes of section 42(8), (9), and (10), ~~the~~
5 ~~term~~ "employment" does not apply to service performed in any of
6 the following situations:

7 (1) In the employ of ~~(i)~~ a church or A convention or asso-
8 ciation of churches ~~—~~ or ~~(ii)~~ an organization ~~which~~ THAT is
9 operated primarily for religious purposes and ~~which~~ THAT is
10 operated, supervised, controlled, or principally supported by a
11 church or A convention or association of churches.

12 (2) By ~~a duly~~ AN ordained, commissioned, or licensed min-
13 ister of a church in the exercise of the ministry or by a member
14 of a religious order in the exercise of duties required by the
15 order.

16 (3) Before January 1, 1978, in the employ of a school
17 ~~which~~ THAT is not an institution of higher education and which
18 service is also excluded from the term "employment" as defined in
19 section 3306(c)(8) of the FEDERAL UNEMPLOYMENT TAX ACT, CHAPTER
20 23 OF THE internal revenue code OF 1986, 26 U.S.C. 3306. After
21 December 31, 1977, in the employ of a governmental entity as
22 defined in section 50a, if the service is performed by an indi-
23 vidual in any of the following capacities:

24 (i) As an elected official.

25 (ii) As a member of a legislative body ~~—~~ or ~~as a member~~
26 of the judiciary.

1 (iii) As a military employee of the state national guard or
2 air national guard.

3 (iv) As an employee serving on a temporary basis in case of
4 fire, storm, snow, earthquake, flood, or similar emergency.

5 (v) In a position which, under or pursuant to the laws of
6 this state, is designated as ~~(i)~~ a major nontenured policymak-
7 ing or advisory position, or ~~(ii)~~ a policymaking or advisory
8 position, the performance of the duties of which ordinarily does
9 not require more than 8 hours per week.

10 (4) By an individual receiving rehabilitation or remunera-
11 tive work in a facility conducted for the purpose of carrying out
12 a program of ~~—(i)~~ rehabilitation for individuals whose earn-
13 ing capacity is impaired by age, physical or mental deficiency,
14 or injury, ~~—~~ or ~~(ii)~~ OF providing remunerative work for indi-
15 viduals who because of their impaired physical or mental capacity
16 cannot be readily absorbed in the competitive labor market.

17 (5) As part of an unemployment work-relief or work-training
18 program assisted or financed, in whole or in part, by a federal
19 agency or an agency of a state or political subdivision of a
20 state by an individual receiving the work relief or work
21 training.

22 (6) By an inmate of a custodial or penal institution.

23 (7) By an individual hired by a state department or recipi-
24 ent governmental entity through a summer youth employment program
25 established pursuant to the Michigan youth corps act, ACT NO. 69
26 OF THE PUBLIC ACTS OF 1983, BEING SECTIONS 409.221 TO 409.229 OF
27 THE MICHIGAN COMPILED LAWS, or an individual hired by a state

1 department through a summer youth employment program administered
2 by the department of natural resources or the department of
3 transportation.

4 (p) Service performed by an individual ~~under the age of~~
5 LESS THAN 18 YEARS OF AGE in the delivery or distribution of
6 newspapers or shopping news, not including delivery or distribu-
7 tion to a point for subsequent delivery or distribution.

8 (q) Service performed for an employing unit other than a
9 governmental entity or nonprofit organization and which is any of
10 the following:

11 (1) Service performed by an individual while the individual
12 was a minor student regularly attending either a public or a pri-
13 vate school below the college level and the individual's employ-
14 ment during the week was ANY OF THE FOLLOWING:

15 (i) ~~less~~ LESS than the scheduled hours the individual
16 would have worked in the department or establishment in which the
17 employment occurred if the individual were not a student. ~~or~~

18 (ii) ~~within~~ WITHIN the customary vacation days or vacation
19 periods of the school following which the individual actually
20 returns to school. ~~or~~

21 (iii) ~~with~~ WITH an employer as a formal and accredited
22 part of the regular curriculum of the individual's school.

23 (2) Service performed by a college student of any age, but
24 only when the student's employment is a formal and accredited
25 part of the regular curriculum of the school.

1 (3) Service performed by an individual as a member of a band
2 or orchestra, but only when the service does not represent the
3 principal occupation of the individual.

4 (r) Service performed by a home improvement and remodeling
5 salesperson ~~providing that~~ IF THE salesperson meets the cri-
6 teria established in section 3508 of the internal revenue code OF
7 1986, 26 U.S.C. 3508, and if any provision of this ~~subsection~~
8 SUBDIVISION prevents the state from qualifying for any federal
9 interest relief provisions provided under section 1202 of TITLE
10 XII OF the social security act, CHAPTER 531, 49 STAT. 620, 42
11 U.S.C. 1322, or prevents employers in this state from qualifying
12 for the limitation on the reduction of federal unemployment tax
13 act credits as provided under section 3302(f) of the federal
14 unemployment tax act, CHAPTER 23 OF THE INTERNAL REVENUE CODE OF
15 1986, 26 U.S.C. ~~3302(f), such~~ 3302. THE provision ~~shall be~~ IS
16 invalid to the extent necessary to maintain qualification for
17 ~~such~~ THE interest relief provisions and federal unemployment
18 tax credits.