



HOUSE BILL No. 5392

November 9, 1995, Introduced by Rep. Jaye and referred to the Committee on Human Resources and Labor.

A bill to amend section 29 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "Michigan employment security act," as amended by Act No. 25 of the Public Acts of 1995, being section 421.29 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 29 of Act No. 1 of the Public Acts of
2 the Extra Session of 1936, as amended by Act No. 25 of the Public
3 Acts of 1995, being section 421.29 of the Michigan Compiled Laws,
4 is amended to read as follows:

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

7 (a) Left work voluntarily without good cause attributable to
8 the employer or employing unit. However, if the individual has
9 an established benefit year in effect and during that benefit

1 year leaves unsuitable work within 60 days after the beginning of
2 that work, the leaving does not disqualify the individual.

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

7 (c) Failed without good cause to apply for available suit-
8 able work after receiving from the employment office or the com-
9 mission 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 rea-
12 sonable 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
16 offered to the individual or to return to the individual's cus-
17 tomary self-employment, if any, when directed by the employment
18 office or the commission.

19 (f) Lost his or her job due to absence from work resulting
20 from a violation of law for which the individual was convicted
21 and sentenced to jail or prison. This subdivision does not apply
22 if conviction of an individual results in a sentence to county
23 jail under conditions of day parole as provided in Act No. 60 of
24 the Public Acts of 1962, being sections 801.251 to 801.258 of the
25 Michigan Compiled Laws, or if the conviction was for a traffic
26 violation that resulted in an absence of less than 10 consecutive
27 work days from the individual's place of employment.

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

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

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

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

12 (i) Was discharged for theft connected with the individual's
13 work.

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

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

21 (l) Was employed by a temporary help firm, which as used in
22 this section means an employer whose primary business is to pro-
23 vide a client with the temporary services of 1 or more individu-
24 als under contract with the employer, to perform services for a
25 client of that firm if each of the following conditions is met:

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

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

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

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

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

1 disqualification of the worker under this subdivision. As used
2 in this subdivision:

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

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

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

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

16 (i) Within 30 days of the effective date of the act that
17 added subdivision (l), the governor requests from the United
18 States department of labor a determination confirming whether
19 this subdivision is in conformity with the federal unemployment
20 tax act, chapter 23 ~~—~~ of the internal revenue code of 1986, 26
21 U.S.C. 3301 to 3311, and the social security act, CHAPTER 531, 49
22 Stat. 620, and whether conformity with those federal acts is a
23 condition for a full tax credit against the tax imposed under the
24 federal unemployment tax act (FUTA), or is a condition for state
25 receipt of federal administrative grant funds under the social
26 security act.

1 (ii) The United States department of labor determines that
2 this subdivision is in conformity with the acts described in
3 subparagraph (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~~
9 ~~available work from the individual's residence.~~ AN INDIVIDUAL
10 WHO REFUSES AN OFFER OF WORK SHALL BE DENIED BENEFITS IF THAT
11 WORK IS DETERMINED TO BE SUITABLE UNDER THIS SECTION AND EITHER
12 OF THE FOLLOWING CONDITIONS EXISTS: (i) THE INDIVIDUAL OWNS OR
13 HAS THE USE OF A MOTOR VEHICLE AND THE SUITABLE WORK IS NOT MORE
14 THAN 90 MILES FROM HIS OR HER RESIDENCE; (ii) THE SUITABLE WORK
15 IS A COMMUTE OF 90 MINUTES OR LESS BY PUBLIC TRANSPORTATION TO OR
16 FROM THE INDIVIDUAL'S RESIDENCE. Additionally, the commission
17 shall consider the individual's experience and prior earnings,
18 subject to the following ~~limitation~~ LIMITATIONS:

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

24 (b) An individual unemployed for 13 to 20 weeks who refuses
25 an offer of work determined to be suitable under this section
26 shall be denied benefits if the pay rate for that work is at

1 least 75% of the gross pay rate he or she received immediately
2 before becoming unemployed.

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

8 (D) AN INDIVIDUAL WHO REFUSES AN OFFER OF SUITABLE WORK
9 BECAUSE HE OR SHE LACKS TRANSPORTATION FROM HIS OR HER RESIDENCE
10 TO THAT SUITABLE WORK SHALL BE DENIED BENEFITS UNLESS HE OR SHE
11 PROVIDES THE COMMISSION WITH A SWORN STATEMENT VERIFYING THAT
12 PUBLIC TRANSPORTATION IS UNAVAILABLE AND THAT HE OR SHE DOES NOT
13 OWN OR HAVE THE USE OF A MOTOR VEHICLE. AN INDIVIDUAL WHO PRO-
14 VIDES A FALSE STATEMENT UNDER THIS SUBDIVISION IS SUBJECT TO THE
15 PENALTIES PRESCRIBED UNDER SECTION 54 AND ANY OTHER PENALTY PRE-
16 SCRIBED BY LAW.

