

HOUSE BILL No. 6141

May 29, 2002, Introduced by Reps. Van Woerkom, Hart, Gosselin and Kuipers and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 29 (MCL 421.29), as amended by 2002 PA 192.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29. (1) An individual is disqualified from receiving
2 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 attrib-
6 utable to the employer or employing unit. An individual claiming
7 benefits under this act has the burden of proof to establish that
8 he or she left work involuntarily or for good cause that was
9 attributable to the employer or employing unit. However, if the
10 individual has an established benefit year in effect and during
11 that benefit year leaves unsuitable work within 60 days after the

1 beginning of that work, the leaving does not disqualify the
2 individual.

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

5 (c) Failed without good cause to apply for available suit-
6 able work after receiving from the employment office or the com-
7 mission notice of the availability of that work.

8 (d) Failed without good cause while unemployed to report to
9 the individual's former employer or employing unit within a rea-
10 sonable time after that employer or employing unit provided
11 notice of the availability of an interview concerning available
12 suitable work with the former employer or employing unit.

13 (e) Failed without good cause to accept suitable work
14 offered to the individual or to return to the individual's cus-
15 tomary self-employment, if any, when directed by the employment
16 office or the commission. An employer that receives a monetary
17 determination under section 32 may notify the unemployment agency
18 regarding the availability of suitable work with the employer on
19 the monetary determination or other form provided by the unem-
20 ployment agency. Upon receipt of the notice of the availability
21 of suitable work, the unemployment agency shall notify the claim-
22 ant of the availability of suitable work.

23 (f) Lost his or her job due to absence from work resulting
24 from a violation of law for which the individual was convicted
25 and sentenced to jail or prison. This subdivision does not apply
26 if conviction of an individual results in a sentence to county
27 jail under conditions of day parole as provided in 1962 PA 60,

1 MCL 801.251 to 801.258, or if the conviction was for a traffic
2 violation that resulted in an absence of less than 10 consecutive
3 work days from the individual's place of employment.

4 (g) Is discharged, whether or not the discharge is subse-
5 quently reduced to a disciplinary layoff or suspension, for par-
6 ticipation in either of the following:

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

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

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

15 (i) Was discharged for theft connected with the individual's
16 work.

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

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

24 (l) Was employed by a temporary help firm, which as used in
25 this section means an employer whose primary business is to pro-
26 vide a client with the temporary services of 1 or more
27 individuals under contract with the employer, to perform services

1 for a client of that firm if each of the following conditions is
2 met:

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

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

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

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

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

1 for the presence of a controlled substance before a
2 disqualification of the worker under this subdivision. As used
3 in this subdivision:

4 (A) "Controlled substance" means that term as defined in
5 section 7104 of the public health code, 1978 PA 368,
6 MCL 333.7104.

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) IS RECEIVING COMMISSION COMPENSATION. AS USED IN THIS
14 SUBDIVISION, "COMMISSION" MEANS COMPENSATION ACCRUING TO A SALES
15 REPRESENTATIVE FOR PAYMENT BY A PRINCIPAL, THE RATE OF WHICH IS
16 EXPRESSED AS A PERCENTAGE OF THE AMOUNT OF ORDERS OR SALES OR AS
17 A PERCENTAGE OF THE DOLLAR AMOUNT OF PROFITS.

18 (2) A disqualification under subsection (1) begins the week
19 in which the act or discharge that caused the disqualification
20 occurs and continues until the disqualified individual requali-
21 fies under subsection (3), except that for benefit years begin-
22 ning before the conversion date prescribed in section 75, the
23 disqualification does not prevent the payment of benefits if
24 there are credit weeks, other than multiemployer credit weeks,
25 after the most recent disqualifying act or discharge.

26 (3) After the week in which the disqualifying act or
27 discharge described in subsection (1) occurs, an individual who

1 seeks to requalify for benefits is subject to all of the
2 following:

3 (a) For benefit years established before the conversion date
4 described in section 75, the individual shall complete 6 requali-
5 fying weeks if he or she was disqualified under
6 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying
7 weeks if he or she was disqualified under subsection (1)(h), (i),
8 (j), (k), or (m). A requalifying week required under this sub-
9 section shall be each week in which the individual does any of
10 the following:

11 (i) Earns or receives remuneration in an amount at least
12 equal to an amount needed to earn a credit week, as that term is
13 defined 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 sub-
18 sequent to the disqualifying act or discharge.

