



# HOUSE BILL No. 5046

September 14, 1995, Introduced by Rep. McBryde and referred to the Committee on Human Resources and 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. 25 of the Public Acts of 1995, 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. 25 of the Public  
3 Acts of 1995, 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 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 its  
4 political subdivisions, or of an instrumentality of another state  
5 or its political subdivisions, except as otherwise provided in  
6 section 42(9); and service performed in the employ of the United  
7 States government or an instrumentality of the United States  
8 exempt under the constitution of the United States from the con-  
9 tributions imposed by this act. However, to the extent that the  
10 congress of the United States permits states to require instru-  
11 mentalities of the United States to make payments into an unem-  
12 ployment fund under a state unemployment compensation law, this  
13 act shall apply to the instrumentalities, and to services per-  
14 formed for the instrumentalities, in the same manner, to the same  
15 extent, and on the same terms as to all other employers, employ-  
16 ing units, individuals, and services. If this state is not cer-  
17 tified for any year by the appropriate agency of the United  
18 States under section 3304(c) of the internal revenue code, the  
19 payments required of the instrumentalities with respect to the  
20 year shall be refunded by the commission from the fund in the  
21 same manner and within the same period as provided in section 16  
22 with respect to contributions erroneously collected.

23 (c) Service with respect to which unemployment compensation  
24 is payable under an unemployment compensation system established  
25 by an act of congress. However, the commission shall enter into  
26 agreements with the proper agencies under the act of congress,  
27 which agreements shall become effective 10 days after publication

1 of the agreements in the manner provided in section 4 for  
2 regulations, to provide reciprocal treatment to individuals who  
3 have, after acquiring potential rights to benefits under this  
4 act, acquired rights to unemployment compensation under the act  
5 of congress, or who have, after acquiring potential rights to  
6 unemployment compensation under the act of congress, acquired  
7 rights to benefits under this act.

8 (d) "Agricultural labor" which shall comprise all service  
9 performed:

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

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

22 (3) In connection with the production or harvesting of a  
23 commodity defined as an agricultural commodity in section 15(g)  
24 of the agricultural marketing act, 12 U.S.C. 1141j, or in connec-  
25 tion with the ginning of cotton, or the operation or maintenance  
26 of ditches, canals, reservoirs, or waterways not owned or

1 operated for profit, used exclusively for supplying and storing  
2 water for farming purposes.

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

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

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

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

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

1 Agricultural labor performed after December 31, 1977 shall  
2 not be excluded from the term employment when the labor is  
3 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 not  
8 be excluded from the term employment when performed for an  
9 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 activity, except service performed on or in connection  
21 with a vessel of more than 10 net tons determined in the manner  
22 provided for determining the register tonnage of merchant vessels  
23 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 18 in the employ 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 duly 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 other than an organi-  
23 zation described in section 401(a) of the internal revenue code,  
24 or under section 521 of the internal revenue code, if the remu-  
25 neration earned is less than \$50.00.

26 (l) Service performed in the employ of a school, college, or  
27 university, if the service is performed:

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

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

12          (m) Service performed by an individual less than 22 years of  
13 age who is enrolled, at a nonprofit or public educational insti-  
14 tution which normally maintains a regular faculty and curriculum  
15 and normally has a regularly organized body of students in  
16 attendance at the place where its educational activities are car-  
17 ried on, as a student in a full-time program, taken for credit at  
18 the institution, which combines academic instruction with work  
19 experience, if the service is an integral part of the program,  
20 and the institution has certified that fact to the employer.  
21 This subdivision shall not apply to service performed in a pro-  
22 gram established for or on behalf of an employer or group of  
23 employers.

24          (n) Service performed in the employ of a hospital, if the  
25 service is performed by a patient of the hospital, as defined in  
26 section 53(1).

