HB526

150993-1

By Representatives Williams (J), McClurkin, Cheesteen, Buttram, Mask, Johnson (K), Drake, McMillan, Beckman, Wren, Standridge, Jones, Carns, Roberts, Butler, Greer, Sanderford, Davis, Patterson, Ball, Tuggle, Sessions, Williams (P), Faust, Brown, Merrill and Collins

RFD: Commerce and Small Business

First Read: 02-APR-13
SYNOPSIS: Under existing law, there is no explicit language that prohibits employment as a substitute employee at a school from qualifying for unemployment compensation. This bill would provide that the term "employment" for purposes of qualifying for unemployment compensation does not include services performed as a substitute employee in a school.

A BILL
TO BE ENTITLED
AN ACT

Relating to unemployment compensation; to amend Section 25-4-10, Code of Alabama 1975, by adding a new provision to include an exemption from the term "employment" for services as a substitute employee in a school.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 25-4-10, Code of Alabama 1975, is amended to read as follows:
§25-4-10.

"(a) Subject to other provisions of this chapter, "employment" means:

"(1) Any service performed prior to January 1, 1978, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, services performed for remuneration after December 31, 1977, including service in interstate commerce, by:

"a. Any officer of a corporation; or

"b. Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

"c. Any individual other than an individual who is an employee under paragraphs a. or b. of this subdivision (1) who performs services for remuneration for any person:

"1. As an agent-driver or commission-driver engaged in distributing meat products, bakery products, beverages (other than milk) or laundry or dry cleaning services for a principal;

"2. As a traveling or city salesman engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations."
"For purposes of paragraph c. of this subdivision, the term "employment" shall include services described in subparagraphs 1 and 2 of paragraph c. of this subdivision, performed after December 31, 1971, only if:

"(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

"(ii) 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); and

"(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are rendered.

"(2) Service performed:

"a. After December 31, 1971, but prior to January 1, 1978, by an individual in the employ of this state or any of its instrumentalities or political sub divisions or their instrumentalities (or in the employ of any of the foregoing and one or more other states or their instrumentalities or political sub divisions) for a hospital or institution of higher education located in this state; provided, however, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act, and is not excluded from "employment" under subsection (b) of this section; provided further, that
such service in the employ of a political subdivision or any of its instrumentalities shall be deemed to be "employment" within the meaning of this chapter only if the political subdivision or its instrumentalities has elected to become an employer subject to this chapter pursuant to Section 25-4-131 for all such service in the employ of the political subdivision and its instrumentalities and has not ceased to be an employer subject hereto pursuant to Section 25-4-130 or Section 25-4-131; and

"b. After December 31, 1977, in the employ of this state or any of its instrumentalities or of any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any one of the foregoing and one or more other states or political subdivisions, provided, however, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subsection (b) of this section.

"c. For the purposes of this chapter, the term "governmental entity" in reference to this state is defined as the entirety of state government, but for the purposes of reporting, accounting or other administrative procedures such entity shall be divided into each department, agency, board, commission, and any other separately organized division or instrumentality of this state. The Comptroller of this state shall make such payments to the director as are required by
the other provisions of this chapter as they pertain to the
various organizational components of the state. The
Comptroller is hereby authorized to require of such components
such payments as are necessary to discharge his or her
responsibilities and shall enforce such payments under the
provisions of subsection (b) of Section 25-4-51.

"d. The term "governmental entity" in reference to
any political subdivision is defined as each county and its
instrumentalities and each municipality and its
instrumentalities, except that each instrumentality of a
political subdivision which is separately incorporated or
otherwise removed from the control of the governing body of
the political subdivision shall be a separate governmental
entity. Instrumentalities organized and operated jointly by
any combination of two or more of the aforementioned entities
shall be considered as constituting a separate governmental
entity. The foregoing notwithstanding, each separate public
school system shall constitute a separate governmental entity.

