

SENATE BILL No. 686

November 14, 2013, Introduced by Senators WALKER, CASPERSON, HANSEN, BOOHER, KOWALL, PROOS, MEEKHOF and BRANDENBURG and referred to the Committee on Reforms, Restructuring and Reinventing.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 43 (MCL 421.43), as amended by 2004 PA 243.

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 according to sections 214(c) and 101(a)(15)(H) of the immigration
6 and nationality act, 8 USC 1184 and 8 USC 1101.

7 (b) Service performed in the employ of another state or its
8 political subdivisions, or of an instrumentality of another state
9 or its political subdivisions, except as otherwise provided in
10 section 42(9); and service performed in the employ of the United

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

18 (c) Service with respect to which unemployment compensation is
19 payable under an unemployment compensation system established by an
20 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 benefits
2 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, and
9 management of livestock, bees, poultry, and fur-bearing animals and
10 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 and
14 its tools and equipment, or in salvaging timber or clearing land of
15 brush and other debris left by a hurricane, if the major part of
16 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, 12 USC 1141j, in
20 connection with the ginning of cotton, or the operation or
21 maintenance of ditches, canals, reservoirs, or waterways not owned
22 or operated for profit, used exclusively for supplying and storing
23 water for farming purposes.

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

1 state, an agricultural or horticultural commodity, if the operator
2 produced more than 1/2 of the commodity for which the service is
3 performed.

4 (v) Service performed in the employ of a group of operators of
5 farms or a cooperative organization of which the operators are
6 members, in the performance of service described in subparagraph
7 (iv), but only if the operators produced more than 1/2 of the
8 commodity for which the services are performed.

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

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

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

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

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

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

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

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

23 (i) Service performed within this state by an individual who
24 is not a citizen of the United States or service performed within
25 this state for an employer other than an American employer as
26 defined in section 42(12)(d), if the service is incidental to the
27 individual's service in a foreign country in which the base of

1 operation is maintained or from which the service is directed or
2 controlled.

3 (j) Service covered by an arrangement between the commission
4 and the agency charged with the administration of another state or
5 federal unemployment compensation law under which all service
6 performed by an individual for an employing unit during the period
7 covered by the employing unit's approved election. Service
8 described in this subdivision is considered to be performed
9 entirely within the agency's state or under federal law.

10 (k) Service performed by an individual in a calendar quarter
11 in the employ of an organization exempt from income tax under
12 section 501(a) of the internal revenue code of 1986, 26 USC 501,
13 other than an organization described in section 401(a) of the
14 internal revenue code of 1986, 26 USC 401, or under section 521 of
15 the internal revenue code of 1986, 26 USC 521, if the remuneration
16 earned is less than \$50.00.

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

19 (i) By a person who is primarily a student at the school,
20 college, or university. For the purpose of this subparagraph, a
21 person is considered to be "primarily a student" if the individual
22 is enrolled in an institution, is pursuing a course of study for
23 academic credit, and while enrolled normally works 30 hours or less
24 per week for the institution.

25 (ii) By a spouse of a student, if given written notice at the
26 start of the service that the employment is under a program to
27 provide financial assistance to the student and that the employment

1 will not be covered by a program of unemployment compensation.

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

14 (n) Service performed in the employ of a hospital, if the
15 service is performed by a patient of the hospital as defined in
16 section 53(1).

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

20 (i) In the employ of a church or a convention or association of
21 churches or an organization that is operated primarily for
22 religious purposes and that is operated, supervised, controlled, or
23 principally supported by a church or a convention or association of
24 churches.

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

1 (iii) Before January 1, 1978, in the employ of a school that is
2 not an institution of higher education and which service is also
3 excluded from the term "employment" as defined in section
4 3306(c)(8) of the federal unemployment tax act, chapter 23 of the
5 internal revenue code of 1986, 26 USC 3306. After December 31,
6 1977, in the employ of a governmental entity as defined in section
7 50a, if the service is performed by an individual in any of the
8 following capacities:

9 (A) As an elected official.

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

11 (C) As a military employee of the state national guard or air
12 national guard.

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

15 (E) In a position that, under or pursuant to the laws of this
16 state, is designated as a major nontenured policymaking or advisory
17 position, or a policymaking or advisory position, the performance
18 of the duties of which ordinarily does not require more than 8
19 hours per week.

