

SENATE BILL NO. 729

September 22, 1999, Introduced by Senator STILLE and referred to the Committee on Human Resources, Labor, Senior Citizens and Veterans Affairs.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 29 (MCL 421.29), as amended by 1995 PA 25.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29. (1) An individual is disqualified from receiving
2 benefits if he or she:

3 (a) Left work voluntarily without good cause attributable to
4 the employer or employing unit. However, if ~~the~~ EITHER OF THE
5 FOLLOWING CONDITIONS IS MET, THE LEAVING DOES NOT DISQUALIFY THE
6 INDIVIDUAL:

7 (i) THE individual has an established benefit year in effect
8 and during that benefit year leaves unsuitable work within 60
9 days after the beginning of that work. ~~the leaving does not~~
10 ~~disqualify the individual.~~

1 (ii) THE INDIVIDUAL IS THE SPOUSE OF A FULL-TIME MEMBER OF
2 THE UNITED STATES ARMED FORCES, AND THE LEAVING IS DUE TO THE
3 MILITARY DUTY REASSIGNMENT OF THAT MEMBER OF THE UNITED STATES
4 ARMED FORCES TO A DIFFERENT GEOGRAPHIC LOCATION.

5 (b) Was discharged for misconduct connected with the
6 individual's work or for intoxication while at work unless the
7 discharge was subsequently reduced to a disciplinary layoff or
8 suspension.

9 (c) Failed without good cause to apply for available suit-
10 able work after receiving from the employment office or the com-
11 mission notice of the availability of that work.

12 (d) Failed without good cause while unemployed to report to
13 the individual's former employer or employing unit within a rea-
14 sonable time after that employer or employing unit provided
15 notice of the availability of an interview concerning available
16 suitable work with the former employer or employing unit.

17 (e) Failed without good cause to accept suitable work
18 offered to the individual or to return to the individual's cus-
19 tomary self-employment, if any, when directed by the employment
20 office or the commission.

21 (f) Lost his or her job due to absence from work resulting
22 from a violation of law for which the individual was convicted
23 and sentenced to jail or prison. This subdivision does not apply
24 if conviction of an individual results in a sentence to county
25 jail under conditions of day parole as provided in ~~Act No. 60 of~~
26 ~~the Public Acts of 1962, being sections 801.251 to 801.258 of the~~
27 ~~Michigan Compiled Laws~~ 1962 PA 60, MCL 801.251 TO 801.258, or if

1 the conviction was for a traffic violation that resulted in an
2 absence of less than 10 consecutive work days from the
3 individual's place of employment.

4 (g) Is discharged, whether or not the discharge is subse-
5 quently reduced to a disciplinary layoff or suspension, for par-
6 ticipation in either of the following:

7 (i) A strike or other concerted action in violation of an
8 applicable collective bargaining agreement that results in cur-
9 tailment of work or restriction of or interference with
10 production.

11 (ii) A wildcat strike or other concerted action not autho-
12 rized by the individual's recognized bargaining representative.

13 (h) Was discharged for an act of assault and battery con-
14 nected with the individual's work.

15 (i) Was discharged for theft connected with the individual's
16 work.

17 (j) Was discharged for willful destruction of property con-
18 nected with the individual's work.

19 (k) Committed a theft after receiving notice of a layoff or
20 discharge, but before the effective date of the layoff or dis-
21 charge, resulting in loss or damage to the employer who would
22 otherwise be chargeable for the benefits, regardless of whether
23 the individual qualified for the benefits before the theft.

24 (l) Was employed by a temporary help firm, which as used in
25 this section means an employer whose primary business is to pro-
26 vide a client with the temporary services of 1 or more
27 individuals under contract with the employer, to perform services

1 for a client of that firm if each of the following conditions is
2 met:

3 (i) The temporary help firm provided the employee with a
4 written notice before the employee began performing services for
5 the client stating in substance both of the following:

6 (A) That within 7 days after completing services for a
7 client of the temporary help firm, the employee is under a duty
8 to notify the temporary help firm of the completion of those
9 services.

10 (B) That a failure to provide the temporary help firm with
11 notice of the employee's completion of services pursuant to
12 sub-subparagraph (A) constitutes a voluntary quit that will
13 affect the employee's eligibility for unemployment compensation
14 should the employee seek unemployment compensation following com-
15 pletion of those services.

16 (ii) The employee did not provide the temporary help firm
17 with notice that the employee had completed his or her services
18 for the client within 7 days after completion of his or her serv-
19 ices for the client.