"(3) Service performed after December 31, 1971, by
an individual in the employ of a religious, charitable,
educational, or other organization but only if the following
conditions are met:

"a. The service is excluded from "employment" as
defined in the Federal Unemployment Tax Act solely by reason
of Section 3306(c)(8) of that act, and is not excluded from
"employment" under subdivisions (8) and (21) of subsection (b)
of this section; and
"b. The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

"(4)a. Service performed after December 31, 1977, by an individual in agricultural labor as defined in subdivision (1) of subsection (b) of this section, when:

"1. Such service is performed for an employing unit which:

"(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1984, by an alien referred to in subparagraph 2. of this paragraph a.; or

"(ii) For some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1984, by an alien referred to in subparagraph 2. of this paragraph a., 10 or more individuals, regardless of whether they were employed at the same moment of time.

"2. For the purposes of this paragraph a., such service is not considered to be performed in agricultural labor if performed before January 1, 1984, by an individual
who is an alien admitted to the United States to perform
service in agricultural labor pursuant to Sections 214(c) and

"3. For the purposes of this paragraph a., any
individual who is a member of a crew furnished by a crew
leader to perform service in agricultural labor for any other
person shall be treated as an employee of such crew leader.

"(i) If such crew leader holds a valid certificate
of registration under the Farm Labor Contractor Registration
Act of 1963, or substantially all the members of such crew
operate or maintain tractors, mechanized harvesting or crop
dusting equipment, or any other mechanized equipment, which is
provided by such crew leader; and

"(ii) If such individual is not an employee of any
other person within the meaning of subdivision (1) of this
subsection.

"4. For the purposes of this subdivision (4) in the
case of any individual who is furnished by a crew leader to
perform service in agricultural labor for any other person and
who is not treated as an employee of such crew leader under
subparagraph 3. of this paragraph a.:

"(i) Such other person and not the crew leader shall
be treated as the employer of such individual; and

"(ii) Such other person shall be treated as having
paid cash remuneration to such individual in an amount equal
to the amount of cash remuneration paid to such individual by
the crew leader (either on his or her own behalf or on the
behalf of such other person) for the service in agricultural labor performed for such other person.

"5. For the purposes of this paragraph a., the term "crew leader" shall mean an individual who:

"(i) Furnishes individuals to perform service in agricultural labor for any other persons;

"(ii) Pays (either on his or her own behalf or on behalf of such other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and

"(iii) Has not entered into a written agreement with the farm operator under which such crew leader is designated as an employee of such farm operator.

"b. Domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person, their spouse, or estate who paid cash remuneration of $1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

"For the purposes of this paragraph b. the term "domestic service" includes all service for a person in the operation and maintenance of a private household, local college club, or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise, or vocation.
"(5) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971, (except in Canada or in the case of the Virgin Islands after December 31, 1971, and prior to January 1 of the year following the year in which the U.S. Secretary of Labor approves the Unemployment Compensation Law of the Virgin Islands under Section 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision (8) or (9) of this subsection (a) or the parallel provisions of another state's law), if:

"a. The employer's principal place of business in the United States is located in this state; or

"b. The employer has no place of business in the United States, but:

"1. The employer is an individual who is a resident of this state; or

"2. The employer is a corporation which is organized under the laws of this state; or

"3. The employer is 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 other state; or

"c. None of the criteria of paragraphs a. and b. of this subdivision (5) is met but the employer has elected coverage in this state, or the employer having failed to elect
coverage in any state, the individual has filed a claim for
benefits, based on such service, under the law of this state.

"d. An "American employer," for the purpose of this
subsection, means a person who is:

"1. An individual who is a resident of the United
 States; or

"2. A partnership, if two-thirds or more of the
 partners are residents of the United States; or

"3. A trust, if all of the trustees are residents of
the United States; or

"4. A corporation organized under the laws of the
United States or of any state.

"e. For the purposes of this subdivision (5), the
term "United States" includes the states of the United States,
the District of Columbia, the Commonwealth of Puerto Rico, and
in the case of the Virgin Islands, after December 31 of the
year in which the U.S. Secretary of Labor approves the Virgin
Islands' Unemployment Insurance Law for the first time.

