

# SENATE BILL No. 796

March 12, 1992, Introduced by Senators DI NELLO, DUNASKISS, KOIVISTO, BARCIA and PRIDNIA and referred to the Committee State Affairs and Military/Veteran Affairs.

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 (i) ~~—(1)—~~ On a farm, in the employ of any person, in connec-  
13 tion with cultivating the soil, or in connection with raising or  
14 harvesting an agricultural or horticultural commodity, including  
15 the raising, shearing, feeding, caring for, training, and manage-  
16 ment of livestock, bees, poultry, and fur-bearing animals and  
17 wildlife.

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

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

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

5 (iv) ~~-(4)-~~ In the employ of the operator of a farm in han-  
6 dling, planting, drying, packing, packaging, processing, freez-  
7 ing, grading, storing, or delivering to storage, ~~or~~ to market,  
8 or to a carrier for transportation to market, in its unmanufac-  
9 tured state, an agricultural or horticultural commodity, if the  
10 operator produced more than 1/2 of the commodity with respect to  
11 which the service is performed.

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

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

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

24 As used in this subdivision, ~~the term~~ "farm" includes  
25 stock, dairy, poultry, fruit, fur-bearing animals, truck farms,  
26 plantations, ranches, nurseries, ranges, and greenhouses, or

1 other similar structures used primarily for the raising of  
2 agricultural or horticultural commodities.

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

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

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

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

26       (g) Service performed by an individual in the employ of the  
27 individual's son, daughter, or spouse, and service performed by a

1 child ~~under the age of~~ LESS THAN 18 YEARS OF AGE in the employ  
2 of the child's parent.

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

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

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

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

1 1986, 26 U.S.C. 521, if the remuneration earned is less than  
2 \$50.00.

3 (1) Service performed in the employ of a school, college, or  
4 university, if the service is performed:

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

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

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

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

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

24 (A) ~~(i)~~ As an elected official.

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



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

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

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

11 (iv) ~~-(4)-~~ By an individual receiving rehabilitation or  
12 remunerative work in a facility conducted for the purpose of car-  
13 rying out a program of ~~-(i)-~~ rehabilitation for individuals  
14 whose earning capacity is impaired by age, physical or mental  
15 deficiency, or injury, ~~+~~ or ~~-(ii)-~~ OF providing remunerative  
16 work for individuals who because of their impaired physical or  
17 mental capacity cannot be readily absorbed in the competitive  
18 labor market.

19 (v) ~~-(5)-~~ As part of an unemployment work-relief or  
20 work-training program assisted or financed, in whole or in part,  
21 by a federal agency or an agency of a state or political subdivi-  
22 sion of a state by an individual receiving the work relief or  
23 work training.

24 (vi) ~~-(6)-~~ By an inmate of a custodial or penal  
25 institution.

26 (vii) ~~-(7)-~~ By an individual hired by a state department or  
27 recipient governmental entity through a summer youth employment

1 program established pursuant to the Michigan youth corps act, ACT  
2 NO. 69 OF THE PUBLIC ACTS OF 1983, BEING SECTIONS 409.221 TO  
3 409.229 OF THE MICHIGAN COMPILED LAWS, or an individual hired by  
4 a state department through a summer youth employment program  
5 administered by the department of natural resources or the  
6 department of transportation.

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

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

14 (i) ~~(1)~~ Service performed by an individual while the indi-  
15 vidual was a minor student regularly attending either a public or  
16 a private school below the college level and the individual's  
17 employment during the week was ANY OF THE FOLLOWING:

18 (A) ~~(i) less~~ LESS than the scheduled hours the individual  
19 would have worked in the department or establishment in which the  
20 employment occurred if the individual were not a student. ~~per~~

21 (B) ~~(ii) within~~ WITHIN the customary vacation days or  
22 vacation periods of the school following which the individual  
23 actually returns to school. ~~per~~

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

1       (ii) ~~-(2)-~~ Service performed by a college student of any  
 2 age, but only when the student's employment is a formal and  
 3 accredited part of the regular curriculum of the school.

4       (iii) ~~-(3)-~~ Service performed by an individual as a member  
 5 of a band or orchestra, but only when the service does not repre-  
 6 sent the principal occupation of the individual.

