House Engrossed

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KEN BENNETT
SECRETARY OF STATE

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CHAPTER 218

HOUSE BILL 2645

AN ACT

AMENDING SECTIONS 23-603, 23-613, 23-615, 23-615.01, 23-617, 23-725 AND 23-751.01, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 23-603, Arizona Revised Statutes, is amended to read:

23-603. Agricultural labor; definitions; exemption

A. "Agricultural labor" means and includes all service performed prior to January 1, 1972, ~~which~~ THAT was agricultural labor as defined in this section prior to ~~such~~ THAT date, and THAT remunerated service performed after December 31, 1971:

1. 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.

2. 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 the 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.

3. 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.~~ UNITED STATES CODE SECTION 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.

4. ~~(a)~~ 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 the operator produced more than one-half of the commodity with respect to which ~~such~~ THE service is performed and only if the service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of the fruits or vegetables for market.

~~(b)~~ 5. In the employ of a group of operators of farms, or a cooperative organization of which ~~such~~ THE operators are members, in the performance of service described in ~~subdivision (a)~~ PARAGRAPH 4 OF THIS SUBSECTION, but only if ~~such~~ THE operators produced more than one-half of the commodity with respect to which ~~such~~ THE service is performed.

~~(c) The provisions of subdivisions (a) and (b) 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.~~

~~5.~~ 6. On a farm operated for profit if ~~such~~ THE service is not in the course of the employer's trade or business.

B. ~~As used in~~ FOR THE PURPOSES OF this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms~~,~~ AND plantations, ranches, nurseries, ranges, greenhouses~~,~~ or other similar structures THAT ARE used primarily for raising agricultural or horticultural commodities, ~~and~~ INCLUDING orchards.

C. Notwithstanding ~~the provisions of~~ section 23-617, paragraph 1, service ~~defined in~~ AS PRESCRIBED BY subsection A of this section THAT IS performed after December 31, 1977, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act is exempt employment during any period in which it does not meet the definition of employment in section 23-615, SUBSECTION A, paragraph ~~8~~ 10.

D. SUBSECTION A, PARAGRAPHS 4 AND 5 OF THIS SECTION DO NOT APPLY 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.

Sec. 2. Section 23-613, Arizona Revised Statutes, is amended to read:

23-613. Employer

A. "Employer" means:

1. Any employing unit which, within the calendar year 1941 or within any succeeding calendar year through 1971, for some portion of a day, but not necessarily simultaneously, in each of twenty different calendar weeks, whether or not the weeks are or were consecutive, has or had in employment three or more individuals irrespective of whether the same individuals are or were employed in each ~~such~~ day.

2. Any employing unit:

(a) ~~Which~~ THAT after December 31, 1971 for some portion of a day in each of twenty different calendar weeks, whether or not the weeks are or were consecutive, in either the current or the preceding calendar year, has or had in employment at least one individual irrespective of whether the same individual was in employment in each ~~such~~ day. ~~; or~~

(b) ~~Which~~ THAT after December 31, 1971 in any calendar quarter in either the current or preceding calendar year, paid for service in employment wages of one thousand five hundred dollars or more. ~~; or~~

(c) For which service in employment, as defined in section 23-615, SUBSECTION A, paragraph 6, 7 OR 8 or section 23-615.01 is performed after December 31, 1977.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in subsection C OF THIS SECTION. If an employing unit is determined an employer under subsection B of this section, ~~such~~ THE employing unit shall be determined an employer for the purposes of this paragraph.

3. Any individual or employing unit ~~which~~ THAT acquired the organization, trade or business or substantially all the assets thereof, of another ~~which~~ EMPLOYING UNIT THAT at the time of acquisition was an employer subject to this chapter, or ~~which~~ THAT acquired a part of the organization, trade or business of another ~~which~~ EMPLOYING UNIT THAT at the time of acquisition was an employer subject to this chapter provided ~~such other~~ THE EMPLOYING UNIT would have been an employer under this ~~section~~ SUBSECTION if ~~such~~ THAT part had constituted its entire organization, trade or business.

