

HOUSE BILL NO. 5007

September 18, 2025, Introduced by Reps. Andrews, Weiss, Breen, T. Carter, Tsernoglou, Xiong, Young, McKinney, Longjohn, Rheingans, Price, Wegela, Skaggs, Mentzer, Scott, Koleszar, Pohutsky and Wooden and referred to Committee on Economic Competitiveness.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 42 (MCL 421.42), as amended by 2014 PA 241.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 42. (1) "Employment" means service, including service in
2 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

1 the following apply:

2 (a) The service is localized in this state. Service ~~shall be~~
 3 **is** deemed to be localized within a state if the service is
 4 performed entirely within the state, ~~+~~ or the service is performed
 5 both within and without the state, but the service performed
 6 without the state is incidental to the individual's service within
 7 the state, such as service ~~which~~ **that** is temporary or transitory in
 8 nature or consists of isolated transactions.

9 (b) The service is not localized in a state, but some of the
 10 service **is** performed in this state, and the base of operations, or,
 11 if there is not a base of operations, then the place from which the
 12 service is directed or controlled, is in this state, ~~+~~ or the base
 13 of operations or place from which the service is directed or
 14 controlled is not in a state in which some part of the service is
 15 performed, but the individual's residence is in this state.

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

27 (3) Service performed within this state but not covered under
 28 subsection (2) and not excluded under section 43 ~~shall be~~ **is** deemed
 29 to be employment subject to this act if contributions are not

1 required and paid with respect to those services under an
2 unemployment compensation law of any other state or of the federal
3 government.

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

29 (5) Before January 1, 2013, services performed by an

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

16 **(6) ~~On~~ Except as otherwise provided in this subsection, on** and
 17 after January 1, 2013, services are employment if the services are
 18 performed by an individual who the agency determines to be in an
 19 employer-employee relationship using the 20-factor test announced
 20 by the ~~internal revenue service~~ **Internal Revenue Service** of the
 21 United States ~~department of treasury~~ **Department of Treasury** in
 22 revenue ruling 87-41, 1987-1 C.B. 296. An individual from whom an
 23 employer is required to withhold federal income tax is prima facie
 24 considered to perform services in employment under this act. **Except**
 25 **as otherwise provided in this subsection, on and after January 1,**
 26 **2026, an individual who performs any service for a hiring entity**
 27 **must be classified as an employee of that hiring entity unless**
 28 **either of the following applies:**

29 **(a) The individual is a separate business entity.**

1 (b) All of the following criteria are met:

2 (i) The individual is free from control and direction in
3 performing the service under the individual's contract with the
4 hiring entity and in fact.

5 (ii) The service is performed outside the usual course of
6 business of the hiring entity.

7 (iii) The individual is customarily engaged in an independently
8 established trade, occupation, profession, or business that is
9 similar to the service that the individual performs for the hiring
10 entity.

11 (7) ~~(6)~~ Notwithstanding section 43, services performed for an
12 employing unit, for which the employing unit is liable for federal
13 tax against which credit may be taken for contributions required to
14 be paid into a state unemployment compensation fund, except service
15 performed by an individual holding a visa described in section
16 101(a)(15)(H)(ii)(b) of the immigration and nationality act, 8 USC
17 1101, ~~shall be~~ **are** deemed to constitute employment for the purposes
18 of this act, but only to the extent that the services constitute
19 employment with respect to which federal tax is payable.

20 Notwithstanding any other provision of this act, ~~or any amendatory~~
21 ~~act,~~ services performed for an employing unit ~~which~~ **that** are
22 required to be covered under this act, as a condition for its
23 certification by the United States ~~secretary of labor,~~ **shall**
24 **Secretary of Labor,** constitute employment for the purposes of this
25 act. The unemployment **insurance** agency may waive the provisions of
26 this subsection with respect to services performed within this
27 state if the employing unit is an employer solely by reason of
28 section 41(7) and establishes that the services are covered by the
29 election of the employing unit under any other state unemployment

1 compensation law. This subsection does not apply to the exceptions
2 provided in section 43(q).

3 **(8)** ~~(7)~~—Notwithstanding subsection (2), all service performed
4 after December 31, 1964 ~~—~~by an officer or member of the crew of an
5 American vessel on or in connection with the vessel is deemed to be
6 employment subject to this act if the operating office, from which
7 the operations of the vessel operating on navigable waters within,
8 or within and without, the United States are ordinarily and
9 regularly supervised, managed, directed, and controlled, is within
10 this state.

