

## CHAPTER 966

## H.B. No. 520

## AN ACT

relating to the exclusion from coverage under the Texas Unemployment Compensation Act of services performed by certain landmen.

*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) Service performed by an individual as a product demonstrator if:

(i) the service is performed under a written contract between the individual and a person whose principal business is obtaining the services of demonstrators for third parties for product demonstration purposes; and

(ii) both in contract and in fact the individual:

(I) is not treated as an employee with respect to those services for federal unemployment tax purposes;

(II) is compensated for each demonstration, or the compensation is based on factors that relate to the work performed;

(III) determines the method of performing the service;

(IV) provides the vehicles 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) is free to accept or reject jobs from a product demonstrator business, and the principal business has no control over where the individual works;

(VII) pays all expenses, and the opportunity for profit or loss rests solely with the individual; and

(VIII) is responsible for operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(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;

(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;

(X) Service performed by a full-time student in the employ of an organized camp if the conditions in (i) below are met.

(i) This paragraph applies if:

(I) such camp:

(a) did not operate for more than seven (7) months in the calendar year and did not operate for more than seven (7) months in the preceding calendar year, or

(b) had average gross receipts for any six (6) months in the preceding calendar year which were not more than 33% percent of its average gross receipts for the other six (6) months in the preceding calendar year; and

(II) such full-time student performed services in the employ of such camp for less than thirteen (13) calendar weeks in such calendar year.

(ii) For purposes of this paragraph, an individual shall be treated as a full-time student for any period:

(I) during which the individual is enrolled as a full-time student at an educational institution, or

(II) which is between academic years or terms if:

(a) the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term, and

(b) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in Subparagraph (a);

(Y) Service performed by an individual as a real estate broker or salesman if:

(i) the individual is engaged in performing acts or transactions comprehended by the definition of "real estate broker" in The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes);

(ii) the individual is licensed as a real estate broker or salesman by the Texas Real Estate Commission;

(iii) 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

(iv) 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;

(Z) Service performed by an individual as an instructor of persons licensed or seeking licensure as real estate brokers or salesmen if:

(i) the individual is instructing an educational program or course approved by the Texas Real Estate Commission; and

(ii) 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; and

(AA) Service performed for a private for-profit delivery or courier service by an individual for compensation if:

(i) the individual:

(I) is free to accept or reject jobs from a private for-profit delivery or courier service, and the private for-profit delivery or courier service has no control over when the individual works;

(II) is compensated for each delivery, or the compensation is based on factors that relate to the work performed, including receipt of a percentage of any rate schedule or of a lawfully published tariff;

(III) pays all expenses, and the opportunity for profit or loss rests solely with the individual;

(IV) is responsible for operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(V) determines the method of performing the service, including selection of routes and order of deliveries;

(VI) is responsible for the completion of a specific job and is liable for any failure to complete the job;

(VII) enters into a contract that specifies the relationship of the individual to the private for-profit delivery or courier service to be that of an independent contractor and not that of an employee; and

(VIII) provides the vehicle used to perform the service; and

(ii) the private for-profit delivery or courier service operates exclusively within a commercial zone as defined and prescribed by the Railroad Commission of Texas under Section 1(g), Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes).

(BB) Service performed by an individual at a trade market for a wholesaler or sales representative of a wholesaler or manufacturer of consumer goods under a written contract, or as a salesman for a wholesaler or wholesalers of consumer goods if such wholesaler or sales representative maintains a regular or seasonal place of business at a trade market facility in a city with a population of more than 750,000.

(CC) *Service performed for a private for-profit person or entity by an individual as a landman if:*

*(i) the individual is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration for or development of minerals;*

*(ii) substantially all remuneration, paid in cash or otherwise, for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual; 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 that provides that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.*

SECTION 2. This Act takes effect September 1, 1993, and applies only to benefit eligibility based on a claim for unemployment compensation benefits that is filed with the Texas Employment Commission on or after that date. A claim filed before that date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

SECTION 3. 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 21, 1993, by a non-record vote; passed by the Senate on May 26, 1993: Yeas 30, Nays 0.

Approved June 13, 1993.

Effective Sept. 1, 1993.