



SENATE BILL No. 105

January 17, 1995, Introduced by Senators SHUGARS,
STEIL and BENNETT and referred to the Committee
on Human Resources, Labor and Veteran Affairs.

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. 162 of the Public Acts of 1994, being sec-
tion 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. 162 of the
3 Public Acts of 1994, being section 421.29 of the Michigan
4 Compiled Laws, is amended to read as follows:

5 Sec. 29. (1) An individual is disqualified for benefits if
6 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, has left unsuitable work within 60 days after the beginning of that work, the leaving is not disqualifying.

(b) Was discharged for ~~misconduct connected with the individual's work or for intoxication while at work~~ ANY OF THE FOLLOWING, unless the discharge was subsequently reduced to a disciplinary layoff or suspension: —

(i) MISCONDUCT CONNECTED WITH THE INDIVIDUAL'S WORK.

(ii) INTOXICATION WHILE AT WORK.

(iii) FAILING A TEST FOR THE PRESENCE OF A CONTROLLED SUBSTANCE AS THAT TERM IS DEFINED IN SECTION 7104 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.7104 OF THE MICHIGAN COMPILED LAWS, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE TEST WAS GIVEN PURSUANT TO AN ESTABLISHED COMPANY POLICY OR LABOR UNION CONTRACT THAT STATES FAILING SUCH A TEST IS GROUNDS FOR DISCHARGE.

(B) THE TEST COMPLIED WITH SCIENTIFICALLY ACCEPTED ANALYTICAL METHODS AND PROCEDURES, AND A POSITIVE TEST RESULT WAS CONFIRMED BY GAS CHROMATOGRAPHY, GAS CHROMATOGRAPHY-MASS SPECTROSCOPY, OR OTHER COMPARABLY RELIABLE ANALYTICAL METHOD.

(C) THE TEST WAS ADMINISTERED IN A NONDISCRIMINATORY MANNER.

(D) THE SAMPLE OF URINE, BLOOD, BREATH, SALIVA, OR HAIR TESTED WAS COLLECTED, STORED, TRANSPORTED, AND TESTED IN A MANNER REASONABLY CALCULATED TO PREVENT A SUBSTITUTION OR INTERFERENCE OF ANY KIND AND TO REASONABLY PRECLUDE THE PROBABILITY OF SAMPLE CONTAMINATION OR ADULTERATION.

1 (E) THE INDIVIDUAL WAS GIVEN AN OPPORTUNITY TO PROVIDE
2 NOTICE TO THE INDIVIDUAL ANALYZING THE SAMPLE OF ANY INFORMATION
3 THAT MAY BE CONSIDERED RELEVANT TO THE TEST, INCLUDING IDENTIFI-
4 CATION OF CURRENTLY OR RECENTLY USED PRESCRIPTION OR NONPRESCRIP-
5 TION DRUGS OR OTHER RELEVANT MEDICAL INFORMATION.

6 (c) Failed without good cause to apply for available suit-
7 able work of which the individual was notified by the employment
8 office or the commission.

9 (d) Being unemployed, failed without good cause to report to
10 the individual's former employer or employing unit within a rea-
11 sonable time after notice from that employer or employing unit
12 for an interview concerning available suitable work with the
13 former employer or employing unit.

14 (e) Failed without good cause to accept suitable work when
15 offered the individual or to return to the individual's customary
16 self-employment, if any, when directed by the employment office
17 or the commission.

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

1 (g) Is discharged, whether or not the discharge is
2 subsequently reduced to a disciplinary layoff or suspension, for
3 participation in a strike or other concerted action resulting in
4 curtailment of work or restriction of or interference with pro-
5 duction contrary to an applicable collective bargaining agree-
6 ment, or for participation in a wildcat strike or other concerted
7 action not authorized by the individual's recognized bargaining
8 representative.

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

11 (i) Was discharged for theft connected with the individual's
12 work resulting in a loss or damage of \$25.00 or less.

13 (j) Was discharged for theft connected with the individual's
14 work resulting in a loss or damage of more than \$25.00.

15 (k) Was discharged for willful destruction of property con-
16 nected with the individual's work resulting in loss or damage of
17 \$25.00 or less.

