

SENATE BILL No. 285

April 6, 1989, Introduced by Senators DINGELL,
DILLINGHAM and WELBORN and referred to the
Committee on Human Resources and Senior Citizens.

A bill to amend sections 43 and 44 of Act No. 1 of the
Public Acts of the Extra Session of 1936, entitled as amended
"Michigan employment security act,"
section 43 as amended by Act No. 70 of the Public Acts of 1986
and section 44 as amended by Act No. 223 of the Public Acts of
1985, being sections 421.43 and 421.44 of the Michigan Compiled
Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 43 and 44 of Act No. 1 of the Public
2 Acts of the Extra Session of 1936, section 43 as amended by Act
3 No. 70 of the Public Acts of 1986 and section 44 as amended by
4 Act No. 223 of the Public Acts of 1985, being sections 421.43 and
5 421.44 of the Michigan Compiled Laws, are amended to read as
6 follows:

1 Sec. 43. Except as otherwise provided in section 42(6), the
2 term "employment" shall not include:

3 (a) Before January 1, 1980, agricultural service performed
4 by an individual who is an alien admitted to the United States to
5 perform that service pursuant to sections 214(c) and
6 101(a)(15)(H) of the immigration and nationality act,
7 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
12 States government or an instrumentality of the United States
13 exempt under the constitution of the United States from the con-
14 tributions imposed by this act. However, to the extent that the
15 congress of the United States permits states to require instru-
16 mentalities of the United States to make payments into an unem-
17 ployment fund under a state unemployment compensation law, this
18 act shall apply to the instrumentalities, and to services per-
19 formed for the instrumentalities, in the same manner, to the same
20 extent, and on the same terms as to all other employers, employ-
21 ing units, individuals, and services. If this state is not cer-
22 tified for any year by the appropriate agency of the United
23 States under section 3304(c) of the internal revenue code, the
24 payments required of the instrumentalities with respect to the
25 year shall be refunded by the commission from the fund in the
26 same manner and within the same period as provided in section 16
27 with respect to contributions erroneously collected.

1 (c) Service with respect to which unemployment compensation
2 is payable under an unemployment compensation system established
3 by an act of congress. However, the commission shall enter into
4 agreements with the proper agencies under the act of congress,
5 which agreements shall become effective 10 days after publication
6 of the agreements in the manner provided in section 4 for regula-
7 tions, to provide reciprocal treatment to individuals who have,
8 after acquiring potential rights to benefits under this act,
9 acquired rights to unemployment compensation under the act of
10 congress, or who have, after acquiring potential rights to unem-
11 ployment compensation under the act of congress, acquired rights
12 to benefits under this act.

13 (d) "Agricultural labor" which shall comprise all service
14 performed:

15 (1) On a farm, in the employ of any person, in connection
16 with cultivating the soil, or in connection with raising or har-
17 vesting an agricultural or horticultural commodity, including the
18 raising, shearing, feeding, caring for, training, and management
19 of livestock, bees, poultry, and fur-bearing animals and
20 wildlife.

21 (2) In the employ of the owner or tenant or another operator
22 of a farm in connection with the operation, management, conserva-
23 tion, improvement, or maintenance of a farm and its tools and
24 equipment, or in salvaging timber or clearing land of brush and
25 other debris left by a hurricane, if the major part of the serv-
26 ice is performed on a farm.

1 (3) In connection with the production or harvesting of a
2 commodity defined as an agricultural commodity in section 15(g)
3 of the agricultural marketing act, 12 U.S.C. 1141j, or in connec-
4 tion with the ginning of cotton, or the operation or maintenance
5 of ditches, canals, reservoirs, or waterways not owned or oper-
6 ated for profit, used exclusively for supplying and storing water
7 for farming purposes.

8 (4) In the employ of the operator of a farm in handling,
9 planting, drying, packing, packaging, processing, freezing, grad-
10 ing, storing, or delivering to storage or to market or to a car-
11 rier for transportation to market, in its unmanufactured state,
12 an agricultural or horticultural commodity, if the operator
13 produced more than 1/2 of the commodity with respect to which the
14 service is performed.

15 (5) In the employ of a group of operators of farms or a
16 cooperative organization of which the operators are members, in
17 the performance of service described in subparagraph (4), but
18 only if the operators produced more than 1/2 of the commodity
19 with respect to which the services are performed.

20 (6) On a farm operated for profit if the service is not in
21 the course of the employer's trade or business.

22 (7) Subparagraphs (4) and (5) shall not apply with respect
23 to service performed in connection with commercial canning or
24 commercial freezing or in connection with an agricultural or
25 horticultural commodity after its delivery to a terminal market
26 for distribution for consumption.