"(6) Notwithstanding subdivision (8) of this
subsection (a), all service performed by an officer or a
member of the crew of an American vessel on or in connection
with such vessel, if the operating office from which the
operations of such 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.
"(7) Notwithstanding any other provisions of this section, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

"(8) Subject to the other provisions of this section, the term "employment" shall include an employee's entire service, performed within or both within and without this state if:

"a. The service is localized in this state; or
"b. The service is not localized in any state but some of the service is performed in this state and the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled is in this state, or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state;
"c. Service shall be deemed to be localized within a state if the service is performed entirely within such state, or the service is performed both within and without such state, but the service performed without such state is incidental to the employee's service within the state; for example, service which is temporary or transitory in nature or consists of isolated transactions;
"d. The service shall be deemed to be localized in this state wherever such service is performed within the United States, as defined in paragraph e. of subdivision (5) of this subsection, if such service is not covered under the unemployment compensation law of any other state, as defined in Section 25-4-14, and the place from which such service is directed or controlled is in this state.

"(9) Services not covered under subdivision (8) of this subsection (a) and performed entirely without the state, with respect to no part of which contributions are 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 chapter if the employee performing such service is a resident of this state and the director approves the election of the employing unit for whom such services are performed. The entire service of such employee shall be deemed to be "employment" subject to this chapter.

"(10) The term "employment" includes a person's entire services if such service is deemed performed in this state by virtue of reciprocal agreements pursuant to the provisions of Section 25-4-120 and does not include any service which by virtue of such agreement is deemed performed in another state.

"(11) The term "employment" includes services in the employ of an Indian tribe. The term "Indian tribe" has the meaning given the term by Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 USC
450b(c)), and includes any subdivision, subsidiary, or 
business enterprise wholly owned by the Indian tribe.

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

"(1) Except as provided in paragraph a. of 
subdivision (4) of subsection (a) of this section, service 
performed by an individual in agricultural labor. For 
purposes of this chapter, the term "agricultural labor" means 
any service performed prior to January 1, 1978, which was 
agricultural labor as defined in this section prior to such 
date, and remunerated service performed after December 31, 
1977, if such service was performed:

"a. On a farm, in the employ of any employing unit, 
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.

"b. 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.

"c. 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, Sec. 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.

"d. In the employ of the operator of a farm, a group
of operators of farms (or a cooperative organization of which
such operators are members) 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 commodities, but only if such
operator or group of operators (or a cooperative organization
of which such operators are members) produced more than one
half of the commodity with respect to which service is
performed; provided, however, the provisions of this paragraph
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.

"e. On a farm operated for profit if such service is
not in the course of the employer's trade or business.

"As used in this subdivision, 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.

"(2) Prior to January 1, 1978, domestic services in
a private home, local college club, or local chapter of a
college fraternity or sorority and after December 31, 1977, if
the provisions of paragraph b. of subdivision (4) of
subsection (a) of this section are not met.

"(3) Casual labor not in the usual course of the
employer's trade or business performed after December 31,
1971, in any calendar quarter by an individual, unless the
cash remuneration paid for such service is $50 or more and
such service is performed by an individual who is regularly
employed by such employing unit to perform such service. For
the purposes of this subdivision, an individual shall be
deemed to be regularly employed to perform service not in the
course of an employing unit's trade or business during a
calendar quarter only if:

"a. On each of some 24 days during such quarter such
individual performs such service for some portion of the day;
or

"b. Such individual was regularly employed (as
determined under paragraph a. of this subdivision) by such
employing unit in the performance of such service during the
preceding calendar quarter.

"(4) Service performed by an individual in the
employ of his or her son, daughter or spouse, and service
performed by an individual under the age of 21 in the employ
of his or her father or mother.

"(5) Prior to January 1, 1978, except to the extent
set forth in subdivision (2) of subsection (a) of this
section, service performed in the employ of this state, or any
political subdivision thereof, or of any instrumentality of
this state or its political subdivisions.

"(6) Prior to January 1, 1978, except as provided in
subdivision (2) of subsection (a) of this section, service
performed in the employ of any other state or any political
subdivisions thereof, or any instrumentality of any one or
more of the foregoing which is wholly owned by one or more
such states or political subdivisions, and any service
performed in the employ of any instrumentality of any one or
more other states or their political subdivisions to the
extent that the instrumentality is, with respect to such
service, immune, under the Constitution of the United States
from the tax imposed by Section 3301 of the Federal Internal
Revenue Code.

