

SENATE BILL No. 697

September 27, 2011, Introduced by Senators GREGORY, BIEDA, ANDERSON, HOOD, JOHNSON, GLEASON and HOPGOOD and referred to the Committee on Economic Development.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," (MCL 421.1 to 421.75) by adding sections 28b, 28c, 28d, 28e, 28f, 28g, 28h, 28i, 28j, 28k, 28l, and 28m; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 28B. AS USED IN THIS SECTION AND SECTIONS 28C TO 28M:

2 (A) "AFFECTED UNIT" MEANS A DEPARTMENT, SHIFT, OR OTHER
3 ORGANIZATIONAL UNIT OF 2 OR MORE EMPLOYEES THAT IS DESIGNATED BY AN
4 EMPLOYER TO PARTICIPATE IN A SHARED-WORK PLAN.

5 (B) "APPROVED SHARED-WORK PLAN" MEANS AN EMPLOYER'S SHARED-
6 WORK PLAN THAT MEETS THE REQUIREMENTS OF SECTION 28D AND THAT THE
7 UNEMPLOYMENT AGENCY APPROVES IN WRITING.

1 (C) "FRINGE BENEFIT" MEANS HEALTH INSURANCE, A RETIREMENT
2 BENEFIT RECEIVED UNDER A PENSION PLAN, A PAID VACATION DAY, A PAID
3 HOLIDAY, SICK LEAVE, OR ANY OTHER SIMILAR EMPLOYEE BENEFIT PROVIDED
4 BY AN EMPLOYER.

5 (D) "NORMAL WEEKLY HOURS OF WORK" MEANS THE ESTABLISHED
6 STANDARD WORK TIMES AND NUMBER OF HOURS IN THE WORKWEEK FOR THE
7 POSITION, OR IF NO STANDARD WORK TIME AND NUMBER OF HOURS HAVE BEEN
8 ESTABLISHED FOR THE POSITION, THE WORK TIMES AND AVERAGE NUMBER OF
9 HOURS PER WEEK ACTUALLY WORKED BY THE EMPLOYEE IN THAT POSITION
10 OVER THE MOST RECENT 3 MONTHS BEFORE APPLICATION FOR DESIGNATION AS
11 A PARTICIPATING EMPLOYER.

12 (E) "PARTICIPATING EMPLOYEE" MEANS AN EMPLOYEE IN THE AFFECTED
13 UNIT WHOSE HOURS OF WORK ARE REDUCED BY THE REDUCTION PERCENTAGE
14 UNDER THE SHARED-WORK PLAN.

15 (F) "PARTICIPATING EMPLOYER" MEANS AN EMPLOYER THAT HAS A
16 SHARED-WORK PLAN IN EFFECT.

17 (G) "REDUCTION PERCENTAGE" MEANS THE PERCENTAGE BY WHICH EACH
18 PARTICIPATING EMPLOYEE'S NORMAL WEEKLY HOURS OF WORK ARE REDUCED
19 UNDER A SHARED-WORK PLAN IN ACCORDANCE WITH SECTION 28D(2).

20 (H) "SHARED-WORK PLAN" MEANS A PLAN FOR REDUCING UNEMPLOYMENT
21 UNDER WHICH PARTICIPATING EMPLOYEES OF AN AFFECTED UNIT SHARE THE
22 WORK REMAINING AFTER REDUCTION IN THEIR NORMAL WEEKLY HOURS OF
23 WORK.

24 SEC. 28C. (1) AN EMPLOYER THAT MEETS ALL OF THE FOLLOWING
25 REQUIREMENTS MAY APPLY TO THE UNEMPLOYMENT AGENCY FOR APPROVAL OF A
26 SHARED-WORK PLAN:

27 (A) THE EMPLOYER HAS FILED ALL QUARTERLY REPORTS AND OTHER

1 REPORTS REQUIRED UNDER THIS ACT AND HAS PAID ALL CONTRIBUTION,
2 REIMBURSEMENTS IN LIEU OF CONTRIBUTIONS, INTEREST, AND PENALTIES
3 DUE THROUGH THE DATE OF THE EMPLOYER'S APPLICATION.