1 As used in this subdivision, the term "farm" includes stock,
2 dairy, poultry, fruit, fur-bearing animals, truck farms,
3 plantations, ranches, nurseries, ranges, and greenhouses, or
4 other similar structures used primarily for the raising of agri-
5 cultural or horticultural commodities.

6 Agricultural labor performed after December 31, 1977 shall
7 not be excluded from the term employment when the labor is per-
8 formed for an employer as defined in section 41(5).

9 (e) Domestic service in a private home, local college club,
10 or local chapter of a college fraternity or sorority not operated
11 for profit.

12 Domestic service performed after December 31, 1977 shall not
13 be excluded from the term employment when performed for an
14 employer as defined in section 41(6).

15 (f) Service as an officer or member of a crew of an American
16 vessel performed on or in connection with the vessel, except a
17 vessel of less than 200 horsepower, if the operating office from
18 which the operations of the vessel operating on navigable waters
19 within or without the United States are ordinarily and regularly
20 supervised, managed, directed and controlled, is without this
21 state; and service performed by an individual in or as an officer
22 or member of the crew of a vessel while it is engaged in the
23 catching, taking, or harvesting of any kind of fish including
24 service performed by an individual as an ordinary incident to
25 such an activity, except service performed on or in connection
26 with a vessel of more than 10 net tons determined in the manner

1 provided for determining the register tonnage of merchant vessels
2 under the laws of the United States.

3 (g) Service performed by an individual in the employ of the
4 individual's son, daughter, or spouse, and service performed by a
5 child under the age of 18 in the employ of the child's parent.

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

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

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

25 (k) Service performed by an individual in a calendar quarter
26 in the employ of an organization exempt from income tax under
27 section 501(a) of the internal revenue code other than an

1 organization described in section 401(a) of the internal revenue
2 code, or under section 521 of the internal revenue code, if the
3 remuneration earned is less than \$50.00.

4 (l) Service performed in the employ of a school, college, or
5 university, if the service is performed:

6 (i) By a person who is primarily a student at the school,
7 college, or university. For the purpose of this subdivision a
8 person is considered to be "primarily a student" if the individ-
9 ual is enrolled in an institution, is pursuing a course of study
10 for academic credit and while thus enrolled normally works 30
11 hours or less per week for the institution.

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

17 (m) Service performed by an individual less than 22 years of
18 age who is enrolled, at a nonprofit or public educational insti-
19 tution which normally maintains a regular faculty and curriculum
20 and normally has a regularly organized body of students in
21 attendance at the place where its educational activities are car-
22 ried on, as a student in a full-time program, taken for credit at
23 the institution, which combines academic instruction with work
24 experience, if the service is an integral part of the program,
25 and the institution has certified that fact to the employer.
26 This subdivision shall not apply to service performed in a

1 program established for or on behalf of an employer or group of
2 employers.

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

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

9 (1) In the employ of (i) a church or convention or associa-
10 tion of churches; or (ii) an organization which is operated pri-
11 marily for religious purposes and which is operated, supervised,
12 controlled, or principally supported by a church or convention or
13 association of churches.

14 (2) By a duly ordained, commissioned, or licensed minister
15 of a church in the exercise of the ministry or by a member of a
16 religious order in the exercise of duties required by the order.

17 (3) Before January 1, 1978, in the employ of a school which
18 is not an institution of higher education and which service is
19 also excluded from the term "employment" as defined in
20 section 3306(c)(8) of the internal revenue code. After
21 December 31, 1977, in the employ of a governmental entity as
22 defined in section 50a, if the service is performed by an indi-
23 vidual in any of the following capacities:

24 (i) As an elected official.

25 (ii) As a member of a legislative body, or as a member of
26 the judiciary.

1 (iii) As a military employee of the state national guard or
2 air national guard.

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

5 (v) In a position which, under or pursuant to the laws of
6 this state, is designated as (i) a major nontenured policymaking
7 or advisory position, or (ii) a policymaking or advisory posi-
8 tion, the performance of the duties of which ordinarily does not
9 require more than 8 hours per week.

10 (4) By an individual receiving rehabilitation or remunera-
11 tive work in a facility conducted for the purpose of carrying out
12 a program of: (i) rehabilitation for individuals whose earning
13 capacity is impaired by age, physical or mental deficiency, or
14 injury; or (ii) providing remunerative work for individuals who
15 because of their impaired physical or mental capacity cannot be
16 readily absorbed in the competitive labor market.

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

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

23 (7) By an individual hired by a state department or recipi-
24 ent governmental entity through a summer youth employment program
25 established pursuant to the Michigan youth corps act, or an indi-
26 vidual hired by a state department through a summer youth

1 employment program administered by the department of natural
2 resources or the department of transportation.