20 (m) Was discharged for (i) Illegally ingesting, injecting,
21 inhaling, or possessing a controlled substance on the premises of
22 the employer, (ii) Refusing to submit to a drug test that was
23 required to be administered in a nondiscriminatory manner, or
24 (iii) Testing positive on a drug test, if the test was adminis-
25 tered in a nondiscriminatory manner. If the worker disputes the
26 result of the testing, a generally accepted confirmatory test
27 shall be administered and shall also indicate a positive result

1 for the presence of a controlled substance before a
2 disqualification of the worker under this subdivision. As used
3 in this subdivision:

4 (A) "Controlled substance" means that term as defined in
5 section 7104 of the public health code, ~~Act No. 368 of the~~
6 ~~Public Acts of 1978, being section 333.7104 of the Michigan~~
7 ~~Compiled Laws~~ 1978 PA 368, MCL 333.7104.

8 (B) "Drug test" means a test designed to detect the illegal
9 use of a controlled substance.

10 (C) "Nondiscriminatory manner" means administered impar-
11 tially and objectively in accordance with a collective bargaining
12 agreement, rule, policy, a verbal or written notice, or a
13 labor-management contract.

14 (n) Has an income exceeding \$100,000.00 for the calendar
15 year in which he or she applies for benefits. This subdivision
16 shall not take effect unless both of the following occur:

17 (i) ~~Within 30 days of the effective date of the act that~~
18 ~~added subdivision (l)~~ BY MARCH 28, 1996, the governor requests
19 from the United States department of labor a determination con-
20 firming whether this subdivision is in conformity with the fed-
21 eral unemployment tax act, chapter 23, of the internal revenue
22 code of 1986, 26 U.S.C. 3301 to 3311 and the social security act,
23 49 Stat. 620, and whether conformity with those federal acts is a
24 condition for a full tax credit against the tax imposed under the
25 federal unemployment tax act (FUTA), or is a condition for state
26 receipt of federal administrative grant funds under the social
27 security act.

1 (ii) The United States department of labor determines that
2 this subdivision is in conformity with the acts described in sub-
3 paragraph (i), or verifies that conformity with those federal
4 acts is not a condition for a tax credit or a grant described in
5 subparagraph (i).

6 (2) A disqualification under subsection (1) begins the week
7 in which the act or discharge that caused the disqualification
8 occurs and continues until the disqualified individual requali-
9 fies under subsection (3), except that for benefit years begin-
10 ning before the conversion date prescribed in section 75, the
11 disqualification does not prevent the payment of benefits if
12 there are credit weeks, other than multiemployer credit weeks,
13 after the most recent disqualifying act or discharge.

14 (3) After the week in which the disqualifying act or dis-
15 charge described in subsection (1) occurs, an individual who
16 seeks to requalify for benefits is subject to all of the
17 following:

18 (a) For benefit years established before the conversion date
19 described in section 75, the individual shall complete 6 requali-
20 fying weeks if he or she was disqualified under
21 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying
22 weeks if he or she was disqualified under subsection (1)(h), (i),
23 (j), (k), or (m). A requalifying week required under this sub-
24 section shall be each week in which the individual does any of
25 the following:

1 (i) Earns or receives remuneration in an amount at least
2 equal to an amount needed to earn a credit week, as that term is
3 defined in section 50.

4 (ii) Otherwise meets all of the requirements of this act to
5 receive a benefit payment if the individual were not disqualified
6 under subsection (1).

7 (iii) Receives a benefit payment based on credit weeks sub-
8 sequent to the disqualifying act or discharge.

9 (b) For benefit years established before the conversion date
10 prescribed in section 75, if the individual is disqualified under
11 subsection (1)(a) or (b), he or she shall requalify, after the
12 week in which the disqualifying discharge occurred by earning in
13 employment for an employer liable under this act or the unemploy-
14 ment compensation act of another state an amount equal to, or in
15 excess of, 7 times the individual's potential weekly benefit
16 rate, calculated on the basis of employment with the employer
17 involved in the disqualification, or by earning in employment for
18 an employer liable under this act or the unemployment compensa-
19 tion act of another state an amount equal to, or in excess of, 40
20 times the state minimum hourly wage times 7, whichever is the
21 lesser amount.

22 (c) For benefit years established before the conversion date
23 prescribed in section 75, a benefit payable to an individual dis-
24 qualified under subsection (1)(a) or (b), shall be charged to the
25 nonchargeable benefits account, and not to the account of the
26 employer with whom the individual was involved in the
27 disqualification.