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

22       (s) SERVICE PERFORMED BY AN INDIVIDUAL AS A PRODUCT DEMON-  
 23 STRATOR OR PRODUCT MERCHANDISER IF THE SERVICE IS PERFORMED UNDER  
 24 A WRITTEN CONTRACT BETWEEN THE INDIVIDUAL AND A PERSON WHOSE  
 25 PRINCIPAL BUSINESS IS PROVIDING DEMONSTRATORS OR MERCHANDISERS,  
 26 OR BOTH, FOR THIRD PARTIES FOR PRODUCT DEMONSTRATION OR  
 27 MERCHANDISING PURPOSES AND THE CONTRACT PROVIDES THAT THE

1 INDIVIDUAL WILL NOT BE TREATED AS AN EMPLOYEE WITH RESPECT TO  
2 THOSE SERVICES. IN ADDITION, FOR PURPOSES OF THIS SUBDIVISION, A  
3 PERSON WHOSE PRINCIPAL BUSINESS IS PROVIDING PRODUCT DEMONSTRA-  
4 TIONS OR PRODUCT MERCHANDISERS, OR BOTH, FOR THIRD PARTIES FOR  
5 PRODUCT DEMONSTRATION OR MERCHANDISING PURPOSES SHALL NOT HAVE AN  
6 EXCLUSIVE CONTRACT WITH A RETAILER. ANY REASONABLE PROOF OF PAR-  
7 TICIPATION IN AN EXCLUSIVE CONTRACT SHALL BE CONSIDERED PERSUA-  
8 SIVE EVIDENCE THAT AN EMPLOYMENT RELATIONSHIP EXISTS, UNLESS SUB-  
9 STANTIAL EVIDENCE TO THE CONTRARY IS INTRODUCED BY OR ON BEHALF  
10 OF THE RETAILER. EACH INDIVIDUAL AND THE COMMISSION SHALL THEN  
11 CONSIDER THE RETAILER AS THE EMPLOYING UNIT FOR ALL PURPOSES OF  
12 THIS ACT. AS USED IN THIS SUBDIVISION:

13 (i) "EXCLUSIVE CONTRACT" MEANS A CONTRACT, EXPRESS OR  
14 IMPLIED, ENTERED INTO BETWEEN A RETAILER AND A PRODUCT DEMONSTRA-  
15 TOR OR PRODUCT MERCHANDISER WHICH, WHEN OTHER SIMILAR COMPETITIVE  
16 SERVICES ARE AVAILABLE, DOES BOTH OF THE FOLLOWING:

17 (A) GRANTS THE PRODUCT DEMONSTRATOR OR PRODUCT MERCHANDISER  
18 SOLE RESPONSIBILITY FOR PRODUCT DEMONSTRATION OR MERCHANDISING,  
19 AS APPROPRIATE.

20 (B) REQUIRES A THIRD PARTY, ACTUALLY OR CONSTRUCTIVELY, TO  
21 UTILIZE THE EXCLUSIVE SERVICES OF THE PRODUCT DEMONSTRATOR OR  
22 PRODUCT MERCHANDISER TO ACCESS THE RETAILER.

23 (ii) "PRODUCT DEMONSTRATOR" MEANS AN INDIVIDUAL WHO, ON A  
24 TEMPORARY, PART-TIME BASIS, DEMONSTRATES OR GIVES AWAY SAMPLES OF  
25 A FOOD OR OTHER PRODUCT AS PART OF AN ADVERTISING OR SALES PROMO-  
26 TION FOR THE PRODUCT IN A RETAIL STORE AND WHO IS NOT OTHERWISE  
27 DIRECTLY EMPLOYED BY THE MANUFACTURER, DISTRIBUTOR, OR RETAILER.

1       (iii) "PRODUCT MERCHANDISER" MEANS AN INDIVIDUAL WHO, ON A  
2 TEMPORARY, PART-TIME BASIS, BUILDS OR RESETS A PRODUCT DISPLAY IN  
3 A RETAIL STORE AND WHO IS NOT OTHERWISE DIRECTLY EMPLOYED BY THE  
4 MANUFACTURER, DISTRIBUTOR, OR RETAILER.

5       (iv) "THIRD PARTY" MEANS A MANUFACTURER OR BROKER.