



# HOUSE BILL No. 5363

November 7, 1995, Introduced by Reps. Baade, Willard, Pitoniak, Curtis, Porreca, Harder, Kaza, Palamara, LaForge, Griffin and Olshove and referred to the Committee on Human Resources and Labor.

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. 25 of the Public Acts of 1995, being section 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. 25 of the Public  
3 Acts of 1995, being section 421.29 of the Michigan Compiled Laws,  
4 is amended to read as follows:

5 Sec. 29. (1) An individual is disqualified from receiving  
6 benefits if 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 leaves unsuitable work within 60 days after the beginning of  
2 that work, the leaving does not disqualify the individual.

3 (b) Was discharged for misconduct connected with the  
4 individual's work or for intoxication while at work unless the  
5 discharge was subsequently reduced to a disciplinary layoff or  
6 suspension.

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

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

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

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

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

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

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

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

12 (i) Was discharged for theft connected with the individual's  
13 work.

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

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

21 (l) Was employed by a temporary help firm, which as used in  
22 this section means an employer whose primary business is to pro-  
23 vide a client with the temporary services of 1 or more individu-  
24 als under contract with the employer, to perform services for a  
25 client of that firm if each of the following conditions is met:

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

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

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

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

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

1 disqualification of the worker under this subdivision. As used  
2 in this subdivision:

3 (A) "Controlled substance" means that term as defined in  
4 section 7104 of the public health code, Act No. 368 of the Public  
5 Acts of 1978, being section 333.7104 of the Michigan Compiled  
6 Laws.

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) Has an income exceeding \$100,000.00 for the calendar  
14 year in which he or she applies for benefits. This subdivision  
15 shall not take effect unless both of the following occur:

16 (i) Within 30 days of the effective date of the act that  
17 added subdivision (l), the governor requests from the United  
18 States department of labor a determination confirming whether  
19 this subdivision is in conformity with the federal unemployment  
20 tax act, chapter 23 ~~—~~ of the internal revenue code of 1986, 26  
21 U.S.C. 3301 to 3311, and the social security act, CHAPTER 531, 49  
22 Stat. 620, and whether conformity with those federal acts is a  
23 condition for a full tax credit against the tax imposed under the  
24 federal unemployment tax act (FUTA), or is a condition for state  
25 receipt of federal administrative grant funds under the social  
26 security act.

1       (ii) The United States department of labor determines that  
2 this subdivision is in conformity with the acts described in  
3 subparagraph (i), or verifies that conformity with those federal  
4 acts is not a condition for a tax credit or a grant described in  
5 subparagraph (i).

6       (2) A disqualification under subsection (1) begins the week  
7 in which the act or discharge that caused the disqualification  
8 occurs and continues until the disqualified individual requali-  
9 fies under subsection (3), except that for benefit years begin-  
10 ning before the conversion date prescribed in section 75, the  
11 disqualification does not prevent the payment of benefits if  
12 there are credit weeks, other than multiemployer credit weeks,  
13 after the most recent disqualifying act or discharge.

14       (3) After the week in which the disqualifying act or dis-  
15 charge described in subsection (1) occurs, an individual who  
16 seeks to requalify for benefits is subject to all of the  
17 following:

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

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

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

7 (iii) Receives a benefit payment based on credit weeks sub-  
8 sequent to the disqualifying act or discharge.

9 (b) For benefit years established before the conversion date  
10 prescribed in section 75, if the individual is disqualified under  
11 subsection (1)(a) or (b), he or she shall requalify, after the  
12 week in which the disqualifying discharge occurred by earning in  
13 employment for an employer liable under this act or the unemploy-  
14 ment compensation act of another state an amount equal to, or in  
15 excess of, 7 times the individual's potential weekly benefit  
16 rate, calculated on the basis of employment with the employer  
17 involved in the disqualification, or by earning in employment for  
18 an employer liable under this act or the unemployment compensa-  
19 tion act of another state an amount equal to, or in excess of, 40  
20 times the state minimum hourly wage times 7, whichever is the  
21 lesser amount.

22 (c) For benefit years established before the conversion date  
23 prescribed in section 75, a benefit payable to an individual dis-  
24 qualified under subsection (1)(a) or (b), shall be charged to the  
25 nonchargeable benefits account, and not to the account of the  
26 employer with whom the individual was involved in the  
27 disqualification.

1 (d) For benefit years beginning after the conversion date  
2 prescribed in section 75, subsequent to the week in which the  
3 disqualifying act or discharge occurred, an individual shall com-  
4 plete 6 requalifying weeks if he or she was disqualified under  
5 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying  
6 weeks if he or she was disqualified under subsection (1)(h), (i),  
7 (j), (k), or (m). A requalifying week required under this sub-  
8 section shall be each week in which the individual does any of  
9 the following:

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

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 (e) For benefit years beginning after the conversion date  
18 prescribed in section 75, if the individual is disqualified under  
19 subsection (1)(a) or (b), he or she shall requalify, after the  
20 week in which the disqualifying act or discharge occurred by  
21 earning in employment for an employer liable under this act or  
22 the unemployment compensation law of another state at least the  
23 lesser of the following:

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

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

26 (f) A benefit payable to the individual disqualified or  
27 separated under disqualifying circumstances under

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

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

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

25 (i) The number of requalifying weeks required of the indi-  
26 vidual under this section.

1       (ii) The number of weeks of benefit entitlement remaining  
2 with that employer.

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

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

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

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

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

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

3 (ii) The number of weeks of benefit entitlement remaining on  
4 the claim.

