

HOUSE BILL No. 5647

June 11, 2014, Introduced by Rep. Goike and referred to the Committee on Commerce.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 29 (MCL 421.29), as amended by 2013 PA 146.

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

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

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

26 (ii) The individual is the spouse of a full-time member of the
27 United States armed forces, and the leaving is due to the military

1 duty reassignment of that member of the United States armed forces
2 to a different geographic location. Benefits paid after a leaving
3 under this subparagraph shall not be charged to the experience
4 account of the employer the individual left, but shall be charged
5 instead to the nonchargeable benefits account.

6 (iii) The individual is concurrently working part-time for an
7 employer or employing unit and for another employer or employing
8 unit and voluntarily leaves the part-time work while continuing
9 work with the other employer. The portion of the benefits paid in
10 accordance with this subparagraph that would otherwise be charged
11 to the experience account of the part-time employer that the
12 individual left shall not be charged to the account of that
13 employer, but shall be charged instead to the nonchargeable
14 benefits account.

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

17 (c) Failed without good cause to apply diligently for
18 available suitable work after receiving notice from the
19 unemployment agency of the availability of that work or failed to
20 apply for work with employers that could reasonably be expected to
21 have suitable work available.

22 (d) Failed without good cause while unemployed to report to
23 the individual's former employer or employing unit within a
24 reasonable time after that employer or employing unit provided
25 notice of the availability of an interview concerning available
26 suitable work with the former employer or employing unit.

27 (e) Failed without good cause to accept suitable work offered

1 to the individual or to return to the individual's customary self-
2 employment, if any, when directed by the employment office or the
3 unemployment agency. An employer that receives a monetary
4 determination under section 32 may notify the unemployment agency
5 regarding the availability of suitable work with the employer on
6 the monetary determination or other form provided by the
7 unemployment agency. Upon receipt of the notice of the availability
8 of suitable work, the unemployment agency shall notify the claimant
9 of the availability of suitable work. ~~Until 1 year after the~~
10 ~~effective date of the amendatory act that added this sentence, an~~
11 **AN** individual is considered to have refused an offer of suitable
12 work if the prospective employer requires as a condition of the
13 offer a drug test that is subject to the same terms and conditions
14 as a drug test administered under subdivision (m), and the employer
15 withdraws the conditional offer after either of the following:

16 (i) The individual tests positive for a controlled substance
17 and lacks a valid, documented prescription, as defined in section
18 17708 of the public health code, 1978 PA 368, MCL 333.17708, for
19 the controlled substance issued to the individual by his or her
20 treating physician.

21 (ii) The individual refuses without good cause to submit to the
22 drug test.

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 and
25 sentenced to jail or prison. This subdivision does not apply if
26 conviction of an individual results in a sentence to county jail
27 under conditions of day parole as provided in 1962 PA 60, MCL

1 801.251 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
5 subsequently reduced to a disciplinary layoff or suspension, for
6 participation 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
9 curtailment of work or restriction of or interference with
10 production.

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

13 (h) Was discharged for an act of assault and battery connected
14 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
18 connected 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
21 discharge, resulting in loss or damage to the employer who would
22 otherwise be chargeable for the benefits, regardless of whether the
23 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 provide
26 a client with the temporary services of 1 or more individuals under
27 contract with the employer, to perform services for a client of

1 that firm if each of the following conditions is met:

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

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

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

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

18 (m) Was discharged for illegally ingesting, injecting,
19 inhaling, or possessing a controlled substance on the premises of
20 the employer; refusing to submit to a drug test that was required
21 to be administered in a nondiscriminatory manner; or testing
22 positive on a drug test, if the test was administered in a
23 nondiscriminatory manner. If the worker disputes the result of the
24 testing, and if a generally accepted confirmatory test has not been
25 administered on the same sample previously tested, then a generally
26 accepted confirmatory test shall be administered on that sample. If
27 the confirmatory test also indicates a positive result for the

1 presence of a controlled substance, the worker who is discharged as
2 a result of the test result will be disqualified under this
3 subdivision. A report by a drug testing facility showing a positive
4 result for the presence of a controlled substance is conclusive
5 unless there is substantial evidence to the contrary. As used in
6 this subdivision and subdivision (e):

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

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

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

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

18 (2) A disqualification under subsection (1) begins the week in
19 which the act or discharge that caused the disqualification occurs
20 and continues until the disqualified individual requalifies under
21 subsection (3).