18 (l) Was discharged for willful destruction of property con-
19 nected with the individual's work resulting in loss or damage of
20 more than \$25.00.

21 (m) Committed a theft that occurred after a notice of layoff
22 or discharge, but before the effective date of layoff or dis-
23 charge, resulting in loss or damage of more than \$25.00 to the
24 employer who would otherwise be chargeable for the benefits, not-
25 withstanding that the original layoff or discharge was under non-
26 disqualifying circumstances.

1 (2) A disqualification provided in subsection (1) begins
2 with the week in which the act or discharge occurred that caused
3 the disqualification and continues until the disqualified indi-
4 vidual regualifies under subsection (3), except that for benefit
5 years beginning before the conversion date prescribed in
6 section 75, with respect to multiemployer credit weeks, the dis-
7 qualification does not prevent the payment of benefits if there
8 are credit weeks after the most recent disqualifying act or
9 discharge.

10 (3) For benefit years established before the conversion date
11 prescribed in section 75, after the week in which the disqualify-
12 ing act or discharge occurred, an individual shall complete 6
13 regualifying weeks if disqualified under subsection (1)(c), (d),
14 (e), (f), or (g), or shall complete 13 regualifying weeks if dis-
15 qualified under subsection (1)(h), (j), (l), or (m), for each
16 week in which the individual earns or receives remuneration in an
17 amount at least equal to an amount needed to earn a credit week,
18 as defined in section 50, or would otherwise meet all of the
19 requirements of this act to receive a benefit payment if the
20 individual were not disqualified under subsection (1), or
21 receives a benefit payment based on credit weeks subsequent to
22 the disqualifying act or discharge. An individual who is dis-
23 qualified under subsection (1)(a), (b), (i), or (k), shall, after
24 the week in which the disqualifying discharge occurred, regualify
25 by earning in employment for an employer liable under this act or
26 the unemployment compensation act of another state an amount
27 equal to, or in excess of, 7 times the individual's potential

1 weekly benefit rate, calculated on the basis of employment with
2 the employer involved in the disqualification, or by earning in
3 employment for an employer liable under this act or the unemploy-
4 ment compensation act of another state an amount equal to, or in
5 excess of, 40 times the state minimum hourly wage times 7, which-
6 ever is the lesser amount. Any benefits that become payable to
7 an individual disqualified under subsection (1)(a), (b), (i), or
8 (k) shall not be charged to the account of the employer with whom
9 the individual was involved in the disqualification. The bene-
10 fits paid shall be charged to the nonchargeable benefits
11 account. 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 6 requalifying weeks if disqualified under
15 subsection (1)(c), (d), (e), (f), or (g), or shall complete 13
16 requalifying weeks if disqualified under subsection (1)(h), (j),
17 (l), or (m), for each week in which the individual earns or
18 receives remuneration in an amount equal to at least $1/13$ of the
19 minimum amount needed in a calendar quarter of the base period
20 for an individual to qualify for benefits, rounded down to the
21 nearest whole dollar, or would otherwise meet all of the require-
22 ments of this act to receive a benefit payment if the individual
23 were not disqualified under subsection (1). An individual who is
24 disqualified under subsection (1)(a), (b), (i), or (k) shall,
25 subsequent to the week in which the disqualifying act or dis-
26 charge occurred, requalify by earning in employment for an
27 employer liable under this act or the unemployment compensation

1 law of another state an amount equal to, or in excess of, 7 times
2 the individual's weekly benefit rate, or by earning in employment
3 for an employer liable under this act or the unemployment compen-
4 sation law of another state an amount equal to, or in excess of,
5 40 times the state minimum hourly wage times 7, whichever is the
6 lesser amount. Any benefits which may become payable to an indi-
7 vidual disqualified or separated under disqualifying circum-
8 stances under subsection (1)(a), (b), (i), or (k) shall not be
9 charged to the account of the employer with whom the individual
10 was involved in the separation. Those benefits paid shall be
11 charged to the nonchargeable benefits account. Benefits payable
12 to an individual determined by the commission to be separated
13 under disqualifying circumstances shall not be charged to the
14 account of the employer involved in the disqualification for any
15 period after the employer notifies the commission of the
16 claimant's possible ineligibility or disqualification. If a dis-
17 qualifying act or discharge occurs during the individual's bene-
18 fit year, any benefits that may become payable to the individual
19 in a later benefit year based on employment with the employer
20 involved in the disqualification shall be charged to the non-
21 chargeable benefits account.

