

Act No. 241  
Public Acts of 2014  
Approved by the Governor  
June 24, 2014  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

**Introduced by Rep. Foster**

# **ENROLLED HOUSE BILL No. 4958**

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act," by amending sections 26a, 42, and 43 (MCL 421.26a, 421.42, and 421.43), section 26a as added by 2011 PA 268, section 42 as amended by 2011 PA 269, and section 43 as amended by 2004 PA 243.

*The People of the State of Michigan enact:*

Sec. 26a. (1) The director of the department of licensing and regulatory affairs may request the Michigan finance authority to issue notes, bonds, financial instruments, or other evidences of indebtedness, the proceeds of which may be used for any of the following purposes:

(a) To finance, refinance, refund, or advance refund any payment required or obligation arising under this section or under 42 USC 1321 and 1322.

(b) To repay amounts owed or to be owed to the United States treasury resulting from advances made to this state by the federal government under federal law, including 42 USC 1321, together with interest on those advances.

(c) To reimburse funds advanced or loaned under either of the following circumstances:

(i) By this state to the unemployment trust fund and used to make any payment required or obligation described in this section or 42 USC 1321.

(ii) By the unemployment trust fund to the obligation trust fund and used to pay obligations of the Michigan finance authority.

(d) To fund unemployment compensation benefits and this state's account within the federal government unemployment trust fund, including balances in that account.

(e) To fund capitalized interest; debt service reserve funds; and payment of costs of, and administrative expenses in connection with, issuing obligations.

(2) In 2011 and in each year thereafter in which any obligation is outstanding, an employer is subject to, shall be assessed, and shall pay an unemployment obligation assessment, which shall be collected quarterly and shall be deposited to the credit of the obligation trust fund. The obligation assessment is in addition to the employer's required contributions, is not subject to the limiting provisions for contributions required under this act, and is in addition to and separate from the solvency tax imposed under section 19a.

(3) The unemployment obligation assessment rate shall be determined by the state treasurer after consultation with the director of the department of licensing and regulatory affairs and shall be an amount sufficient to ensure timely payment of all of the following:

(a) Principal, interest, and any redemption premium on the obligations.

(b) Administrative expenses, credit enhancement and termination fees, and other fees, if any, in connection with issuing the obligations.

(c) All other amounts required to be maintained and paid under the terms of a resolution, indenture, or authorizing statute under which the obligation is issued.

(d) Amounts necessary to maintain the ratings on the obligations that are assigned by a nationally recognized rating service at a level determined by the state treasurer, in his or her sole discretion.

(4) The obligation assessment rate may take into account the employer's experience rating from the previous year. Notwithstanding the exclusion from employment under section 43(a)(ii) of services performed for the employer, wages paid for performing those services shall be used to calculate the employer's obligation assessment rate and obligation assessment under this section. The obligation assessment rate shall be applied against the taxable wage limit described in section 44, and shall be assessed against all contributing employers.

(5) The obligation assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as contributions assessed under this act.

(6) The proceeds of obligation assessments received each year are irrevocably pledged and dedicated to the payment of obligations and administrative expenses on those expenses and are subject to the pledge and lien made to the extent and as described in the resolution, indenture, or the authorizing statute under which the obligation is issued.

(7) The director of the department of licensing and regulatory affairs shall administer and cause the obligation assessments to be collected.

(8) The director of the department of licensing and regulatory affairs may request the state treasurer to establish additional special subaccounts within the obligation trust fund for the purpose of identifying more precisely the sources of payments into and disbursements from the obligation trust fund, or as may be required under the resolution or indenture authorizing the obligations.

(9) The director of the department of licensing and regulatory affairs or his or her designee may enter into agreements with the issuer of the obligations or a third party as is necessary to issue the obligations. Nothing in this act or any provision of any document authorized under this section creates or constitutes state indebtedness.

(10) As used in this section and section 10a:

(a) "Michigan finance authority" means the authority created under Executive Order No. 2010-2, MCL 12.194.

(b) "Obligation" means a note, bond, financial instrument or other evidence of indebtedness issued as provided in this section.

(c) "Unemployment obligation assessment" means an assessment on an employer under this section.

(d) "Obligation trust fund" means the fund created in section 10a.

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

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

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

(b) The service is not localized in a state but some of the service performed in this state and the base of operations, or, if there is not a base of operations, then the place from which the service is directed or controlled, is in this state; or

the base of operations or place from which the service is directed or controlled is not in a state in which some part of the service is performed, but the individual's residence is in this state.

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

(3) Service performed within this state but not covered under subsection (2) and not excluded under section 43 shall be deemed to be employment subject to this act if contributions are not required and paid with respect to those services under an unemployment compensation law of any other state or of the federal government.

