

# SENATE BILL No. 758

October 18, 2011, Introduced by Senators PROOS, JANSEN, CASWELL, EMMONS, BOOHER, HANSEN, MARLEAU, BRANDENBURG, PAVLOV, PAPPAGEORGE and JONES and referred to the Committee on Economic Development.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 29 (MCL 421.29), as amended by 2008 PA 480.

**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  
7 claiming benefits under this act has the burden of proof to  
8 establish that he or she left work involuntarily or for good cause  
9 that was attributable to the employer or employing unit. However,  
10 if either of the following conditions is met, the leaving does not

1 disqualify the individual:

2 (i) The individual has an established benefit year in effect  
3 and during that benefit year leaves unsuitable work within 60 days  
4 after the beginning of that work.

5 (ii) The individual is the spouse of a full-time member of the  
6 United States armed forces, and the leaving is due to the military  
7 duty reassignment of that member of the United States armed forces  
8 to a different geographic location.

9 (b) Was suspended or discharged for misconduct connected with  
10 the individual's work or for intoxication while at work. **SUSPENSION**  
11 **OR DISCHARGE FOR MISCONDUCT IS PRESUMED IF THE EMPLOYEE HAS BEEN**  
12 **CHARGED WITH A CRIME IN CONNECTION WITH THE EMPLOYEE'S WORK. IF THE**  
13 **EMPLOYEE IS SUBSEQUENTLY ACQUITTED OR THE CHARGES ARE DROPPED,**  
14 **BENEFITS MAY BE AWARDED RETROACTIVELY.**

15 (c) Failed without good cause to apply for available suitable  
16 work after receiving from the employment office or the commission  
17 notice of the availability of that work.

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

23 (e) Failed without good cause to accept suitable work offered  
24 to the individual or to return to the individual's customary self-  
25 employment, if any, when directed by the employment office or the  
26 commission. An employer that receives a monetary determination  
27 under section 32 may notify the unemployment agency regarding the

1 availability of suitable work with the employer on the monetary  
2 determination or other form provided by the unemployment agency.  
3 Upon receipt of the notice of the availability of suitable work,  
4 the unemployment agency shall notify the claimant of the  
5 availability of suitable work.

6 (f) Lost his or her job due to absence from work resulting  
7 from a violation of law for which the individual was convicted and  
8 sentenced to jail or prison. This subdivision does not apply if  
9 conviction of an individual results in a sentence to county jail  
10 under conditions of day parole as provided in 1962 PA 60, MCL  
11 801.251 to 801.258, or if the conviction was for a traffic  
12 violation that resulted in an absence of less than 10 consecutive  
13 work days from the individual's place of employment.

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

17 (i) A strike or other concerted action in violation of an  
18 applicable collective bargaining agreement that results in  
19 curtailment of work or restriction of or interference with  
20 production.

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

23 (h) Was discharged for an act of assault and battery connected  
24 with the individual's work.

25 (i) Was discharged for theft connected with the individual's  
26 work.

27 (j) Was discharged for willful destruction of property

1 connected with the individual's work.

2 (k) Committed a theft after receiving notice of a layoff or  
3 discharge, but before the effective date of the layoff or  
4 discharge, resulting in loss or damage to the employer who would  
5 otherwise be chargeable for the benefits, regardless of whether the  
6 individual qualified for the benefits before the theft.

7 (l) Was employed by a temporary help firm, which as used in  
8 this section means an employer whose primary business is to provide  
9 a client with the temporary services of 1 or more individuals under  
10 contract with the employer, to perform services for a client of  
11 that firm if each of the following conditions is met:

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

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

18 (B) That a failure to provide the temporary help firm with  
19 notice of the employee's completion of services pursuant to sub-  
20 subparagraph (A) constitutes a voluntary quit that will affect the  
21 employee's eligibility for unemployment compensation should the  
22 employee seek unemployment compensation following completion of  
23 those services.

24 (ii) The employee did not provide the temporary help firm with  
25 notice that the employee had completed his or her services for the  
26 client within 7 days after completion of his or her services for  
27 the client.

