

SUBSTITUTE FOR
HOUSE BILL NO. 5598

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 43 (MCL 421.43), as amended by 2000 PA 490.

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 ~~pursuant~~ **according** to sections 214(c) and 101(a)(15)(H) of the
6 immigration and nationality act, 8 ~~U.S.C.~~ **USC** 1184 and 8
7 ~~U.S.C.~~ **USC** 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

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

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

1 compensation under the act of congress, acquired rights to
2 benefits under this act.

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

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

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

17 (iii) Service performed in connection with the production or
18 harvesting of a commodity defined as an agricultural commodity in
19 section 15(g) of the agricultural marketing act, ~~chapter 24, 46~~
20 ~~Stat. 18, 12 U.S.C.~~ **USC** 1141j, in connection with the ginning
21 of cotton, or the operation or maintenance of ditches, canals,
22 reservoirs, or waterways not owned or operated for profit, used
23 exclusively for supplying and storing water for farming
24 purposes.

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

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

5 (v) Service performed in the employ of a group of operators
6 of 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
12 business.

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

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

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

26 (e) Domestic service in a private home, local college club,
27 or local chapter of a college fraternity or sorority not operated

1 for profit. Domestic service is not excluded from the term
2 "employment" if performed for an employer as defined in
3 section 41(6).

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

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

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

26 (i) Service performed within this state by an individual who
27 is not a citizen of the United States or service performed within

1 this state for an employer other than an American employer as
2 defined in section 42(12)(d), if the service is incidental to the
3 individual's service in a foreign country in which the base of
4 operation is maintained or from which the service is directed or
5 controlled.

6 (j) Service covered by an arrangement between the commission
7 and the agency charged with the administration of another state
8 or federal unemployment compensation law ~~pursuant to~~ **under**
9 which all service performed by an individual for an employing
10 unit during the period covered by the employing unit's approved
11 election. Service described in this subdivision is considered to
12 be performed entirely within the agency's state or under federal
13 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
19 of the internal revenue code of 1986, **26 USC 521**, if the
20 remuneration 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
26 individual is enrolled in an institution, is pursuing a course of
27 study for academic credit, and while enrolled normally works 30

1 hours or less 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
5 employment will not be covered by a program of unemployment
6 compensation.

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

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

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

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

1 or principally supported by a church or a convention or
2 association of churches.

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

6 (iii) Before January 1, 1978, in the employ of a school that
7 is not an institution of higher education and which service is
8 also excluded from the term "employment" as defined in
9 section 3306(c)(8) of the federal unemployment tax act,
10 chapter 23 of the internal revenue code of 1986, **26 USC 3306**.

11 After December 31, 1977, in the employ of a governmental entity
12 as defined in section 50a, if the service is performed by an
13 individual in any of the following capacities:

14 (A) As an elected official.

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

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

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

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

25 (iv) By an individual receiving rehabilitation or
26 remunerative work in a facility conducted for the purpose of
27 carrying out a program of rehabilitation for individuals whose

1 earning capacity is impaired by age, physical or mental
2 deficiency, or injury, or of providing remunerative work for
3 individuals who because of their impaired physical or mental
4 capacity cannot be readily absorbed in the competitive labor
5 market.

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

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

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

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

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

26 (i) Service performed by an individual while the individual
27 was a minor student regularly attending either a public or a

1 private school below the college level and the individual's
2 employment during the week was any of the following:

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

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

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

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

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

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

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

26 (ii) The trade or business of selling, or soliciting the sale
27 of, consumer products or services in the home or otherwise than

1 in a permanent retail establishment.

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

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

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

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

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

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

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

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

27 (v) Is responsible for the completion of a specific job and

1 is liable for any failure to complete the job.

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

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

6 (viii) As used in this subdivision:

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

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

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

17 (u) **Service performed in an Americorps program.**