4 (B) IF THE EMPLOYER IS A CONTRIBUTING EMPLOYER, THE EMPLOYER'S
5 RESERVE IN THE EMPLOYER'S EXPERIENCE ACCOUNT AS OF THE MOST RECENT
6 COMPUTATION DATE PRECEDING THE DATE OF THE EMPLOYER'S APPLICATION
7 IS A POSITIVE NUMBER.

8 (C) THE EMPLOYER HAS PAID WAGES FOR THE 12 CONSECUTIVE
9 CALENDAR QUARTERS PRECEDING THE DATE OF THE EMPLOYER'S APPLICATION.

10 (2) AN APPLICATION UNDER THIS SECTION SHALL BE MADE IN THE
11 MANNER PRESCRIBED BY THE UNEMPLOYMENT AGENCY AND CONTAIN ALL
12 INFORMATION REQUIRED BY THE UNEMPLOYMENT AGENCY, INCLUDING THE
13 FOLLOWING:

14 (A) THE EMPLOYER'S ASSURANCE THAT IT WILL PROVIDE REPORTS TO
15 THE UNEMPLOYMENT AGENCY RELATING TO THE OPERATION OF ITS SHARED-
16 WORK PLAN AT THE TIMES AND IN THE MANNER PRESCRIBED BY THE
17 UNEMPLOYMENT AGENCY AND CONTAINING ALL INFORMATION REQUIRED BY THE
18 UNEMPLOYMENT AGENCY.

19 (B) THE EMPLOYER'S ASSURANCE THAT IT WILL NOT HIRE NEW
20 EMPLOYEES IN, OR TRANSFER EMPLOYEES TO, THE AFFECTED UNIT DURING
21 THE EFFECTIVE PERIOD OF THE SHARED-WORK PLAN.

22 (C) THE EMPLOYER'S ASSURANCE THAT IT WILL NOT LAY OFF
23 PARTICIPATING EMPLOYEES DURING THE EFFECTIVE PERIOD OF THE SHARED-
24 WORK PLAN, OR REDUCE PARTICIPATING EMPLOYEES' HOURS OF WORK BY MORE
25 THAN THE REDUCTION PERCENTAGE DURING THE EFFECTIVE PERIOD OF THE
26 SHARED-WORK PLAN, EXCEPT IN CASES OF HOLIDAYS, DESIGNATED VACATION
27 PERIODS, EQUIPMENT MAINTENANCE, OR SIMILAR CIRCUMSTANCES.

1 (D) A LIST OF THE WEEK OR WEEKS WITHIN THE REQUESTED EFFECTIVE
2 PERIOD OF THE PLAN DURING WHICH PARTICIPATING EMPLOYEES ARE
3 ANTICIPATED TO WORK FEWER HOURS THAN THE NUMBER OF HOURS DETERMINED
4 UNDER SECTION 28D(1) (E) DUE TO CIRCUMSTANCES INCLUDED IN
5 SUBDIVISION (C) .

6 (E) THE EMPLOYER'S CERTIFICATION THAT THE IMPLEMENTATION OF A
7 SHARED-WORK PLAN IS IN LIEU OF TEMPORARY LAYOFFS THAT WOULD AFFECT
8 AT LEAST 10% OF THE EMPLOYEES IN THE AFFECTED UNIT AND WOULD RESULT
9 IN AN EQUIVALENT REDUCTION IN WORK HOURS.

10 (F) THE EMPLOYER'S ASSURANCE THAT IT WILL ABIDE BY ALL TERMS
11 AND CONDITIONS OF SECTIONS 28B TO 28M.

12 (3) AN EMPLOYER MAY APPLY TO THE UNEMPLOYMENT AGENCY FOR
13 APPROVAL OF MORE THAN 1 SHARED-WORK PLAN.

14 SEC. 28D. (1) THE UNEMPLOYMENT AGENCY MAY APPROVE A SHARED-
15 WORK PLAN ONLY IF THE PLAN MEETS ALL OF THE FOLLOWING REQUIREMENTS:

16 (A) THE SHARED-WORK PLAN APPLIES TO 1 AFFECTED UNIT.