(4) Services, not covered under subsection (2), performed entirely without this state, for which contributions are not required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the unemployment agency approves the election of the employer for whom the services are performed that the entire service of the individual shall be deemed to be employment subject to this act. Such an election may be canceled by the employer by filing a written notice with the unemployment agency before January 30 of any year stating the employer's desire to cancel the election or at any time by submitting to the unemployment agency satisfactory proof that the services designated in the election are covered by an unemployment compensation law of another state or of the federal government, or if the services are covered by an arrangement pursuant to section 11 between the unemployment agency and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within the state, shall be deemed to be employment if the unemployment agency has approved an election of the employing unit for which the services are performed, pursuant to which the entire service of the individual during the period covered by the election is deemed to be employment.

(5) Before January 1, 2013, services performed by an individual for remuneration are not employment subject to this act, unless the individual is under the employer's control or direction as to the performance of the services both under a contract for hire and in fact. Service performed by an individual for remuneration under an exclusive contract that provides for the individual's control and direction by a person, firm, or corporation possessing a public service permit or by a certificated motor carrier transporting goods or property for hire are employment subject to this act. Service is employment under this act if it is performed by an individual who by lease, contract, or arrangement places at the disposal of a person, firm, or corporation a piece of motor vehicle equipment and under a contract of hire that provides for the individual's control and direction, is engaged by the person, firm, or corporation to operate the motor vehicle equipment. On and after January 1, 2013, services are employment if the services are performed by an individual who the agency determines to be in an employer-employee relationship using the 20-factor test announced by the internal revenue service of the United States department of treasury in revenue ruling 87-41, 1987-1 C.B. 296. An individual from whom an employer is required to withhold federal income tax is prima facie considered to perform services in employment under this act.

(6) Notwithstanding section 43, services performed for an employing unit, for which the employing unit is liable for federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, except service performed by an individual holding a visa described in section 101(a)(15)(H)(ii)(b) of the immigration and nationality act, 8 USC 1101, shall be deemed to constitute employment for the purposes of this act, but only to the extent that the services constitute employment with respect to which federal tax is payable. Notwithstanding any other provision of this act or any amendatory act, services performed for an employing unit which are required to be covered under this act, as a condition for its certification by the United States secretary of labor, shall constitute employment for the purposes of this act. The unemployment agency may waive the provisions of this subsection with respect to services performed within this state if the employing unit is an employer solely by reason of section 41(7) and establishes that the services are covered by the election of the employing unit under any other state unemployment compensation law. This subsection does not apply to the exceptions provided in section 43(q).

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 43. Except as otherwise provided in section 42(6), the term "employment" does not include any of the following:

(a) Services performed by an individual who is an alien admitted to the United States to perform services described in either of the following:

(i) Sections 214(c) and 101(a)(15)(H)(ii)(a) of the immigration and nationality act, 8 USC 1184 and 8 USC 1101(a)(15)(H)(ii)(a).

(ii) Beginning January 1, 2014, services described in section 101(a)(15)(H)(ii)(b) of the immigration and nationality act, 8 USC 1101(a)(15)(H)(ii)(b), and services described in 22 CFR 62.28 to 62.32 that are performed by a holder of a J-1 exchange visitor program visa issued under section 101(a)(15)(J) of the immigration and nationality act, 8 USC 1101(a)(15)(J), and the mutual educational and cultural exchange act of 1961, 22 USC 2451 to 2464. The employer claiming an exclusion under this subparagraph must be the petitioner of an H-2B visa holder, as documented on an approved I-129 petition for a nonimmigrant worker, or the sponsor of the J-1 exchange visitor program visa holder, as documented in the DS-2019 form. The employer shall maintain the supporting documentation for the claim for 6 years and, upon request, provide the unemployment agency with that documentation for compliance and verification purposes. This subparagraph is intended to apply retroactively to include the full calendar year.

(b) Service performed in the employ of another state or its political subdivisions, or of an instrumentality of another state or its political subdivisions, except as otherwise provided in section 42(9); and service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act. However, to the extent that the congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, this act applies to the instrumentalities and to services performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the appropriate agency of the United States under section 3304(c) of the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, 26 USC 3304, the payments required of the instrumentalities with respect to the year shall be refunded by the commission from the fund in the same manner and within the same period as provided in section 16 with respect to contributions erroneously collected.

(c) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress. However, the commission shall enter into agreements with the proper agencies under the act of congress, which agreements take effect 10 days after publication of the agreements in the manner provided in section 4 for regulations to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under the act of congress, or who have, after acquiring potential rights to unemployment compensation under the act of congress, acquired rights to benefits under this act.

(d) Agricultural labor. As used in this subdivision, "agricultural labor" includes all of the following:

(i) Service performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(ii) Service performed in the employ of the owner, tenant, or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm.

(iii) Service performed in connection with the production or harvesting of a commodity defined as an agricultural commodity in section 15(g) of the agricultural marketing act, 12 USC 1141j, in connection with the ginning of cotton, or the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(iv) Service performed in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market, or to a carrier for transportation to market, in its unmanufactured state, an agricultural or horticultural commodity, if the operator produced more than 1/2 of the commodity for which the service is performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) By a spouse of a student, if given written notice at the start of the service that the employment is under a program to provide financial assistance to the student and that the employment will not be covered by a program of unemployment compensation.

