

HOUSE BILL No. 4958

September 4, 2013, Introduced by Rep. Foster and referred to the Committee on Commerce.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 43 (MCL 421.43), as amended by 2004 PA 243.

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) Agricultural service performed by an individual who is an
4 alien admitted to the United States to perform that service
5 according to sections 214(c) and 101(a)(15)(H) of the immigration
6 and nationality act, 8 USC 1184 and 8 USC 1101, **NONAGRICULTURAL**
7 **SERVICE PERFORMED BY AN INDIVIDUAL WHO IS AN ALIEN ADMITTED TO THE**
8 **UNITED STATES UNDER AN H-2B VISA ISSUED UNDER 8 USC 1101 TO PERFORM**
9 **THAT SERVICE, OR SERVICE PERFORMED BY AN INDIVIDUAL ADMITTED TO THE**
10 **UNITED STATES UNDER A J-1 VISA ISSUED UNDER 8 USC 1101.**

1 (b) Service performed in the employ of another state or its
2 political subdivisions, or of an instrumentality of another state
3 or its political subdivisions, except as otherwise provided in
4 section 42(9); and service performed in the employ of the United
5 States government or an instrumentality of the United States exempt
6 under the constitution of the United States from the contributions
7 imposed by this act. However, to the extent that the congress of
8 the United States permits states to require instrumentalities of
9 the United States to make payments into an unemployment fund under
10 a state unemployment compensation law, this act applies to the
11 instrumentalities and to services performed for the
12 instrumentalities in the same manner, to the same extent, and on
13 the same terms as to all other employers, employing units,
14 individuals, and services. If this state is not certified for any
15 year by the appropriate agency of the United States under section
16 3304(c) of the federal unemployment tax act, chapter 23 of subtitle
17 C of the internal revenue code of 1986, 26 USC 3304, the payments
18 required of the instrumentalities with respect to the year shall be
19 refunded by the commission from the fund in the same manner and
20 within the same period as provided in section 16 with respect to
21 contributions erroneously collected.

22 (c) Service with respect to which unemployment compensation is
23 payable under an unemployment compensation system established by an
24 act of congress. However, the commission shall enter into
25 agreements with the proper agencies under the act of congress,
26 which agreements take effect 10 days after publication of the
27 agreements in the manner provided in section 4 for regulations to

1 provide reciprocal treatment to individuals who have, after
2 acquiring potential rights to benefits under this act, acquired
3 rights to unemployment compensation under the act of congress, or
4 who have, after acquiring potential rights to unemployment
5 compensation under the act of congress, acquired rights to benefits
6 under this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) Service performed within this state by an individual who

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

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

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

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

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

1 per week for the institution.

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

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

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

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

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

1 churches.

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

5 (iii) Before January 1, 1978, in the employ of a school that is
6 not an institution of higher education and which service is also
7 excluded from the term "employment" as defined in section
8 3306(c)(8) of the federal unemployment tax act, chapter 23 of the
9 internal revenue code of 1986, 26 USC 3306. After December 31,
10 1977, in the employ of a governmental entity as defined in section
11 50a, if the service is performed by an individual in any of the
12 following capacities:

13 (A) As an elected official.

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

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

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

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

24 (iv) By an individual receiving rehabilitation or remunerative
25 work in a facility conducted for the purpose of carrying out a
26 program of rehabilitation for individuals whose earning capacity is
27 impaired by age, physical or mental deficiency, or injury, or of

1 providing remunerative work for individuals who because of their
2 impaired physical or mental capacity cannot be readily absorbed in
3 the competitive labor market.

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

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

9 (vii) By an individual hired by a state department or recipient
10 governmental entity through a summer youth employment program
11 established under the Michigan youth corps act, 1983 PA 69, MCL
12 409.221 to 409.229, or an individual hired by a state department
13 through a summer youth employment program administered by the
14 department of natural resources or the department of
15 transportation.

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

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

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

27 (A) Less than the scheduled hours the individual would have

1 worked in the department or establishment in which the employment
2 occurred if the individual were not a student.

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

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

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

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

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

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

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

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

27 (i) Substantially all the cash or other remuneration, for the

1 performance of the services described in subdivision (r) is
2 directly related to sales or other output, including the
3 performance of services, rather than to the number of hours worked.

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

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

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

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

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

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

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

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

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

1 (viii) As used in this subdivision:

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

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

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

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

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

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