17 (B) ALL EMPLOYEES IN THE AFFECTED UNIT ARE PARTICIPATING
18 EMPLOYEES, EXCEPT THAT THE FOLLOWING EMPLOYEES SHALL NOT BE
19 PARTICIPATING EMPLOYEES:

20 (i) AN EMPLOYEE WHO HAS BEEN EMPLOYED IN THE AFFECTED UNIT FOR
21 LESS THAN 3 MONTHS BEFORE THE DATE THE EMPLOYER APPLIES FOR
22 APPROVAL OF THE SHARED-WORK PLAN.

23 (ii) AN EMPLOYEE WHOSE HOURS OF WORK PER WEEK DETERMINED UNDER
24 SUBDIVISION (E) ARE 40 OR MORE HOURS.

25 (C) THERE ARE NO FEWER THAN 2 PARTICIPATING EMPLOYEES,
26 DETERMINED WITHOUT REGARD TO CORPORATE OFFICERS.

27 (D) THE PARTICIPATING EMPLOYEES ARE IDENTIFIED BY NAME AND

1 SOCIAL SECURITY NUMBER.

2 (E) THE NUMBER OF HOURS A PARTICIPATING EMPLOYEE WILL WORK
3 EACH WEEK DURING THE EFFECTIVE PERIOD OF THE PLAN IS THE NUMBER OF
4 THE EMPLOYEE'S NORMAL WEEKLY HOURS OF WORK REDUCED BY THE REDUCTION
5 PERCENTAGE.

6 (F) AS A RESULT OF A DECREASE IN THE NUMBER OF HOURS WORKED BY
7 EACH PARTICIPATING EMPLOYEE, THERE IS A CORRESPONDING REDUCTION IN
8 WAGES.

9 (G) IF ANY PARTICIPATING EMPLOYEE IS COVERED BY A COLLECTIVE
10 BARGAINING AGREEMENT, THE PLAN IS APPROVED IN WRITING BY THE
11 COLLECTIVE BARGAINING REPRESENTATIVE.

12 (H) THE PLAN DOES NOT AFFECT THE FRINGE BENEFITS OF ANY
13 PARTICIPATING EMPLOYEE NOT COVERED BY A COLLECTIVE BARGAINING
14 AGREEMENT.

15 (I) THE EFFECTIVE PERIOD OF THE PLAN IS NOT MORE THAN 52
16 CONSECUTIVE WEEKS.

17 (J) THE EFFECTIVE PERIOD OF THE PLAN COMBINED WITH EFFECTIVE
18 PERIODS OF THE PARTICIPATING EMPLOYER'S PRIOR PLANS DOES NOT EQUAL
19 MORE THAN 104 WEEKS OUT OF A 156-WEEK PERIOD.

20 (K) THE REDUCTION PERCENTAGE SATISFIES THE REQUIREMENTS OF
21 SUBSECTION (2).

22 (2) THE REDUCTION PERCENTAGE UNDER AN APPROVED SHARED-WORK
23 PLAN SHALL MEET ALL OF THE FOLLOWING REQUIREMENTS:

24 (A) THE REDUCTION PERCENTAGE SHALL BE NO LESS THAN 20% AND NO
25 MORE THAN 40%.

26 (B) THE REDUCTION PERCENTAGE SHALL BE THE SAME FOR ALL
27 PARTICIPATING EMPLOYEES.

1 (C) THE REDUCTION PERCENTAGE SHALL NOT CHANGE DURING THE
2 PERIOD OF THE SHARED-WORK PLAN UNLESS THE PLAN IS MODIFIED IN
3 ACCORDANCE WITH SECTION 28I.

4 SEC. 28E. THE UNEMPLOYMENT AGENCY SHALL APPROVE OR DISAPPROVE
5 A SHARED-WORK PLAN NO LATER THAN 15 DAYS AFTER THE DATE THE
6 UNEMPLOYMENT AGENCY RECEIVES AN EMPLOYER'S SHARED-WORK PLAN
7 APPLICATION THAT MEETS THE REQUIREMENTS OF SECTIONS 28C AND 28D.
8 THE UNEMPLOYMENT AGENCY'S DECISION SHALL BE EXPRESSED IN WRITING
9 AND, IF THE SHARED-WORK PLAN IS DISAPPROVED, SHALL INCLUDE THE
10 REASONS FOR THE DISAPPROVAL.