1 (m) Was discharged for illegally ingesting, injecting,  
2 inhaling, or possessing a controlled substance on the premises of  
3 the employer; refusing to submit to a drug test that was required  
4 to be administered in a nondiscriminatory manner; or testing  
5 positive on a drug test, if the test was administered in a  
6 nondiscriminatory manner. If the worker disputes the result of the  
7 testing, a generally accepted confirmatory test shall be  
8 administered and shall also indicate a positive result for the  
9 presence of a controlled substance before a disqualification of the  
10 worker under this subdivision. As used in this subdivision:

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

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

15 (iii) "Nondiscriminatory manner" means administered impartially  
16 and objectively in accordance with a collective bargaining  
17 agreement, rule, policy, a verbal or written notice, or a labor-  
18 management contract.

19 (2) A disqualification under subsection (1) begins the week in  
20 which the act or discharge that caused the disqualification occurs  
21 and continues until the disqualified individual requalifies under  
22 subsection (3), except that for benefit years beginning before  
23 October 1, 2000, the disqualification does not prevent the payment  
24 of benefits if there are credit weeks, other than multiemployer  
25 credit weeks, after the most recent disqualifying act or discharge.

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

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

2 (a) For benefit years established before October 1, 2000, the  
3 individual shall complete 6 requalifying weeks if he or she was  
4 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or  
5 13 requalifying weeks if he or she was disqualified under  
6 subsection (1)(h), (i), (j), (k), or (m). A requalifying week  
7 required under this subdivision is each week in which the  
8 individual does any of the following:

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

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

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

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

1 7, whichever is the lesser amount.

2 (c) For benefit years established before October 1, 2000, a  
3 benefit payable to an individual disqualified under subsection  
4 (1)(a) or (b) shall be charged to the nonchargeable benefits  
5 account, and not to the account of the employer with whom the  
6 individual was involved in the disqualification.

7 (d) For benefit years beginning on or after October 1, 2000,  
8 after the week in which the disqualifying act or discharge  
9 occurred, an individual shall complete 13 requalifying weeks if he  
10 or she was disqualified under subsection (1)(c), (d), (e), (f),  
11 (g), or (l), or 26 requalifying weeks if he or she was disqualified  
12 under subsection (1)(h), (i), (j), (k), or (m). A requalifying week  
13 required under this subdivision is each week in which the  
14 individual does any of the following:

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

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

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

1 state at least the lesser of the following:

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

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

4 (f) For benefit years beginning on or after April 26, 2002, if  
5 the individual is disqualified under subsection (1)(a), he or she  
6 shall requalify, after the week in which the disqualifying act or  
7 discharge occurred by earning in employment for an employer liable  
8 under this act or the unemployment compensation law of another  
9 state at least 12 times the individual's weekly benefit rate.

10 (g) For benefit years beginning on or after April 26, 2002, if  
11 the individual is disqualified under subsection (1)(b), he or she  
12 shall requalify, after the week in which the disqualifying act or  
13 discharge occurred by earning in employment for an employer liable  
14 under this act or the unemployment compensation law of another  
15 state at least 17 times the individual's weekly benefit rate.

16 (h) A benefit payable to the individual disqualified or  
17 separated under disqualifying circumstances under subsection (1)(a)  
18 or (b), shall be charged to the nonchargeable benefits account, and  
19 not to the account of the employer with whom the individual was  
20 involved in the separation. Benefits payable to an individual  
21 determined by the commission to be separated under disqualifying  
22 circumstances shall not be charged to the account of the employer  
23 involved in the disqualification for any period after the employer  
24 notifies the commission of the claimant's possible ineligibility or  
25 disqualification. If a disqualifying act or discharge occurs during  
26 the individual's benefit year, any benefits that may become payable  
27 to the individual in a later benefit year based on employment with

1 the employer involved in the disqualification shall be charged to  
2 the nonchargeable benefits account.

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

6 (a) For benefit years established before October 1, 2000, if  
7 the individual is disqualified under subsection (1)(c), (d), (e),  
8 (f), (g), or (l) and the maximum amount of benefits is based on  
9 wages and credit weeks earned from an employer before an act or  
10 discharge involving that employer, the amount shall be reduced by  
11 an amount equal to the individual's weekly benefit rate as to that  
12 employer multiplied by the lesser of either of the following:

13 (i) The number of requalifying weeks required of the individual  
14 under this section.

15 (ii) The number of weeks of benefit entitlement remaining with  
16 that employer.

17 (b) If the individual has insufficient or no potential benefit  
18 entitlement remaining with the employer involved in the  
19 disqualification in the benefit year in existence on the date of  
20 the disqualifying determination, a reduction of benefits described  
21 in this subsection applies in a succeeding benefit year with  
22 respect to any benefit entitlement based upon credit weeks earned  
23 with the employer before the disqualifying act or discharge.