20 (iv) By an individual receiving rehabilitation or remunerative
21 work in a facility conducted for the purpose of carrying out a
22 program of rehabilitation for individuals whose earning capacity is
23 impaired by age, physical or mental deficiency, or injury, or of
24 providing remunerative work for individuals who because of their
25 impaired physical or mental capacity cannot be readily absorbed in
26 the competitive labor market.

27 (v) As part of an unemployment work-relief or work-training

1 program assisted or financed in whole or in part by a federal
2 agency or an agency of a state or political subdivision of a state
3 by an individual receiving the work relief or work training.

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

5 (vii) By an individual hired by a state department or recipient
6 governmental entity through a summer youth employment program
7 established under the Michigan youth corps act, 1983 PA 69, MCL
8 409.221 to 409.229, or an individual hired by a state department
9 through a summer youth employment program administered by the
10 department of natural resources or the department of
11 transportation.

12 (p) Service performed by an individual less than 18 years of
13 age in the delivery or distribution of newspapers or shopping news,
14 not including delivery or distribution to a point for subsequent
15 delivery or distribution.

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

19 (i) Service performed by an individual while the individual was
20 a minor student regularly attending either a public or a private
21 school below the college level and the individual's employment
22 during the week was any of the following:

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

26 (B) Within the customary vacation days or vacation periods of
27 the school, following which the individual actually returns to

1 school.

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

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

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

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

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

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

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

23 (i) Substantially all the cash or other remuneration, for the
24 performance of the services described in subdivision (r) is
25 directly related to sales or other output, including the
26 performance of services, rather than to the number of hours worked.

27 (ii) The services are performed according to a written contract

1 that provides that the person performing the services will not be
2 treated as an employee with respect to those services for federal
3 tax purposes.

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

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

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

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

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

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

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

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

24 (viii) As used in this subdivision:

25 (A) "Product demonstrator" means an individual who, on a
26 temporary, part-time basis, demonstrates or gives away samples of a
27 food or other product as part of an advertising or sales promotion

1 for the product and who is not otherwise directly employed by the
2 manufacturer, distributor, or retailer.

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

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

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

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

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

14 (V) BEGINNING APRIL 1, 2014, NONAGRICULTURAL SERVICE PERFORMED
15 BY AN INDIVIDUAL WHO IS AN ALIEN ADMITTED TO THE UNITED STATES TO
16 PERFORM THAT SERVICE UNDER AN H-2B VISA ISSUED UNDER 8 USC 1101 OR
17 A J-1 EXCHANGE VISITOR PROGRAM VISA ISSUED UNDER 8 USC
18 1101(A)(15)(J) AND THE MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT
19 OF 1961, 22 USC 2451 TO 2462, IF ALL OF THE FOLLOWING CONDITIONS
20 ARE SATISFIED:

21 (i) THAT SERVICE IS EXCLUDED FROM EMPLOYMENT UNDER SECTION
22 3306(C)(19) OF THE INTERNAL REVENUE CODE, 26 USC 3306(C)(19).

23 (ii) THE EMPLOYER CLAIMING THE EXCLUSION IS THE PETITIONER OF
24 THE H-2B VISA HOLDER, AS DOCUMENTED ON AN APPROVED I-129 PETITION
25 FOR A NONIMMIGRANT WORKER; OR THE EMPLOYER IS THE SPONSOR OF THE J-
26 1 EXCHANGE VISITOR PROGRAM VISA HOLDER, AS DOCUMENTED IN THE DS-
27 2019 FORM, AND THE EXCHANGE VISITOR PROGRAM IS LIMITED TO THOSE

1 DESCRIBED IN 22 CFR 62.28 TO 62.32.

2 (iii) THE EMPLOYER CERTIFIES TO THE UNEMPLOYMENT AGENCY AS TO
3 EACH INDIVIDUAL ENGAGED IN THAT SERVICE FOR EACH QUARTERLY REPORT
4 THAT THE FEDERAL TAX DESCRIBED IN SECTION 42(6) DOES NOT APPLY TO
5 THAT SERVICE.

6 (iv) THE EMPLOYER CLAIMING THE EXCLUSION MAINTAINS SUPPORTING
7 DOCUMENTATION FOR THE CLAIM FOR 6 YEARS AND, UPON REQUEST, PROVIDES
8 THE UNEMPLOYMENT AGENCY WITH DOCUMENTATION FOR COMPLIANCE AND
9 VERIFICATION PURPOSES.