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

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

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

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

24 (c) When issuing a determination covering the period of  
25 employment with a new or former employer described in this sub-  
26 section, the commission shall advise the chargeable employer of  
27 the name and address of the other employer, the period covered by

1 the employment, and the extent of the benefits that may be  
2 charged to the account of the chargeable employer.

3 (6) In determining whether work is suitable for an individu-  
4 al, the commission shall consider the degree of risk involved to  
5 the individual's health, safety, and morals, the individual's  
6 physical fitness and prior training, the individual's length of  
7 unemployment and prospects for securing local work in the  
8 individual's customary occupation, and the distance of the avail-  
9 able work from the individual's residence. Additionally, the  
10 commission shall consider the individual's experience and prior  
11 earnings, subject to the following limitation:

12 (a) An individual unemployed for 1 to 12 weeks who refuses  
13 an offer of work determined to be suitable under this section  
14 shall be denied benefits if the pay rate for that work is at  
15 least 80% of the gross pay rate he or she received immediately  
16 before becoming unemployed.

17 (b) An individual unemployed for 13 to 20 weeks who refuses  
18 an offer of work determined to be suitable under this section  
19 shall be denied benefits if the pay rate for that work is at  
20 least 75% of the gross pay rate he or she received immediately  
21 before becoming unemployed.

22 (c) An individual unemployed for more than 20 weeks who  
23 refuses an offer of work determined to be suitable under this  
24 section shall be denied benefits if the pay rate for that work is  
25 at least 70% of the gross pay rate he or she received immediately  
26 before becoming unemployed.

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

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

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

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

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

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

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

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

25 (b) An individual's disqualification imposed or imposable  
26 under this subsection is terminated if the individual performs  
27 services in employment with an employer in at least 2 consecutive

1 weeks falling wholly within the period of the individual's total  
2 or partial unemployment due to the labor dispute, and in addition  
3 earns wages in each of those weeks in an amount equal to or  
4 greater than the individual's actual or potential weekly benefit  
5 rate with respect to those weeks based on the individual's  
6 employment with the employer involved in the labor dispute.

7 (c) An individual is not disqualified under this subsection  
8 if the individual is not directly involved in the labor dispute.  
9 An individual is not directly involved in a labor dispute unless  
10 any of the following are established:

11 (i) At the time or in the course of a labor dispute in the  
12 establishment in which the individual was then employed, the  
13 individual in concert with 1 or more other employees voluntarily  
14 stopped working other than at the direction of the individual's  
15 employing unit.

16 (ii) The individual is participating in, financing, or  
17 directly interested in the labor dispute that causes the  
18 individual's total or partial unemployment. The payment of regu-  
19 lar union dues, in amounts and for purposes established before  
20 the inception of the labor dispute, is not financing a labor dis-  
21 pute within the meaning of this subparagraph.

22 (iii) At any time a labor dispute in the establishment or  
23 department in which the individual was employed does not exist,  
24 and the individual voluntarily stops working, other than at the  
25 direction of the individual's employing unit, in sympathy with  
26 employees in some other establishment or department in which a  
27 labor dispute is in progress.

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

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

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

25 (ii) If it is established that 1 of the issues in or pur-  
26 poses of the labor dispute is to obtain a change in the terms and  
27 conditions of employment for members of the individual's grade or

1 class of workers in the establishment in which the individual is  
2 or was last employed.

3 (iii) If a collective bargaining agreement covers both the  
4 individual's grade or class of workers in the establishment in  
5 which the individual is or was last employed and the workers in  
6 another establishment of the same employing unit who are actively  
7 participating in the labor dispute, and that collective bargain-  
8 ing agreement is subject by its terms to modification, supplemen-  
9 tation, or replacement, or has expired or been opened by mutual  
10 consent at the time of the labor dispute.

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

13 (i) Representation of the workers by the same national or  
14 international organization or by local affiliates of that  
15 national or international organization.

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

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

23 (iv) Any functional integration of the work performed by  
24 those workers.

25 (v) Whether the resolution of those issues involved in the  
26 labor dispute as to some of the workers could directly or

1 indirectly affect the advancement, negotiation, or settlement of  
2 the same or similar issues in respect to the remaining workers.

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

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

11 (9) Except for an individual disqualified under subsection  
12 (1)(g), or an individual whose disqualifying discharge under  
13 subsection (1)(b) is determined or redetermined to be a disci-  
14 plinary layoff or suspension, an individual is disqualified from  
15 receiving benefits for the duration of the individual's disci-  
16 plinary layoff or suspension if the individual becomes unemployed  
17 because of a disciplinary layoff or suspension based upon any of  
18 the following:

19 (a) Misconduct directly or indirectly connected with work.

20 (b) Participation in a strike or other concerted activity  
21 resulting in a curtailment of work or restriction of or interfer-  
22 ence with production contrary to an applicable collective bar-  
23 gaining agreement.

24 (c) Participation in a wildcat strike or other concerted  
25 activity not authorized by the individual's recognized bargaining  
26 representative.

1 (10) If a disqualifying discharge under subsection (1)(b) is  
2 determined or redetermined to be a suspension, the  
3 disqualification provided under subsection (9) applies from the  
4 date of the discharge.

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

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

19 (13) BENEFITS PAID TO AN INDIVIDUAL INVOLUNTARILY UNEMPLOYED  
20 DUE TO A MENTAL OR PHYSICAL ILLNESS OR CONDITION SHALL NOT BE  
21 CHARGED TO THE INDIVIDUAL'S EMPLOYER OR EMPLOYING UNIT. THE BEN-  
22 EFITS PAID TO THAT INDIVIDUAL SHALL BE CHARGED TO THE NONCHARGE-  
23 ABLE BENEFITS ACCOUNT DESCRIBED IN SECTION 17.