

# HOUSE BILL No. 5598

February 25, 2004, Introduced by Reps. Caswell, Brandenburg, Palmer, Drolet, Milosch, Nitz, Garfield, Bradstreet, Emmons, LaJoy, Taub, Tabor, Wenke, Stakoe, Casperson, Voorhees, Kooiman, Meyer, Caul, Pappageorge, Hummel, Mortimer and Sheen and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1936 (Ex Sess) PA 1, entitled  
 "Michigan employment security act,"  
 by amending section 42 (MCL 421.42).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 42. (1) "Employment" means service, including service  
 2 in interstate commerce, performed for remuneration or under any  
 3 contract of hire, written or oral, express or implied.

4       (2) "Employment" includes an individual's entire service,  
 5 performed within or both within and without this state if any of  
 6 the following apply:

7       (a) The service is localized in this state. Service ~~shall~~  
 8 ~~be deemed to be~~ **is** localized within a state if the service is  
 9 performed entirely within the state; or the service is performed  
 10 both within and ~~without~~ **outside** the state, but the service  
 11 performed ~~without~~ **outside** the state is incidental to the

1 individual's service within the state, such as service ~~which~~  
2 **that** is temporary or transitory in nature or consists of isolated  
3 transactions.

4 (b) The service is not localized in a state but some of the  
5 service performed in this state and the base of operations, or,  
6 if there is not a base of operations, then the place from which  
7 the service is directed or controlled, is in this state; or the  
8 base of operations or place from which the service is directed or  
9 controlled is not in a state in which some part of the service is  
10 performed, but the individual's residence is in this state.

11 (c) After December 31, 1964, the service is not localized in  
12 any state but is performed by an employee on or in connection  
13 with an American aircraft, if either the contract of service is  
14 entered into within this state or if the contract of service is  
15 not entered into within this state or within any other state and  
16 during the performance of the contract of service and while the  
17 employee is employed on the aircraft, it touches at an airfield  
18 in this state, and the employee is employed on and in connection  
19 with the aircraft when outside the United States. The commission  
20 may enter into reciprocal agreements with other states with  
21 respect to ~~aircraft which~~ **aircrafts that** touch airfields in  
22 more than 1 state.

23 (3) Service performed within this state but not covered  
24 under subsection (2) and not excluded under section 43 ~~shall be~~  
25 ~~deemed to be~~ **is** employment subject to this act if contributions  
26 are not required and paid with respect to those services under an  
27 unemployment compensation law of any other state or of the

1 federal government.

2 (4) Services, not covered under subsection (2), performed  
3 entirely ~~without~~ **outside** this state, for which contributions  
4 are not required and paid under an unemployment compensation law  
5 of any other state or of the federal government, ~~shall be deemed~~  
6 ~~to be~~ **are** employment subject to this act if the commission  
7 approves the election of the employer for whom the services are  
8 performed that the entire service of the individual ~~shall be~~  
9 ~~deemed to be~~ **is** employment subject to this act. Such an  
10 election may be canceled by the employer by filing a written  
11 notice with the commission before January 30 of any year stating  
12 the employer's desire to cancel the election or at any time by  
13 submitting to the commission satisfactory proof that the services  
14 designated in the election are covered by an unemployment  
15 compensation law of another state or of the federal government,  
16 or if the services are covered by an arrangement ~~pursuant to~~  
17 **under** section 11 between the commission and the agency charged  
18 with the administration of any other state or federal  
19 unemployment compensation law, ~~pursuant~~ **according** to which all  
20 services performed by an individual for an employing unit are  
21 ~~deemed to be~~ **considered** performed entirely within the state,  
22 shall be ~~deemed to be~~ **considered** employment if the commission  
23 has approved an election of the employing unit for which the  
24 services are performed, ~~pursuant~~ **according** to which the entire  
25 service of the individual during the period covered by the  
26 election is ~~deemed to be~~ employment.

27 (5) Services performed by an individual for remuneration

1 ~~shall not be deemed to be~~ **are not considered** employment subject  
2 to this act, unless the individual is under the employer's  
3 control or direction as to the performance of the services both  
4 under a contract for hire and in fact. Service performed by an  
5 individual for remuneration under an exclusive contract ~~which~~  
6 **that** provides for the individual's control and direction by a  
7 person, firm, or corporation possessing a public service permit  
8 or by a certificated motor carrier transporting goods or property  
9 for hire ~~shall be deemed~~ **is considered** employment subject to  
10 this act. Service performed by an individual who by lease,  
11 contract, or arrangement places at the disposal of a person,  
12 firm, or corporation a piece of motor vehicle equipment and under  
13 a contract of hire, ~~which~~ **that** provides for the individual's  
14 control and direction, is engaged by the person, firm, or  
15 corporation to operate the motor vehicle equipment ~~shall be~~  
16 ~~deemed to be~~ **is** employment subject to this act.

17 (6) Notwithstanding section 43, services performed for an  
18 employing unit, for which the employing unit is liable for  
19 federal tax against which credit may be taken for contributions  
20 required to be paid into a state unemployment compensation fund,  
21 ~~shall be deemed to constitute~~ **are** employment for the purposes  
22 of this act, but only to the extent that the services constitute  
23 employment with respect to which federal tax is payable.  
24 Notwithstanding any other provision of this act or any amendatory  
25 act, services performed for an employing unit ~~which~~ **that** are  
26 required to be covered under this act, as a condition for its  
27 certification by the United States secretary of labor, shall

1 constitute employment for the purposes of this act. The  
2 commission may waive the provisions of this subsection with  
3 respect to services performed within this state if the employing  
4 unit is an employer solely by reason of section 41(7) and  
5 establishes that the services are covered by the election of the  
6 employing unit under any other state unemployment compensation  
7 law. This subsection shall not apply to the exceptions provided  
8 in section 43(q).

