

SENATE BILL No. 484

June 22, 2017, Introduced by Senators SCHMIDT, HORN, STAMAS and ANANICH 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 2014 PA 510.

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) ~~Services~~**SERVICE** performed by an individual who is an
4 alien admitted to the United States to perform services described
5 in either of the following:

6 (i) Sections 214(c) and 101(a)(15)(H)(ii)(a) of the
7 immigration and nationality act, 8 USC 1184 and 8 USC
8 1101(a)(15)(H)(ii)(a).

9 (ii) Beginning January 1, 2014, services described in section
10 101(a)(15)(H)(ii)(b) of the immigration and nationality act, 8 USC

1 1101(a)(15)(H)(ii)(b), and services described in 22 CFR 62.28 to
2 62.32 that are performed by a holder of a J-1 exchange visitor
3 program visa issued under section 101(a)(15)(J) of the immigration
4 and nationality act, 8 USC 1101(a)(15)(J), and the mutual
5 educational and cultural exchange act of 1961, 22 USC 2451 to 2464.
6 The employer claiming an exclusion under this subparagraph must be
7 the employer of an H-2B visa holder, as documented on an approved
8 I-129 petition or successor form for a nonimmigrant worker, or the
9 employer of the J-1 exchange visitor program visa holder, as
10 documented in the DS-2019 or successor form. The employer shall
11 maintain the supporting documentation for the claim for 6 years
12 and, upon request, provide the unemployment agency with that
13 documentation for compliance and verification purposes. This
14 subparagraph ~~is intended to apply~~ **APPLIES** retroactively to include
15 the full calendar year.

16 (b) Service performed in the employ of another state or its
17 political subdivisions, or of an instrumentality of another state
18 or its political subdivisions, except as otherwise provided in
19 section 42(9); and service performed in the employ of the United
20 States government or an instrumentality of the United States exempt
21 under the ~~constitution~~ **CONSTITUTION** of the United States from the
22 contributions imposed by this act. However, to the extent that the
23 ~~congress~~ **CONGRESS** of the United States permits states to require
24 instrumentalities of the United States to make payments into an
25 unemployment fund under a state unemployment compensation law, this
26 act applies to the instrumentalities and to services performed for
27 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 **UNEMPLOYMENT AGENCY SHALL REFUND 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~~. **CONGRESS**. However, the ~~commission~~ **UNEMPLOYMENT AGENCY** shall enter into agreements with the proper agencies under the act of ~~congress~~, **which CONGRESS. THE** agreements **MUST** take effect 10 days after publication of the agreements, in the manner provided in section 4 for regulations, ~~to~~ **AND** 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~~, **CONGRESS**, or who have, after acquiring potential rights to unemployment compensation under the act of ~~congress~~, **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

1 raising or harvesting an agricultural or horticultural commodity,
2 including the raising, shearing, feeding, caring for, training, and
3 management of livestock, bees, poultry, and fur-bearing animals and
4 wildlife.

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

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

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

25 (v) Service performed in the employ of a group of operators of
26 farms or a cooperative organization of which the operators are
27 members, in the performance of service described in subparagraph

1 (iv), but only if the operators produced more than 1/2 of the
2 commodity for which the services are performed.

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

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

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

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

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

22 (f) Service as an officer or member of a crew of an American
23 vessel performed on or in connection with the vessel, except a
24 vessel of less than 200 horsepower, if the operating office from
25 which the operations of the vessel operating on navigable waters
26 within or without the United States are ordinarily and regularly
27 supervised, managed, directed, and controlled is without this

1 state; and service performed by an individual in or as an officer
2 or member of the crew of a vessel while it is engaged in the
3 catching, taking, or harvesting of any kind of fish including
4 service performed by an individual as an ordinary incident to that
5 activity, except service performed on or in connection with a
6 vessel of more than 10 net tons determined in the manner provided
7 for determining the register tonnage of merchant vessels under the
8 laws of the United States.

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

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

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

24 (j) Service covered by an arrangement between the ~~commission~~
25 **UNEMPLOYMENT AGENCY** and the agency charged with the administration
26 of another state or federal unemployment compensation law under
27 which all service performed by an individual for an employing unit

1 during the period covered by the employing unit's approved
2 election. Service described in this subdivision is considered to be
3 performed entirely within the agency's state or under federal law.