4. Any individual or employing unit ~~which~~ THAT acquired the organization, trade or business, or substantially all the assets ~~thereof~~ OF THE INDIVIDUAL OR EMPLOYING UNIT, of another employing unit if EITHER:

(a) The employment record of the individual or employing unit subsequent to the acquisition, together with the employment record of the acquired unit ~~prior to~~ BEFORE the acquisition, both within the same calendar year, would be sufficient to constitute an employing unit an employer subject to this chapter under this section. ~~, or~~

(b) The wages paid by the individual or employing unit subsequent to the acquisition, together with the wages paid by the acquired unit ~~prior to~~ BEFORE the acquisition, both within the same calendar quarter, would be sufficient to constitute an employing unit an employer subject to this chapter under this section.

5. Any employing unit which, together with one or more other employing units, is owned or controlled by legally enforceable means or otherwise, directly or indirectly by the same interests, or ~~which~~ THAT owns or controls by legally enforceable means or otherwise one or more other employing units, and ~~which~~ THAT if treated as a single unit with the other employing units or interests, or both, would be an employer under this section.

6. Any employing unit THAT IS not an employer by reason of any other paragraph of this ~~section~~ SUBSECTION for which, within either the current or preceding calendar year, services in employment are or were performed with respect to which the employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to ~~such~~ THE act, to be an employer under this chapter.

7. Any employing unit which, having become an employer under this section has not, under section 23-725, ceased to be an employer subject to this chapter.

8. For the effective period of its election pursuant to section 23-725, any other employing unit ~~which~~ THAT has elected to become subject to this chapter.

B. In the case of agricultural labor, the term "employer" means any employing unit ~~which~~ THAT after December 31, 1977:

1. For some portion of a day, but not necessarily simultaneously, in each of twenty different calendar weeks, whether or not the weeks are or were consecutive, in either the current or the preceding calendar year, employed in agricultural labor at least ten individuals irrespective of whether the same individuals were employed in each ~~such~~ day. ~~; or~~

2. In any calendar quarter in either the current or preceding calendar year paid cash wages of twenty thousand dollars or more for agricultural labor.

C. In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term "employer" means any employing unit, which after December 31, 1977, in any calendar quarter in either the current or preceding calendar year paid cash wages of one thousand dollars or more to individuals employed in ~~such~~ THAT service. An employing unit, treated as an employer under this subsection shall not be treated as an employer with respect to wages paid for any other service unless ~~such~~ THE employing unit is treated as an employer under subsection A or B of this section with respect to ~~such~~ THE other service.

D. For purposes of this section, if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another week.

Sec. 3. Section 23-615, Arizona Revised Statutes, is amended to read:

23-615. Employment; definition

A. "Employment" means any service of whatever nature performed by an employee for the person employing ~~him~~ THE EMPLOYEE, including service in interstate commerce, and includes:

1. An individual's entire service performed within or both within and ~~without~~ OUTSIDE this state if:

(a) The service is localized in this state.

(b) The service is not localized in any state but some of the service is performed in this state and EITHER:

(i) The individual's base of operations, or, if there is no base of operations, then the place from which ~~such~~ THE service is directed or controlled is LOCATED in this state. ~~, or~~

(ii) The individual's base of operations or place from which the service is directed or controlled is not LOCATED in any state in which some part of the service is performed but the individual's residence is in this state. Service ~~shall be~~ IS deemed localized within a state if the service is performed entirely within ~~such~~ THAT state, or the service is performed both within and without ~~such~~ THAT state but the service performed without the state is temporary or transitory in nature or consists of isolated transactions, and is incidental to the individual's service within the state.

2. Services covered by an election pursuant to section 23-725.

3. Services covered by an arrangement pursuant to section 23-644, between the department 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 this state shall be deemed to be employment if the department 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 insured work.

4. Service performed by any officer of a corporation.

5. Service performed after December 31, 1971, outside the United States, except in Canada, by an individual who is a citizen of the United States in the employ of an American employer, ~~(~~other than service ~~which~~ THAT is deemed employment under ~~the provisions of~~ paragraph 1 of this ~~section~~ SUBSECTION or the parallel provisions of another state's law~~)~~ if EITHER:

(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:

(i) The employer is an individual who is a resident of this state. ~~; or~~

(ii) The employer is a corporation ~~which~~ THAT is organized under the laws of this state. ~~; or~~

(iii) 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 one other state. ~~; or~~

(c) None of the criteria of SUBDIVISION (a) or (b) of this paragraph 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~~ LAWS of this state.

