

Act No. 243  
Public Acts of 2004  
Approved by the Governor  
July 22, 2004  
Filed with the Secretary of State  
July 23, 2004  
EFFECTIVE DATE: July 23, 2004

**STATE OF MICHIGAN  
92ND LEGISLATURE  
REGULAR SESSION OF 2004**

**Introduced by Reps. Caswell, Brandenburg, Palmer, Drolet, Milosch, Nitz, Garfield, Bradstreet, Emmons, LaJoy, Taub, Tabor, Wenke, Stakoe, Casperson, Voorhees, Kooiman, Meyer, Caul, Pappageorge, Hummel, Mortimer and Sheen**

# **ENROLLED HOUSE BILL No. 5598**

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending section 43 (MCL 421.43), as amended by 2000 PA 490.

*The People of the State of Michigan enact:*

Sec. 43. Except as otherwise provided in section 42(6), the term "employment" does not include any of the following:

(a) Agricultural service performed by an individual who is an alien admitted to the United States to perform that service according to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act, 8 USC 1184 and 8 USC 1101.

(b) Service performed in the employ of another state or its political subdivisions, or of an instrumentality of another state or its political subdivisions, except as otherwise provided in section 42(9); and service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act. However, to the extent that the congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, this act applies to the instrumentalities and to services performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the appropriate agency of the United States under section 3304(c) of the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, 26 USC 3304, the payments required of the instrumentalities with respect to the year shall be refunded by the

commission from the fund in the same manner and within the same period as provided in section 16 with respect to contributions erroneously collected.

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

(d) Agricultural labor. As used in this subdivision, "agricultural labor" includes all of the following:

(i) Service performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(ii) Service performed in the employ of the owner, tenant, or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm.

(iii) Service performed in connection with the production or harvesting of a commodity defined as an agricultural commodity in section 15(g) of the agricultural marketing act, 12 USC 1141j, in connection with the ginning of cotton, or the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(iv) Service performed in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market, or to a carrier for transportation to market, in its unmanufactured state, an agricultural or horticultural commodity, if the operator produced more than 1/2 of the commodity for which the service is performed.

(v) Service performed in the employ of a group of operators of farms or a cooperative organization of which the operators are members, in the performance of service described in subparagraph (iv), but only if the operators produced more than 1/2 of the commodity for which the services are performed.

(vi) Service performed on a farm operated for profit if the service is not in the course of the employer's trade or business.

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

(viii) As used in this subdivision, "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, nurseries, ranges, and greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(ix) Agricultural labor is not excluded from the term employment if the labor is performed for an employer as defined in section 41(5).

(e) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority not operated for profit. Domestic service is not excluded from the term "employment" if performed for an employer as defined in section 41(6).

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

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

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

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

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

(k) Service performed by an individual in a calendar quarter in the employ of an organization exempt from income tax under section 501(a) of the internal revenue code of 1986, 26 USC 501, other than an organization described in section 401(a) of the internal revenue code of 1986, 26 USC 401, or under section 521 of the internal revenue code of 1986, 26 USC 521, if the remuneration earned is less than \$50.00.

(l) Service performed in the employ of a school, college, or university, if the service is performed by any of the following:

(i) By a person who is primarily a student at the school, college, or university. For the purpose of this subparagraph, a person is considered to be "primarily a student" if the individual is enrolled in an institution, is pursuing a course of study for academic credit, and while enrolled normally works 30 hours or less per week for the institution.

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

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

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

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

(i) In the employ of a church or a convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.

(ii) By an ordained, commissioned, or licensed minister of a church in the exercise of the ministry or by a member of a religious order in the exercise of duties required by the order.

(iii) Before January 1, 1978, in the employ of a school that is not an institution of higher education and which service is also excluded from the term "employment" as defined in section 3306(c)(8) of the federal unemployment tax act, chapter 23 of the internal revenue code of 1986, 26 USC 3306. After December 31, 1977, in the employ of a governmental entity as defined in section 50a, if the service is performed by an individual in any of the following capacities:

(A) As an elected official.

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

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

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

(E) In a position that, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than 8 hours per week.

(iv) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or of providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market.

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

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

(vii) By an individual hired by a state department or recipient governmental entity through a summer youth employment program established under the Michigan youth corps act, 1983 PA 69, MCL 409.221 to 409.229, or an individual hired by a state department through a summer youth employment program administered by the department of natural resources or the department of transportation.

(p) Service performed by an individual less than 18 years of age in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to a point for subsequent delivery or distribution.

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

(i) Service performed by an individual while the individual was a minor student regularly attending either a public or a private school below the college level and the individual's employment during the week was any of the following:

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

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

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

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

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

(r) Subject to subdivision (s), services performed as a direct seller, if the person is engaged in either of the following:

(i) The trade or business of selling, or soliciting the sale of, consumer products or services to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis that the commission or the U.S. department of labor designates by rule or regulation, for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment.

(ii) The trade or business of selling, or soliciting the sale of, consumer products or services in the home or otherwise than in a permanent retail establishment.

(s) The exclusion of services under subdivision (r) applies only if both of the following are met:

(i) Substantially all the cash or other remuneration, for the performance of the services described in subdivision (r) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(ii) The services are performed according to a written contract that provides that the person performing the services will not be treated as an employee with respect to those services for federal tax purposes.

(t) Service performed by an individual as a product demonstrator or product merchandiser if the service is performed under a written contract between the individual and a person whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties for product demonstration and product merchandising purposes, and both in contract and in fact, the individual meets all of the following conditions:

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

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

(iii) Determines the method of performing the service.

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

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

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

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

(viii) As used in this subdivision:

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

(B) "Product merchandiser" means an individual who, on a temporary, part-time basis, builds or resets a product display and who is not otherwise directly employed by the manufacturer, distributor, or retailer.

(C) "Third party" means a manufacturer or broker.

(u) Service performed in an Americorps program but only if both of the following conditions are met:

(i) The individual performed the service under a contract or agreement providing for a guaranteed stipend opportunity.

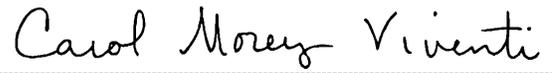
(ii) The individual received the full amount of the guaranteed stipend before the ending date of the contract or agreement.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor