

SENATE BILL No. 500

June 16, 2011, Introduced by Senators JANSEN and KOWALL and referred to the Committee on Economic Development.

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 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,
10 if either of the following conditions is met, the leaving does not
11 disqualify the individual:

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

4 (ii) The individual is the spouse of a full-time member of the
5 United States armed forces, and the leaving is due to the military
6 duty reassignment of that member of the United States armed forces
7 to a different geographic location.

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

10 (c) Failed without good cause to apply **DILIGENTLY** for
11 available suitable work after receiving from the employment office
12 or the commission notice of the availability of that work **OR WITH**
13 **EMPLOYERS WHO COULD REASONABLY BE EXPECTED TO HAVE SUITABLE WORK**
14 **AVAILABLE.**

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

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

1 the unemployment agency shall notify the claimant of the
2 availability of suitable work.

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

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

14 (i) A strike or other concerted action in violation of an
15 applicable collective bargaining agreement that results in
16 curtailment of work or restriction of or interference with
17 production.

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

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

22 (i) Was discharged for theft connected with the individual's
23 work.

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

26 (k) Committed a theft after receiving notice of a layoff or
27 discharge, but before the effective date of the layoff or

1 discharge, resulting in loss or damage to the employer who would
2 otherwise be chargeable for the benefits, regardless of whether the
3 individual qualified for the benefits before the theft.

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

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

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

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

21 (ii) The employee did not provide the temporary help firm with
22 notice that the employee had completed his or her services for the
23 client within 7 days after completion of his or her services for
24 the client.

25 (m) Was discharged for illegally ingesting, injecting,
26 inhaling, or possessing a controlled substance on the premises of
27 the employer; refusing to submit to a drug test that was required

1 to be administered in a nondiscriminatory manner; or testing
2 positive on a drug test, if the test was administered in a
3 nondiscriminatory manner. If the worker disputes the result of the
4 testing, a generally accepted confirmatory test shall be
5 administered and shall also indicate a positive result for the
6 presence of a controlled substance before a disqualification of the
7 worker under this subdivision. As used in this subdivision:

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

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

12 (iii) "Nondiscriminatory manner" means administered impartially
13 and objectively in accordance with a collective bargaining
14 agreement, rule, policy, a verbal or written notice, or a labor-
15 management contract.

16 **(N) WAS SUSPENDED OR DISCHARGED BECAUSE OF THE INDIVIDUAL'S**
17 **INABILITY TO PERFORM THE WORK CORRECTLY OR FOR FAILING TO MEET**
18 **NORMAL PRODUCTION QUOTAS.**

19 **(O) WAS SUSPENDED OR DISCHARGED FOR CONSISTENT TARDINESS OR**
20 **ABSENCE WITHOUT JUSTIFIABLE CAUSE.**

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

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

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

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

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

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

1 the unemployment compensation act of another state an amount equal
2 to, or in excess of, 40 times the state minimum hourly wage times
3 7, whichever is the lesser amount.

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

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

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

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

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

1 discharge occurred by earning in employment for an employer liable
2 under this act or the unemployment compensation law of another
3 state at least the lesser of the following:

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

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

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

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

1 the individual's benefit year, any benefits that may become payable
2 to the individual in a later benefit year based on employment with
3 the employer involved in the disqualification shall be charged to
4 the nonchargeable benefits account.

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

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

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

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

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

26 (c) For benefit years established before October 1, 2000, an
27 individual disqualified under subsection (1)(h), (i), (j), (k), or

1 (m) is not entitled to benefits based on wages and credit weeks
2 earned before the disqualifying act or discharge with the employer
3 involved in the disqualification.

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

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

9 (f) For benefit years established on or after October 1, 2000,
10 if the individual is disqualified under subsection (1)(c), (d),
11 (e), (f), (g), or (l), the maximum number of weeks otherwise
12 applicable in calculating benefits for the individual under section
13 27(d) shall be reduced by the lesser 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 on
17 the claim.

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

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

1 employer, all of the following apply:

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

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

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

15 (6) In determining whether work is suitable for an individual,
16 the commission shall consider the degree of risk involved to the
17 individual's health, safety, and morals, the individual's physical
18 fitness and prior training, the individual's length of unemployment
19 and prospects for securing local work in the individual's customary
20 occupation, and the distance of the available work from the
21 individual's residence. Additionally, the commission shall consider
22 the individual's experience and prior earnings, but an unemployed
23 individual who refuses an offer of work determined to be suitable
24 under this section shall be denied benefits if the pay rate for
25 that work is at least 70% of the gross pay rate he or she received
26 immediately before becoming unemployed. **BEGINNING SEPTEMBER 1,**
27 **2011, AFTER AN INDIVIDUAL HAS RECEIVED BENEFITS FOR 50% OF THE**

1 BENEFIT WEEKS IN THE INDIVIDUAL'S BENEFIT YEAR, WORK SHALL NOT BE
2 CONSIDERED UNSUITABLE BECAUSE IT IS OUTSIDE OF THE INDIVIDUAL'S
3 TRAINING AND EXPERIENCE OR UNSUITABLE AS TO PAY RATE IF THE PAY
4 RATE FOR THAT WORK MEETS OR EXCEEDS THE MINIMUM WAGE AND IS 120% OR
5 MORE OF THE INDIVIDUAL'S WEEKLY BENEFIT AMOUNT.

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.