

SUBSTITUTE FOR
SENATE BILL NO. 399

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 64 (MCL 421.64), as amended by 2003 PA 174.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 64. (1)(a) Payment of extended benefits under this
2 section shall be made at the individual's weekly extended benefit
3 rate, for any week of unemployment ~~which~~**THAT** begins in the
4 individual's eligibility period, to each individual who is fully
5 eligible and not disqualified under this act, who has exhausted all
6 rights to regular benefits under this act, who is not seeking or
7 receiving benefits with respect to that week under the unemployment
8 compensation law of Canada, and who does not have rights to
9 benefits under the unemployment compensation law of any other state
10 or the United States or to compensation or allowances under any
11 other federal law, such as the trade expansion act, the automotive

1 products trade act, or the railroad unemployment insurance act;
2 however, if the individual is seeking benefits and the appropriate
3 agency finally determines that the individual is not entitled to
4 benefits under another law, the individual shall be considered to
5 have exhausted the right to benefits. For the purpose of the
6 preceding sentence, an individual shall have exhausted the right to
7 regular benefits under this section with respect to any week of
8 unemployment in the individual's eligibility period under either of
9 the following circumstances:

10 (i) When payments of regular benefits may not be made for that
11 week because the individual has received all regular benefits
12 available based on his or her employment or wages during the base
13 period for the current benefit year.

14 (ii) When the right to the benefits has terminated before that
15 week by reason of the expiration or termination of the benefit year
16 with respect to which the right existed; and the individual has no,
17 or insufficient, wages or employment to establish a new benefit
18 year. However, for purposes of this subsection, an individual shall
19 be considered to have exhausted the right to regular benefits with
20 respect to any week of unemployment in his or her eligibility
21 period when the individual may become entitled to regular benefits
22 with respect to that week or future weeks, but the benefits are not
23 payable at the time the individual claims extended benefits because
24 final action on a pending redetermination or on an appeal has not
25 yet been taken with respect to eligibility or qualification for the
26 regular benefits or when the individual may be entitled to regular
27 benefits with respect to future weeks of unemployment, but regular

1 benefits are not payable with respect to any week of unemployment
2 in his or her eligibility period by reason of seasonal limitations
3 in any state unemployment compensation law.

4 (b) Except where inconsistent with the provisions of this
5 section, the terms and conditions of this act that apply to claims
6 for regular benefits and to the payment of those benefits apply to
7 claims for extended benefits and to the payment of those benefits.

8 (c) An individual shall not be paid additional compensation
9 and extended compensation with respect to the same week. If an
10 individual is potentially eligible for both types of compensation
11 in this state with respect to the same week, the bureau may pay
12 extended compensation instead of additional compensation with
13 respect to the week. If an individual is potentially eligible for
14 extended compensation in 1 state and potentially eligible for
15 additional compensation for the same week in another state, the
16 individual may elect which of the 2 types of compensation to claim.

17 (2) The bureau shall establish, for each eligible individual
18 who files an application, an extended benefit account with respect
19 to that individual's benefit year. The amount established in the
20 account shall be determined as follows:

21 (a) If subdivision (b) does not apply, whichever of the
22 following is smaller:

23 (i) Fifty percent of the total amount of regular benefits
24 payable to the individual under this act during the benefit year.

25 (ii) Thirteen times the individual's weekly extended benefit
26 rate.

27 (b) With respect to a week beginning in a period in which the

1 average rate of total unemployment as described in subsection
2 (5) (c) (ii) equals or exceeds 8%, but no later than ~~December 27, 2003~~
3 **THE END OF THE WEEK IN WHICH EXTENDED BENEFITS PAYABLE UNDER THIS**
4 **SECTION CEASE TO BE FUNDED UNDER SECTION 2005 OF THE AMERICAN**
5 **RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111-5**, whichever
6 of the following is smaller:

7 (i) Eighty percent of the total amount of regular benefits
8 payable to the individual under this act during the benefit year.

9 (ii) Twenty times the individual's weekly extended benefit
10 rate.

11 If an amount determined under this subsection is not an exact
12 multiple of 1/2 of the individual's weekly extended benefit rate,
13 the amount shall be decreased to the next lower such multiple.