22 (4) For benefit years established before the conversion date
23 prescribed in section 75, and subject to the conditions provided
24 in this subsection, an individual's maximum amount of benefits
25 otherwise available to the individual under section 27(d), based
26 on wages and credit weeks earned before an act or discharge with
27 the employer involved as the result of which the individual was

1 disqualified under subsection (1)(c), (d), (e), (f), or (g),
2 shall be reduced by an amount equal to the individual's weekly
3 benefit rate as to that employer multiplied by the number of
4 requalifying weeks required of the individual under this subsec-
5 tion or multiplied by the number of weeks of benefit entitlement
6 remaining with that employer, whichever is less. The reductions
7 of benefits provided for in this subsection are subject, however,
8 to the following conditions: if the individual has insufficient
9 or no potential benefit entitlement remaining with that employer
10 in the benefit year in existence on the date of the disqualifying
11 determination, the reduction shall apply in a succeeding benefit
12 year with respect to any benefit entitlement based upon credit
13 weeks earned with the employer involved in the disqualification
14 before the disqualifying act or discharge.

15 An individual disqualified under subsection (1)(h), (j),
16 (l), or (m) is not entitled to benefits based on wages and credit
17 weeks earned before the disqualifying act or discharge with the
18 employer involved in the disqualification.

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

22 For purposes of this subsection, the denial or reduction of
23 benefits does not apply to benefits based upon multiemployer
24 credit weeks.

25 For benefit years established after the conversion date pre-
26 scribed in section 75, and subject to the conditions provided in
27 this subsection, if an individual is disqualified under

1 subsection (1)(c), (d), (e), (f), or (g), the individual's
2 maximum number of weeks otherwise payable to the individual under
3 section 27(d), shall be reduced by the number of requalifying
4 weeks required of the individual under this subsection, or by the
5 number of weeks of benefit entitlement remaining on the claim,
6 whichever is less. The benefits of an individual disqualified
7 under subsection (1)(h), (j), (l), or (m) shall be reduced by 13
8 weeks and any weekly benefit payments made to the claimant there-
9 after shall be reduced by the portion of the payment attributable
10 to base period wages paid by the base period employer involved in
11 a disqualification under subsection (1)(h), (j), (l), or (m).

12 (5) If an individual leaves work to accept permanent
13 full-time work with another employer and performs services for
14 that employer, or leaves work to accept a recall from a former
15 employer, the disqualification provisions of subsection (1) do
16 not apply to that leaving. However, the wages earned with the
17 employer whom the individual last left, including wages previ-
18 ously transferred under this subsection to the last employer, for
19 the purpose of computing and charging benefits, are considered
20 wages earned from the employer with whom the individual accepted
21 work or recall, and benefits paid based upon those wages shall be
22 charged to that employer. When issuing a determination covering
23 that period of employment, the commission shall advise the
24 chargeable employer of the name and address of the other employ-
25 er, the period covered by the employment, and the extent of the
26 benefits that may be charged to the account of the chargeable
27 employer.

1 (6) In determining whether or not work is suitable for an
2 individual, the commission shall consider the degree of risk
3 involved to the individual's health, safety, and morals, the
4 individual's physical fitness and prior training, the
5 individual's experience and prior earnings, the individual's
6 length of unemployment and prospects for securing local work in
7 the individual's customary occupation, and the distance of the
8 available work from the individual's residence.