1 (d) For benefit years beginning after the conversion date
2 prescribed in section 75, subsequent to the week in which the
3 disqualifying act or discharge occurred, an individual shall com-
4 plete 6 requalifying weeks if he or she was disqualified under
5 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying
6 weeks if he or she was disqualified under subsection (1)(h), (i),
7 (j), (k), or (m). A requalifying week required under this sub-
8 section shall be each week in which the individual does any of
9 the following:

10 (i) Earns or receives remuneration in an amount equal to at
11 least 1/13 of the minimum amount needed in a calendar quarter of
12 the base period for an individual to qualify for benefits,
13 rounded down to the nearest whole dollar.

14 (ii) Otherwise meets all of the requirements of this act to
15 receive a benefit payment if the individual were not disqualified
16 under subsection (1).

17 (e) For benefit years beginning after the conversion date
18 prescribed in section 75, if the individual is disqualified under
19 subsection (1)(a) or (b), he or she shall requalify, after the
20 week in which the disqualifying act or discharge occurred by
21 earning in employment for an employer liable under this act or
22 the unemployment compensation law of another state at least the
23 lesser of the following:

24 (i) Seven times the individual's weekly benefit rate.

25 (ii) Forty times the state minimum hourly wage times 7.

26 (f) A benefit payable to the individual disqualified or
27 separated under disqualifying circumstances under

1 subsection (1)(a) or (b), shall be charged to the nonchargeable
2 benefits account, and not to the account of the employer with
3 whom the individual was involved in the separation. Benefits
4 payable to an individual determined by the commission to be sepa-
5 rated under disqualifying circumstances shall not be charged to
6 the account of the employer involved in the disqualification for
7 any period after the employer notifies the commission of the
8 claimant's possible ineligibility or disqualification. If a dis-
9 qualifying act or discharge occurs during the individual's bene-
10 fit year, any benefits that may become payable to the individual
11 in a later benefit year based on employment with the employer
12 involved in the disqualification shall be charged to the non-
13 chargeable benefits account.

14 (4) The maximum amount of benefits otherwise available under
15 section 27(d) to an individual disqualified under subsection (1)
16 is subject to all of the following conditions:

17 (a) For benefit years established before the conversion date
18 prescribed in section 75, if the individual is disqualified under
19 subsection (1)(c), (d), (e), (f), (g), or (l) and the maximum
20 amount of benefits is based on wages and credit weeks earned from
21 an employer before an act or discharge involving that employer,
22 the amount shall be reduced by an amount equal to the
23 individual's weekly benefit rate as to that employer multiplied
24 by the lesser of either of the following:

25 (i) The number of requalifying weeks required of the indi-
26 vidual under this section.

1 (ii) The number of weeks of benefit entitlement remaining
2 with that employer.

3 (b) If the individual has insufficient or no potential bene-
4 fit entitlement remaining with the employer involved in the dis-
5 qualification in the benefit year in existence on the date of the
6 disqualifying determination, a reduction of benefits described in
7 this subsection shall apply in a succeeding benefit year with
8 respect to any benefit entitlement based upon credit weeks earned
9 with the employer before the disqualifying act or discharge.

10 (c) For benefit years established before the conversion date
11 prescribed in section 75, an individual disqualified under sub-
12 section (1)(h), (i), (j), (k), or (m) is not entitled to benefits
13 based on wages and credit weeks earned before the disqualifying
14 act or discharge with the employer involved in the
15 disqualification.

16 (d) The benefit entitlement of an individual disqualified
17 under subsection (1)(a) or (b) is not subject to reduction as a
18 result of that disqualification.

19 (e) A denial or reduction of benefits under this subsection
20 does not apply to benefits based upon multiemployer credit
21 weeks.

22 (f) For benefit years established after the conversion date
23 prescribed in section 75, if the individual is disqualified under
24 subsection (1)(c), (d), (e), (f), (g), or (l), the maximum number
25 of weeks otherwise applicable in calculating benefits for the
26 individual under section 27(d) shall be reduced by the lesser of
27 the following:

1 (i) The number of requalifying weeks required of the
2 individual under this subsection.

3 (ii) The number of weeks of benefit entitlement remaining on
4 the claim.

5 (g) For benefit years beginning after the conversion date
6 prescribed in section 75, the benefits of an individual disquali-
7 fied under subsection (1)(h), (i), (j), (k), or (m) shall be
8 reduced by 13 weeks and any weekly benefit payments made to the
9 claimant thereafter shall be reduced by the portion of the pay-
10 ment attributable to base period wages paid by the base period
11 employer involved in a disqualification under subsection (1)(h),
12 (i), (j), (k), or (m).

13 (5) If an individual leaves work to accept permanent
14 full-time work with another employer and performs services for
15 that employer, or if an individual leaves work to accept a recall
16 from a former employer:

17 (a) Subsection (1) does not apply.

18 (b) Wages earned with the employer whom the individual last
19 left, including wages previously transferred under this subsec-
20 tion to the last employer, for the purpose of computing and
21 charging benefits, are wages earned from the employer with whom
22 the individual accepted work or recall, and benefits paid based
23 upon those wages shall be charged to that employer.

24 (c) When issuing a determination covering the period of
25 employment with a new or former employer described in this sub-
26 section, the commission shall advise the chargeable employer of
27 the name and address of the other employer, the period covered by

1 the employment, and the extent of the benefits that may be
2 charged to the account of the chargeable employer.

3 (6) In determining whether work is suitable for an individu-
4 al, the commission shall consider the degree of risk involved to
5 the individual's health, safety, and morals, the individual's
6 physical fitness and prior training, the individual's length of
7 unemployment and prospects for securing local work in the
8 individual's customary occupation, and the distance of the avail-
9 able work from the individual's residence. Additionally, the
10 commission shall consider the individual's experience and prior
11 earnings, subject to the following limitation:

12 (a) An individual unemployed for 1 to 12 weeks who refuses
13 an offer of work determined to be suitable under this section
14 shall be denied benefits if the pay rate for that work is at
15 least 80% of the gross pay rate he or she received immediately
16 before becoming unemployed.

17 (b) An individual unemployed for 13 to 20 weeks who refuses
18 an offer of work determined to be suitable under this section
19 shall be denied benefits if the pay rate for that work is at
20 least 75% of the gross pay rate he or she received immediately
21 before becoming unemployed.

22 (c) An individual unemployed for more than 20 weeks who
23 refuses an offer of work determined to be suitable under this
24 section shall be denied benefits if the pay rate for that work is
25 at least 70% of the gross pay rate he or she received immediately
26 before becoming unemployed.

1 (7) Work is not suitable and benefits shall not be denied
2 under this act to an otherwise eligible individual for refusing
3 to accept new work under any of the following conditions:

4 (a) If the position offered is vacant due directly to a
5 strike, lockout, or other labor dispute.

6 (b) If the remuneration, hours, or other conditions of the
7 work offered are substantially less favorable to the individual
8 than those prevailing for similar work in the locality.

9 (c) If as a condition of being employed, the individual
10 would be required to join a company union or to resign from or
11 refrain from joining a bona fide labor organization.

12 (8) All of the following apply to an individual who seeks
13 benefits under this act:

14 (a) An individual is disqualified from receiving benefits
15 for a week in which the individual's total or partial unemploy-
16 ment is due to either of the following:

17 (i) A labor dispute in active progress at the place at which
18 the individual is or was last employed, or a shutdown or start-up
19 operation caused by that labor dispute.

20 (ii) A labor dispute, other than a lockout, in active
21 progress or a shutdown or start-up operation caused by that labor
22 dispute in any other establishment within the United States that
23 is both functionally integrated with the establishment described
24 in subparagraph (i) and operated by the same employing unit.

25 (b) An individual's disqualification imposed or imposable
26 under this subsection is terminated if the individual performs
27 services in employment with an employer in at least 2 consecutive

1 weeks falling wholly within the period of the individual's total
2 or partial unemployment due to the labor dispute, and in addition
3 earns wages in each of those weeks in an amount equal to or
4 greater than the individual's actual or potential weekly benefit
5 rate with respect to those weeks based on the individual's
6 employment with the employer involved in the labor dispute.

7 (c) An individual is not disqualified under this subsection
8 if the individual is not directly involved in the labor dispute.
9 An individual is not directly involved in a labor dispute unless
10 any of the following are established:

11 (i) At the time or in the course of a labor dispute in the
12 establishment in which the individual was then employed, the
13 individual in concert with 1 or more other employees voluntarily
14 stopped working other than at the direction of the individual's
15 employing unit.

16 (ii) The individual is participating in, financing, or
17 directly interested in the labor dispute that causes the
18 individual's total or partial unemployment. The payment of regu-
19 lar union dues, in amounts and for purposes established before
20 the inception of the labor dispute, is not financing a labor dis-
21 pute within the meaning of this subparagraph.

22 (iii) At any time a labor dispute in the establishment or
23 department in which the individual was employed does not exist,
24 and the individual voluntarily stops working, other than at the
25 direction of the individual's employing unit, in sympathy with
26 employees in some other establishment or department in which a
27 labor dispute is in progress.

1 (iv) The individual's total or partial unemployment is due
2 to a labor dispute that was or is in progress in a department,
3 unit, or group of workers in the same establishment.

4 (d) As used in this subsection, "directly interested" shall
5 be construed and applied so as not to disqualify individuals
6 unemployed as a result of a labor dispute the resolution of which
7 may not reasonably be expected to affect their wages, hours, or
8 other conditions of employment, and to disqualify individuals
9 whose wages, hours, or conditions of employment may reasonably be
10 expected to be affected by the resolution of the labor dispute.
11 A "reasonable expectation" of an effect on an individual's wages,
12 hours, or other conditions of employment exists, in the absence
13 of a substantial preponderance of evidence to the contrary, in
14 any of the following situations:

15 (i) If it is established that there is in the particular
16 establishment or employing unit a practice, custom, or contrac-
17 tual obligation to extend within a reasonable period to members
18 of the individual's grade or class of workers in the establish-
19 ment in which the individual is or was last employed changes in
20 terms and conditions of employment that are substantially similar
21 or related to some or all of the changes in terms and conditions
22 of employment that are made for the workers among whom there
23 exists the labor dispute that has caused the individual's total
24 or partial unemployment.

25 (ii) If it is established that 1 of the issues in or pur-
26 poses of the labor dispute is to obtain a change in the terms and
27 conditions of employment for members of the individual's grade or

1 class of workers in the establishment in which the individual is
2 or was last employed.

3 (iii) If a collective bargaining agreement covers both the
4 individual's grade or class of workers in the establishment in
5 which the individual is or was last employed and the workers in
6 another establishment of the same employing unit who are actively
7 participating in the labor dispute, and that collective bargain-
8 ing agreement is subject by its terms to modification, supplemen-
9 tation, or replacement, or has expired or been opened by mutual
10 consent at the time of the labor dispute.

11 (e) In determining the scope of the grade or class of work-
12 ers, evidence of the following is relevant:

13 (i) Representation of the workers by the same national or
14 international organization or by local affiliates of that
15 national or international organization.

16 (ii) Whether the workers are included in a single, legally
17 designated, or negotiated bargaining unit.

18 (iii) Whether the workers are or within the past 6 months
19 have been covered by a common master collective bargaining agree-
20 ment that sets forth all or any part of the terms and conditions
21 of the workers' employment, or by separate agreements that are or
22 have been bargained as a part of the same negotiations.

23 (iv) Any functional integration of the work performed by
24 those workers.

25 (v) Whether the resolution of those issues involved in the
26 labor dispute as to some of the workers could directly or

1 indirectly affect the advancement, negotiation, or settlement of
2 the same or similar issues in respect to the remaining workers.

3 (vi) Whether the workers are currently or have been covered
4 by the same or similar demands by their recognized or certified
5 bargaining agent or agents for changes in their wages, hours, or
6 other conditions of employment.

7 (vii) Whether issues on the same subject matter as those
8 involved in the labor dispute have been the subject of proposals
9 or demands made upon the employing unit that would by their terms
10 have applied to those workers.

11 (9) Except for an individual disqualified under subsection
12 (1)(g), or an individual whose disqualifying discharge under
13 subsection (1)(b) is determined or redetermined to be a disci-
14 plinary layoff or suspension, an individual is disqualified from
15 receiving benefits for the duration of the individual's disci-
16 plinary layoff or suspension if the individual becomes unemployed
17 because of a disciplinary layoff or suspension based upon any of
18 the following:

19 (a) Misconduct directly or indirectly connected with work.

20 (b) Participation in a strike or other concerted activity
21 resulting in a curtailment of work or restriction of or interfer-
22 ence with production contrary to an applicable collective bar-
23 gaining agreement.

24 (c) Participation in a wildcat strike or other concerted
25 activity not authorized by the individual's recognized bargaining
26 representative.

1 (10) If a disqualifying discharge under subsection (1)(b) is
2 determined or redetermined to be a suspension, the
3 disqualification provided under subsection (9) applies from the
4 date of the discharge.

5 (11) Notwithstanding subsections (1) to (10), if the employ-
6 ing unit submits notice to the commission of possible ineligibil-
7 ity or disqualification beyond the time limits prescribed by com-
8 mission rule, the notice shall not form the basis of a determina-
9 tion of ineligibility or disqualification for a claim period com-
10 pensated before the receipt of the notice by the commission.

11 (12) An individual is disqualified from receiving benefits
12 for any week or part of a week in which the individual has
13 received, is receiving, or is seeking unemployment benefits under
14 an unemployment compensation law of another state or of the
15 United States. If the appropriate agency of the other state or
16 of the United States finally determines that the individual is
17 not entitled to unemployment benefits, the disqualification
18 described in this subsection does not apply.