14 (3) All of the following apply to an extended benefit period:

15 (a) The period begins with the third week after whichever of
16 the following weeks first occurs:

17 (i) A week for which there is a national "on" indicator as
18 determined by the United States secretary of labor.

19 (ii) A week for which there is a Michigan "on" indicator.

20 (b) The period ends with the third week after the first week
21 for which there is both a national "off" indicator and a Michigan
22 "off" indicator.

23 (c) The period is at least 13 consecutive weeks long, and does
24 not begin by reason of a Michigan "on" indicator before the
25 fourteenth week after the close of a prior extended benefit period
26 under this section. However, an extended benefit period terminates
27 with the week preceding the week for which no extended benefit

1 payments are considered to be shareable compensation under the
 2 federal-state extended unemployment compensation act of 1970, ~~title~~
 3 ~~II of Public Law 91-373,~~ section 3304 nt of the internal revenue
 4 code of 1986, 26 U.S.C.—USC 3304 nt.

5 (4) An individual's "eligibility period" consists of the weeks
 6 in his or her benefit year that begin in an extended benefit
 7 period, and if his or her benefit year ends within the extended
 8 benefit period, any weeks thereafter that begin in the period.

9 (5) (a) With respect to weeks beginning after September 25,
 10 1982, a national "on" indicator for a week shall be determined by
 11 the United States secretary of labor.

12 (b) A national "off" indicator for a week shall be determined
 13 by the United States secretary of labor.

14 (c) There is a Michigan "on" indicator for a week if 1 or both
 15 of the following apply:

16 (i) The rate of insured unemployment under this act for the
 17 period consisting of that week and the immediately preceding 12
 18 weeks equaled or exceeded 120% of the average of the insured
 19 unemployment rates for the corresponding 13-week period ending in
 20 each of the preceding 2 calendar years, and equaled or exceeded 5%.

21 (ii) For weeks beginning after the week in which **THE 2009**
 22 **AMENDATORY ACT THAT AMENDED** this subparagraph becomes effective and
 23 ending ~~on or before December 27, 2003~~ **AT THE END OF THE WEEK IN**
 24 **WHICH EXTENDED BENEFITS PAYABLE UNDER THIS SECTION CEASE TO BE**
 25 **FUNDED UNDER SECTION 2005 OF THE AMERICAN RECOVERY AND REINVESTMENT**
 26 **ACT OF 2009, PUBLIC LAW 111-5,** the average rate of total
 27 unemployment in this state, seasonally adjusted, as determined by

1 the United States secretary of labor, for the period consisting of
2 the most recent 3 months for which data for all states are
3 published before the close of the week equaled or exceeded both of
4 the following:

5 (A) Six and one-half percent.

6 (B) One hundred ten percent of the average rate of total
7 unemployment in this state, seasonally adjusted, for the period
8 consisting of the corresponding 3-month period in either or both of
9 the preceding 2 calendar years.

10 (d) There is a Michigan "off" indicator for a week if, for the
11 period consisting of that week and the immediately preceding 12
12 weeks, either subdivision (c) (i) or (c) (ii) was not satisfied.
13 Notwithstanding any other provision of this act, if this state is
14 in a period in which temporary extended unemployment compensation
15 is payable in this state under title II of the ~~jobs~~**JOB** creation
16 and worker assistance act of 2002, Public Law 107-147, or another
17 similar federal law, and if the governor has the authority under
18 ~~this~~**THAT** federal act or another similar federal law, then the
19 governor may elect to trigger "off" the Michigan indicator for
20 extended benefits under this act only for a period in which
21 temporary extended unemployment compensation is payable in this
22 state, if the election by the governor would not result in a
23 decrease in the number of weeks of unemployment benefits payable to
24 an individual under this act or under federal law.

25 (e) For purposes of subdivisions (c) and (d), the rate of
26 insured unemployment for any 13-week period shall be determined by
27 reference to the average monthly covered employment under this act

1 for the first 4 of the most recent 6 calendar quarters ending
2 before the close of that period.

3 (f) As used in this subsection, "rate of insured unemployment"
4 means the percentage determined by dividing:

5 (i) The average weekly number of individuals filing claims for
6 regular benefits for weeks of unemployment with respect to the
7 specified period as determined on the basis of the reports made by
8 all state agencies or, in the case of subdivisions (c) and (d), by
9 the bureau, to the federal government; by

10 (ii) In the case of subdivisions (c) and (d), the average
11 monthly covered employment under this act for the specified period.

