

# SENATE BILL No. 427

June 12, 2013, Introduced by Senators WALKER, CASPERSON, BOOHER, MOOLENAAR, EMMONS, JANSEN, PROOS, MEEKHOF, JONES and ROBERTSON and referred to the Committee on Reforms, Restructuring and Reinventing.

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.

7       (b) Service performed in the employ of another state or its  
8       political subdivisions, or of an instrumentality of another state  
9       or its political subdivisions, except as otherwise provided in

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

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

1 who have, after acquiring potential rights to unemployment  
2 compensation under the act of congress, acquired rights to benefits  
3 under this act.

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

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

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

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

25 (iv) Service performed in the employ of the operator of a farm  
26 in handling, planting, drying, packing, packaging, processing,  
27 freezing, grading, storing, or delivering to storage, to market, or

1 to a carrier for transportation to market, in its unmanufactured  
2 state, an agricultural or horticultural commodity, if the operator  
3 produced more than 1/2 of the commodity for which the service is  
4 performed.

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

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

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

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

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

25 (e) Domestic service in a private home, local college club, or  
26 local chapter of a college fraternity or sorority not operated for  
27 profit. Domestic service is not excluded from the term "employment"

1 if performed for an employer as defined in section 41(6).

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

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

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

24 (i) Service performed within this state by an individual who  
25 is not a citizen of the United States or service performed within  
26 this state for an employer other than an American employer as  
27 defined in section 42(12)(d), if the service is incidental to the

1 individual's service in a foreign country in which the base of  
2 operation is maintained or from which the service is directed or  
3 controlled.

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

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

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

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

26 (ii) By a spouse of a student, if given written notice at the  
27 start of the service that the employment is under a program to

1 provide financial assistance to the student and that the employment  
2 will not be covered by a program of unemployment compensation.

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

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

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

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

26 (ii) By an ordained, commissioned, or licensed minister of a  
27 church in the exercise of the ministry or by a member of a

1 religious order in the exercise of duties required by the order.

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

10 (A) As an elected official.

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

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

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

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

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



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

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

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

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

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

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

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

27           (B) Within the customary vacation days or vacation periods of

1 the school, following which the individual actually returns to  
2 school.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           (viii) As used in this subdivision:

26           (A) "Product demonstrator" means an individual who, on a  
27 temporary, part-time basis, demonstrates or gives away samples of a

1 food or other product as part of an advertising or sales promotion  
2 for the product and who is not otherwise directly employed by the  
3 manufacturer, distributor, or retailer.

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

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

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

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

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

15 (V) SERVICE PERFORMED BY AN INDIVIDUAL AS AN OIL, GAS, AND  
16 MINERAL LANDMAN UNDER A CONTRACT WITH A PRIVATE PERSON OR ENTITY IF  
17 SUBSTANTIALLY ALL REMUNERATION, INCLUDING PAYMENT AT A DAILY RATE  
18 PAID IN CASH OR OTHERWISE FOR THE PERFORMANCE OF THE SERVICE, IS  
19 DIRECTLY RELATED TO THE INDIVIDUAL'S COMPLETION OF THE SPECIFIC  
20 TASKS CONTRACTED FOR RATHER THAN THE NUMBER OF HOURS WORKED, AND IF  
21 THE CONTRACT PROVIDES THAT THE INDIVIDUAL IS AN INDEPENDENT  
22 CONTRACTOR AND NOT AN EMPLOYEE WITH RESPECT TO THE CONTRACTED  
23 SERVICE. AS USED IN THIS SUBDIVISION, "LANDMAN" MEANS AN INDIVIDUAL  
24 WHO IS ENGAGED IN 1 OR MORE OF THE FOLLOWING:

25 (i) NEGOTIATING THE ACQUISITION OR DIVESTITURE OF OIL, GAS, AND  
26 MINERAL RIGHTS.

27 (ii) NEGOTIATING BUSINESS AGREEMENTS THAT PROVIDE FOR THE

1 EXPLORATION FOR, TRANSPORTATION OF, OR DEVELOPMENT OF OIL, GAS, AND  
2 MINERALS.

3 (iii) DETERMINING THE OWNERSHIP OF OIL, GAS, AND MINERALS  
4 THROUGH RESEARCH OF PUBLIC AND PRIVATE RECORDS.

5 (iv) REVIEWING THE STATUS OF THE TITLE TO, AND CURING TITLE  
6 DEFECTS AND DEFICIENCIES ASSOCIATED WITH, THE OWNERSHIP OF OIL,  
7 GAS, AND MINERALS.

8 (v) MANAGING RIGHTS OR OBLIGATIONS DERIVED FROM THE OWNERSHIP  
9 OF INTERESTS IN OIL, GAS, AND MINERALS.

10 (vi) INTERACTING WITH REGULATORY AGENCIES IN SUPPORT OF  
11 ACTIVITIES RELATING TO EXPLORING FOR AND PRODUCING OIL, GAS, AND  
12 MINERALS, INCLUDING UNITIZING OR POOLING INTERESTS IN OIL, GAS, AND  
13 MINERALS.