11 SEC. 28F. (1) A SHARED-WORK PLAN IS EFFECTIVE FOR THE NUMBER
12 OF CONSECUTIVE WEEKS INDICATED IN THE EMPLOYER'S APPLICATION, OR A
13 LESSER NUMBER OF WEEKS AS APPROVED BY THE UNEMPLOYMENT AGENCY,
14 UNLESS SOONER TERMINATED IN ACCORDANCE WITH SECTION 28J.

15 (2) THE EFFECTIVE PERIOD OF THE SHARED-WORK PLAN SHALL BEGIN
16 WITH THE FIRST CALENDAR WEEK FOLLOWING THE DATE ON WHICH THE
17 UNEMPLOYMENT AGENCY APPROVES THE PLAN.

18 SEC. 28G. (1) COMPENSATION SHALL BE PAYABLE TO A PARTICIPATING
19 EMPLOYEE FOR A WEEK WITHIN THE EFFECTIVE PERIOD OF AN APPROVED
20 SHARED-WORK PLAN DURING WHICH THE EMPLOYEE WORKS THE NUMBER OF
21 HOURS DETERMINED UNDER SECTION 28D(1)(E) FOR THE PARTICIPATING
22 EMPLOYER ON THE SAME TERMS, IN THE SAME AMOUNT, AND SUBJECT TO THE
23 SAME CONDITIONS THAT WOULD APPLY TO THE PARTICIPATING EMPLOYEE
24 WITHOUT REGARD TO SECTIONS 28B TO 28M, EXCEPT AS FOLLOWS:

25 (A) A PARTICIPATING EMPLOYEE SHALL NOT BE REQUIRED TO BE
26 UNEMPLOYED WITHIN THE MEANING OF SECTION 48 OR FILE CLAIMS FOR
27 COMPENSATION UNDER SECTION 32.

1 (B) THE BENEFIT RATE OTHERWISE PAYABLE AS PRESCRIBED IN
2 SECTION 27 SHALL BE MODIFIED SO THAT A PARTICIPATING EMPLOYEE SHALL
3 BE PAID COMPENSATION IN AN AMOUNT EQUAL TO THE PRODUCT OF HIS OR
4 HER WEEKLY BENEFIT RATE AND THE REDUCTION PERCENTAGE, ROUNDED TO
5 THE NEXT LOWER WHOLE DOLLAR AMOUNT.

6 (C) THE UNEMPLOYMENT AGENCY SHALL NOT DENY COMPENSATION TO A
7 PARTICIPATING EMPLOYEE FOR ANY WEEK DURING THE EFFECTIVE PERIOD OF
8 THE SHARED-WORK PLAN BY APPLYING ANY PROVISION OF THIS ACT RELATING
9 TO ACTIVE SEARCH FOR WORK OR REFUSAL TO APPLY FOR OR ACCEPT WORK
10 OTHER THAN WORK OFFERED BY THE PARTICIPATING EMPLOYER.

11 (D) A PARTICIPATING EMPLOYEE SATISFIES THE ELIGIBILITY
12 REQUIREMENTS OF SECTION 28 IF THE EMPLOYEE IS ABLE TO WORK AND IS
13 AVAILABLE FOR THE EMPLOYEE'S NORMAL WEEKLY HOURS OF WORK WITH THE
14 PARTICIPATING EMPLOYER.

15 (2) FOR PURPOSES OF SUBSECTION (1), IF A PARTICIPATING
16 EMPLOYEE WORKS FEWER HOURS THAN THE NUMBER OF HOURS DETERMINED
17 UNDER SECTION 28D(1)(E) FOR THE PARTICIPATING EMPLOYER DURING A
18 WEEK WITHIN THE EFFECTIVE PERIOD OF THE APPROVED SHARED-WORK PLAN,
19 BUT RECEIVES REMUNERATION AS IF THE EMPLOYEE HAD WORKED THE NUMBER
20 OF HOURS DETERMINED UNDER SECTION 28D(1)(E), THE EMPLOYEE WILL BE
21 DEEMED TO HAVE WORKED THE NUMBER OF HOURS DETERMINED UNDER SECTION
22 28D(1)(E) DURING THAT WEEK.