12 (g) Calculations under subdivisions (c) and (d) shall be made
13 by the bureau and shall conform to regulations, if any, prescribed
14 by the United States secretary of labor under authority of the
15 federal-state extended unemployment compensation act of 1970 title
16 II of Public Law 91-373, section 3304 nt of the internal revenue
17 code of 1986, 26 U.S.C.—**USC** 3304 nt.

18 (h) An "on" indicator under subdivision (c) (ii) applies to
19 claimants who qualify ~~on or after the week ending May 24, 2003 and~~
20 ~~before the week ending December 27, 2003~~ for benefits payable
21 beginning the week after the effective date of **THE 2009 AMENDATORY**
22 **ACT THAT AMENDED** this subdivision **AND ENDING THE LAST WEEK EXTENDED**
23 **BENEFITS UNDER THIS SECTION ARE FUNDED UNDER SECTION 2005 OF THE**
24 **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC ACT 111-5.**

25 (6) As used in this section:

26 (a) "Regular benefits" means benefits payable to an individual
27 under this act and, unless otherwise expressly provided, under any

1 other state unemployment compensation law, including unemployment
2 benefits payable pursuant to ~~sections 8501 to 8525 of title 5 of~~
3 ~~the United States Code, 5 U.S.C. USC~~ 8501 to 8525, other than
4 extended benefits, and other than additional benefits which
5 includes training benefits under section 27(g).

6 (b) "Extended benefits" means benefits, including additional
7 benefits and unemployment benefits payable pursuant to ~~sections~~
8 ~~8501 to 8525 of title 5 of the United States Code, 5 U.S.C. USC~~
9 8501 to 8525, payable for weeks of unemployment beginning in an
10 extended benefit period to an individual as provided under this
11 section.

12 (c) "Additional benefits" means benefits totally financed by a
13 state and payable to exhaustees by reason of conditions of high
14 unemployment or by reason of other special factors under the
15 provisions of any state law as well as training benefits paid under
16 section 27(g) with respect to an extended benefit period.

17 (d) "Weekly extended benefit rate" means an amount equal to
18 the amount of regular benefits payable under this act to an
19 individual within the individual's benefit year for a week of total
20 unemployment, unless the individual had more than 1 weekly extended
21 benefit rate within that benefit year, in which case the
22 individual's weekly extended benefit rate shall be computed by
23 dividing the maximum amount of regular benefits payable under this
24 act within that benefit year by the number of weeks for which
25 benefits were payable, adjusted to the next lower multiple of
26 \$1.00.

27 (e) "Benefits payable" includes all benefits computed in

1 accordance with section 27(d), irrespective of whether the
2 individual was otherwise eligible for the benefits within his or
3 her current benefit year and irrespective of any benefit reduction
4 by reason of a disqualification ~~which~~**THAT** required a reduction.

5 (7) (a) Notwithstanding the provisions of subsection (1)(b),
6 an individual shall be ineligible for payment of extended benefits
7 for any week of unemployment if the bureau finds that during that
8 period either of the following occurred:

9 (i) The individual failed to accept any offer of suitable work
10 or failed to apply for any suitable work to which the individual
11 was referred by the bureau.

12 (ii) The individual failed to actively engage in seeking work
13 as described in subdivision (f).

14 (b) Any individual who has been found ineligible for extended
15 benefits under subdivision (a) shall also be denied benefits
16 beginning with the first day of the week following the week in
17 which the failure occurred and until the individual has been
18 employed in each of 4 subsequent weeks, whether or not consecutive,
19 and has earned remuneration equal to not less than 4 times the
20 extended weekly benefit amount, as determined under subsection (2).

21 (c) As used in this subsection, "suitable work" means, with
22 respect to any individual, any work ~~which~~**THAT** is within that
23 individual's capabilities, if both of the following apply:

24 (i) The gross weekly remuneration payable for the work exceeds
25 the sum of the following:

26 (A) The individual's extended weekly benefit amount as
27 determined under subsection (2).