1 (c) For the purposes of section 42(8), (9), and (10), the  
2 term "employment" does not apply to service performed in any of  
3 the following situations:

4 (1) In the employ of (i) a church or convention or associa-  
5 tion of churches; or (ii) an organization which is operated pri-  
6 marily for religious purposes and which is operated, supervised,  
7 controlled, or principally supported by a church or convention or  
8 association of churches.

9 (2) By a duly ordained, commissioned, or licensed minister  
10 of a church in the exercise of the ministry or by a member of a  
11 religious order in the exercise of duties required by the order.

12 (3) Before January 1, 1978, in the employ of a school which  
13 is not an institution of higher education and which service is  
14 also excluded from the term "employment" as defined in  
15 section 3306(c)(8) of the internal revenue code. After  
16 December 31, 1977, in the employ of a governmental entity as  
17 defined in section 50a, if the service is performed by an indi-  
18 vidual in any of the following capacities:

19 (i) As an elected official.

20 (ii) As a member of a legislative body, or as a member of  
21 the judiciary.

22 (iii) As a military employee of the state national guard or  
23 air national guard.

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

26 (v) In a position which, under or pursuant to the laws of  
27 this state, is designated as (i) a major nontenured policymaking

1 or advisory position, or (ii) a policymaking or advisory  
2 position, the performance of the duties of which ordinarily does  
3 not require more than 8 hours per week.

4 (4) By an individual receiving rehabilitation or remunera-  
5 tive work in a facility conducted for the purpose of carrying out  
6 a program of: (i) rehabilitation for individuals whose earning  
7 capacity is impaired by age, physical or mental deficiency, or  
8 injury; or (ii) providing remunerative work for individuals who  
9 because of their impaired physical or mental capacity cannot be  
10 readily absorbed in the competitive labor market.

11 (5) As part of an unemployment work-relief or work-training  
12 program assisted or financed in whole or in part by a federal  
13 agency or an agency of a state or political subdivision of a  
14 state by an individual receiving the work relief or work  
15 training.

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

17 (7) By an individual hired by a state department or recipi-  
18 ent governmental entity through a summer youth employment program  
19 established pursuant to the Michigan youth corps act, or an indi-  
20 vidual hired by a state department through a summer youth employ-  
21 ment program administered by the department of natural resources  
22 or the department of transportation.

23 (p) Service performed by an individual ~~under the age of 18~~  
24 in the delivery or distribution of newspapers or shopping news,  
25 not including delivery or distribution to a point for subsequent  
26 delivery or distribution.

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

4 (1) Service performed by an individual while the individual  
5 was a minor student regularly attending either a public or a pri-  
6 vate school below the college level and the individual's employ-  
7 ment during the week was: (i) less than the scheduled hours the  
8 individual would have worked in the department or establishment  
9 in which the employment occurred if the individual were not a  
10 student; or (ii) within the customary vacation days or vacation  
11 periods of the school following which the individual actually  
12 returns to school; or (iii) with an employer as a formal and  
13 accredited part of the regular curriculum of the individual's  
14 school.

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

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

21 (r)(1) Services performed as a direct seller, if the person  
22 (A) is engaged in the trade or business of selling, or soliciting  
23 the sale of, consumer products or services to any buyer on a  
24 buy-sell basis, a deposit-commission basis, or any similar basis  
25 that the commission or the U.S. department of labor designates by  
26 rule or regulation, for resale, by the buyer or any other person,  
27 in the home or otherwise than in a permanent retail

1 establishment, or (B) is engaged in the trade or business of  
2 selling, or soliciting the sale of, consumer products or services  
3 in the home or otherwise than in a permanent retail  
4 establishment.

5 (2) The exclusion of services provided by this subsection  
6 applies only if (i) substantially all the remuneration, whether  
7 or not paid in cash, for the performance of the services  
8 described in this subsection, is directly related to sales or  
9 other output, including the performance of services, rather than  
10 to the number of hours worked, and (ii) the services are per-  
11 formed pursuant to a written contract which provides that the  
12 person performing the services will not be treated as an employee  
13 with respect to those services for federal tax purposes.