6. ~~(a)~~ Service performed after December 31, 1971, in the employ of this state or any of its instrumentalities, ~~(~~or in the employ of this state and one or more other states or their instrumentalities~~)~~, for a hospital or institution of higher education located in this state. For purposes of this chapter, "service performed in the employ of this state for an institution of higher education" includes service performed for a community college located in this state ~~which~~ THAT is or becomes integrated into the state community college system, as provided in title 15.

~~(b)~~ 7. Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization, but only if BOTH OF the following conditions are met:

~~(i)~~ (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~~

~~(ii)~~ (b) The organization had AT LEAST four ~~or more~~ individuals in employment for some portion of a day in each of twenty different weeks, whether or not ~~such~~ THE weeks ~~are~~ WERE consecutive, within either the current or preceding calendar year, regardless of whether ~~they~~ THE INDIVIDUALS were employed ~~at the same moment of time~~ SIMULTANEOUSLY.

~~(c)~~ 8. Service performed after December 31, 1977, in the employ of this state, or any instrumentality, agency or board of this state, or any one or more of the foregoing and one or more other states.

~~7.~~ 9. An individual's service wherever performed within the United States or Canada if BOTH OF THE FOLLOWING ARE TRUE:

(a) The service is not covered under the unemployment compensation law of any other state or Canada. ~~, and~~

(b) The place from which the service is directed or controlled is in this state.

~~8.~~ 10. Notwithstanding any other provisions of this chapter, 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~~ THAT 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.

~~(d)~~ B. For purposes of ~~this paragraph~~ SUBSECTION A, PARAGRAPHS 6, 7 AND 8, the term "employment" does not apply to service performed FOR ANY OF THE FOLLOWING:

~~(i)~~ 1. In the employ of a church or convention or association of churches, or an organization ~~which~~ THAT is operated primarily for religious purposes, INCLUDING EDUCATIONAL AND CHILD CARE SERVICES THAT INCLUDE RELIGIOUS INSTRUCTION, and ~~which~~ THAT is operated, supervised, controlled, or principally supported by a church or convention or association of churches. ~~; or~~

~~(ii)~~ 2. 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~~ THE order. ~~; or~~

~~(iii)~~ 3. In the employ of a governmental entity referred to in section 23-750, subsection A, paragraph 2, if ~~such~~ THE service is performed by an individual in the exercise of ~~his~~ THE INDIVIDUALS duties IN ANY OF THE FOLLOWING:

~~(A)~~ (a) As an elected official. ~~; or~~

~~(B)~~ (b) As a member of a legislative body or the judiciary, of this state or a political subdivision ~~thereof; or~~ OF THIS STATE.

~~(C)~~ (c) As a member of the state national guard or air national guard. ~~; or~~

~~(D)~~ (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood~~,~~ or similar emergency. ~~; or~~

~~(E)~~ (e) In a position ~~which, under or~~ THAT pursuant to the LAWS OF THIS state ~~law~~ 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 eight hours per week. ~~; or~~

~~(iv)~~ 4. 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. ~~; or~~

~~(v)~~ 5. 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~~ OF A STATE, by an individual receiving such work-relief or work-training. ~~; or~~

~~(vi)~~ 6. By an inmate of a custodial or penal institution.

Sec. 4. Section 23-615.01, Arizona Revised Statutes, is amended to read:

23-615.01. Political subdivision or instrumentality employment

A. Notwithstanding any ~~provisions of~~ law to the contrary, except for subsection B of this section, for the purposes of this chapter, employment, as defined in section 23-615, SUBSECTION A, paragraph 6, ~~shall include~~ 7 OR 8 INCLUDES service performed after December 31, 1977 in the employ of EITHER OF THE FOLLOWING:

1. Any political subdivision of this state or any instrumentality of such political subdivisions. ~~; or~~

2. Any combination of political subdivisions and this or another state, their instrumentalities, agencies or boards whether wholly within this state or partly within this state and one or more other states.

