

HOUSE BILL No. 6588

October 29, 2008, Introduced by Rep. Elsenheimer and referred to the Committee on Labor.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 29 (MCL 421.29), as amended by 2002 PA 192.

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. An individual who left work is
5 presumed to have left work voluntarily without good cause
6 attributable to the employer or employing unit. An individual
7 claiming benefits under this act has the burden of proof to
8 establish that he or she left work involuntarily or for good cause
9 that was attributable to the employer or employing unit. However,

1 if the individual has an established benefit year in effect and
2 during that benefit year leaves unsuitable work within 60 days
3 after the beginning of that work, the leaving does not disqualify
4 the individual.

5 (b) Was suspended or discharged for misconduct connected with
6 the individual's work or for intoxication while at work.

7 (c) Failed without good cause to apply for available suitable
8 work after receiving from the employment office or the commission
9 notice of the availability of that work.

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

15 (e) Failed without good cause to accept suitable work offered
16 to the individual or to return to the individual's customary self-
17 employment, if any, when directed by the employment office or the
18 commission. An employer that receives a monetary determination
19 under section 32 may notify the unemployment agency regarding the
20 availability of suitable work with the employer on the monetary
21 determination or other form provided by the unemployment agency.
22 Upon receipt of the notice of the availability of suitable work,
23 the unemployment agency shall notify the claimant of the
24 availability of suitable work.

25 (f) Lost his or her job due to absence from work resulting
26 from a violation of law for which the individual was convicted and
27 sentenced to jail or prison. This subdivision does not apply if

1 conviction of an individual results in a sentence to county jail
2 under conditions of day parole as provided in 1962 PA 60, MCL
3 801.251 to 801.258, or if the conviction was for a traffic
4 violation that resulted in an absence of less than 10 consecutive
5 work days from the individual's place of employment.

6 (g) Is discharged, whether or not the discharge is
7 subsequently reduced to a disciplinary layoff or suspension, for
8 participation in either of the following:

9 (i) A strike or other concerted action in violation of an
10 applicable collective bargaining agreement that results in
11 curtailment of work or restriction of or interference with
12 production.

13 (ii) A wildcat strike or other concerted action not authorized
14 by the individual's recognized bargaining representative.

15 (h) Was discharged for an act of assault and battery connected
16 with the individual's work.

17 (i) Was discharged for theft connected with the individual's
18 work.

19 (j) Was discharged for willful destruction of property
20 connected with the individual's work.

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

26 (l) Was employed by a temporary help firm, which as used in
27 this section means an employer whose primary business is to provide

1 a client with the temporary services of 1 or more individuals under
2 contract with the employer, to perform services for a client of
3 that firm if each of the following conditions is met:

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

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

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

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

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

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

4 (i) ~~(A)~~—"Controlled substance" means that term as defined in
5 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

6 (ii) ~~(B)~~—"Drug test" means a test designed to detect the
7 illegal use of a controlled substance.

8 (iii) ~~(C)~~—"Nondiscriminatory manner" means administered
9 impartially and objectively in accordance with a collective
10 bargaining agreement, rule, policy, a verbal or written notice, or
11 a labor-management contract.

12 (2) A disqualification under subsection (1) begins the week in
13 which the act or discharge that caused the disqualification occurs
14 and continues until the disqualified individual requalifies under
15 subsection (3), except that for benefit years beginning before ~~the~~
16 ~~conversion date prescribed in section 75~~ **OCTOBER 1, 2000**, the
17 disqualification does not prevent the payment of benefits if there
18 are credit weeks, other than multiemployer credit weeks, after the
19 most recent disqualifying act or discharge.

20 (3) After the week in which the disqualifying act or discharge
21 described in subsection (1) occurs, an individual who seeks to
22 requalify for benefits is subject to all of the following:

23 (a) For benefit years established before ~~the conversion date~~
24 ~~described in section 75~~ **OCTOBER 1, 2000**, the individual shall
25 complete 6 requalifying weeks if he or she was disqualified under
26 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying
27 weeks if he or she was disqualified under subsection (1)(h), (i),

1 (j), (k), or (m). A requalifying week required under this
2 ~~subsection shall be~~ **SUBDIVISION IS** each week in which the
3 individual does any of the following:

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

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

10 (iii) Receives a benefit payment based on credit weeks
11 subsequent to the disqualifying act or discharge.

12 (b) For benefit years established before ~~the conversion date~~
13 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, if the individual is
14 disqualified under subsection (1)(a) or (b), he or she shall
15 requalify, after the week in which the disqualifying discharge
16 occurred by earning in employment for an employer liable under this
17 act or the unemployment compensation act of another state an amount
18 equal to, or in excess of, 7 times the individual's potential
19 weekly benefit rate, calculated on the basis of employment with the
20 employer involved in the disqualification, or by earning in
21 employment for an employer liable under this act or the
22 unemployment compensation act of another state an amount equal to,
23 or in excess of, 40 times the state minimum hourly wage times 7,
24 whichever is the lesser amount.

25 (c) For benefit years established before ~~the conversion date~~
26 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, a benefit payable to an
27 individual disqualified under subsection (1)(a) or (b) ~~shall be~~

1 charged to the nonchargeable benefits account, and not to the
2 account of the employer with whom the individual was involved in
3 the disqualification.

4 (d) For benefit years beginning **ON OR** after ~~the conversion~~
5 ~~date prescribed in section 75~~ **OCTOBER 1, 2000**, ~~subsequent to~~ **AFTER**
6 the week in which the disqualifying act or discharge occurred, an
7 individual shall complete 13 requalifying weeks if he or she was
8 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or
9 26 requalifying weeks if he or she was disqualified under
10 subsection (1)(h), (i), (j), (k), or (m). A requalifying week
11 required under this ~~subsection shall be~~ **SUBDIVISION IS** each week in
12 which the individual does any of the following:

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

17 (ii) Otherwise meets all of the requirements of this act to
18 receive a benefit payment if the individual ~~were~~ **WAS** not
19 disqualified under subsection (1).

20 (e) For benefit years beginning **ON OR** after ~~the conversion~~
21 ~~date prescribed in section 75~~ **OCTOBER 1, 2000** and beginning before
22 ~~the effective date of the amendatory act that added section 13~~
23 **APRIL 26, 2002**, if the individual is disqualified under subsection
24 (1)(a) or (b), he or she shall requalify, after the week in which
25 the disqualifying act or discharge occurred by earning in
26 employment for an employer liable under this act or the
27 unemployment compensation law of another state at least the lesser

1 of the following:

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

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

4 (f) For benefit years beginning ~~after the conversion date~~
5 ~~prescribed in section 75 and ON OR after the effective date of the~~
6 ~~amendatory act that added section 13/~~ **APRIL 26, 2002**, if the
7 individual is disqualified under subsection (1)(a), he or she shall
8 requalify, after the week in which the disqualifying act or
9 discharge occurred by earning in employment for an employer liable
10 under this act or the unemployment compensation law of another
11 state at least 12 times the individual's weekly benefit rate.

12 (g) For benefit years beginning ~~after the conversion date~~
13 ~~prescribed in section 75 and ON OR after the effective date of the~~
14 ~~amendatory act that added section 13/~~ **APRIL 26, 2002**, if the
15 individual is disqualified under subsection (1)(b), he or she shall
16 requalify, after the week in which the disqualifying act or
17 discharge occurred by earning in employment for an employer liable
18 under this act or the unemployment compensation law of another
19 state at least 17 times the individual's weekly benefit rate.

20 (h) A benefit payable to the individual disqualified or
21 separated under disqualifying circumstances under subsection (1)(a)
22 or (b), shall be charged to the nonchargeable benefits account, and
23 not to the account of the employer with whom the individual was
24 involved in the separation. Benefits payable to an individual
25 determined by the commission to be separated under disqualifying
26 circumstances shall not be charged to the account of the employer
27 involved in the disqualification for any period after the employer

1 notifies the commission of the claimant's possible ineligibility or
2 disqualification. If a disqualifying act or discharge occurs during
3 the individual's benefit year, any benefits that may become payable
4 to the individual in a later benefit year based on employment with
5 the employer involved in the disqualification shall be charged to
6 the nonchargeable benefits account.

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

10 (a) For benefit years established before ~~the conversion date~~
11 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, if the individual is
12 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l) and
13 the maximum amount of benefits is based on wages and credit weeks
14 earned from an employer before an act or discharge involving that
15 employer, the amount shall be reduced by an amount equal to the
16 individual's weekly benefit rate as to that employer multiplied by
17 the lesser of either of the following:

18 (i) The number of requalifying weeks required of the individual
19 under this section.

20 (ii) The number of weeks of benefit entitlement remaining with
21 that employer.

22 (b) If the individual has insufficient or no potential benefit
23 entitlement remaining with the employer involved in the
24 disqualification in the benefit year in existence on the date of
25 the disqualifying determination, a reduction of benefits described
26 in this subsection ~~shall apply~~ **APPLIES** in a succeeding benefit year
27 with respect to any benefit entitlement based upon credit weeks

1 earned with the employer before the disqualifying act or discharge.

2 (c) For benefit years established before ~~the conversion date~~
3 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, an individual
4 disqualified under subsection (1)(h), (i), (j), (k), or (m) is not
5 entitled to benefits based on wages and credit weeks earned before
6 the disqualifying act or discharge with the employer involved in
7 the disqualification.

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

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

13 (f) For benefit years established **ON OR** after ~~the conversion~~
14 ~~date prescribed in section 75~~ **OCTOBER 1, 2000**, if the individual is
15 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l),
16 the maximum number of weeks otherwise applicable in calculating
17 benefits for the individual under section 27(d) shall be reduced by
18 the lesser of the following:

19 (i) The number of requalifying weeks required of the individual
20 under this ~~subsection~~ **SECTION**.

21 (ii) The number of weeks of benefit entitlement remaining on
22 the claim.

23 (g) For benefit years beginning **ON OR** after ~~the conversion~~
24 ~~date prescribed in section 75~~ **OCTOBER 1, 2000**, the benefits of an
25 individual disqualified under subsection (1)(h), (i), (j), (k), or
26 (m) shall be reduced by 13 weeks and any weekly benefit payments
27 made to the claimant thereafter shall be reduced by the portion of

1 the payment attributable to base period wages paid by the base
2 period employer involved in a disqualification under subsection
3 (1)(h), (i), (j), (k), or (m).

4 (5) If an individual leaves work to accept permanent full-time
5 work with another employer and performs services for that employer,
6 or if an individual leaves work to accept a recall from a former
7 employer, **ALL OF THE FOLLOWING APPLY:**

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

9 (b) Wages earned with the employer whom the individual last
10 left, including wages previously transferred under this subsection
11 to the last employer, for the purpose of computing and charging
12 benefits, are wages earned from the employer with whom the
13 individual accepted work or recall, and benefits paid based upon
14 those wages shall be charged to that employer.

15 (c) When issuing a determination covering the period of
16 employment with a new or former employer described in this
17 subsection, the commission shall advise the chargeable employer of
18 the name and address of the other employer, the period covered by
19 the employment, and the extent of the benefits that may be charged
20 to the account of the chargeable employer.

21 (6) In determining whether work is suitable for an individual,
22 the commission shall consider the degree of risk involved to the
23 individual's health, safety, and morals, the individual's physical
24 fitness and prior training, the individual's length of unemployment
25 and prospects for securing local work in the individual's customary
26 occupation, and the distance of the available work from the
27 individual's residence. Additionally, the commission shall consider

1 the individual's experience and prior earnings, but an unemployed
2 individual who refuses an offer of work determined to be suitable
3 under this section shall be denied benefits if the pay rate for
4 that work is at least 70% of the gross pay rate he or she received
5 immediately before becoming unemployed.

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

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

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

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

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

19 (a) An individual is disqualified from receiving benefits for
20 a week in which the individual's total or partial unemployment is
21 due to either of the following:

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

25 (ii) A labor dispute, other than a lockout, in active progress
26 or a shutdown or start-up operation caused by that labor dispute in
27 any other establishment within the United States that is both

1 functionally integrated with the establishment described in
2 subparagraph (i) and operated by the same employing unit.