19 (b) For benefit years established before the conversion date
20 prescribed in section 75, if the individual is disqualified under
21 subsection (1)(a) or (b), he or she shall requalify, after the
22 week in which the disqualifying discharge occurred by earning in
23 employment for an employer liable under this act or the unemploy-
24 ment compensation act of another state an amount equal to, or in
25 excess of, 7 times the individual's potential weekly benefit
26 rate, calculated on the basis of employment with the employer
27 involved in the disqualification, or by earning in employment for

1 an employer liable under this act or the unemployment
2 compensation act of another state an amount equal to, or in
3 excess of, 40 times the state minimum hourly wage times 7, which-
4 ever is the lesser amount.

5 (c) For benefit years established before the conversion date
6 prescribed in section 75, a benefit payable to an individual dis-
7 qualified under subsection (1)(a) or (b), shall be charged to the
8 nonchargeable benefits account, and not to the account of the
9 employer with whom the individual was involved in the
10 disqualification.

11 (d) For benefit years beginning after the conversion date
12 prescribed in section 75, subsequent to the week in which the
13 disqualifying act or discharge occurred, an individual shall com-
14 plete 13 requalifying weeks if he or she was disqualified under
15 subsection (1)(c), (d), (e), (f), (g), or (l), or 26 requalifying
16 weeks if he or she was disqualified under subsection (1)(h), (i),
17 (j), (k), or (m). A requalifying week required under this sub-
18 section shall be each week in which the individual does any of
19 the following:

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

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

1 (e) For benefit years beginning after the conversion date
2 prescribed in section 75 and beginning before the effective date
3 of the amendatory act that added section 13/, if the individual
4 is disqualified under subsection (1)(a) or (b), he or she shall
5 requalify, after the week in which the disqualifying act or dis-
6 charge occurred by earning in employment for an employer liable
7 under this act or the unemployment compensation law of another
8 state at least the lesser of the following:

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

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

11 (f) For benefit years beginning after the conversion date
12 prescribed in section 75 and after the effective date of the
13 amendatory act that added section 13/, if the individual is dis-
14 qualified under subsection (1)(a), he or she shall requalify,
15 after the week in which the disqualifying act or discharge
16 occurred by earning in employment for an employer liable under
17 this act or the unemployment compensation law of another state at
18 least 12 times the individual's weekly benefit rate.

19 (g) For benefit years beginning after the conversion date
20 prescribed in section 75 and after the effective date of the
21 amendatory act that added section 13/, if the individual is dis-
22 qualified under subsection (1)(b), he or she shall requalify,
23 after the week in which the disqualifying act or discharge
24 occurred by earning in employment for an employer liable under
25 this act or the unemployment compensation law of another state at
26 least 17 times the individual's weekly benefit rate.

1 (h) A benefit payable to the individual disqualified or
2 separated under disqualifying circumstances under
3 subsection (1)(a) or (b), shall be charged to the nonchargeable
4 benefits account, and not to the account of the employer with
5 whom the individual was involved in the separation. Benefits
6 payable to an individual determined by the commission to be sepa-
7 rated under disqualifying circumstances shall not be charged to
8 the account of the employer involved in the disqualification for
9 any period after the employer notifies the commission of the
10 claimant's possible ineligibility or disqualification. If a dis-
11 qualifying act or discharge occurs during the individual's bene-
12 fit year, any benefits that may become payable to the individual
13 in a later benefit year based on employment with the employer
14 involved in the disqualification shall be charged to the non-
15 chargeable benefits account.

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

19 (a) For benefit years established before the conversion date
20 prescribed in section 75, if the individual is disqualified under
21 subsection (1)(c), (d), (e), (f), (g), or (l) and the maximum
22 amount of benefits is based on wages and credit weeks earned from
23 an employer before an act or discharge involving that employer,
24 the amount shall be reduced by an amount equal to the
25 individual's weekly benefit rate as to that employer multiplied
26 by the lesser of either of the following:

1 (i) The number of requalifying weeks required of the
2 individual under this section.

3 (ii) The number of weeks of benefit entitlement remaining
4 with that employer.

5 (b) If the individual has insufficient or no potential bene-
6 fit entitlement remaining with the employer involved in the dis-
7 qualification in the benefit year in existence on the date of the
8 disqualifying determination, a reduction of benefits described in
9 this subsection shall apply in a succeeding benefit year with
10 respect to any benefit entitlement based upon credit weeks earned
11 with the employer before the disqualifying act or discharge.

