

SENATE BILL No. 1079

April 19, 2012, Introduced by Senator HILDENBRAND and referred to the Committee on Reforms, Restructuring and Reinventing.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 29 (MCL 421.29), as amended by 2011 PA 269.

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 who
7 is absent from work for a period of 3 consecutive work days or more
8 without contacting the employer in a manner acceptable to the
9 employer and of which the individual was informed at the time of
10 hire shall be considered to have voluntarily left work without good
11 cause attributable to the employer. An individual who becomes

1 unemployed as a result of negligently losing a requirement for the
2 job of which he or she was informed at the time of hire shall be
3 considered to have voluntarily left work without good cause
4 attributable to the employer. An individual claiming benefits under
5 this act has the burden of proof to establish that he or she left
6 work involuntarily or for good cause that was attributable to the
7 employer or employing unit. An individual claiming to have left
8 work involuntarily for medical reasons must have done all of the
9 following before the leaving: secured a statement from a medical
10 professional that continuing in the individual's current job would
11 be harmful to the individual's physical or mental health;
12 unsuccessfully attempted to secure alternative work with the
13 employer; and unsuccessfully attempted to be placed on a leave of
14 absence with the employer to last until the individual's mental or
15 physical health would no longer be harmed by the current job.
16 However, if any of the following conditions is met, the leaving
17 does not disqualify the individual:

18 (i) The individual has an established benefit year in effect
19 and during that benefit year leaves unsuitable work within 60 days
20 after the beginning of that work. Benefits paid after a leaving
21 under this subparagraph shall not be charged to the experience
22 account of the employer the individual left, but shall be charged
23 instead to the nonchargeable benefits account.

24 (ii) **THE INDIVIDUAL HAS AN ESTABLISHED BENEFIT YEAR IN EFFECT**
25 **AND DURING THAT BENEFIT YEAR LEAVES PART-TIME WORK TO ACCEPT OTHER**
26 **PART-TIME WORK THAT PROVIDES A GREATER HOURLY WAGE, MORE HOURS AT**
27 **AN EQUAL HOURLY WAGE, OR FRINGE BENEFITS WITH GREATER MONETARY**

1 VALUE THAN PROVIDED BY THE FORMER PART-TIME EMPLOYER. BENEFITS PAID
2 BASED ON PART-TIME EMPLOYMENT THAT THE EMPLOYEE LEAVES UNDER THE
3 CONDITIONS DESCRIBED IN THIS SUBPARAGRAPH SHALL NOT BE CHARGED TO
4 THE PART-TIME EMPLOYER WHO THE EMPLOYEE LEAVES, BUT SHALL BE
5 CHARGED TO THE NONCHARGEABLE BENEFITS ACCOUNT.

6 (iii) ~~(ii)~~—The individual is the spouse of a full-time member of
7 the United States armed forces, and the leaving is due to the
8 military duty reassignment of that member of the United States
9 armed forces to a different geographic location. Benefits paid
10 after a leaving under this subparagraph shall not be charged to the
11 experience account of the employer the individual left, but shall
12 be charged instead to the nonchargeable benefits account.

13 (iv) ~~(iii)~~—The individual is concurrently working part-time for
14 an employer or employing unit and for another employer or employing
15 unit and voluntarily leaves the part-time work while continuing
16 work with the other employer. The portion of the benefits paid in
17 accordance with this subparagraph that would otherwise be charged
18 to the experience account of the part-time employer that the
19 individual left shall not be charged to the account of that
20 employer, but shall be charged instead to the nonchargeable
21 benefits account.

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

24 (c) Failed without good cause to apply diligently for
25 available suitable work after receiving notice from the
26 unemployment agency of the availability of that work or failed to
27 apply for work with employers that could reasonably be expected to

1 have suitable work available.

2 (d) Failed without good cause while unemployed to report to
3 the individual's former employer or employing unit within a
4 reasonable time after that employer or employing unit provided
5 notice of the availability of an interview concerning available
6 suitable work with the former employer or employing unit.

7 (e) Failed without good cause to accept suitable work offered
8 to the individual or to return to the individual's customary self-
9 employment, if any, when directed by the employment office or the
10 unemployment agency. An employer that receives a monetary
11 determination under section 32 may notify the unemployment agency
12 regarding the availability of suitable work with the employer on
13 the monetary determination or other form provided by the
14 unemployment agency. Upon receipt of the notice of the availability
15 of suitable work, the unemployment agency shall notify the claimant
16 of the availability of suitable work.

