

CHAPTER 385

H.B. No. 1263

An Act relating to the eligibility for unemployment compensation benefits of certain direct sales agents.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 19(g)(5), Texas Unemployment Compensation Act (Article 5221b-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) The term "employment" shall not include:

(A) Service with respect to which unemployment compensation is payable under an Unemployment Compensation System established by an Act of Congress; provided that the Commission is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in subsection 11(b) of this Act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(B) Agricultural labor, which is hereby defined as all services performed:

(i) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any 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) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such 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 such service is performed on a farm;

(iii) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, 3; 12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with 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)(I) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(II) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (I) above, but only if such operators produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(III) the provisions of subparagraphs (I) and (II) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

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

(C) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;

(E) Service performed in the employ of a church, convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(F) Services performed in the employ of a political subdivision or any instrumentality thereof which is wholly owned by one (1) or more political subdivisions:

(i) as an elected official;

(ii) as a member of a legislative body;

(iii) as a member of the judiciary;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(v) in a position which, under or pursuant to law, is designated as a major nontenured policy-making or advisory position, or a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;

(G) Service performed in the employ of a foreign government (including services as a consular or other officer or employee, or a nondiplomatic representative);

(H) Service performed in the employ of an instrumentality wholly owned by a foreign government (i) if the service is of a character similar to that performed in foreign countries by the employees of the United States Government or of an instrumentality thereof; and (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(I) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law;

(J) Service performed by an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(K) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(L) Service covered by an arrangement between the Commission 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 during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

(M) 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, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this Act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this State shall not be certified for any year by the Social Security Board or successor under Section 1603(c) of the Internal Revenue Code of 1954, the payments required by such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in subsection 14(j) of this Act with respect to contributions erroneously collected;

(N) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(P) Service performed in the employ of a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitative or remunerative work;

(Q) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(R) Service performed by an inmate of a custodial or penal institution which is owned or operated by the State or a political subdivision thereof;

(S) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(T) Service performed by an individual who is enrolled at a nonprofit or public educational institution which 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 such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employing unit, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, service performed in an apprenticeship training program, or service performed by a teaching assistant; ~~and~~

(U) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(V) Service performed on a fishing vessel normally having a crew of fewer than ten (10) if the crew member's reimbursement for services performed is a share of the catch and the services are determined not to be employment under the Federal Unemployment Tax Act; and

(W) Service performed by an individual as a direct seller if:

(i) *the individual is engaged in the business of in-person sales of consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale in the home, or in a place other than in, or affiliated with, a permanent retail establishment, or the individual is engaged in the business of selling consumer products in the home or in a place other than in, or affiliated with, a permanent retail establishment;*

(ii) *substantially all the remuneration, whether or not paid in cash, for the performance of the services is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and*

(iii) *the services performed by the individual are performed under a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual is not treated as an employee with respect to those services for federal tax purposes.*

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 7, 1985, by a non-record vote; passed by the Senate on May 17, 1985, by the following vote: Yeas 30, Nays 0.

Approved: June 10, 1985

Effective: August 26, 1985