11 **(9) (a)** ~~(8) (a)~~—Service performed before January 1, 1978 ~~—~~by an
12 individual in the classified civil service of this state and
13 service performed by an individual for a school district, a
14 community college district, a school or educational facility owned
15 or operated by the state other than an institution of higher
16 education, or a political subdivision of the state is employment
17 subject to this act.

18 (b) Service performed after December 31, 1977 ~~—~~in the employ
19 of a governmental entity as defined in section 50a is employment
20 subject to this act.

21 **(10)** ~~(9)~~—"Employment" includes service performed after
22 December 31, 1971 ~~—~~by an individual in the employ of this state or
23 any of its instrumentalities for a state hospital or state
24 institution of higher education, or in the employ of this state and
25 1 or more other states or their instrumentalities for a hospital or
26 institution of higher education located in this state. Coverage of
27 services performed for these hospitals and institutions of higher
28 education after December 31, 1977 ~~—~~shall be determined pursuant to
29 subsection ~~(8) (b)~~. **(9) (b)**.

1 (11) ~~(10)~~ "Employment" includes service performed after
 2 December 31, 1971 ~~—~~by an individual in the employ of a religious,
 3 charitable, educational, or other organization which is excluded
 4 from the term ~~"employment"~~ **employment** as defined in the federal
 5 unemployment tax act solely by reason of section 3306(c)(8) of the
 6 unemployment tax act.

7 (12) ~~(11)~~ "Employment" includes service performed after
 8 December 31, 1971 ~~—~~by an individual for ~~his~~ **the individual's**
 9 principal as an agent driver or commission driver engaged in
 10 distributing beverages, meat, vegetable, fruit, bakery, dairy, or
 11 other food products, or laundry or dry cleaning services; or as a
 12 traveling or city salesman, other than as an agent driver or
 13 commission driver, engaged upon a full-time basis in the
 14 solicitation on behalf of, and the transmission to, ~~his~~ **the**
 15 **individual's** principal except for sideline sales activities on
 16 behalf of some other person, of orders from wholesalers, retailers,
 17 contractors, operators of hotels, restaurants, or other similar
 18 establishments for merchandise for resale or supplies for use in
 19 their business operations. For purposes of this subsection,
 20 "employment" includes services performed after December 31, 1971,
 21 only if all of the following apply:

22 (a) The contract of service contemplates that substantially
 23 all of the services are to be performed personally by the
 24 individual.

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

28 (c) The services are not in the nature of a single transaction
 29 which is not part of a continuing relationship with the person for

1 whom the services are performed.

2 **(13)** ~~(12)~~ "Employment" includes service performed by a United
 3 States citizen outside the United States after December 31, 1971,
 4 except in Canada, and in the Virgin Islands after December 31,
 5 1971, and before January 1 of the year following the year in which
 6 the United States ~~secretary of labor~~ **Secretary of Labor** approves
 7 the unemployment compensation law of the Virgin Islands under
 8 section 3304(a) of the internal revenue code, while in the employ
 9 of an American employer and is other than service ~~which~~ **that** is
 10 employment ~~pursuant to~~ **under** subsection (2) or a parallel provision
 11 of another state's law, if the requirements of subdivision (a),
 12 (b), or (c) are met:

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

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

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

18 (ii) A corporation ~~which is~~ organized under the laws of this
 19 state.

20 (iii) A partnership or a trust, and the number of the partners
 21 or trustees who are residents of this state is greater than the
 22 number who are residents of any one other state.

23 (c) None of the criteria of subdivisions (a) and (b) is met
 24 but the employer elected coverage of the service under this act, or
 25 the employer failed to elect coverage in any state and the
 26 individual filed a claim for benefits based on the service under
 27 the law of this state.

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

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

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

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

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

8 (e) As used in this subsection, "United States" includes the
9 states, the District of Columbia, and the Commonwealth of Puerto
10 Rico.

11 **(14)** ~~(13)~~ Notwithstanding any other provision of this act, ~~the~~
12 ~~term~~ "employment" includes an individual's service, wherever
13 performed within the United States, the Virgin Islands, or Canada,
14 if the service is not covered under the unemployment compensation
15 law of any other state, the Virgin Islands, or Canada, and the
16 place from which the service is directed or controlled is in this
17 state.

18 Enacting section 1. This amendatory act is retroactive and
19 applies to services performed on or after January 1, 2021.