



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 686 (as introduced 11-14-13)  
Sponsor: Senator Howard W. Walker  
Committee: Reforms, Restructuring and Reinvention

Date Completed: 2-10-14

### **CONTENT**

**The bill would amend the Michigan Employment Security Act, beginning April 1, 2014, to exclude from the definition of "employment" nonagricultural service performed by an individual who is an alien admitted to the United States to perform that service under an H-2B visa or a J-1 Exchange Visitor Program visa, if all of the conditions described below were met.**

The nonagricultural service would have to be excluded from employment under Section 3306(c)(19) of the Internal Revenue Code. (That exclusion applies to service performed for a specified purpose by a nonresident alien for the period he or she is temporarily present in the U.S. as a nonimmigrant under certain provisions of the Immigration and Nationality Act. Those provisions include several categories of foreign residents who are present in the U.S. for educational purposes, or are participants in an international cultural exchange program.)

Either the employer claiming the proposed exclusion would have to be the petitioner of the H-2B visa holder for a nonimmigrant worker; or the employer would have to be the sponsor of the J-1 Exchange Visitor Program visa holder, and the program would have to be limited to those described in specific Federal regulations (22 CFR 62.28 to 62.32).

As to each individual engaged in that service, the employer would have to certify to the Unemployment Insurance Agency for each quarterly report that the Federal tax described in Section 42(6) of the Act did not apply to that service. (Section 42(6) pertains to the tax imposed on employers by the Federal Unemployment Tax Act.)

The employer would have to maintain supporting documentation for the claim for six years and, upon request, give the Agency documentation for compliance and verification purposes.

MCL 421.43

### **BACKGROUND**

#### H-2B Visa

According to the U.S. Department of Homeland Security, the H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to perform temporary nonagricultural jobs. The employer or agent must file a petition on the prospective worker's behalf, and establish the following:

- There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.
- The employment of H-2B workers will not adversely affect the wages or working conditions of similarly employed U.S. workers.
- The need for the prospective worker's services or labor is temporary (because it is a one-time occurrence, seasonal need, peakload need, or intermittent need).

As a rule, H-2B petitions may be approved only for foreign nationals from countries that the Department of Homeland Security, with the concurrence of the U.S. Secretary of State, has designated as eligible to participate in the program.

### J-1 Visa

According to the U.S. Department of State, the J-1 visa category is for nonimmigrants approved to participate in work- and study-based exchange programs. The Department designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs. To participate, foreign nationals must be sponsored by one of the designated entities.

Part 62 of Title 22 of the Code of Federal Regulations provides for the implementation of the J-1 visa program, and includes provisions specific to different categories of programs. Those covered by Sections 62.28 to 62.32 are the following:

- International visitors (foreign nationals who are recognized or potential leaders and are selected by the U.S. Department of State).
- Government visitors (foreign nationals who are recognized as influential or distinguished individuals and are selected by U.S. Federal, state, or local government agencies).
- Camp counselors (foreign nationals designated by the U.S. Department of State to serve as counselors in U.S. summer camps).
- Au pairs (foreign nationals who live with an American host family, provide child care, and pursue academic credit).
- Foreign college and university students participating in the summer work travel program.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have a small, but negative, fiscal impact on the State's balance in the Unemployment Trust Fund (UTF) and no fiscal impact on local units of government. The Unemployment Insurance Agency has indicated that approximately 7,700 workers in Michigan would qualify for the exclusions under the bill. The UTF is a Federal fund that holds separate accounts for each state from which state unemployment benefits are paid. Each state's account is funded by a State Unemployment Tax Act (SUTA) tax. Michigan's SUTA tax is variable and depends on a given employer's history with regard to how many former employees have collected unemployment benefits, as well as other factors. The average SUTA rate in Michigan is 5.56%, and the taxable base is the first \$9,000 of an employee's wages. Assuming that all 7,700 workers whose employers would be excluded from paying SUTA taxes under the bill made at least \$9,000 annually, the bill would reduce annual SUTA tax collections by approximately \$3.9 million, or about 0.21% of total annual SUTA collections.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.