23 (3) A PARTICIPATING EMPLOYEE'S ELIGIBILITY FOR COMPENSATION
24 FOR A WEEK WITHIN THE EFFECTIVE PERIOD OF AN APPROVED SHARED-WORK
25 PLAN SHALL BE DETERMINED WITHOUT REGARD TO SECTIONS 28B TO 28M
26 UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

27 (A) THE EMPLOYEE RECEIVES REMUNERATION FOR THE WEEK FROM THE

1 PARTICIPATING EMPLOYER THAT IS LESS THAN THE AMOUNT DUE FOR THE
2 NUMBER OF HOURS DETERMINED UNDER SECTION 28D(1)(E).

3 (B) THE EMPLOYEE RECEIVES REMUNERATION FOR THE WEEK FROM THE
4 PARTICIPATING EMPLOYER IN EXCESS OF THE AMOUNT DUE FOR THE NUMBER
5 OF HOURS DETERMINED UNDER SECTION 28D(1)(E).

6 SEC. 28H. (1) THE UNEMPLOYMENT AGENCY SHALL ESTABLISH A
7 SCHEDULE OF CONSECUTIVE 2-WEEK PERIODS WITHIN THE EFFECTIVE PERIOD
8 OF THE SHARED-WORK PLAN. THE UNEMPLOYMENT AGENCY MAY, AS NECESSARY,
9 INCLUDE 1-WEEK PERIODS IN THE SCHEDULE AND REVISE THE SCHEDULE. AT
10 THE END OF EACH SCHEDULED PERIOD, THE PARTICIPATING EMPLOYER SHALL
11 FILE CLAIMS FOR COMPENSATION FOR THE WEEK OR WEEKS WITHIN THE
12 PERIOD ON BEHALF OF THE PARTICIPATING EMPLOYEES. THE CLAIMS SHALL
13 BE FILED NO LATER THAN THE LAST DAY OF THE WEEK IMMEDIATELY
14 FOLLOWING THE PERIOD, UNLESS AN EXTENSION OF TIME IS GRANTED BY THE
15 UNEMPLOYMENT AGENCY FOR GOOD CAUSE. THE CLAIMS SHALL BE FILED IN
16 THE MANNER PRESCRIBED BY THE UNEMPLOYMENT AGENCY AND SHALL CONTAIN
17 ALL INFORMATION REQUIRED BY THE UNEMPLOYMENT AGENCY TO DETERMINE
18 THE ELIGIBILITY OF THE PARTICIPATING EMPLOYEES FOR COMPENSATION.

19 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,
20 COMPENSATION PAID TO PARTICIPATING EMPLOYEES FOR WEEKS WITHIN THE
21 EFFECTIVE PERIOD OF AN APPROVED SHARED-WORK PLAN SHALL BE CHARGED
22 TO THE PARTICIPATING EMPLOYER.

23 SEC. 28I. AN EMPLOYER MAY APPLY TO THE UNEMPLOYMENT AGENCY FOR
24 APPROVAL TO MODIFY A SHARED-WORK PLAN TO MEET CHANGED CONDITIONS.
25 THE UNEMPLOYMENT AGENCY SHALL REEVALUATE THE PLAN AND MAY APPROVE
26 THE MODIFIED PLAN IF IT MEETS THE REQUIREMENTS FOR APPROVAL UNDER
27 SECTION 28E. IF THE MODIFICATIONS CAUSE THE SHARED-WORK PLAN TO

1 FAIL TO MEET THE REQUIREMENTS FOR APPROVAL, THE UNEMPLOYMENT AGENCY
2 SHALL DISAPPROVE THE PROPOSED MODIFICATIONS.

3 SEC. 28J. (1) THE UNEMPLOYMENT AGENCY MAY TERMINATE A SHARED-
4 WORK PLAN FOR GOOD CAUSE.

5 (2) FOR PURPOSES OF SUBSECTION (1), GOOD CAUSE INCLUDES ANY OF
6 THE FOLLOWING:

7 (A) THE PLAN IS NOT BEING EXECUTED ACCORDING TO ITS APPROVED
8 TERMS AND CONDITIONS.

9 (B) THE PARTICIPATING EMPLOYER FAILS TO COMPLY WITH THE
10 ASSURANCES GIVEN IN THE PLAN.