17 (f) Lost his or her job due to absence from work resulting
18 from a violation of law for which the individual was convicted and
19 sentenced to jail or prison. This subdivision does not apply if
20 conviction of an individual results in a sentence to county jail
21 under conditions of day parole as provided in 1962 PA 60, MCL
22 801.251 to 801.258, or if the conviction was for a traffic
23 violation that resulted in an absence of less than 10 consecutive
24 work days from the individual's place of employment.

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

1 (i) A strike or other concerted action in violation of an
2 applicable collective bargaining agreement that results in
3 curtailment of work or restriction of or interference with
4 production.

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

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

9 (i) Was discharged for theft connected with the individual's
10 work.

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

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

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

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

26 (A) That within 7 days after completing services for a client
27 of the temporary help firm, the employee is under a duty to notify

1 the temporary help firm of the completion of those services.

2 (B) That a failure to provide the temporary help firm with
3 notice of the employee's completion of services pursuant to sub-
4 subparagraph (A) constitutes a voluntary quit that will affect the
5 employee's eligibility for unemployment compensation should the
6 employee seek unemployment compensation following completion of
7 those services.

8 (ii) The employee did not provide the temporary help firm with
9 notice that the employee had completed his or her services for the
10 client within 7 days after completion of his or her services for
11 the client.

12 (m) Was discharged for illegally ingesting, injecting,
13 inhaling, or possessing a controlled substance on the premises of
14 the employer; refusing to submit to a drug test that was required
15 to be administered in a nondiscriminatory manner; or testing
16 positive on a drug test, if the test was administered in a
17 nondiscriminatory manner. If the worker disputes the result of the
18 testing, and if a generally accepted confirmatory test has not been
19 administered on the same sample previously tested, then a generally
20 accepted confirmatory test shall be administered on that sample. If
21 the confirmatory test also indicates a positive result for the
22 presence of a controlled substance, the worker who is discharged as
23 a result of the test result will be disqualified under this
24 subdivision. A report by a drug testing facility showing a positive
25 result for the presence of a controlled substance is conclusive
26 unless there is substantial evidence to the contrary. As used in
27 this subdivision:

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

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

5 (iii) "Nondiscriminatory manner" means administered impartially
6 and objectively in accordance with a collective bargaining
7 agreement, rule, policy, a verbal or written notice, or a labor-
8 management contract.

9 (n) Theft from the employer that resulted in the employee's
10 conviction, within 2 years of the date of the discharge, of theft
11 or a lesser included offense.

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

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

22 (a) For benefit years established before October 1, 2000, the
23 individual shall complete 6 requalifying weeks if he or she was
24 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or
25 13 requalifying weeks if he or she was disqualified under
26 subsection (1)(h), (i), (j), (k), or (m). A requalifying week
27 required under this subdivision is each week in which the

1 individual does any of the following:

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

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

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

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

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

27 (d) For benefit years beginning on or after October 1, 2000,

1 after the week in which the disqualifying act or discharge
2 occurred, an individual shall complete 13 requalifying weeks if he
3 or she was disqualified under subsection (1)(c), (d), (e), (f),
4 (g), or (l), or 26 requalifying weeks if he or she was disqualified
5 under subsection (1)(h), (i), (j), (k), (m), or (n). A requalifying
6 week required under this subdivision is each week in which the
7 individual does any of the following:

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

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

15 (e) For benefit years beginning on or after October 1, 2000
16 and beginning before April 26, 2002, if the individual is
17 disqualified under subsection (1)(a) or (b), he or she shall
18 requalify, after the week in which the disqualifying act or
19 discharge occurred by earning in employment for an employer liable
20 under this act or the unemployment compensation law of another
21 state at least the lesser of the following:

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

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

24 (f) For benefit years beginning on or after April 26, 2002, if
25 the individual is disqualified under subsection (1)(a), he or she
26 shall 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 12 times the individual's weekly benefit rate.