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

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

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

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

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

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

(A) As an elected official.

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



- (C) As a military employee of the state national guard or air national guard.
- (D) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.
- (E) In a position that, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than 8 hours per week.
- (iv) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or of providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market.
- (v) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision of a state by an individual receiving the work relief or work training.
- (vi) By an inmate of a custodial or penal institution.
- (vii) By an individual hired by a state department or recipient governmental entity through a summer youth employment program established under the Michigan youth corps act, 1983 PA 69, MCL 409.221 to 409.229, or an individual hired by a state department through a summer youth employment program administered by the department of natural resources or the department of transportation.
- (p) Service performed by an individual less than 18 years of age in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to a point for subsequent delivery or distribution.
- (q) Service performed for an employing unit other than a governmental entity or nonprofit organization and that is any of the following:
  - (i) Service performed by an individual while the individual was a minor student regularly attending either a public or a private school below the college level and the individual's employment during the week was any of the following:
    - (A) Less than the scheduled hours the individual would have worked in the department or establishment in which the employment occurred if the individual were not a student.
    - (B) Within the customary vacation days or vacation periods of the school, following which the individual actually returns to school.
    - (C) With an employer as a formal and accredited part of the regular curriculum of the individual's school.
  - (ii) Service performed by a college student of any age, but only if the student's employment is a formal and accredited part of the regular curriculum of the school.
  - (iii) Service performed by an individual as a member of a band or orchestra, but only if the service does not represent the principal occupation of the individual.
- (r) Subject to subdivision (s), services performed as a direct seller, if the person is engaged in either of the following:
  - (i) The trade or business of selling, or soliciting the sale of, consumer products or services to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis that the commission or the U.S. department of labor designates by rule or regulation, for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment.
  - (ii) The trade or business of selling, or soliciting the sale of, consumer products or services in the home or otherwise than in a permanent retail establishment.
- (s) The exclusion of services under subdivision (r) applies only if both of the following are met:
  - (i) Substantially all the cash or other remuneration, for the performance of the services described in subdivision (r) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.
  - (ii) The services are performed according to a written contract that provides that the person performing the services will not be treated as an employee with respect to those services for federal tax purposes.
- (t) Service performed by an individual as a product demonstrator or product merchandiser if the service is performed under a written contract between the individual and a person whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties for product demonstration and product merchandising purposes, and both in contract and in fact, the individual meets all of the following conditions:
  - (i) Is not treated as an employee with respect to those services for federal unemployment tax purposes.
  - (ii) Is compensated for each job, or the compensation is based on factors that relate to the work performed.
  - (iii) Determines the method of performing the service.
  - (iv) Provides the equipment used to perform the service.
  - (v) Is responsible for the completion of a specific job and is liable for any failure to complete the job.

- (vi) Pays all expenses, and the opportunity for profit or loss rests solely with the individual.
- (vii) Is responsible for operating costs, fuel, repairs, supplies, and motor vehicle insurance.
- (viii) As used in this subdivision:

(A) "Product demonstrator" means an individual who, on a temporary, part-time basis, demonstrates or gives away samples of a food or other product as part of an advertising or sales promotion for the product and who is not otherwise directly employed by the manufacturer, distributor, or retailer.

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

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

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

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

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

(v) Service performed by an individual as an oil, gas, or mineral landman under a contract with a private person or private entity if substantially all remuneration, including payment at a daily rate paid in cash or otherwise for the performance of the service, is directly related to the individual's completion of the specific tasks contracted for rather than the number of hours worked, and if the contract provides that the individual is an independent contractor and not an employee with respect to the contracted service. As used in this subdivision, "landman" means an individual who is engaged in 1 or more of the following:

(i) Negotiating the acquisition or divestiture of oil, gas, or mineral rights.

(ii) Negotiating business agreements that provide for the exploration for, transportation of, or development of oil, gas, or minerals.

(iii) Determining the ownership of oil, gas, or minerals through research of public and private records.

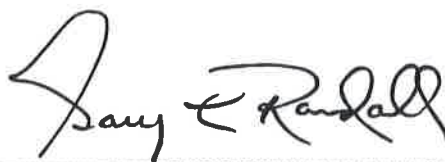
(iv) Reviewing the status of the title to, and curing title defects and deficiencies associated with, the ownership of oil, gas, or minerals.

(v) Managing rights or obligations derived from the ownership of interests in oil, gas, or minerals.

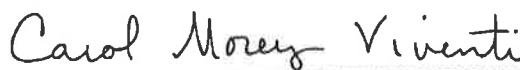
(vi) Interacting with regulatory agencies in support of activities relating to exploring for and producing oil, gas, or minerals, including unitizing or pooling interests in oil, gas, or minerals.

Enacting section 1. This amendatory act takes effect 60 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor