

HOUSE BILL No. 5291

September 2, 2009, Introduced by Reps. Agema, Genetski, Rick Jones, Walsh, McMillin, Kurtz, Elsenheimer, Denby, Marleau, Calley, Meekhof, Knollenberg, Proos and Pearce 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 2008 PA 480.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29. (1) Except as provided in subsection (5), an
2 individual is disqualified from receiving 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 EMPLOYEE IS**
7 **PRESUMED TO HAVE LEFT WORK VOLUNTARILY IF A LICENSE OR ENDORSEMENT**
8 **THAT IS NECESSARY TO PERFORM THE WORK IS REVOKED OR OTHERWISE LOST**
9 **BECAUSE OF A VOLUNTARY ACT OF THE EMPLOYEE THAT VIOLATES THE**

1 **CONDITIONS ON WHICH THE LICENSE OR ENDORSEMENT IS GRANTED.** An

2 individual claiming benefits under this act has the burden of proof
3 to establish that he or she left work involuntarily or for good
4 cause that was attributable to the employer or employing unit.
5 However, if either of the following conditions is met, the leaving
6 does not disqualify the individual:

7 (i) The individual has an established benefit year in effect
8 and during that benefit year leaves unsuitable work within 60 days
9 after the beginning of that work.

10 (ii) The individual is the spouse of a full-time member of the
11 United States armed forces, and the leaving is due to the military
12 duty reassignment of that member of the United States armed forces
13 to a different geographic location.

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

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

19 (d) Failed without good cause while unemployed to report to
20 the individual's former employer or employing unit within a
21 reasonable time after that employer or employing unit provided
22 notice of the availability of an interview concerning available
23 suitable work with the former employer or employing unit.

24 (e) Failed without good cause to accept suitable work offered
25 to the individual or to return to the individual's customary self-
26 employment, if any, when directed by the employment office or the
27 commission. An employer that receives a monetary determination

1 under section 32 may notify the unemployment agency regarding the
2 availability of suitable work with the employer on the monetary
3 determination or other form provided by the unemployment agency.
4 Upon receipt of the notice of the availability of suitable work,
5 the unemployment agency shall notify the claimant of the
6 availability of suitable work.

7 (f) Lost his or her job due to absence from work resulting
8 from a violation of law for which the individual was convicted and
9 sentenced to jail or prison. This subdivision does not apply if
10 conviction of an individual results in a sentence to county jail
11 under conditions of day parole as provided in 1962 PA 60, MCL
12 801.251 to 801.258, or if the conviction was for a traffic
13 violation that resulted in an absence of less than 10 consecutive
14 work days from the individual's place of employment.

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

18 (i) A strike or other concerted action in violation of an
19 applicable collective bargaining agreement that results in
20 curtailment of work or restriction of or interference with
21 production.

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

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

26 (i) Was discharged for theft connected with the individual's
27 work.

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

3 (k) Committed a theft after receiving notice of a layoff or
4 discharge, but before the effective date of the layoff or
5 discharge, resulting in loss or damage to the employer who would
6 otherwise be chargeable for the benefits, regardless of whether the
7 individual qualified for the benefits before the theft.

8 (l) Was employed by a temporary help firm, which as used in
9 this section means an employer whose primary business is to provide
10 a client with the temporary services of 1 or more individuals under
11 contract with the employer, to perform services for a client of
12 that firm if each of the following conditions is met:

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

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

19 (B) That a failure to provide the temporary help firm with
20 notice of the employee's completion of services ~~pursuant to~~ **UNDER**
21 sub-subparagraph (A) constitutes a voluntary ~~quit~~ **LEAVING** that will
22 affect the employee's eligibility for unemployment compensation
23 should the employee seek unemployment compensation following
24 completion of those services.

25 (ii) The employee did not provide the temporary help firm with
26 notice that the employee had completed his or her services for the
27 client within 7 days after completion of his or her services for

1 the client.

2 (m) Was discharged for illegally ingesting, injecting,
3 inhaling, or possessing a controlled substance on the premises of
4 the employer; refusing to submit to a drug test that was required
5 to be administered in a nondiscriminatory manner; or testing
6 positive on a drug test, if the test was administered in a
7 nondiscriminatory manner. If the worker disputes the result of the
8 testing, a generally accepted confirmatory test shall be
9 administered and shall also indicate a positive result for the
10 presence of a controlled substance before a disqualification of the
11 worker under this subdivision. As used in this subdivision:

12 (i) "Controlled substance" means that term as defined in
13 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

14 (ii) "Drug test" means a test designed to detect the illegal
15 use of a controlled substance.

16 (iii) "Nondiscriminatory manner" means administered impartially
17 and objectively in accordance with a collective bargaining
18 agreement, rule, policy, a verbal or written notice, or a labor-
19 management contract.

20 (2) A disqualification under subsection (1) begins the week in
21 which the act or discharge that caused the disqualification occurs
22 and continues until the disqualified individual requalifies under
23 subsection (3), except that for benefit years beginning before
24 October 1, 2000, the disqualification does not prevent the payment
25 of benefits if there are credit weeks, other than multiemployer
26 credit weeks, after the most recent disqualifying act or discharge.

27 (3) After the week in which the disqualifying act or discharge

1 described in subsection (1) occurs, an individual who seeks to
2 requalify for benefits is subject to all of the following:

3 (a) For benefit years established before October 1, 2000, the
4 individual shall complete 6 requalifying weeks if he or she was
5 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or
6 13 requalifying weeks if he or she was disqualified under
7 subsection (1)(h), (i), (j), (k), or (m). A requalifying week
8 required under this subdivision is each week in which the
9 individual does any of the following:

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

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

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

18 (b) For benefit years established before October 1, 2000, if
19 the individual is disqualified under subsection (1)(a) or (b), he
20 or she shall requalify, after the week in which the disqualifying
21 discharge occurred by earning in employment for an employer liable
22 under this act or the unemployment compensation act of another
23 state an amount equal to, or in excess of, 7 times the individual's
24 potential weekly benefit rate, calculated on the basis of
25 employment with the employer involved in the disqualification, or
26 by earning in employment for an employer liable under this act or
27 the unemployment compensation act of another state an amount equal

1 to, or in excess of, 40 times the state minimum hourly wage times
2 7, whichever is the lesser amount.

3 (c) For benefit years established before October 1, 2000, a
4 benefit payable to an individual disqualified under subsection
5 (1)(a) or (b) shall be charged to the nonchargeable benefits
6 account, and not to the account of the employer with whom the
7 individual was involved in the disqualification.

8 (d) For benefit years beginning on or after October 1, 2000,
9 after the week in which the disqualifying act or discharge
10 occurred, an individual shall complete 13 requalifying weeks if he
11 or she was disqualified under subsection (1)(c), (d), (e), (f),
12 (g), or (l), or 26 requalifying weeks if he or she was disqualified
13 under subsection (1)(h), (i), (j), (k), or (m). A requalifying week
14 required under this subdivision is each week in which the
15 individual does any of the following:

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

20 (ii) Otherwise meets all of the requirements of this act to
21 receive a benefit payment if the individual was not disqualified
22 under subsection (1).

23 (e) For benefit years beginning on or after October 1, 2000
24 and beginning before April 26, 2002, if the individual is
25 disqualified under subsection (1)(a) or (b), he or she shall
26 requalify, after the week in which the disqualifying act or
27 discharge occurred by earning in employment for an employer liable

1 under this act or the unemployment compensation law of another
2 state at least the lesser of the following:

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

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

5 (f) For benefit years beginning on or after April 26, 2002, if
6 the individual is disqualified under subsection (1)(a), he or she
7 shall requalify, after the week in which the disqualifying act or
8 discharge occurred, by earning in employment for an employer liable
9 under this act or the unemployment compensation law of another
10 state at least 12 times the individual's weekly benefit rate.

11 (g) For benefit years beginning on or after April 26, 2002, if
12 the individual is disqualified under subsection (1)(b), he or she
13 shall requalify, after the week in which the disqualifying act or
14 discharge occurred by earning in employment for an employer liable
15 under this act or the unemployment compensation law of another
16 state at least 17 times the individual's weekly benefit rate.

17 (h) A benefit payable to the individual disqualified or
18 separated under disqualifying circumstances under subsection (1)(a)
19 or (b), shall be charged to the nonchargeable benefits account, and
20 not to the account of the employer with whom the individual was
21 involved in the separation. Benefits payable to an individual
22 determined by the commission to be separated under disqualifying
23 circumstances shall not be charged to the account of the employer
24 involved in the disqualification for any period after the employer
25 notifies the commission of the claimant's possible ineligibility or
26 disqualification. If a disqualifying act or discharge occurs during
27 the individual's benefit year, any benefits that may become payable

1 to the individual in a later benefit year based on employment with
2 the employer involved in the disqualification shall be charged to
3 the nonchargeable benefits account.

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

7 (a) For benefit years established before October 1, 2000, if
8 the individual is disqualified under subsection (1)(c), (d), (e),
9 (f), (g), or (l) and the maximum amount of benefits is based on
10 wages and credit weeks earned from an employer before an act or
11 discharge involving that employer, the amount shall be reduced by
12 an amount equal to the individual's weekly benefit rate as to that
13 employer multiplied by the lesser of either of the following:

14 (i) The number of requalifying weeks required of the individual
15 under this section.

16 (ii) The number of weeks of benefit entitlement remaining with
17 that employer.

18 (b) If the individual has insufficient or no potential benefit
19 entitlement remaining with the employer involved in the
20 disqualification in the benefit year in existence on the date of
21 the disqualifying determination, a reduction of benefits described
22 in this subsection applies in a succeeding benefit year with
23 respect to any benefit entitlement based upon credit weeks earned
24 with the employer before the disqualifying act or discharge.

25 (c) For benefit years established before October 1, 2000, an
26 individual disqualified under subsection (1)(h), (i), (j), (k), or
27 (m) is not entitled to benefits based on wages and credit weeks

1 earned before the disqualifying act or discharge with the employer
2 involved in the disqualification.

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

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

8 (f) For benefit years established on or after October 1, 2000,
9 if the individual is disqualified under subsection (1)(c), (d),
10 (e), (f), (g), or (l), the maximum number of weeks otherwise
11 applicable in calculating benefits for the individual under section
12 27(d) shall be reduced by the lesser of the following:

13 (i) The number of requalifying weeks required of the individual
14 under this section.

15 (ii) The number of weeks of benefit entitlement remaining on
16 the claim.

17 (g) For benefit years beginning on or after October 1, 2000,
18 the benefits of an individual disqualified under subsection (1)(h),
19 (i), (j), (k), or (m) shall be reduced by 13 weeks and any weekly
20 benefit payments made to the claimant thereafter shall be reduced
21 by the portion of the payment attributable to base period wages
22 paid by the base period employer involved in a disqualification
23 under subsection (1)(h), (i), (j), (k), or (m).

24 (5) If an individual leaves work to accept permanent full-time
25 work with another employer and performs services for that employer,
26 or if an individual leaves work to accept a recall from a former
27 employer, all of the following apply:

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

2 (b) Wages earned with the employer whom the individual last
3 left, including wages previously transferred under this subsection
4 to the last employer, for the purpose of computing and charging
5 benefits, are wages earned from the employer with whom the
6 individual accepted work or recall, and benefits paid based upon
7 those wages shall be charged to that employer.

8 (c) When issuing a determination covering the period of
9 employment with a new or former employer described in this
10 subsection, the commission shall advise the chargeable employer of
11 the name and address of the other employer, the period covered by
12 the employment, and the extent of the benefits that may be charged
13 to the account of the chargeable employer.

14 (6) In determining whether work is suitable for an individual,
15 the commission shall consider the degree of risk involved to the
16 individual's health, safety, and morals, the individual's physical
17 fitness and prior training, the individual's length of unemployment
18 and prospects for securing local work in the individual's customary
19 occupation, and the distance of the available work from the
20 individual's residence. Additionally, the commission shall consider
21 the individual's experience and prior earnings, but an unemployed
22 individual who refuses an offer of work determined to be suitable
23 under this section shall be denied benefits if the pay rate for
24 that work is at least 70% of the gross pay rate he or she received
25 immediately before becoming unemployed.

26 (7) Work is not suitable and benefits shall not be denied
27 under this act to an otherwise eligible individual for refusing to

1 accept new work under any of the following conditions:

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

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

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

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

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

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

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

23 (b) An individual's disqualification imposed or imposable
24 under this subsection is terminated if the individual performs
25 services in employment with an employer in at least 2 consecutive
26 weeks falling wholly within the period of the individual's total or
27 partial unemployment due to the labor dispute, and in addition

1 earns wages in each of those weeks in an amount equal to or greater
2 than the individual's actual or potential weekly benefit rate with
3 respect to those weeks based on the individual's employment with
4 the employer involved in the labor dispute.

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

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

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

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

26 (iv) The individual's total or partial unemployment is due to a
27 labor dispute that was or is in progress in a department, unit, or

1 group of workers in the same establishment.

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

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

23 (ii) If it is established that 1 of the issues in or purposes
24 of the labor dispute is to obtain a change in the terms and
25 conditions of employment for members of the individual's grade or
26 class of workers in the establishment in which the individual is or
27 was last employed.

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

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

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

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

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

21 (iv) Any functional integration of the work performed by those
22 workers.

23 (v) Whether the resolution of those issues involved in the
24 labor dispute as to some of the workers could directly or
25 indirectly affect the advancement, negotiation, or settlement of
26 the same or similar issues in respect to the remaining workers.

27 (vi) Whether the workers are currently or have been covered by

1 the same or similar demands by their recognized or certified
2 bargaining agent or agents for changes in their wages, hours, or
3 other conditions of employment.

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

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

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