24 (c) For benefit years established before October 1, 2000, an  
25 individual disqualified under subsection (1)(h), (i), (j), (k), or  
26 (m) is not entitled to benefits based on wages and credit weeks  
27 earned before the disqualifying act or discharge with the employer

1 involved in the disqualification.

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

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

7 (f) For benefit years established on or after October 1, 2000,  
8 if the individual is disqualified under subsection (1)(c), (d),  
9 (e), (f), (g), or (l), the maximum number of weeks otherwise  
10 applicable in calculating benefits for the individual under section  
11 27(d) shall be reduced by the lesser of the following:

12 (i) The number of requalifying weeks required of the individual  
13 under this section.

14 (ii) The number of weeks of benefit entitlement remaining on  
15 the claim.

16 (g) For benefit years beginning on or after October 1, 2000,  
17 the benefits of an individual disqualified under subsection (1)(h),  
18 (i), (j), (k), or (m) shall be reduced by 13 weeks and any weekly  
19 benefit payments made to the claimant thereafter shall be reduced  
20 by the portion of the payment attributable to base period wages  
21 paid by the base period employer involved in a disqualification  
22 under subsection (1)(h), (i), (j), (k), or (m).

23 (5) If an individual leaves work to accept permanent full-time  
24 work with another employer and performs services for that employer,  
25 or if an individual leaves work to accept a recall from a former  
26 employer, all of the following apply:

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

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

7 (c) When issuing a determination covering the period of  
8 employment with a new or former employer described in this  
9 subsection, the commission shall advise the chargeable employer of  
10 the name and address of the other employer, the period covered by  
11 the employment, and the extent of the benefits that may be charged  
12 to the account of the chargeable employer.

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

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

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

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

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

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

11 (a) An individual is disqualified from receiving benefits for  
12 a week in which the individual's total or partial unemployment is  
13 due to either of the following:

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

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

22 (b) An individual's disqualification imposed or imposable  
23 under this subsection is terminated if the individual performs  
24 services in employment with an employer in at least 2 consecutive  
25 weeks falling wholly within the period of the individual's total or  
26 partial unemployment due to the labor dispute, and in addition  
27 earns wages in each of those weeks in an amount equal to or greater

1 than the individual's actual or potential weekly benefit rate with  
2 respect to those weeks based on the individual's employment with  
3 the employer involved in the labor dispute.

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

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

13 (ii) The individual is participating in, financing, or directly  
14 interested in the labor dispute that causes the individual's total  
15 or partial unemployment. The payment of regular union dues, in  
16 amounts and for purposes established before the inception of the  
17 labor dispute, is not financing a labor dispute within the meaning  
18 of this subparagraph.

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

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

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

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

22 (ii) If it is established that 1 of the issues in or purposes  
23 of the labor dispute is to obtain a change in the terms and  
24 conditions of employment for members of the individual's grade or  
25 class of workers in the establishment in which the individual is or  
26 was last employed.

27 (iii) If a collective bargaining agreement covers both the

1 individual's grade or class of workers in the establishment in  
2 which the individual is or was last employed and the workers in  
3 another establishment of the same employing unit who are actively  
4 participating in the labor dispute, and that collective bargaining  
5 agreement is subject by its terms to modification, supplementation,  
6 or replacement, or has expired or been opened by mutual consent at  
7 the time of the labor dispute.

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

10 (i) Representation of the workers by the same national or  
11 international organization or by local affiliates of that national  
12 or international organization.

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

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

20 (iv) Any functional integration of the work performed by those  
21 workers.

22 (v) Whether the resolution of those issues involved in the  
23 labor dispute as to some of the workers could directly or  
24 indirectly affect the advancement, negotiation, or settlement of  
25 the same or similar issues in respect to the remaining workers.

26 (vi) Whether the workers are currently or have been covered by  
27 the same or similar demands by their recognized or certified

1 bargaining agent or agents for changes in their wages, hours, or  
2 other conditions of employment.

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

7 (9) Notwithstanding subsections (1) to (8), if the employing  
8 unit submits notice to the commission of possible ineligibility or  
9 disqualification beyond the time limits prescribed by commission  
10 rule, the notice shall not form the basis of a determination of  
11 ineligibility or disqualification for a claim period compensated  
12 before the receipt of the notice by the commission.

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