

November 9, 2000, Introduced by Reps. Vear, Ehardt and Mortimer and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 43 (MCL 421.43), as amended by 1996 PA 145.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 43. Except as otherwise provided in section 42(6), the
2 term "employment" does not include ANY OF THE FOLLOWING:

3 (a) ~~Before January 1, 1980, agricultural~~ AGRICULTURAL
4 service performed by an individual who is an alien admitted to
5 the United States to perform that service pursuant to
6 sections 214(c) and 101(a)(15)(H) of the immigration and nation-
7 ality act, 8 U.S.C. 1184 and 8 U.S.C. 1101.

8 (b) Service performed in the employ of another state or its
9 political subdivisions, or of an instrumentality of another state
10 or its political subdivisions, except as otherwise provided in
11 section 42(9); and service performed in the employ of the United

1 States government or an instrumentality of the United States
2 exempt under the constitution of the United States from the con-
3 tributions imposed by this act. However, to the extent that the
4 congress of the United States permits states to require instru-
5 mentalities of the United States to make payments into an unem-
6 ployment fund under a state unemployment compensation law, this
7 act applies to the instrumentalities and to services performed
8 for the instrumentalities in the same manner, to the same extent,
9 and on the same terms as to all other employers, employing units,
10 individuals, and services. If this state is not certified for
11 any year by the appropriate agency of the United States under
12 section 3304(c) of the federal unemployment tax ~~tax~~ ACT, chap-
13 ter 23 of SUBTITLE C OF the internal revenue code of 1986, ~~26~~
14 ~~U.S.C. 3304~~, the payments required of the instrumentalities with
15 respect to the year shall be refunded by the commission from the
16 fund in the same manner and within the same period as provided in
17 section 16 with respect to contributions erroneously collected.

18 (c) Service with respect to which unemployment compensation
19 is payable under an unemployment compensation system established
20 by an act of congress. However, the commission shall enter into
21 agreements with the proper agencies under the act of congress,
22 which agreements take effect 10 days after publication of the
23 agreements in the manner provided in section 4 for regulations to
24 provide reciprocal treatment to individuals who have, after
25 acquiring potential rights to benefits under this act, acquired
26 rights to unemployment compensation under the act of congress, or
27 who have, after acquiring potential rights to unemployment

1 compensation under the act of congress, acquired rights to
2 benefits under this act.

3 (d) ~~"Agricultural labor" which is comprised of all service~~
4 ~~performed~~ AGRICULTURAL LABOR. AS USED IN THIS SUBDIVISION,
5 "AGRICULTURAL LABOR" INCLUDES ALL OF THE FOLLOWING:

6 (i) ~~On~~ SERVICE PERFORMED ON a farm, in the employ of any
7 person, in connection with cultivating the soil, or in connection
8 with raising or harvesting an agricultural or horticultural com-
9 modity, including the raising, shearing, feeding, caring for,
10 training, and management of livestock, bees, poultry, and
11 fur-bearing animals and wildlife.

12 (ii) ~~In~~ SERVICE PERFORMED IN the employ of the owner, ~~or~~
13 tenant, or ~~another~~ OTHER operator of a farm in connection with
14 the operation, management, conservation, improvement, or mainte-
15 nance of a farm and its tools and equipment, or in salvaging
16 timber or clearing land of brush and other debris left by a hur-
17 ricane, if the major part of the service is performed on a farm.

18 (iii) ~~In~~ SERVICE PERFORMED IN connection with the produc-
19 tion or harvesting of a commodity defined as an agricultural com-
20 modity in section 15(g) of the agricultural marketing act,
21 chapter 24, 46 Stat. 18, 12 U.S.C. 1141j, in connection with the
22 ginning of cotton, or the operation or maintenance of ditches,
23 canals, reservoirs, or waterways not owned or operated for
24 profit, used exclusively for supplying and storing water for
25 farming purposes.

26 (iv) ~~In~~ SERVICE PERFORMED IN the employ of the operator of
27 a farm in handling, planting, drying, packing, packaging,

1 processing, freezing, grading, storing, or delivering to storage,
2 to market, or to a carrier for transportation to market, in its
3 unmanufactured state, an agricultural or horticultural commodity,
4 if the operator produced more than 1/2 of the commodity ~~with~~
5 ~~respect to~~ FOR which the service is performed.