3 (p) Service performed by an individual under the age of 18
4 in the delivery or distribution of newspapers or shopping news,
5 not including delivery or distribution to a point for subsequent
6 delivery or distribution.

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

10 (1) Service performed by an individual while the individual
11 was a minor student regularly attending either a public or a pri-
12 vate school below the college level and the individual's employ-
13 ment during the week was: (i) less than the scheduled hours the
14 individual would have worked in the department or establishment
15 in which the employment occurred if the individual were not a
16 student; or (ii) within the customary vacation days or vacation
17 periods of the school following which the individual actually
18 returns to school; or (iii) with an employer as a formal and
19 accredited part of the regular curriculum of the individual's
20 school.

21 (2) Service performed by a college student of any age, but
22 only when the student's employment is a formal and accredited
23 part of the regular curriculum of the school.

24 (3) Service performed by an individual as a member of a band
25 or orchestra, but only when the service does not represent the
26 principal occupation of the individual.

1 (r) Service performed by a home improvement and remodeling
2 salesperson providing that salesperson meets the criteria
3 established in section 3508 of the internal revenue code and if
4 any provision of this subsection prevents the state from qualify-
5 ing for any federal interest relief provisions provided under
6 section 1202 of the social security act, 42 U.S.C. 1322, or pre-
7 vents employers in this state from qualifying for the limitation
8 on the reduction of federal unemployment tax act credits as pro-
9 vided under section 3302(f) of the federal unemployment tax act,
10 26 U.S.C. 3302(f), such provision shall be invalid to the extent
11 necessary to maintain qualification for such interest relief pro-
12 visions and federal unemployment tax credits.

13 (S) SERVICE PERFORMED BY A PRISONER WHO RESIDES IN A COMMU-
14 NITY CORRECTION CENTER, RESIDENT HOME, HALFWAY HOUSE, OR OTHER
15 SIMILAR FACILITY THAT HOUSES AN INMATE POPULATION UNDER THE
16 JURISDICTION OF THE DEPARTMENT OF CORRECTIONS.

17 Sec. 44. (1) "Remuneration" means all compensation paid for
18 personal services, including commissions and bonuses, and except
19 for agricultural and domestic services, the cash value of all
20 compensation payable in a medium other than cash. Any remunera-
21 tion payable to an individual which has not been actually
22 received by that individual within 21 days after the end of the
23 pay period in which the remuneration was earned, shall, for the
24 purposes of subsections (2) to (5), be considered to have been
25 paid on the twenty-first day after the end of that pay period.
26 The reasonable cash value of compensation payable in a medium
27 other than cash, shall be estimated and determined in accordance

1 with rules promulgated by the commission. Beginning January 1,
2 1986, "Remuneration" shall include tips actually reported to an
3 employer under section 6053(a) of the internal revenue code, 26
4 U.S.C. 6053(a), by an employee who receives tip income.

5 Remuneration shall not include money paid an individual by a unit
6 of government for services rendered as a member of the national
7 guard of this state, or for similar services to any state or the
8 United States.

9 (2) "Wages", subject to subsections (3) to (5), means remuneration paid by employers for employment and, beginning January
10 1, 1986, includes tips actually reported to an employer under
11 section 6053(a) of the internal revenue code, 26 U.S.C. 6053(a),
12 by an employee who receives tip income. Notwithstanding the pre-
13 ceding sentence, for the period January 1, 1986 through December
14 31, 1986 for purposes of sections 50 and 51, wages shall include
15 tips only to the extent that they are taken in account by the
16 employer in determining the employee's compensation under the
17 state minimum wage law or, where the employer adds a certain per-
18 cent to the customer's bill as a tip for disbursement to the
19 employees, the dollar amount of the percentage so added. If any
20 provision of this subsection prevents the state from qualifying
21 for any federal interest relief provisions provided under section
22 1202 of the social security act, 42 U.S.C. 1322, or prevents
23 employers in this state from qualifying for the limitation on the
24 reduction of federal unemployment tax act credits as provided
25 under section 3302(f) of the federal unemployment tax act, 26
27 U.S.C. 3302(f), such provision shall be invalid to the extent

1 necessary to maintain qualification for such interest relief
2 provisions and federal unemployment tax credits.

