## **HOUSE BILL No. 5073**

November 10, 2015, Introduced by Rep. Garcia and referred to the Committee on Commerce and Trade.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act,"

by amending section 41 (MCL 421.41), as amended by 2005 PA 19.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 41. "Employer" means any of the following:
- 2 (1) An employing unit that in each of 20 different calendar
- 3 weeks within a calendar year, whether or not the weeks were
- 4 consecutive, has or had in employment 1 or more individuals
- 5 irrespective of whether the same individual was employed in each
  - week, or by which total remuneration of \$1,000.00 or more for
    - employment was paid or payable within the calendar year.

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- (2) (a) Any individual, legal entity, or employing unit that acquires the organization, trade, or business, or 75% or more of
- the assets of another organization, trade, or business, which at

- 1 the time of the acquisition was an employer subject to this act.
- 2 (b) Any individual, legal entity, or employing unit that
- 3 becomes a transferee of business assets by any means otherwise than
- 4 in the ordinary course of trade from an employer, if there is
- 5 substantially common ownership, management, or control of the
- 6 transferor and transferee at the time of transfer.
- 7 (3) Any employing unit that has become an employer under
- 8 subdivision (1), (2), (4), (5), (6), (7), or (9) but has not, under
- 9 section 24 or 25, ceased to be an employer subject to this act.
- 10 (4) For the effective period of its election pursuant to
- 11 section 25, any other employing unit that has elected to become
- 12 fully subject to this act.
- 13 (5) (a) An employing unit that for some portion of a day in
- 14 each of 20 different calendar weeks, whether or not the weeks were
- 15 consecutive, in either the current or the preceding calendar year,
- 16 employed 10 or more individuals performing agricultural service,
- 17 regardless of whether the individuals were employed at the same
- 18 moment of time, or that, during any calendar quarter in either the
- 19 current or the preceding calendar year, paid remuneration in cash
- of \$20,000.00 or more to employees performing agricultural service.
- 21 (b) For the purposes of this subdivision, an individual who is
- 22 a member of a crew furnished by a farm labor contractor to perform
- 23 agricultural service for any farm operator shall be treated as an
- 24 employee of that farm labor contractor if the farm labor contractor
- 25 holds a valid certificate of registration under the migrant and
- 26 seasonal agricultural worker protection act, 29 USC 1801 to 1872;
- 27 or substantially all the members of the crew operate or maintain

- 1 tractors, mechanized harvesting or crop-dusting equipment, or any
- 2 other mechanized equipment, which is provided by the farm labor
- 3 contractor; and if the farm labor contractor is not an employee of
- 4 the farm operator within the meaning of this act.
- 5 (c) For the purposes of this subdivision, in the case of an
- 6 individual who is furnished by a farm labor contractor to perform
- 7 agricultural service for a farm operator and who is not treated as
- 8 an employee of the farm labor contractor under paragraph
- 9 SUBPARAGRAPH (b), the farm operator and not the farm labor
- 10 contractor shall be treated as the employer of the individual, and
- 11 the farm operator shall be treated as having paid cash remuneration
- 12 to the individual in an amount equal to the amount of cash
- 13 remuneration paid to the individual by the farm labor contractor,
- 14 either on the farm labor contractor's own behalf or on behalf of
- 15 the farm operator, for the agricultural service performed for the
- 16 farm operator.
- 17 (d) For the purposes of this subdivision, the term "farm labor
- 18 contractor" means an individual who does all of the following:
- 19 (i) Furnishes individuals to perform agricultural service for
- 20 a farm operator.
- 21 (ii) Pays, either on the individual's own behalf or on behalf
- 22 of a farm operator, the individuals furnished by the individual for
- 23 the agricultural service performed by them.
- 24 (iii) Has not entered into a written agreement with the farm
- 25 operator under which the farm labor contractor is designated as an
- 26 employee of the farm operator.
- 27 (6) An employing unit that paid cash remuneration of \$1,000.00

- 1 or more for domestic service in any calendar quarter in the current
- 2 calendar year or the preceding calendar year. An employing unit
- 3 that is determined to be an employer under this subdivision shall
- 4 not be considered an employer of other covered services unless it
- 5 meets the test of being an employer under another subdivision of
- 6 this section.
- 7 (7) Any employing unit not **OTHERWISE** an employer by reason of
- 8 any other paragraph of UNDER this section for which services in
- 9 employment are performed with respect to FOR which the employing
- 10 unit is liable for any federal tax against which credit may be
- 11 taken for contributions required to be paid into a state
- 12 unemployment compensation fund; but services performed for the
- 13 employing unit shall constitute ARE employment for the purposes of
- 14 this act only to the extent that those services constitute ARE
- 15 employment with respect to which the federal tax is payable.
- 16 (8) For purposes of this section, a week that falls in 2
- 17 calendar years shall be considered to fall entirely within the
- 18 calendar year that contains the majority of days of that week.
- 19 (9) Notwithstanding subdivision (1), after December 31, 1977,
- 20 "employer" includes any employing unit for which services are
- 21 performed as defined DESCRIBED in section 42(8) or (9).
- 22 (10) For the purpose of determining the amount of
- 23 contributions due pursuant to section 44(2), the provisions of
- 24 subdivisions (5) and (6) shall first apply with respect to
- 25 remuneration paid after December 31, 1977, for services performed
- 26 after that date.

## 27 (11) EXCEPT AS SPECIFICALLY PROVIDED IN THE FRANCHISE

- 1 AGREEMENT, AS BETWEEN A FRANCHISEE AND FRANCHISOR, THE FRANCHISEE
- 2 IS CONSIDERED THE SOLE EMPLOYER OF WORKERS FOR WHOM THE FRANCHISEE
- 3 PROVIDES A BENEFIT PLAN OR PAYS WAGES.
- 4 Enacting section 1. This amendatory act takes effect 90 days
- 5 after the date it is enacted into law.