

HOUSE BILL NO. 5885

June 23, 2020, Introduced by Reps. Lasinski, Sabo, Rabhi, Gay-Dagnogo, Tate, Wittenberg, Kuppa, Guerra, Elder, Pohutsky, Kennedy, Yancey, Brixie, Hood, Hertel, Cherry, Hoadley, Ellison, LaGrand, Manoogian, Stone, Koleszar, Hammoud, Hope, Sneller, Tyrone Carter, Bolden, Garza, Chirkun, Pagan, Haadsma, Warren, Cambensy, Shannon, Brenda Carter, Clemente, Jones and Anthony and referred to the Committee on Government Operations.

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,



1 performed within or both within and without this state if any of
2 the following apply:

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

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

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

28 (3) Service performed within this state but not covered under
29 subsection (2) and not excluded under section 43 shall be deemed to



1 be employment subject to this act if contributions are not required
2 and paid with respect to those services under an unemployment
3 compensation law of any other state or of the federal 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 deemed to be
8 employment subject to this act if the unemployment agency approves
9 the election of the employer for whom the services are performed
10 that the entire service of the individual shall be deemed to be
11 employment subject to this act. ~~Such an~~ **The employer's** election may
12 be canceled by the employer by filing a written notice with the
13 unemployment agency before January 30 of any year stating the
14 employer's desire to cancel the election or at any time by
15 submitting to the unemployment agency satisfactory proof that the
16 services designated in the election are covered by an unemployment
17 compensation law of another state or of the federal government, or
18 if the services are covered by an arrangement pursuant to section
19 11 between the unemployment agency and the agency charged with the
20 administration of any other state or federal unemployment
21 compensation law, pursuant to which all services performed by an
22 individual for an employing unit are deemed to be performed
23 entirely within the state, shall be deemed to be employment if the
24 unemployment agency has approved an election of the employing unit
25 for which the services are performed, pursuant to which the entire
26 service of the individual during the period covered by the election
27 is deemed to be employment.

28 (5) Before January 1, 2013, services performed by an
29 individual for remuneration are not employment subject to this act,



1 unless the individual is under the employer's control or direction
 2 as to the performance of the services both under a contract for
 3 hire and in fact. Service performed by an individual for
 4 remuneration under an exclusive contract that provides for the
 5 individual's control and direction by a person, firm, or
 6 corporation possessing a public service permit or by a certificated
 7 motor carrier transporting goods or property for hire are
 8 employment subject to this act. Service is employment under this
 9 act if it is performed by an individual who by lease, contract, or
 10 arrangement places at the disposal of a person, firm, or
 11 corporation a piece of motor vehicle equipment and under a contract
 12 of hire that provides for the individual's control and direction,
 13 is engaged by the person, firm, or corporation to operate the motor
 14 vehicle equipment.

15 **(6) ~~On~~ Except as otherwise provided in this subsection, on** and
 16 after January 1, 2013, services are employment if the services are
 17 performed by an individual who the agency determines to be in an
 18 employer-employee relationship using the 20-factor test announced
 19 by the ~~internal revenue service~~ **Internal Revenue Service** of the
 20 United States ~~department of treasury~~ **Department of Treasury** in
 21 revenue ruling 87-41, 1987-1 C.B. 296. An individual from whom an
 22 employer is required to withhold federal income tax is prima facie
 23 considered to perform services in employment under this act. **Except**
 24 **as otherwise provided in this subsection, on and after June 1,**
 25 **2020, services are not employment if the unemployment agency**
 26 **determines that the individual performing the services is, under**
 27 **contract and in fact, free from the control and direction of the**
 28 **hiring entity in connection with the performance of the services,**
 29 **the services are not in the usual course of the hiring entity's**



1 business, and the individual is customarily engaged in an
 2 independently established trade, occupation, or business of the
 3 same nature as the services performed. For claims submitted during
 4 an emergency declared by the governor because of an infectious
 5 disease, services described in this subsection are employment.

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

15 Notwithstanding any other provision of this act, ~~or any amendatory~~
 16 ~~act,~~ services performed for an employing unit which are required to
 17 be covered under this act, as a condition for its certification by
 18 the United States ~~secretary of labor,~~ shall **Secretary of Labor,**
 19 constitute employment for the purposes of this act. The
 20 unemployment agency may waive the provisions of this subsection
 21 with respect to services performed within this state if the
 22 employing unit is an employer solely by reason of section 41(7) and
 23 establishes that the services are covered by the election of the
 24 employing unit under any other state unemployment compensation law.
 25 This subsection does not apply to the exceptions provided in
 26 section 43(q).