B. ~~The provisions of~~ This section shall not be applicable if Public Law 94-566 or the federal act it amends is adjudged unconstitutional or invalid in its application to the governmental entities described in subsection A of this section. If the application of Public Law 94-566 or the federal act it amends is stayed as to employees of the governmental entities described in subsection A of this section or its employees by any court of competent jurisdiction before or after the provisions of subsection A become effective, the provisions of subsection A shall not be effective from the time ~~which~~ THAT the stay order became effective and continue for the duration of ~~such~~ THE stay order.

C. If Public Law 94-566 is finally determined to be constitutional and the court further determines that the governmental entities described in subsection A of this section were liable for claims for benefits during a stay of enforcement then any ~~such~~ liability shall be borne by the affected governmental entities.

Sec. 5. Section 23-617, Arizona Revised Statutes, is amended to read:

23-617. Exempt employment; definition

"Exempt employment" means employment not considered in determining whether an employing unit constitutes an "employer" under this chapter and includes:

1. Agricultural labor as defined in section 23-603 unless ~~such~~ THE labor is performed for an employing unit ~~which~~ THAT after December 31, 1977 either:

(a) For some portion of a day, but not necessarily simultaneously, in each of twenty different calendar weeks, whether or not the weeks are or were consecutive, in either the current or the preceding calendar year, employed in agricultural labor at least ten individuals irrespective of whether the same individuals were employed in each ~~such~~ day.

(b) In any calendar quarter in either the current or preceding calendar year paid cash wages of twenty thousand dollars or more for agricultural labor.

2. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed after December 31, 1977, for an employing unit ~~which~~ THAT in any calendar quarter in either the current or preceding calendar year paid cash wages of one thousand dollars or more to individuals employed in ~~such~~ THAT service.

3. Service performed on or in connection with a vessel or aircraft that is not an American vessel or American aircraft, if the employee is employed on and in connection with ~~such~~ THE vessel or aircraft when outside the United States.

4. Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by an individual under ~~the age of~~ twenty-one years OF AGE in the employ of the individual's father or mother.

5. Service performed in the employ of the United States government or an instrumentality of the United States ~~which~~ THAT is wholly or partially owned by the United States or ~~which~~ THAT is exempt from the tax imposed by section 3301 of the federal internal revenue code, except that to the extent Congress shall permit states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall be applicable to ~~such~~ 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, but if this state is not certified for any year by the secretary of labor of the United States under section 3304 of the federal internal revenue code, the payments required of ~~such~~ THE instrumentalities with respect to the year shall be refunded by the department from the fund in the same manner and within the same period as is provided in section 23-742 with respect to contributions erroneously collected.

6. Service performed in the employ of another state, or any political subdivision ~~thereof~~ OF ANOTHER STATE, or an instrumentality of ~~one or more thereof which~~ ANOTHER STATE OR ANOTHER STATE'S POLITICAL SUBDIVISION THAT is wholly owned by one or more other states or political subdivisions and ~~which~~ THAT exercises only governmental as distinguished from proprietary functions, and service performed in the employ of any political subdivisions of this or

any other state to the extent the instrumentality, with respect to ~~such~~ THE service, is exempt under the Constitution of the United States from the tax imposed by section 3301 of the federal internal revenue code, except that part of ~~such~~ THE service performed in the employ of any of the foregoing ~~which~~ THAT is "employment" under section 23-615, SUBSECTION A, paragraph 6, 7 OR 8. But any state, or a political subdivision ~~thereof~~ OF A STATE, or instrumentality of any one or more of the foregoing ~~which~~ THAT is wholly owned by one or more states or political subdivisions may elect coverage whether or not the service performed is governmental or proprietary for any ~~such~~ state or political subdivision thereof or any instrumentality thereof or any department thereof in the manner prescribed and subject to the terms of section 23-725, and ~~such~~ election may exclude any services described in section 23-615, ~~paragraph 6, subdivision (d)~~ SUBSECTION B. This state or any instrumentality or political subdivision of this state may appropriate funds to pay contributions or payments in lieu of contributions as required by this chapter.

7. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress.

8. Service performed in any calendar quarter in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 of the federal internal revenue code, if the remuneration for such service is less than fifty dollars.

9. Service performed in the employ of a school, college or university, if the service is performed either:

(a) By a student enrolled and regularly attending classes at the school, college or university.

