

**CHAPTER 67**

**H.B. No. 32**

An Act relating to coverage of agricultural employers and employment under the Texas Unemployment Compensation Act.

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

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

(f) "Employer" means:

(1) Any employing unit, other than one to which paragraph (3) or (6) or (8) below is applicable, which during any calendar quarter in the current calendar year or the preceding calendar year paid wages of One Thousand Five Hundred Dollars (\$1,500) or more, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one (1) individual in employment for some portion of the day;

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any employing unit which is a nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under Section 501(a) of such Code and which on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed four (4) or more individuals in employment for some portion of the day;

(4) Any employing unit which has elected to become an employer under Section 8 of this Act;

(5) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act for the current calendar year;

(6) A state or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection which, as a condition for approval of this Act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an "employer" under this Act;

(8) Any employing unit which paid wages for or employed individuals in *farm and ranch* [~~agricultural~~] labor in accordance with the following:

(A) *For the period*

(i) *between January 1, 1986, and December 31, 1986, farm and ranch* [~~notwithstanding any other provision in this Act, agricultural~~] labor [~~as defined in subsection 10(g)(5)(B) of this Act~~] shall constitute employment if performed by a seasonal worker employed on a truck farm, orchard, or vineyard, or if performed by any other farm and ranch laborer employed by [~~for~~] any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of *Seven Thousand Five Hundred* [~~Twenty Thousand~~] Dollars (\$7,500) [~~\$20,000~~] or more for such services, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least *four (4)* [~~ten (10)~~] or more individuals in that employment for some portion of the day; and

(ii) *beginning January 1, 1987, farm and ranch labor shall constitute employment if performed by a seasonal worker employed on a truck farm, orchard, or vineyard, or if performed by any other farm and ranch laborer employed by an employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of Six Thousand Two Hundred Fifty Dollars (\$6,250) or more for such services, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least three (3) or more individuals in that employment for some portion of the day.*

(B) *Farm and ranch labor shall constitute employment if performed by farm and ranch laborers who are migrant workers.*

(C) *Farm and ranch labor, if performed by a seasonal worker, shall constitute employment under the same conditions as if the seasonal worker were a migrant worker, provided that:*

(i) *the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and*

(ii) *the seasonal worker is doing the same work at the same time at the same location as migrant workers.*

(D) *If a labor agent furnishes farm and ranch laborers, the labor agent is liable for the payment of taxes under this Act as if the labor agent were the employer of the workers, without regard to the right of control or other factors used to determine an employer-employee relationship. However, if the labor agent does not pay tax in accordance with this Act, the person with whom the labor agent contracts for the services of the farm and ranch laborers is jointly and severally liable with the labor*

agent for the payment of taxes under this Act as an employer. A labor agent must notify each person with whom the agent contracts whether the agent pays unemployment compensation tax in this state. If the labor agent does pay, the agent must present evidence of payment of the tax to each person with whom the agent contracts. In this subdivision, "labor agent" means a person who:

- (i) is a labor agent for purposes of Chapter 234, Acts of the 51st Legislature, Regular Session, 1949 (Article 5221a-5, Vernon's Texas Civil Statutes); or
- (ii) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Sec. 1801 et seq.).

(E) In this subdivision, an employer shall not be treated as an employer with respect to wages paid for any service other than service performed:

- (i) by seasonal workers employed on a truck farm, orchard, or vineyard;
- (ii) by farm and ranch laborers who are migrant workers; or
- (iii) by seasonal workers:
  - (I) who work for a farmer, ranch operator, or labor agent who employs migrant workers; and
  - (II) who do the same work at the same time at the same location as migrant workers unless the employer is an employer with respect to farm and ranch service performed in accordance with Paragraph (A) of this subdivision; provided that wages paid for service listed in (i), (ii), and (iii) of this paragraph are included in the determination of wages paid for the purposes of Paragraph (A). [provided that

[(A) for purposes of this provision, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of the crew leader;

[(i) if:

[(I) the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or

[(II) substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop/dusting equipment, or any other mechanized equipment which is provided by the crew leader; and

[(iii) if the individual is not an employee of such other person;

[(B) for purposes of this provision, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (A) of this subdivision:

[(i) the other person and not the crew leader shall be treated as the employer of that individual; and

[(ii) the other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by the crew leader (either on his behalf or on behalf of the other person) for the agricultural labor performed for the other person;

[(C) for purposes of this provision, the term "crew leader" means an individual who:

[(i) furnishes individuals to perform agricultural labor for any other person;

[(ii) pays (either on his behalf or on behalf of the other person) the individuals so furnished by him for the agricultural labor performed by them; and

[(iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

[(D) for the purposes of this provision, wages shall not include remuneration paid in any medium other than cash;

[(E) this provision shall not be applicable to agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to Sections 214(e) and 101(a)(15)(H) of the Immigration and Nationality Act.]

(9) Any employing unit which paid wages for domestic service in accordance with the following: notwithstanding any other provision in this Act, domestic service in a private home, local college club, or a local chapter of a college fraternity or sorority shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of One Thousand Dollars (\$1,000) or more for the domestic service, provided that an employer under this provision shall not be treated as an employer with respect to wages paid for any service other than domestic service unless the employer is treated as an employer under some other provision of this Act with respect to the service.

**SECTION 2.** Subsection g(5), Section 19, 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 (16 Stat. 1550, 3; 12 U.S.C. 1111); 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.

**SECTION 3.** Subsection (a), Section 7, Texas Unemployment Compensation Act (Article 5221b-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Payment: Contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he is subject to this Act, with respect to wages for employment paid during such calendar year, or portion thereof. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such rules or regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ. ~~[For agricultural employers subject to this Act, the Commission may require estimated contributions quarterly, but shall require a full report only once each year.]~~

**SECTION 4.** This Act takes effect January 1, 1986.

**SECTION 5.** 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.

Passed by the House on April 11, 1985, by a non-record vote; passed by the Senate on April 17, 1985, by a viva-voce vote.

Approved: May 2, 1985

Effective: January 1, 1986