"(7) Service performed in the employ of the United
States government or of any instrumentality wholly owned by
the United States, except that if 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 this chapter, then to the extent permitted by Congress
and from and after the date as of which such permission
becomes effective, all of the provisions of this chapter shall
be applicable to such instrumentalities and to services
performed by employees for such instrumentalities in the same
manner, to the same extent, and on the same terms as to all
other employers and employing units; provided, however, if
this state should not be certified by the Secretary of Labor
under Section 3304(c) of the Federal Internal Revenue Code for
any year, then the payment required of such instrumentality
with respect to such year shall be deemed to have been
erroneously collected within the meaning of Article 3 of this
chapter and shall be refunded by the director from the fund in
accordance with the provisions of Section 25-4-137.

"(8) Except to the extent set forth in subdivision
(3) of subsection (a) of this section, service performed in
the employ of a corporation, community chest, fund, or
foundation organized and operated exclusively for religious,
charitable, scientific, literary, or educational purposes, or
for the prevention of cruelty to children or animals, no part
of the net earnings of which inures to the benefit of any
private shareholder or individual, and no substantial part of
the activities of which is carrying on propaganda, or
otherwise attempting to influence legislation.

"(9) Service performed after June 30, 1939, with
respect to which unemployment compensation is payable under
the Railroad Unemployment Insurance Act of Congress (52 Stat.
1094, as amended) and services with respect to which
unemployment compensation is payable under any other
unemployment compensation system established by an act of
Congress; provided, however, that the director is hereby authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in Section 25-4-111 for general rules to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter acquired rights to unemployment compensation under such act or acts of Congress, or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

"(10) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

"(11) Service performed, in the employ of a school, college, or university, if such service is performed:

"a. By a student who is enrolled and is regularly attending classes at such school, college, or university;

"b. By the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service, that:

"1. The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university; and
"2. Such employment will not be covered by any program of unemployment insurance.

"c. By an individual performing services on an intermittent basis as a substitute employee.

"(12) 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 employer, except this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

"(13) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital as defined in subsection (e) of this section, or 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 laws, 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.
(14) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(15) Except as provided in subdivisions (2) and (3) of subsection (a) of this section, any employment or service which is excluded by the express statutory provisions of Section 3306 of the Federal Internal Revenue Code as amended.

(16) Service performed by an officer or member of the crew of a vessel which is not an American vessel. The term "American vessel" means any vessel documented or numbered under the law of the United States, and includes any vessel which is neither documented nor numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(17) 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, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except:

a. Service performed in connection with the catching or taking of salmon or halibut for commercial purposes; and
"b. 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).

"(18) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative).

"(19) Service performed in the employ of an instrumentality wholly owned by a foreign government if:

"a. The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

"b. The director 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 service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

"(20) Except to the extent set forth in subdivision (3) of subsection (a) of this section, service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501(a) of the Federal Internal Revenue Code (other than organizations described in Section 401(a)) or under Section 521 of such Code, if the remuneration for such service is less than $50.
"(21) Services performed for any governmental entity, institution or organization described in subdivisions (2) and (3) of subsection (a) of this section:

"a. In the employ of:

"1. A church or convention or association of churches; or

"2. An organization that is operated primarily for religious purposes and which is either operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

"b. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order; or

"c. Except as provided in subdivision (7) of subsection (a) of Section 25-4-8:

"1. Prior to January 1, 1978, in the employ of a school which is not an institution of higher education;

"2. After December 31, 1977, in the employ of a governmental entity referred to in paragraph b. of subdivision (2) of subsection (a) of this section, if such service is performed by an individual in the exercise of duties:

"(i) As an elected official;

"(ii) As a member of a legislative body, or a member of the judiciary of this state or any of its political subdivisions or of an Indian tribe;
"(iii) As a member of the State National Guard or Air National Guard;

"(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency (this exclusion does not apply to permanent employees whose usual responsibilities include emergency situations);

"(v) In a position which, under or pursuant to the laws of this state or of an Indian tribe, 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; or

"d. In 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 rehabilitation or remunerative work; provided however, if an individual's employment is otherwise characterized as employment under subsection (a) and the individual is performing work under the Javits Wagner O'Day Act or a similar set-aside program under the laws of the United States, the individual's employment shall be considered employment under subsection (a) as of the date of such written election.
"e. 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 or of an Indian tribe, by an individual receiving such work relief or work training; or

"f. For a hospital in a state prison or other state correctional institution prior to January 1, 1978, by an inmate of the prison or correctional institution and, after December 31, 1977, by an inmate of a custodial or penal institution.