12 (c) For benefit years established before the conversion date
13 prescribed in section 75, an individual disqualified under sub-
14 section (1)(h), (i), (j), (k), or (m) is not entitled to benefits
15 based on wages and credit weeks earned before the disqualifying
16 act or discharge with the employer involved in the
17 disqualification.

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

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

24 (f) For benefit years established after the conversion date
25 prescribed in section 75, if the individual is disqualified under
26 subsection (1)(c), (d), (e), (f), (g), or (l), the maximum number
27 of weeks otherwise applicable in calculating benefits for the

1 individual under section 27(d) shall be reduced by the lesser of
2 the following:

3 (i) The number of requalifying weeks required of the indi-
4 vidual under this subsection.

5 (ii) The number of weeks of benefit entitlement remaining on
6 the claim.

7 (g) For benefit years beginning after the conversion date
8 prescribed in section 75, the benefits of an individual disquali-
9 fied under subsection (1)(h), (i), (j), (k), or (m) shall be
10 reduced by 13 weeks and any weekly benefit payments made to the
11 claimant thereafter shall be reduced by the portion of the pay-
12 ment attributable to base period wages paid by the base period
13 employer involved in a disqualification under subsection (1)(h),
14 (i), (j), (k), or (m).

15 (5) If an individual leaves work to accept permanent
16 full-time work with another employer and performs services for
17 that employer, or if an individual leaves work to accept a recall
18 from a former employer:

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

20 (b) Wages earned with the employer whom the individual last
21 left, including wages previously transferred under this subsec-
22 tion to the last employer, for the purpose of computing and
23 charging benefits, are wages earned from the employer with whom
24 the individual accepted work or recall, and benefits paid based
25 upon those wages shall be charged to that employer.

26 (c) When issuing a determination covering the period of
27 employment with a new or former employer described in this

1 subsection, the commission shall advise the chargeable employer
2 of the name and address of the other employer, the period covered
3 by the employment, and the extent of the benefits that may be
4 charged to the account of the chargeable employer.

5 (6) In determining whether work is suitable for an individu-
6 al, the commission shall consider the degree of risk involved to
7 the individual's health, safety, and morals, the individual's
8 physical fitness and prior training, the individual's length of
9 unemployment and prospects for securing local work in the
10 individual's customary occupation, and the distance of the avail-
11 able work from the individual's residence. Additionally, the
12 commission shall consider the individual's experience and prior
13 earnings, but an unemployed individual who refuses an offer of
14 work determined to be suitable under this section shall be denied
15 benefits if the pay rate for that work is at least 70% of the
16 gross pay rate he or she received immediately before becoming
17 unemployed.

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

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

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

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

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

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

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

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

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

26 (c) An individual is not disqualified under this subsection
27 if the individual is not directly involved in the labor dispute.

1 An individual is not directly involved in a labor dispute unless
2 any of the following are established:

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

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

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

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

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

1 whose wages, hours, or conditions of employment may reasonably be
2 expected to be affected by the resolution of the labor dispute.
3 A "reasonable expectation" of an effect on an individual's wages,
4 hours, or other conditions of employment exists, in the absence
5 of a substantial preponderance of evidence to the contrary, in
6 any of the following situations:

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

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

22 (iii) If a collective bargaining agreement covers both the
23 individual's grade or class of workers in the establishment in
24 which the individual is or was last employed and the workers in
25 another establishment of the same employing unit who are actively
26 participating in the labor dispute, and that collective
27 bargaining agreement is subject by its terms to modification,

1 supplementation, or replacement, or has expired or been opened by
2 mutual consent at the time of the labor dispute.

3 (e) In determining the scope of the grade or class of work-
4 ers, evidence of the following is relevant:

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

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

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

15 (iv) Any functional integration of the work performed by
16 those workers.

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

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

25 (vii) Whether issues on the same subject matter as those
26 involved in the labor dispute have been the subject of proposals

1 or demands made upon the employing unit that would by their terms
2 have applied to those workers.

3 (9) Notwithstanding subsections (1) to (8), if the employing
4 unit submits notice to the commission of possible ineligibility
5 or disqualification beyond the time limits prescribed by commis-
6 sion rule, the notice shall not form the basis of a determination
7 of ineligibility or disqualification for a claim period compen-
8 sated before the receipt of the notice by the commission.

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