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

25 (a) For benefit years established before October 1, 2000, the
26 individual shall complete 6 requalifying weeks if he or she was
27 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or

1 13 requalifying weeks if he or she was disqualified under
2 subsection (1)(h), (i), (j), (k), or (m). A requalifying week
3 required under this subdivision is each week in which the
4 individual does any of the following:

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

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

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

13 (b) For benefit years established before October 1, 2000, if
14 the individual is disqualified under subsection (1)(a) or (b), he
15 or she shall requalify, after the week in which the disqualifying
16 discharge occurred by earning in employment for an employer liable
17 under this act or the unemployment compensation act of another
18 state an amount equal to, or in excess of, 7 times the individual's
19 potential weekly benefit rate, calculated on the basis of
20 employment with the employer involved in the disqualification, or
21 by earning in employment for an employer liable under this act or
22 the unemployment compensation act of another state an amount equal
23 to, or in excess of, 40 times the state minimum hourly wage times
24 7, whichever is the lesser amount.

25 (c) For benefit years established before October 1, 2000, a
26 benefit payable to an individual disqualified under subsection
27 (1)(a) or (b) shall be charged to the nonchargeable benefits

1 account, and not to the account of the employer with whom the
2 individual was involved in the disqualification.

3 (d) For benefit years beginning on or after October 1, 2000,
4 after the week in which the disqualifying act or discharge
5 occurred, an individual shall complete 13 requalifying weeks if he
6 or she was disqualified under subsection (1)(c), (d), (e), (f),
7 (g), or (l), or 26 requalifying weeks if he or she was disqualified
8 under subsection (1)(h), (i), (j), (k), (m), or (n). A requalifying
9 week 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 equal to at
12 least 1/13 of the minimum amount needed in a calendar quarter of
13 the base period for an individual to qualify for benefits, rounded
14 down to the nearest whole dollar.

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

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

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

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

27 (f) For benefit years beginning on or after April 26, 2002, if

1 the individual is disqualified under subsection (1)(a), he or she
2 shall requalify, after the week in which the disqualifying act or
3 discharge occurred by earning in employment for an employer liable
4 under this act or the unemployment compensation law of another
5 state at least 12 times the individual's weekly benefit rate.

6 (g) For benefit years beginning on or after April 26, 2002, if
7 the individual is disqualified under subsection (1)(b), 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 17 times the individual's weekly benefit rate.

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

1 benefit year, any benefits that may become payable to the
2 individual in a later benefit year based on employment with the
3 employer involved in the disqualification shall be charged to the
4 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), (m), or (n) shall be reduced by 13 weeks and any
21 weekly benefit payments made to the claimant thereafter shall be
22 reduced by the portion of the payment attributable to base period
23 wages paid by the base period employer involved in a
24 disqualification under subsection (1)(h), (i), (j), (k), (m), or
25 (n).

26 (5) If an individual leaves work to accept permanent full-time
27 work with another employer or to accept a referral to another

1 employer from the individual's union hiring hall and performs
2 services for that employer, or if an individual leaves work to
3 accept a recall from a former employer, all of the following apply:

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

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

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

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

1 the gross pay rate he or she received immediately before becoming
2 unemployed. Beginning January 15, 2012, after an individual has
3 received benefits for 50% of the benefit weeks in the individual's
4 benefit year, work shall not be considered unsuitable because it is
5 outside of the individual's training or experience or unsuitable as
6 to pay rate if the pay rate for that work meets or exceeds the
7 minimum wage; is at least the prevailing mean wage for similar work
8 in the locality for the most recent full calendar year for which
9 data are available as published by the department of technology,
10 management, and budget as "wages by job title", by standard
11 metropolitan statistical area; and is 120% or more of the
12 individual's weekly benefit amount.

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

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

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

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

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

26 (a) An individual is disqualified from receiving benefits for
27 a week in which the individual's total or partial unemployment is

1 due to either of the following:

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

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

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

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

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

26 (ii) The individual is participating in, financing, or directly
27 interested in the labor dispute that causes the individual's total

1 or partial unemployment. The payment of regular union dues, in
2 amounts and for purposes established before the inception of the
3 labor dispute, is not financing a labor dispute within the meaning
4 of this subparagraph.

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

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

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

25 (i) If it is established that there is in the particular
26 establishment or employing unit a practice, custom, or contractual
27 obligation to extend within a reasonable period to members of the

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

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

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

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

23 (i) Representation of the workers by the same national or
24 international organization or by local affiliates of that national
25 or international organization.

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

1 (iii) Whether the workers are or within the past 6 months have
2 been covered by a common master collective bargaining agreement
3 that sets forth all or any part of the terms and conditions of the
4 workers' employment, or by separate agreements that are or have
5 been bargained as a part of the same negotiations.

6 (iv) Any functional integration of the work performed by those
7 workers.

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

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

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

20 (9) Notwithstanding subsections (1) to (8), if the employing
21 unit submits notice to the unemployment agency of possible
22 ineligibility or disqualification beyond the time limits prescribed
23 by unemployment agency rule and the unemployment agency concludes
24 that benefits should not have been paid, the claimant shall repay
25 the benefits paid during the entire period of ineligibility or
26 disqualification. The unemployment agency shall not charge interest
27 on repayments required under this subsection.

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