3 (3) For the purpose of determining the amount of contribu-
4 tions due from an employer under this act, wages shall be limited
5 by the taxable wage limit applicable under subsection (4). For
6 this purpose wages shall exclude all remuneration paid within a
7 calendar year to an individual by an employing unit after the
8 individual was paid within that year by that employing unit remu-
9 nation equal to the taxable wage limit on which unemployment
10 taxes were paid or were payable in this and any other states. If
11 an employing unit, hereinafter referred to as successor, during
12 any calendar year becomes a transferee in a transfer of business
13 as defined in section 22 of another, hereinafter referred to as a
14 predecessor, and immediately after the transfer employs in his or
15 her trade or business an individual who immediately before the
16 transfer was employed in the trade or business of the predeces-
17 sor, then for the purpose of determining whether the successor
18 has paid remuneration with respect to employment equal to the
19 taxable wage limit to that individual during the calendar year,
20 any remuneration with respect to employment paid to that individ-
21 ual by the predecessor during the calendar year and before the
22 transfer shall be considered as having been paid by the
23 successor.

24 (4) The taxable wage limit for each calendar year shall be
25 \$8,000.00 in the 1983 calendar year, \$8,500.00 in the 1984 calen-
26 dar year, \$9,000.00 in the 1985 calendar year, \$9,500.00 in the
27 1986 calendar year, and \$9,500.00 for calendar years after 1986,

1 or the maximum amount of remuneration paid within a calendar year
2 by an employer subject to the federal unemployment tax act, 26
3 U.S.C. 3301 to 3311, to an individual with respect to employment
4 as defined in that act which is subject to tax under that act
5 during that year for each calendar year, whichever is greater.

6 (5) For the purposes of this act, the term "wages" shall not
7 include:

8 (a) The amount of a payment, including an amount paid by an
9 employer for insurance or annuities or into a fund, to provide
10 for such a payment, made to, or on behalf of, an employee or any
11 of the employee's dependents under a plan or system established
12 by an employer which makes provision for the employer's employees
13 generally, or for the employer's employees generally and their
14 dependents, or for a class or classes of the employer's employ-
15 ees, or for a class or classes of the employer's employees and
16 their dependents, on account of retirement, sickness or accident
17 disability, medical or hospitalization expenses in connection
18 with sickness or accident disability, or death.

19 (b) A payment made to an employee, including an amount paid
20 by an employer for insurance or annuities, or into a fund, to
21 provide for such a payment, on account of retirement.

22 (c) A payment on account of sickness or accident disability,
23 or medical or hospitalization expenses in connection with sick-
24 ness or accident disability, made by an employer to, or on behalf
25 of, an employee after the expiration of 6 calendar months follow-
26 ing the last calendar month in which the employee worked for the
27 employer.

1 (d) A payment made to, or on behalf of, an employee or the
2 employee's beneficiary from or to a trust described in section
3 401(a) of the internal revenue code which is exempt from tax
4 under section 501(a) of the internal revenue code at the time of
5 the payment, unless the payment is made to an employee of the
6 trust as remuneration for services rendered as an employee and
7 not as a beneficiary of the trust, or under or to an annuity plan
8 which, at the time of the payment, is a plan described in section
9 403(a) of the internal revenue code, or under or to a bond pur-
10 chase plan which at the time of the payment, is a qualified bond
11 purchase plan described in section 405(a) of the internal revenue
12 code.

13 (e) The payment by an employer, without deduction from the
14 remuneration of the employee, of the tax imposed upon an employee
15 under section 3101 of the internal revenue code.

16 (f) Remuneration paid in any medium other than cash to an
17 employee for service not in the course of the employer's trade or
18 business.

19 (g) A payment, other than vacation or sick pay, made to an
20 employee after the month in which the employee attains the age of
21 65, if the employee did not work for the employer in the period
22 for which the payment is made.

23 (h) Remuneration paid to or on behalf of an employee as
24 moving expenses if, and to the extent that, at the time of pay-
25 ment of the remuneration it is reasonable to believe that a cor-
26 responding deduction is allowable under section 217 of the
27 internal revenue code.

1 (1) REMUNERATION PAID BY AN EMPLOYER TO AN EMPLOYEE WHO IS A
2 PRISONER RESIDING IN A COMMUNITY CORRECTION CENTER, RESIDENT
3 HOME, HALFWAY HOUSE, OR OTHER SIMILAR FACILITY THAT HOUSES AN
4 INMATE POPULATION UNDER THE JURISDICTION OF THE DEPARTMENT OF
5 CORRECTIONS.

6 (6) The amendments made to this section by Act No. 155 of
7 the Public Acts of 1977 ~~shall~~ apply to ~~all~~ remuneration paid
8 after December 31, 1977.

9 (7) The amendments made in subsection (1) by ~~the amendatory~~
10 ~~act which added this subsection shall first~~ ACT NO. 277 OF THE
11 PUBLIC ACTS OF 1977 apply to remuneration paid after December 31,
12 1977.