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

9 (h) A benefit payable to the individual disqualified or
10 separated under disqualifying circumstances under subsection (1)(a)
11 or (b), shall be charged to the nonchargeable benefits account, and
12 not to the account of the employer with whom the individual was
13 involved in the separation. Benefits payable to an individual
14 determined by the unemployment agency to be separated under
15 disqualifying circumstances shall not be charged to the account of
16 the employer involved in the disqualification for any period after
17 the employer notifies the unemployment agency of the claimant's
18 possible ineligibility or disqualification. However, an individual
19 filing a new claim for benefits who reports the reason for
20 separation from a base period employer as a voluntary leaving shall
21 be presumed to have voluntarily left without good cause
22 attributable to the employer and shall be disqualified unless the
23 individual provides substantial evidence to rebut the presumption.
24 If a disqualifying act or discharge occurs during the individual's
25 benefit year, any benefits that may become payable to the
26 individual in a later benefit year based on employment with the
27 employer involved in the disqualification shall be charged to the

1 nonchargeable benefits account.

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

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

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

14 (ii) The number of weeks of benefit entitlement remaining with
15 that employer.

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

23 (c) For benefit years established before October 1, 2000, an
24 individual disqualified under subsection (1)(h), (i), (j), (k), or
25 (m) is not entitled to benefits based on wages and credit weeks
26 earned before the disqualifying act or discharge with the employer
27 involved in the disqualification.

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

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

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

11 (i) The number of requalifying weeks required of the individual
12 under this section.

13 (ii) The number of weeks of benefit entitlement remaining on
14 the claim.

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

23 (5) If an individual leaves work to accept permanent full-time
24 work with another employer or to accept a referral to another
25 employer from the individual's union hiring hall and performs
26 services for that employer, or if an individual leaves work to
27 accept a recall from a former 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 unemployment agency shall advise the chargeable
11 employer of the name and address of the other employer, the period
12 covered by the employment, and the extent of the benefits that may
13 be charged to the account of the chargeable employer.

14 (6) In determining whether work is suitable for an individual,
15 the unemployment agency shall consider the degree of risk involved
16 to the individual's health, safety, and morals, the individual's
17 physical fitness and prior training, the individual's length of
18 unemployment and prospects for securing local work in the
19 individual's customary occupation, and the distance of the
20 available work from the individual's residence. Additionally, the
21 unemployment agency shall consider the individual's experience and
22 prior earnings, but an unemployed individual who refuses an offer
23 of work determined to be suitable under this section shall be
24 denied benefits if the pay rate for that work is at least 70% of
25 the gross pay rate he or she received immediately before becoming
26 unemployed. Beginning January 15, 2012, after an individual has
27 received benefits for 50% of the benefit weeks in the individual's

1 benefit year, work shall not be considered unsuitable because it is
2 outside of the individual's training or experience or unsuitable as
3 to pay rate if the pay rate for that work meets or exceeds the
4 minimum wage; is at least the prevailing mean wage for similar work
5 in the locality for the most recent full calendar year for which
6 data are available as published by the department of technology,
7 management, and budget as "wages by job title", by standard
8 metropolitan statistical area; and is 120% or more of the
9 individual's weekly benefit amount.

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

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

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

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

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

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

26 (i) A labor dispute in active progress at the place at which
27 the individual is or was last employed, or a shutdown or start-up

1 operation caused by that labor dispute.

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

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

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

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

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

1 of this subparagraph.

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

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

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

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

1 to some or all of the changes in terms and conditions of employment
2 that are made for the workers among whom there exists the labor
3 dispute that has caused the individual's total or partial
4 unemployment.

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

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

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

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

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

25 (iii) Whether the workers are or within the past 6 months have
26 been covered by a common master collective bargaining agreement
27 that sets forth all or any part of the terms and conditions of the

1 workers' employment, or by separate agreements that are or have
2 been bargained as a part of the same negotiations.

3 (iv) Any functional integration of the work performed by those
4 workers.

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

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

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

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

24 (10) An individual is disqualified from receiving benefits for
25 any week or part of a week in which the individual has received, is
26 receiving, or is seeking unemployment benefits under an
27 unemployment compensation law of another state or of the United

1 States. If the appropriate agency of the other state or of the
2 United States finally determines that the individual is not
3 entitled to unemployment benefits, the disqualification described
4 in this subsection does not apply.