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

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

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

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

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

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

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

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

14 (b) An individual's disqualification imposed or imposable
15 under this subsection is terminated if the individual performs
16 services in employment with an employer in at least 2 consecutive
17 weeks falling wholly within the period of the individual's total
18 or partial unemployment due to the labor dispute, and in addition
19 earns wages in each of those weeks in an amount equal to or
20 greater than the individual's actual or potential weekly benefit
21 rate with respect to those weeks based on the individual's
22 employment with the employer involved in the labor dispute.

23 (c) An individual is not disqualified under this subsection
24 if the individual is not directly involved in the labor dispute.
25 An individual is not directly involved in a labor dispute unless
26 any of the following are established:

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

6 (ii) The individual is participating in, financing, or
7 directly interested in the labor dispute that causes the
8 individual's total or partial unemployment. The payment of regu-
9 lar union dues, in amounts and for purposes established before
10 the inception of the labor dispute, is not financing a labor dis-
11 pute within the meaning of this subparagraph.

12 (iii) At any time a labor dispute in the establishment or
13 department in which the individual was employed does not exist,
14 and the individual voluntarily stops working, other than at the
15 direction of the individual's employing unit, in sympathy with
16 employees in some other establishment or department in which a
17 labor dispute is in progress.

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

21 (d) As used in this subsection, "directly interested" shall
22 be construed and applied so as not to disqualify individuals
23 unemployed as a result of a labor dispute the resolution of which
24 may not reasonably be expected to affect their wages, hours, or
25 other conditions of employment, and to disqualify individuals
26 whose wages, hours, or conditions of employment may reasonably be
27 expected to be affected by the resolution of the labor dispute.

1 A "reasonable expectation" of an effect on an individual's wages,
2 hours, or other conditions of employment exists, in the absence
3 of a substantial preponderance of evidence to the contrary, in
4 any of the following situations:

5 (i) If it is established that there is in the particular
6 establishment or employing unit a practice, custom, or contrac-
7 tual obligation to extend within a reasonable period to members
8 of the individual's grade or class of workers in the establish-
9 ment in which the individual is or was last employed changes in
10 terms and conditions of employment that are substantially similar
11 or related to some or all of the changes in terms and conditions
12 of employment that are made for the workers among whom there
13 exists the labor dispute that has caused the individual's total
14 or partial unemployment.

15 (ii) If it is established that 1 of the issues in or pur-
16 poses of the labor dispute is to obtain a change in the terms and
17 conditions of employment for members of the individual's grade or
18 class of workers in the establishment in which the individual is
19 or was last employed.

20 (iii) If a collective bargaining agreement covers both the
21 individual's grade or class of workers in the establishment in
22 which the individual is or was last employed and the workers in
23 another establishment of the same employing unit who are actively
24 participating in the labor dispute, and that collective bargain-
25 ing agreement is subject by its terms to modification, supplemen-
26 tation, or replacement, or has expired or been opened by mutual
27 consent at the time of the labor dispute.

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

3 (i) Representation of the workers by the same national or
4 international organization or by local affiliates of that
5 national or international organization.

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

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

13 (iv) Any functional integration of the work performed by
14 those workers.

15 (v) Whether the resolution of those issues involved in the
16 labor dispute as to some of the workers could directly or indi-
17 rectly affect the advancement, negotiation, or settlement of the
18 same or similar issues in respect to the remaining workers.

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

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

1 (9) Except for an individual disqualified under subsection
2 (1)(g), or an individual whose disqualifying discharge under
3 subsection (1)(b) is determined or redetermined to be a disci-
4 plinary layoff or suspension, an individual is disqualified from
5 receiving benefits for the duration of the individual's disci-
6 plinary layoff or suspension if the individual becomes unemployed
7 because of a disciplinary layoff or suspension based upon any of
8 the following:

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

10 (b) Participation in a strike or other concerted activity
11 resulting in a curtailment of work or restriction of or interfer-
12 ence with production contrary to an applicable collective bar-
13 gaining agreement.

14 (c) Participation in a wildcat strike or other concerted
15 activity not authorized by the individual's recognized bargaining
16 representative.

17 (10) If a disqualifying discharge under subsection (1)(b) is
18 determined or redetermined to be a suspension, the disqualifica-
19 tion provided under subsection (9) applies from the date of the
20 discharge.

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

1 (12) An individual is disqualified from receiving benefits
2 for any week or part of a week in which the individual has
3 received, is receiving, or is seeking unemployment benefits under
4 an unemployment compensation law of another state or of the
5 United States. If the appropriate agency of the other state or
6 of the United States finally determines that the individual is
7 not entitled to unemployment benefits, the disqualification
8 described in this subsection does not apply.