11 (C) THE PARTICIPATING EMPLOYER OR A PARTICIPATING EMPLOYEE
12 VIOLATES ANY CRITERIA ON WHICH APPROVAL OF THE PLAN WAS BASED.

13 (3) THE EMPLOYER MAY TERMINATE A SHARED-WORK PLAN BY WRITTEN
14 NOTICE TO THE UNEMPLOYMENT AGENCY.

15 SEC. 28K. THE DECISION TO APPROVE OR DISAPPROVE A SHARED-WORK
16 PLAN, TO APPROVE OR DISAPPROVE A MODIFICATION OF A SHARED-WORK
17 PLAN, OR TO TERMINATE A SHARED-WORK PLAN IS AT THE UNEMPLOYMENT
18 AGENCY'S DISCRETION. THOSE DECISIONS ARE NOT SUBJECT TO THE APPEAL
19 PROVISIONS OF THIS ACT.

20 SEC. 28L. IN ADDITION TO OTHER REPORTS REQUIRED BY LAW, THE
21 UNEMPLOYMENT AGENCY SHALL SUBMIT AN ANNUAL REPORT TO THE GOVERNOR,
22 THE SECRETARY OF THE SENATE, AND THE CLERK OF THE HOUSE OF
23 REPRESENTATIVES FOR REFERRAL TO THE CHAIR AND MINORITY VICE CHAIR
24 OF THE APPROPRIATE COMMITTEES REGARDING SHARED-WORK PLANS UNDER
25 SECTIONS 28B TO 28M. THE REPORT SHALL INCLUDE THE NUMBER OF
26 APPROVED SHARED-WORK PLANS, THE NUMBER OF PARTICIPATING EMPLOYERS,
27 THE NUMBER OF PARTICIPATING EMPLOYEES, THE AMOUNT OF COMPENSATION

1 PAID TO PARTICIPATING EMPLOYEES, AND ANY OTHER INFORMATION THAT THE
2 UNEMPLOYMENT AGENCY DETERMINES IS RELEVANT TO ASSESS THE IMPACT OF
3 SHARED-WORK PLANS ON THE UNEMPLOYMENT COMPENSATION FUND. THE FIRST
4 REPORT SHALL BE SUBMITTED ON OR BEFORE THE FIRST DAY OF MARCH
5 FOLLOWING THE FIRST COMPLETE CALENDAR YEAR DURING WHICH SECTIONS
6 28B TO 28M ARE IN EFFECT, AND SUBSEQUENT REPORTS SHALL BE SUBMITTED
7 ON OR BEFORE THE FIRST DAY OF MARCH OF EACH SUBSEQUENT YEAR.

8 SEC. 28M. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,
9 IF ANY PROVISION OR PROVISIONS OF THIS SECTION OR SECTIONS 28B TO
10 28/ CAUSE THE UNITED STATES DEPARTMENT OF LABOR TO WITHHOLD APPROVAL
11 OF THIS SECTION OR SECTIONS 28B TO 28/ AS REQUIRED UNDER SECTION
12 3304(A)(4)(E) OF THE FEDERAL UNEMPLOYMENT TAX ACT, 26 USC 3304, AND
13 SECTION 303(A)(5) OF THE SOCIAL SECURITY ACT, 42 USC 503, THE
14 PROVISIONS IN THIS SECTION OR SECTIONS 28B TO 28/ DO NOT APPLY.

15 (2) WHEN THE PROVISIONS OF THIS SECTION OR SECTIONS 28B TO 28/
16 ARE APPROVED OR DISAPPROVED BY THE UNITED STATES DEPARTMENT OF
17 LABOR, THE UNEMPLOYMENT AGENCY SHALL TRANSMIT TO THE SECRETARY OF
18 THE SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES NOTICE OF
19 THE APPROVAL OR DISAPPROVAL.

20 Enacting section 1. Sections 28b to 28m of the Michigan
21 employment security act, 1936 (Ex Sess) PA 1, MCL 421.28b to
22 421.28m, are repealed 5 years after the effective date of this
23 amendatory act.

24 Enacting section 2. This amendatory act takes effect July 1,
25 2011.