3 (b) An individual's disqualification imposed or imposable
4 under this subsection is terminated if the individual performs
5 services in employment with an employer in at least 2 consecutive
6 weeks falling wholly within the period of the individual's total or
7 partial unemployment due to the labor dispute, and in addition
8 earns wages in each of those weeks in an amount equal to or greater
9 than the individual's actual or potential weekly benefit rate with
10 respect to those weeks based on the individual's employment with
11 the employer involved in the labor dispute.

12 (c) An individual is not disqualified under this subsection if
13 the individual is not directly involved in the labor dispute. An
14 individual is not directly involved in a labor dispute unless any
15 of the following are established:

16 (i) At the time or in the course of a labor dispute in the
17 establishment in which the individual was then employed, the
18 individual in concert with 1 or more other employees voluntarily
19 stopped working other than at the direction of the individual's
20 employing unit.

21 (ii) The individual is participating in, financing, or directly
22 interested in the labor dispute that causes the individual's total
23 or partial unemployment. The payment of regular union dues, in
24 amounts and for purposes established before the inception of the
25 labor dispute, is not financing a labor dispute within the meaning
26 of this subparagraph.

27 (iii) At any time a labor dispute in the establishment or

1 department in which the individual was employed does not exist, and
2 the individual voluntarily stops working, other than at the
3 direction of the individual's employing unit, in sympathy with
4 employees in some other establishment or department in which a
5 labor dispute is in progress.

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

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

20 (i) If it is established that there is in the particular
21 establishment or employing unit a practice, custom, or contractual
22 obligation to extend within a reasonable period to members of the
23 individual's grade or class of workers in the establishment in
24 which the individual is or was last employed changes in terms and
25 conditions of employment that are substantially similar or related
26 to some or all of the changes in terms and conditions of employment
27 that are made for the workers among whom there exists the labor

1 dispute that has caused the individual's total or partial
2 unemployment.

3 (ii) If it is established that 1 of the issues in or purposes
4 of the labor dispute is to obtain a change in the terms and
5 conditions of employment for members of the individual's grade or
6 class of workers in the establishment in which the individual is or
7 was last employed.

8 (iii) If a collective bargaining agreement covers both the
9 individual's grade or class of workers in the establishment in
10 which the individual is or was last employed and the workers in
11 another establishment of the same employing unit who are actively
12 participating in the labor dispute, and that collective bargaining
13 agreement is subject by its terms to modification, supplementation,
14 or replacement, or has expired or been opened by mutual consent at
15 the time of the labor dispute.

16 (e) In determining the scope of the grade or class of workers,
17 evidence of the following is relevant:

18 (i) Representation of the workers by the same national or
19 international organization or by local affiliates of that national
20 or international organization.

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

23 (iii) Whether the workers are or within the past 6 months have
24 been covered by a common master collective bargaining agreement
25 that sets forth all or any part of the terms and conditions of the
26 workers' employment, or by separate agreements that are or have
27 been bargained as a part of the same negotiations.

1 (iv) Any functional integration of the work performed by those
2 workers.

3 (v) Whether the resolution of those issues involved in the
4 labor dispute as to some of the workers could directly or
5 indirectly affect the advancement, negotiation, or settlement of
6 the same or similar issues in respect to the remaining workers.

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

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

15 (9) Notwithstanding subsections (1) to (8), if the employing
16 unit submits notice to the commission of possible ineligibility or
17 disqualification beyond the time limits prescribed by commission
18 rule, the notice shall not form the basis of a determination of
19 ineligibility or disqualification for a claim period compensated
20 before the receipt of the notice by the commission.

21 (10) An individual is disqualified from receiving benefits for
22 any week or part of a week in which the individual has received, is
23 receiving, or is seeking unemployment benefits under an
24 unemployment compensation law of another state or of the United
25 States. If the appropriate agency of the other state or of the
26 United States finally determines that the individual is not
27 entitled to unemployment benefits, the disqualification described

1 in this subsection does not apply.

2 (11) AN INDIVIDUAL IS DISQUALIFIED FROM RECEIVING UNEMPLOYMENT
3 BENEFITS IF THE INDIVIDUAL IS AN ALIEN WHO IS NOT EITHER LAWFULLY
4 ADMITTED FOR PERMANENT RESIDENCE OR OTHERWISE AUTHORIZED TO BE
5 EMPLOYED IN THE UNITED STATES UNDER FEDERAL IMMIGRATION LAW.