1 (B) The amount, if any, of supplemental unemployment
2 compensation benefits, as defined in section ~~501(e)(7)(D)~~
3 **501(C)(17)(D)** of the internal revenue code of 1986, **26 USC**
4 **501(C)(17)(D)**, payable to the individual for that week.

5 (ii) The employer pays wages not less than the higher of the
6 minimum wage provided by section 6(a)(1) of the fair labor
7 standards act of 1938, ~~chapter 676, 52 Stat. 1062, 29 U.S.C. USC~~
8 206(a)(1), without regard to any exemption, or the applicable state
9 or local minimum wage.

10 (d) An individual shall not be denied extended benefits for
11 failure to accept an offer of, or apply for, any job ~~which~~ **THAT**
12 meets the definition of ~~suitability~~ **SUITABLE WORK** as described in
13 subdivision (c) if 1 or more of the following are true:

14 (i) The position was not offered to the individual in writing
15 and was not listed with the state employment service.

16 (ii) The failure could not result in a denial of benefits under
17 the definition of suitable work in section 29(6) to the extent that
18 the criteria of suitability in that section are not inconsistent
19 with the provisions of subdivision (c).

20 (iii) The individual furnishes satisfactory evidence to the
21 bureau that his or her prospects for obtaining work in his or her
22 customary occupation within a reasonably short period are good. If
23 that evidence is deemed satisfactory for this purpose, the
24 determination of whether any work is suitable with respect to that
25 individual shall be made in accordance with the definition of
26 suitable work in section 29(6) without regard to the definition
27 specified by subdivision (c).

1 (e) Notwithstanding subsection (1)(b), work shall not be
2 considered suitable work for an individual if the work does not
3 meet the labor standard provisions required by section 3304(a)(5)
4 of the internal revenue code and section 29(7).

5 (f) For the purposes of subdivision (a)(ii), an individual is
6 actively engaged in seeking work during any week if both of the
7 following are true:

8 (i) The individual has engaged in a systematic and sustained
9 effort to obtain work during that week.

10 (ii) The individual furnishes tangible evidence to the bureau
11 that he or she has engaged in a systematic and sustained effort
12 during that week.

13 (g) The bureau shall refer any applicant for extended benefits
14 to any suitable work ~~which~~**THAT** meets the criteria prescribed in
15 subdivisions (c) and (d).

16 (h) An individual is not eligible to receive extended benefits
17 with respect to any week of unemployment in his or her eligibility
18 period if that individual has been disqualified for benefits under
19 this act because he or she voluntarily left work, was discharged
20 for misconduct, or failed to accept an offer of or apply for
21 suitable work unless the individual requalified in accordance with
22 a specific provision of this act requiring that the individual be
23 employed subsequent to the week in which the act or discharge
24 occurred ~~which~~**THAT** caused the disqualification.

25 (8) (a) Except as provided in subdivision (b), payment of
26 extended benefits shall not be made to any individual for any week
27 of unemployment that otherwise would have been payable pursuant to

1 an interstate claim filed in any state under the interstate benefit
2 payment plan, if an extended benefit period is not in effect for
3 the week in the state in which the interstate claim is filed.

4 (b) Subdivision (a) does not apply with respect to the first 2
5 weeks for which extended benefits are payable, pursuant to an
6 interstate claim, to the individual from the extended benefit
7 account established for the individual.

8 (9) Notwithstanding the provisions of subsection (1)(b), an
9 individual who established a benefit year under section 46a on or
10 after January 2, 1983, shall be eligible to receive extended
11 benefits only if the individual earned wages in an amount exceeding
12 40 times the individual's most recent weekly benefit rate during
13 the base period of the benefit year ~~which~~ **THAT** is used to establish
14 the individual's extended benefit account under subsection (2).

15 (10) This subsection ~~shall be~~ **IS** effective for weeks of
16 unemployment beginning after October 30, 1982. Notwithstanding any
17 other provision of this section, an individual's extended benefit
18 entitlement, with respect to weeks of unemployment beginning after
19 the end of the benefit year, shall be reduced, but not below zero,
20 by the product of the number of weeks for which the individual
21 received any amounts of trade readjustment allowances, paid under
22 the trade act of 1974, Public Law 93-618, ~~88 Stat. 1978,~~ within
23 that benefit year, multiplied by the individual's weekly benefit
24 amount for extended benefits.