27 (8) ~~(7)~~—Notwithstanding subsection (2), all service performed
 28 after December 31, 1964 ~~—~~by an officer or member of the crew of an
 29 American vessel on or in connection with the vessel is deemed to be



1 employment subject to this act if the operating office, from which
 2 the operations of the vessel operating on navigable waters within,
 3 or within and without, the United States are ordinarily and
 4 regularly supervised, managed, directed, and controlled, is within
 5 this state.

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

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

16 **(10)** ~~(9)~~ "Employment" includes service performed after
 17 December 31, 1971 ~~by~~ by an individual in the employ of this state or
 18 any of its instrumentalities for a state hospital or state
 19 institution of higher education, or in the employ of this state and
 20 1 or more other states or their instrumentalities for a hospital or
 21 institution of higher education located in this state. Coverage of
 22 services performed for these hospitals and institutions of higher
 23 education after December 31, 1977 ~~shall~~ shall be determined pursuant to
 24 subsection ~~(8) (b)~~. **(9) (b)** .

25 **(11)** ~~(10)~~ "Employment" includes service performed after
 26 December 31, 1971 ~~by~~ by an individual in the employ of a religious,
 27 charitable, educational, or other organization which is excluded
 28 from the term "employment" as defined in the federal unemployment
 29 tax act solely by reason of section 3306(c) (8) of the unemployment



1 tax act.

2 (12) ~~(11)~~—"Employment" includes service performed after
3 December 31, 1971 ~~—~~by an individual for his **or her** principal as an
4 agent driver or commission driver engaged in distributing
5 beverages, meat, vegetable, fruit, bakery, dairy, or other food
6 products, or laundry or dry cleaning services; or as a traveling or
7 city salesman, other than as an agent driver or commission driver,
8 engaged upon a full-time basis in the solicitation on behalf of,
9 and the transmission to, his **or her** principal except for sideline
10 sales activities on behalf of some other person, of orders from
11 wholesalers, retailers, contractors, operators of hotels,
12 restaurants, or other similar establishments for merchandise for
13 resale or supplies for use in their business operations. For
14 purposes of this subsection, "employment" includes services
15 performed after December 31, 1971, only if all of the following
16 apply:

17 (a) The contract of service contemplates that substantially
18 all of the services are to be performed personally by the
19 individual.

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

23 (c) The services are not in the nature of a single transaction
24 which is not part of a continuing relationship with the person for
25 whom the services are performed.

26 (13) ~~(12)~~—"Employment" includes service performed by a United
27 States citizen outside the United States after December 31, 1971,
28 except in Canada, and in the Virgin Islands after December 31,
29 1971, and before January 1 of the year following the year in which



1 the United States ~~secretary of labor~~ **Secretary of Labor** approves
2 the unemployment compensation law of the Virgin Islands under
3 section 3304(a) of the internal revenue code, while in the employ
4 of an American employer and is other than service which is
5 employment pursuant to subsection (2) or a parallel provision of
6 another state's law, if the requirements of subdivision (a), (b),
7 or (c) are met:

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

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

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

13 (ii) A corporation which is organized under the laws of this
14 state.

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

18 (c) None of the criteria of subdivisions (a) and (b) is met
19 but the employer elected coverage of the service under this act, or
20 the employer failed to elect coverage in any state and the
21 individual filed a claim for benefits based on the service under
22 the law of this state.

23 (d) An "American employer", for purposes of this subsection,
24 means a person who is one of the following:

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

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

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



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

3 (e) As used in this subsection, "United States" includes the
4 states, the District of Columbia, and the Commonwealth of Puerto
5 Rico.

6 **(14)** ~~(13)~~ Notwithstanding any other provision of this act, ~~the~~
7 ~~term~~ "employment" includes an individual's service, wherever
8 performed within the United States, the Virgin Islands, or Canada,
9 if the service is not covered under the unemployment compensation
10 law of any other state, the Virgin Islands, or Canada, and the
11 place from which the service is directed or controlled is in this
12 state.