9 (7) Notwithstanding subsection (2) all service performed  
10 after December 31, 1964, by an officer or member of the crew of  
11 an American vessel on or in connection with the vessel is ~~deemed~~  
12 ~~to be~~ employment subject to this act if the operating office,  
13 from which the operations of the vessel operating on navigable  
14 waters within, or within and ~~without~~ **outside**, the United States  
15 are ordinarily and regularly supervised, managed, directed, and  
16 controlled, is within this state.

17 (8)(a) Service performed before January 1, 1978, by an  
18 individual in the classified civil service of this state and  
19 service performed by an individual for a school district, a  
20 community college district, a school or educational facility  
21 owned or operated by the state other than an institution of  
22 higher education, or a political subdivision of the state, except  
23 a political subdivision ~~which~~ **that** has a local unemployment  
24 compensation system as provided in **former** section 13j, is  
25 employment subject to this act.

26 (b) Service performed after December 31, 1977, in the employ  
27 of a governmental entity as defined in section 50a is employment

1 subject to this act.

2 (9) "Employment" includes service performed after December  
3 31, 1971, by an individual in the employ of this state or any of  
4 its instrumentalities for a state hospital or state institution  
5 of higher education, or in the employ of this state and 1 or more  
6 other states or their instrumentalities for a hospital or  
7 institution of higher education located in this state. Coverage  
8 of services performed for these hospitals and institutions of  
9 higher education after December 31, 1977, shall be determined  
10 ~~pursuant~~ **according** to ~~section 42(8)(b)~~ **subsection (8)(b)**.

11 (10) "Employment" includes service performed after December  
12 31, 1971, by an individual in the employ of a religious,  
13 charitable, educational, or other organization ~~which~~ **that** is  
14 excluded from the term "employment" as defined in the federal  
15 unemployment tax act, **26 USC 3301 to 3311**, solely by reason of  
16 section 3306(c)(8) of the **federal** unemployment tax act, **26 USC**  
17 **3306**.

18 (11) "Employment" includes service performed after December  
19 31, 1971, by an individual for his principal as an agent driver  
20 or commission driver engaged in distributing beverages, meat,  
21 vegetable, fruit, bakery, dairy, or other food products, or  
22 laundry or dry cleaning services; or as a traveling or city  
23 salesman, other than as an agent driver or commission driver,  
24 engaged upon a full-time basis in the solicitation on behalf of,  
25 and the transmission to, his principal except for sideline sales  
26 activities on behalf of some other person, of orders from  
27 wholesalers, retailers, contractors, operators of hotels,

1 restaurants, or other similar establishments for merchandise for  
2 resale or supplies for use in their business operations. For  
3 purposes of this subsection, "employment" includes services  
4 performed after December 31, 1971, only if all of the following  
5 apply:

6 (a) The contract of service contemplates that substantially  
7 all of the services are to be performed personally by the  
8 individual.

9 (b) The individual does not have a substantial investment in  
10 facilities used in connection with the performance of the  
11 services other than in facilities for transportation.

12 (c) The services are not in the nature of a single  
13 transaction ~~which~~ **that** is not part of a continuing relationship  
14 with the person for whom the services are performed.

15 (12) "Employment" includes service performed by a United  
16 States citizen outside the United States after December 31, 1971,  
17 except in Canada, and in the Virgin Islands after December 31,  
18 1971, and before January 1 of the year following the year in  
19 which the United States secretary of labor approves the  
20 unemployment compensation law of the Virgin Islands under section  
21 3304(a) of the internal revenue code **of 1986, 26 USC 3304**, while  
22 in the employ of an American employer and is other than service  
23 ~~which~~ **that** is employment ~~pursuant~~ **according** to subsection (2)  
24 or a parallel provision of another state's law, if **1 of** the  
25 **following** requirements of subdivision (a), (b), or (c) are met:

26 (a) The employer's principal place of business in the United  
27 States is located in this state.

1 (b) The employer does not have a place of business in the  
2 United States, but the employer is any of the following:

3 (i) An individual who is a resident of this state.

4 (ii) A corporation ~~which~~ **that** is organized under the laws  
5 of this state.

6 (iii) A partnership or a trust and the number of the  
7 partners or trustees who are residents of this state is greater  
8 than the number who are residents of any ~~one~~ **1** other state.

9 (c) None of the criteria of subdivisions (a) and (b) ~~is~~  
10 **are** met but the employer elected coverage of the service under  
11 this act, or the employer failed to elect coverage in any state  
12 and the individual filed a claim for benefits based on the  
13 service under the law of this state.

14 (d) An "American employer", for purposes of this subsection,  
15 means a person who is ~~one~~ **1** of the following:

16 (i) An individual who is a resident of the United States.

17 (ii) A partnership if 2/3 or more of the partners are  
18 residents of the United States.

19 (iii) A trust, if all of the trustees are residents of the  
20 United States.

21 (iv) A corporation organized under the laws of the United  
22 States or of any state.

23 (e) As used in this subsection, "United States" includes the  
24 states, the District of Columbia, and the Commonwealth of Puerto  
25 Rico.

26 (13) Notwithstanding any other provision of this act, the  
27 term "employment" ~~shall include~~ **includes** an individual's



1 service, wherever performed within the United States, the Virgin  
2 Islands, or Canada, if the service is not covered under the  
3 unemployment compensation law of any other state, the Virgin  
4 Islands, or Canada, and the place from which the service is  
5 directed or controlled is in this state.

6 (14) "Employment" does not include service performed in an  
7 Americorps program.