(b) By the spouse of ~~such~~ a student if the spouse is advised at the time the spouse commences to perform ~~such~~ THE service that the employment is provided under a program to provide financial assistance to the student by the school, college or university and the employment will not be covered by any program of unemployment compensation.

10. Service performed in the employ of a corporation, community chest fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, 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 a private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and ~~which~~ THAT does not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office; provided that services performed in the employ of an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt on the ground that all of its profits are payable to one or more organizations exempt under this paragraph, and

further provided that services exempt under this paragraph shall not include services performed for an employing unit with respect to which the employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, and further provided that services exempt under this paragraph shall not include services ~~which~~ THAT are "employment" under section 23-615, SUBSECTION B, paragraph 6, 7 OR 8.

11. Services performed as a student nurse in the employ of a hospital or a nurses' training school by an individual enrolled and regularly attending classes in a nurses' training school chartered or approved pursuant to state law, and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law.

12. Service performed by an individual for an employing unit as an insurance producer, if all ~~such~~ service performed by the individual for ~~such~~ THE employing unit is performed for remuneration solely by way of commission.

13. Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, and service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement by which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

14. Service performed by an individual for an employing unit as a licensed real estate broker or a licensed cemetery broker or a licensed real estate salesman or licensed cemetery salesman, if all ~~such~~ service performed by the individual for ~~such~~ THE employing unit is performed for remuneration solely by way of commission, except that any service performed as a real estate broker, a cemetery broker, a real estate salesman or a cemetery salesman for an employing unit to which the provisions of section 23-750 apply is not exempt employment.

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

16. Service performed in the employ of an instrumentality wholly owned by a foreign government if both:

(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~~ OF THE UNITED STATES GOVERNMENT.

(b) The department 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~~ OF THE UNITED STATES GOVERNMENT.

17. Service covered by an arrangement between the department 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 the employing unit's duly approved election are deemed to be performed entirely within ~~such~~ THE agency's state.

18. Casual labor not in the course of the employer's trade or business.

19. Service performed by an individual for an employing unit as a securities salesman, if all such service performed by the individual for ~~such~~ THE employing unit is performed for remuneration solely by way of commission, except that any service performed as a securities salesman for an employing unit to which the provisions of section 23-750 apply is not exempt employment.

20. During any period in which it does not meet the definition of employment in section 23-615, SUBSECTION A, paragraph ~~8~~ 10, service performed by an individual who is enrolled at a nonprofit or public educational institution ~~which~~ THAT normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where ~~its~~ THE INSTITUTION'S educational activities are carried on as a student in a full-time program, AND taken for credit at ~~such~~ THE institution, which combines academic instruction with work experience, if ~~such~~ THE service is an integral part of ~~such~~ THE program, and ~~such~~ THE institution has so certified to the employer, except that this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

21. Service performed in the employ of a hospital if ~~such~~ THE service is performed by a patient of the hospital.

22. Service performed by individuals solely to the extent that the compensation includes commissions, overrides or profits realized on sales primarily resulting from the in-person solicitation of orders for or making sales of consumer goods in the home, except that any ~~such~~ service performed by an individual for an employing unit to which the provisions of section 23-750 apply is not exempt employment.

23. Services performed by an individual for an employing unit in the preparation of tax returns and related schedules and documents, if all ~~such~~ services are performed for remuneration solely by way of commissions, independent of the control of the employing unit, other than that required by the internal revenue service for correct preparation of ~~such~~ THE returns,

except that any ~~such~~ service performed by an individual for an employing unit to which the provisions of section 23-750 apply is not exempt employment.

Sec. 6. Section 23-725, Arizona Revised Statutes, is amended to read:

23-725. Employer coverage; termination; election of coverage

A. Except as provided in subsections D and E of this section, an employing unit ~~which~~ THAT is or becomes an employer subject to the provisions of this chapter within any calendar year shall be deemed an employer during the whole of ~~such~~ THE calendar year.