6 (v) ~~In~~ SERVICE PERFORMED IN the employ of a group of oper-
7 ators of farms or a cooperative organization of which the opera-
8 tors are members, in the performance of service described in
9 subparagraph (iv), but only if the operators produced more than
10 1/2 of the commodity ~~with respect to~~ FOR which the services are
11 performed.

12 (vi) ~~On~~ SERVICE PERFORMED ON a farm operated for profit if
13 the service is not in the course of the employer's trade or
14 business.

15 (vii) Subparagraphs (iv) and (v) do not apply ~~with respect~~
16 to service performed in connection with commercial canning or
17 commercial freezing or in connection with an agricultural or
18 horticultural commodity after its delivery to a terminal market
19 for distribution for consumption.

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

25 (ix) Agricultural labor is not excluded from the term
26 employment ~~when~~ IF the labor is performed for an employer as
27 defined in section 41(5).

1 (e) Domestic service in a private home, local college club,
2 or local chapter of a college fraternity or sorority not operated
3 for profit.

4 Domestic service is not excluded from the term "employment"
5 ~~when~~ IF performed for an employer as defined in section 41(6).

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

20 (g) Service performed by an individual in the employ of the
21 individual's son, daughter, or spouse, and service performed by a
22 child less than 18 years of age in the employ of the child's
23 parent.

24 (h) Service performed by real estate salespersons, sales
25 representatives of investment companies, and agents or solicitors
26 of insurance companies who are compensated principally or wholly
27 on a commission basis.

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

8 (j) Service covered by an arrangement between the commission
9 and the agency charged with the administration of another state
10 or federal unemployment compensation law pursuant to which all
11 service performed by an individual for an employing unit during
12 the period covered by the employing unit's approved election.
13 Service described in this subdivision is considered to be per-
14 formed entirely within the agency's state or under federal law.

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

23 (l) Service performed in the employ of a school, college, or
24 university, if the service is performed BY ANY OF THE FOLLOWING:

25 (i) By a person who is primarily a student at the school,
26 college, or university. For the purpose of this ~~subdivision~~
27 SUBPARAGRAPH, a person is considered to be "primarily a student"

1 if the individual is enrolled in an institution, is pursuing a
2 course of study for academic credit, and while enrolled normally
3 works 30 hours or less per week for the institution.

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

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

21 (n) Service performed in the employ of a hospital, if the
22 service is performed by a patient of the hospital as defined in
23 section 53(1).

24 (o) For purposes of section 42(8), (9), and (10),
25 "employment" does not apply to service performed in any of the
26 following situations:

1 (i) In the employ of a church or a convention or association
2 of churches or an organization that is operated primarily for
3 religious purposes and that is operated, supervised, controlled,
4 or principally supported by a church or a convention or associa-
5 tion of churches.

6 (ii) By an ordained, commissioned, or licensed minister of a
7 church in the exercise of the ministry or by a member of a reli-
8 gious order in the exercise of duties required by the order.

9 (iii) Before January 1, 1978, in the employ of a school that
10 is not an institution of higher education and which service is
11 also excluded from the term "employment" as defined in
12 section 3306(c)(8) of the federal unemployment tax act,
13 chapter 23 of the internal revenue code of 1986. —, 26
14 U.S.C. 3306. After December 31, 1977, in the employ of a govern-
15 mental entity as defined in section 50a, if the service is per-
16 formed by an individual in any of the following capacities:

17 (A) As an elected official.

18 (B) As a member of a legislative body or of the judiciary.

19 (C) As a military employee of the state national guard or
20 air national guard.

21 (D) As an employee serving on a temporary basis in case of
22 fire, storm, snow, earthquake, flood, or similar emergency.

23 (E) In a position ~~which~~ THAT, under or pursuant to the
24 laws of this state, is designated as a major nontenured policy-
25 making or advisory position, or a policymaking or advisory posi-
26 tion, the performance of the duties of which ordinarily does not
27 require more than 8 hours per week.

1 (iv) By an individual receiving rehabilitation or
2 remunerative work in a facility conducted for the purpose of car-
3 rying out a program of rehabilitation for individuals whose earn-
4 ing capacity is impaired by age, physical or mental deficiency,
5 or injury, or of providing remunerative work for individuals who
6 because of their impaired physical or mental capacity cannot be
7 readily absorbed in the competitive labor market.

8 (v) As part of an unemployment work-relief or work-training
9 program assisted or financed in whole or in part by a federal
10 agency or an agency of a state or political subdivision of a
11 state by an individual receiving the work relief or work
12 training.

13 (vi) By an inmate of a custodial or penal institution.