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

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

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

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

23 (m) Service performed by an individual less than 22 years of
24 age who is enrolled, at a nonprofit or public educational
25 institution that normally maintains a regular faculty and
26 curriculum and normally has a regularly organized body of students
27 in attendance at the place where its educational activities are

1 carried on, as a student in a full-time program, taken for credit
2 at the institution, ~~which program~~ **THAT** combines academic
3 instruction with work experience, if the service is an integral
4 part of the program and the institution has certified that fact to
5 the employer. This subdivision does not apply to service performed
6 in a program established for or on behalf of an employer or group
7 of employers.

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

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

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

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

22 ~~(iii) Before January 1, 1978, in the employ of a school that~~
23 ~~is not an institution of higher education and which service is also~~
24 ~~excluded from the term "employment" as defined in section~~
25 ~~3306(c)(8) of the federal unemployment tax act, chapter 23 of the~~
26 ~~internal revenue code of 1986, 26 USC 3306. After December 31,~~
27 1977, in the employ of a governmental entity as defined in section

1 50a, if the service is performed by an individual in any of the
2 following capacities:

3 (A) As an elected official.

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

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

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

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

14 (iv) By an individual receiving rehabilitation or remunerative
15 work in a facility conducted for the purpose of carrying out a
16 program of rehabilitation for individuals whose earning capacity is
17 impaired by age, physical or mental deficiency, or injury, or
18 **CONDUCTED FOR THE PURPOSE** of providing remunerative work for
19 individuals who because of their impaired physical or mental
20 capacity cannot be readily absorbed in the competitive labor
21 market.

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

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

27 (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 **STATE TRANSPORTATION** 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~~ **IF** 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

1 the regular curriculum of the school.

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

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

7 (i) The trade or business of selling, or soliciting the sale
8 of, consumer products or services to any buyer on a buy-sell basis,
9 a deposit-commission basis, or any similar basis that the
10 ~~commission~~ **UNEMPLOYMENT AGENCY** or the ~~U.S. department of labor~~
11 **UNITED STATES DEPARTMENT OF LABOR** designates by rule or regulation,
12 for resale by the buyer or any other person in the home or
13 otherwise than in a permanent retail establishment.

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

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

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

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

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

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

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

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

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

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

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

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

21 (viii) As used in this subdivision:

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

27 (B) "Product merchandiser" means an individual who, on a

1 temporary, part-time basis, builds or resets a product display and
2 who is not otherwise directly employed by the manufacturer,
3 distributor, or retailer.

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

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

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

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

11 (v) Service performed by an individual as an oil, gas, or
12 mineral landman under a contract with a private person or private
13 entity if substantially all remuneration, including payment at a
14 daily rate paid in cash or otherwise for the performance of the
15 service, is directly related to the individual's completion of the
16 specific tasks contracted for rather than the number of hours
17 worked, and if the contract provides that the individual is an
18 independent contractor and not an employee with respect to the
19 contracted service. As used in this subdivision, "landman" means an
20 individual who is engaged in 1 or more of the following:

21 (i) Negotiating the acquisition or divestiture of oil, gas, or
22 mineral rights.

23 (ii) Negotiating business agreements that provide for the
24 exploration for, transportation of, or development of oil, gas, or
25 minerals.

26 (iii) Determining the ownership of oil, gas, or minerals
27 through research of public and private records.

1 (iv) Reviewing the status of the title to, and curing title
2 defects and deficiencies associated with, the ownership of oil,
3 gas, or minerals.

4 (v) Managing rights or obligations derived from the ownership
5 of interests in oil, gas, or minerals.

6 (vi) Interacting with regulatory agencies in support of
7 activities relating to exploring for and producing oil, gas, or
8 minerals, including unitizing or pooling interests in oil, gas, or
9 minerals.

10 **(W) SERVICE PERFORMED BY AN INDIVIDUAL WHO IS 16 YEARS OF AGE**
11 **OR OLDER BUT LESS THAN 21 YEARS OF AGE AS AN ICE HOCKEY PLAYER FOR**
12 **A JUNIOR ICE HOCKEY TEAM THAT IS A MEMBER OF A REGIONAL, NATIONAL,**
13 **OR INTERNATIONAL JUNIOR ICE HOCKEY LEAGUE.**

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.

16 Enacting section 2. This amendatory act does not take effect
17 unless Senate Bill No. 483

18 of the 99th Legislature is enacted into law.