B. Except as otherwise provided in subsections D, E, F, G and H of this section, an employing unit shall cease to be an employer subject to this chapter:

1. As of the first day of January of any calendar year:

(a) If the department finds that during the preceding calendar year ~~such~~ THE employing unit ceased all operations for a period of thirty-five weeks and did not in any calendar quarter in ~~such~~ THE preceding calendar year pay wages for employment amounting to one thousand five hundred dollars or more, or

(b) If the employing unit files with the department within the period from January 1 through March 31 of ~~such~~ THE year a written application for termination of coverage and the department finds that during the preceding calendar year the employing unit did not have one or more individuals in employment in twenty ~~different~~ SEPARATE weeks and did not pay wages for employment amounting to at least one thousand five hundred dollars during any calendar quarter in ~~such~~ THE preceding calendar year.

2. On the transfer date of an employer experience rating account resulting from transfer by an employing unit of its organization, trade or business, or substantially all the assets ~~thereof~~ AN EMPLOYING UNIT, to a successor.

C. For the purposes of subsection B of this section, the two or more employing units mentioned in ~~paragraph 3, 4, or 5 of subsection A of~~ section 23-613, SUBSECTION A, PARAGRAPH 3, 4 OR 5 shall be treated as a single employing unit.

D. An employing unit, not otherwise subject to this chapter, ~~which~~ THAT files with the department its written election to become an employer subject ~~thereto~~ TO THIS CHAPTER for not less than two calendar years, shall with the written approval of ~~such~~ THE election by the department, become an employer subject ~~thereto~~ TO THIS CHAPTER to the same extent as all other employers, as of the date stated in ~~such~~ THE approval, and shall cease to be subject ~~thereto~~ TO THIS CHAPTER as of January 1 of any calendar year subsequent to ~~such~~ THE two calendar years, only if within the period from January 1 through March 31 of ~~such~~ THAT year it has filed with the department a written notice to that effect.

E. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services, with respect to which

payments are not required under an employment security law of any other state or of the federal government, and ~~which~~ THAT are performed by individuals in its employ in one or more distinct establishments or places of business, shall be deemed to constitute employment by an employer for all the purposes of this chapter for ~~not less than~~ AT LEAST two calendar years. ~~Upon~~ ON the written approval of ~~such~~ THE election by the department, ~~such~~ THE services shall be deemed to constitute employment subject to this chapter from and after the date stated in the approval. ~~Such~~ THE services shall cease to be deemed employment subject ~~thereto~~ TO THIS CHAPTER as of January 1 of any calendar year subsequent to ~~such~~ THE two calendar years, only if within the period from January 1 through March 31 of ~~such~~ THAT year the employing unit has filed with the department a written notice to that effect.

F. Any employing unit ~~which~~ THAT became an employer by reason of ~~paragraph 2(c) of subsection A of~~ section 23-613, SUBSECTION A, PARAGRAPH 2, SUBDIVISION (c) because of services defined as employment under ~~paragraph 6(b) of~~ section 23-615, SUBSECTION A, PARAGRAPH 7, shall cease to be an employer subject to this chapter as of the first day of January of any calendar year IF EITHER OF THE FOLLOWING:

~~(1)~~ 1. ~~If~~ The department finds that ~~such~~ THE employing unit ceased all operations for a period of thirty-five weeks in the preceding calendar year. ~~, or~~

~~(2)~~ 2. ~~If~~ The employing unit files with the department within the period from January 1 through March 31 of ~~such~~ THE year a written application for termination of coverage and the department finds that there were not twenty ~~different~~ SEPARATE days, each day being in a ~~different~~ SEPARATE calendar week within the preceding calendar year, within which ~~such~~ THE employing unit employed four or more individuals in employment subject to this chapter.

G. Any employing unit ~~which~~ THAT is an employer solely by reason of section 23-613, subsection B, shall cease to be an employer subject to this chapter as of the first day of January of any calendar year IF EITHER OF THE FOLLOWING ARE TRUE:

1. ~~If~~ The department finds that during the preceding calendar year ~~such~~ THE employing unit ceased all operations for a period of thirty-five weeks and did not in any calendar quarter in ~~such~~ THE preceding calendar year pay wages for agricultural labor amounting to AT LEAST twenty thousand dollars. ~~or more, or~~

2. ~~If~~ The employing unit files with the department within the period from January 1 through March 31 of ~~such~~ THE year a written application for termination of coverage and the department finds that during the preceding calendar year the employing unit did not have AT LEAST ten ~~or more~~ individuals employed in agricultural labor in twenty ~~different~~ SEPARATE weeks and did not pay wages for agricultural labor amounting to at least twenty thousand dollars during any calendar quarter in ~~such~~ THE preceding calendar year.