14 (vii) By an individual hired by a state department or recip-
15 ient governmental entity through a summer youth employment pro-
16 gram established pursuant to the Michigan youth corps act, ~~Act~~
17 ~~No. 69 of the Public Acts of 1983, being sections 409.221 to~~
18 ~~409.229 of the Michigan Compiled Laws~~ 1983 PA 69, MCL 409.221 TO
19 409.229, or an individual hired by a state department through a
20 summer youth employment program administered by the department of
21 natural resources or the department of transportation.

22 (p) Service performed by an individual less than 18 years of
23 age in the delivery or distribution of newspapers or shopping
24 news, not including delivery or distribution to a point for sub-
25 sequent delivery or distribution.

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

4 (i) 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 any of the following:

8 (A) Less than the scheduled hours the individual would have
9 worked in the department or establishment in which the employment
10 occurred if the individual were not a student.

11 (B) Within the customary vacation days or vacation periods
12 of the school, following which the individual actually returns to
13 school.

14 (C) With an employer as a formal and accredited part of the
15 regular curriculum of the individual's school.

16 (ii) Service performed by a college student of any age, but
17 only ~~when~~ IF the student's employment is a formal and accredi-
18 ted part of the regular curriculum of the school.

19 (iii) Service performed by an individual as a member of a
20 band or orchestra, but only ~~when~~ IF the service does not repre-
21 sent the principal occupation of the individual.

22 (R) ~~(r)(1) Services~~ SUBJECT TO SUBDIVISION (S), SERVICES
23 performed as a direct seller, if the person is engaged in either
24 of the following:

25 (i) ~~(A)~~ The trade or business of selling, or soliciting
26 the sale of, consumer products or services to any buyer on a
27 buy-sell basis, a deposit-commission basis, or any similar basis

1 that the commission or the U.S. department of labor designates by
2 rule or regulation, for resale ~~—~~ by the buyer or any other
3 person ~~—~~ in the home or otherwise than in a permanent retail
4 establishment.

5 (ii) ~~—(B)—~~ The trade or business of selling, or soliciting
6 the sale of, consumer products or services in the home or other-
7 wise than in a permanent retail establishment.

8 (S) ~~—(2)—~~ The exclusion of services under ~~this subsection~~
9 SUBDIVISION (R) applies only if both of the following are met:

10 (i) ~~—(A)—~~ Substantially all the cash or other remuneration,
11 for the performance of the services described in ~~this~~
12 ~~subsection~~ SUBDIVISION (R) is directly related to sales or other
13 output, including the performance of services, rather than to the
14 number of hours worked.

15 (ii) ~~—(B)—~~ The services are performed pursuant to a written
16 contract ~~which~~ THAT provides that the person performing the
17 services will not be treated as an employee with respect to those
18 services for federal tax purposes.

19 (T) ~~—(s)—~~ Service performed by an individual as a product
20 demonstrator or product merchandiser if the service is performed
21 under a written contract between the individual and a person
22 whose principal business is obtaining the services of product
23 demonstrators and product merchandisers for third parties for
24 product demonstration and product merchandising purposes, and
25 both in contract and in fact, the individual MEETS ALL OF THE
26 FOLLOWING CONDITIONS:

1 (i) Is not treated as an employee with respect to those
2 services for federal unemployment tax purposes.

3 (ii) Is compensated for each job, or the compensation is
4 based on factors that relate to the work performed.

5 (iii) Determines the method of performing the service.

6 (iv) Provides the equipment used to perform the service.

7 (v) Is responsible for the completion of a specific job and
8 is liable for any failure to complete the job.

9 (vi) Pays all expenses, and the opportunity for profit or
10 loss rests solely with the individual.

11 (vii) Is responsible for operating costs, fuel, repairs,
12 supplies, and motor vehicle insurance.

13 (viii) As used in this subdivision:

14 (A) ~~-(viii)-~~ "Product demonstrator" means an individual who,
15 on a temporary, part-time basis, demonstrates or gives away sam-
16 ples of a food or other product as part of an advertising or
17 sales promotion for the product and who is not otherwise directly
18 employed by the manufacturer, distributor, or retailer.

19 (B) ~~-(ix)-~~ "Product merchandiser" means an individual who,
20 on a temporary, part-time basis, builds or resets a product dis-
21 play and who is not otherwise directly employed by the manufac-
22 turer, distributor, or retailer.

23 (C) ~~-(x)-~~ "Third party" means a manufacturer or broker.