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

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

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

18 (c) 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) An individual is disqualified for benefits for a week in
22 which the individual's total or partial unemployment is due to a
23 labor dispute in active progress, or to shutdown or start-up
24 operations caused by that labor dispute, in the establishment in
25 which the individual is or was last employed, or to a labor dis-
26 pute, other than a lockout, in active progress or to shutdown or
27 start-up operations caused by that labor dispute in any other

1 establishment within the United States which is functionally
2 integrated with the establishment and is operated by the same
3 employing unit. An individual's disqualification imposed or
4 imposable under this subsection is terminated by the individual's
5 performing services in employment with an employer in at least 2
6 consecutive weeks falling wholly within the period of the
7 individual's total or partial unemployment due to the labor dis-
8 pute, and in addition by earning wages in each of those weeks in
9 an amount equal to or in excess of the individual's actual or
10 potential weekly benefit rate with respect to those weeks based
11 on the individual's employment with the employer involved in the
12 labor dispute. An individual is not disqualified under this sub-
13 section if the individual is not directly involved in the
14 dispute.

15 (a) For purposes of this subsection, an individual is not
16 considered to be directly involved in a labor dispute unless it
17 is established that any of the following occurred:

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
24 directly interested in the labor dispute that causes the
25 individual's total or partial unemployment. The payment of regu-
26 lar union dues, in amounts and for purposes established before
27 the inception of the labor dispute, shall not be construed as

1 financing a labor dispute within the meaning of this
2 subparagraph.

3 (iii) At any time when there was not a labor dispute in the
4 establishment or department in which the individual was employed,
5 the individual voluntarily stopped working, other than at the
6 direction of the individual's employing unit, in sympathy with
7 employees in some other establishment or department in which a
8 labor dispute was then in progress.

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

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

23 (i) If it is established that there is in the particular
24 establishment or employing unit a practice, custom, or contrac-
25 tual obligation to extend within a reasonable period to members
26 of the individual's grade or class of workers in the
27 establishment in which the individual is or was last employed

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

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

11 (iii) If the labor dispute exists at a time when the collec-
12 tive bargaining agreement which covers the individual's grade or
13 class of workers in the establishment in which the individual is
14 or was last employed and the workers in another establishment of
15 the same employing unit who are actively participating in the
16 labor dispute has expired, has been opened by mutual consent, or
17 may by its terms be modified, supplemented, or replaced.

18 (c) In determining the scope of the grade or class of work-
19 ers evidence submitted to show any 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
22 national 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 have within the past 6
26 months been, covered by a common master collective bargaining
27 agreement that sets forth all or any part of their terms and

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

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

5 (v) Whether the resolution of issues of the type involved in
6 the 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
10 by 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
15 or demands made upon the employing unit that would by their terms
16 have applied to those workers.

17 (9) An individual is disqualified for benefits for the dura-
18 tion of the individual's disciplinary layoff or suspension in all
19 cases in which the individual becomes unemployed because of a
20 disciplinary layoff or suspension based upon misconduct directly
21 or indirectly connected with work, for participation in a strike
22 or other concerted activity resulting in a curtailment of work or
23 restriction of or interference with production contrary to an
24 applicable collective bargaining agreement, or for participation
25 in a wildcat strike or other concerted activity not authorized by
26 the individual's recognized bargaining representative. This
27 subsection applies only if the individual is not subject to

1 disqualification under subsection (1)(g) or if a disqualifying
2 discharge under subsection (1)(b) is determined or redetermined
3 to be a disciplinary layoff or suspension. If a disqualifying
4 discharge under subsection (1)(b) is determined or redetermined
5 to be a suspension, the disqualification provided under this sub-
6 section applies from the date of the discharge.

7 (10) Notwithstanding subsections (1) to (9), if the employ-
8 ing unit submits notice to the commission of possible ineligibil-
9 ity or disqualification beyond the time limits prescribed by com-
10 mission rule, the notice shall not form the basis of a determina-
11 tion of ineligibility or disqualification for a claim period com-
12 pensated before the receipt of the notice by the commission.

13 (11) An individual is disqualified for benefits for any week
14 with respect to which or a part of which the individual has
15 received, is receiving, or is seeking unemployment benefits under
16 an unemployment compensation law of another state or of the
17 United States. If the appropriate agency of the other state or
18 of the United States finally determines that the individual is
19 not entitled to unemployment benefits, this disqualification does
20 not apply.