H. Any employing unit ~~which~~ THAT is an employer solely by reason of section 23-613, subsection C, shall cease to be an employer subject to this chapter as of ~~the first day of~~ January 1 of any calendar year if the employing unit files with the department within the period from January 1 through March 31 of ~~such~~ THAT year a written application for termination of coverage and the department finds that the employing unit did not pay wages for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority amounting to at least one thousand dollars during any calendar quarter in the preceding calendar year.

I. The time limitation for filing of written application for termination of coverage prescribed in subsections B, F, G and H of this section may be waived by the department if the time limitation has expired prior to the date on which a determination of liability that the employing unit is subject to this chapter has been made as provided in section 23-724.

Sec. 7. Section 23-751.01, Arizona Revised Statutes, is amended to read:

23-751.01. Employment by an Indian tribe; benefits; payments in lieu of contributions; definitions

A. Any Indian tribe for which service in employment is performed is an employer for the purposes of this chapter. Benefits that are based on service in the employment by an Indian tribe are payable in the same amount and on the same terms and are subject to the same conditions as benefits payable on the basis of other service subject to this chapter.

B. An Indian tribe that is subject to this chapter shall pay contributions under the same terms and conditions as prescribed for other employers that are subject to this chapter, unless the tribe elects to make payments in lieu of contributions.

C. An Indian tribe that elects to make payments in lieu of contributions:

1. Shall make the election in the same manner and under the same conditions as prescribed in section 23-750.

2. May elect to make payments in lieu of contributions by the tribe as a whole, by individual tribal units or by combinations of tribal units.

3. Is subject to all other provisions in section 23-750 relating to employers who elect to make payments in lieu of contributions.

D. An Indian tribe that fails to make the payments prescribed in section 23-750, including assessments of interest and penalties, within ninety days after receiving a bill for the payments loses the option to make payments in lieu of contributions for the following tax year unless the tribe makes full payment before the contributions for the next tax year are computed.

E. A tribe that has lost the option to make payments in lieu of contributions shall have the option restored after one year if the tribe timely paid all contributions during the prior year and all contributions, payments in lieu of contributions, penalties and interest have been paid.

F. The department shall notify the United States internal revenue service and the United States department of labor if an Indian tribe fails to make required payments, including assessments of penalties and interest.

G. The department shall include in a notice of payment or delinquency to an Indian tribe a statement that failure to make full payment within the prescribed time will cause the Indian tribe to:

1. Be liable for taxes under the federal unemployment tax act, as amended (26 United States Code sections 3301 through 3311).

2. Lose the option to make payments in lieu of contributions.

H. An Indian tribe shall pay for all extended benefits that are attributable to service in the employment of the tribe if the extended benefits are not reimbursed by the federal government.

I. For the purposes of this section:

1. "Employment by an Indian tribe" means employment by an Indian tribe as defined in 26 United States Code section 3306(u) or by a tribal unit except that employment by an Indian tribe does not include the exclusions from employment prescribed in section 23-615, ~~paragraph 6, subdivision (d), item (iii), subitems (B) and (E) and section 23-615, paragraph 6, subdivision (d), item (v)~~ SUBSECTION B, PARAGRAPH 3, SUBDIVISIONS (b) AND (e) AND PARAGRAPH 5.

2. "Tribal unit" means a subdivision or subsidiary of an Indian tribe or a business enterprise that is wholly owned by an Indian tribe.

APPROVED BY THE GOVERNOR JUNE 19, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 19, 2013.

Passed the House March 4, 2013

by the following vote: 36 Ayes,

23 Nays, 1 Not Voting

Speaker of the House

Pro Tempore

Cheryl Laube

Chief Clerk of the House

Passed the Senate May 22, 2013

by the following vote: 16 Ayes,

12 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

13 day of June, 2013

at 4:45 o'clock P M.

Michaela Howard

Secretary to the Governor

Approved this 19th day of

June

at 10:30 o'clock A. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 19th day of June, 2013

at 2:05 o'clock P M.

Secretary of State

H.B. 2645