"(22) Services performed by an individual as a qualified real estate agent. For the purposes of this chapter the term "qualified real estate agent" shall mean an individual who is a sales person if:

"a. Such individual is a licensed real estate agent; and

"b. Substantially all of the remuneration for services performed as a real estate agent (whether or not paid in cash) is directly related to sales or other output (including the performance of services), rather than the number of hours worked, and

"c. The services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes.
"(23) Services performed by an individual as a direct seller. For the purposes of this chapter the term "direct seller" shall mean any individual who:

"a. Is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a:

"1. Buy-sell basis, or

"2. Deposit-commission basis, or

"3. Any similar basis which the U.S. Secretary of the Treasury prescribes by regulations, for resale (by the buyer or any other individual), in the home or otherwise than in a permanent retail establishment; or

"b. Is engaged in the trade or business of selling (or soliciting the sale of) consumer products to a consumer in the home or otherwise than in a permanent retail establishment, and

"c. Substantially all of the remuneration for the services performed by such individual as a direct seller (whether or not paid in cash) is directly related to sales or output (including the performance of services) rather than to the number of hours worked, and

"d. The services performed by such individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes.
"(24) Services performed by an individual as a product demonstrator. For the purposes of this chapter, the term "product demonstrator" shall mean any individual who satisfies both of the following requirements:

"a. Is engaged in the trade or business of demonstrating, exhibiting, or soliciting the purchase of food, food-related products offered for sale, or other consumer products offered for sale to any buyer on the premises of a grocery store, dry good store, or similar retail establishment, or trade show;

"b. Who performs those services pursuant to a written contract between the individual and a person whose principal business is providing demonstrators to third parties for such purposes and the contract provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

"(25) Services performed by an individual committed to a penal institution.

"(c) "Institution of higher education," for the purposes of this chapter, means an educational institution which:

"(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

"(2) Is legally authorized in this state to provide a program of education beyond high school;
"(3) Provides an educational program for which it
awards a bachelor's or higher degree, or provides a program
which is acceptable for full credit toward such a degree, or a
program of postgraduate or postdoctoral studies, or a program
of training to prepare students for gainful employment in a
recognized occupation.

"(d) For the purposes of this chapter the term
"educational institution" means an educational institution
(including an institution of higher education as defined in
subsection (c) of this section) in which:

"(1) Participants, trainees, or students are offered
an organized course of study or training designed to transfer
to them knowledge, skills, information, doctrines, attitudes,
or abilities from, by, or under the guidance of an
instructor(s) or teacher(s).

"(2) It is approved, licensed, or issued a permit to
operate as a school by the State Department of Education or
other government agency that is authorized within the state to
approve, license, or issue a permit for the operation of a
school.

"(3) The courses of study or training which it
offers may be academic, technical, trade, or preparation for
gainful employment in a recognized occupation, as opposed to
study or training in the social graces or skills or whose
primary purpose is to provide baby-sitting or day care
services although some learning activities may be included.
"In any particular case, the question of whether or not an institution is an educational institution (other than an institution of higher education) within the meaning of the criteria described above will depend on what that particular institution actually does.

"(e) "Hospital" means an institution which has been licensed, certified or approved by the State Board of Health or the State Department of Mental Health and Mental Retardation as a hospital or a similar institution operated by the state or any of its political subdivisions or by an instrumentality of either of the foregoing.

"(f) If the services performed during one half or more of any pay period by an employee for the employing unit employing him or her constitute employment, all of the services of such employee for such period shall be deemed to be employment, but if the services performed during more than one half of any such pay period by an employee for the employing unit employing him or her do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than 31 consecutive days) for which a payment or remuneration is ordinarily made to the employee by the employing unit employing the employee."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.