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House Bill 5763 (Substitute H-8 as passed by the House)  
Sponsor: Representative Randy Richardville  
House Committee: Employment Relations, Training and Safety  
Senate Committee: Human Resources and Labor

Date Completed: 3-20-02

## **CONTENT**

**The bill would amend the Michigan Employment Security Act to do the following:**

- **Replace the \$300 maximum weekly benefit with a maximum of \$375.**
- **Increase the number of weeks a person must work, or the amount a person must earn, in order to qualify for benefits after a disqualifying act or discharge.**
- **Decrease the pay rate of a job that an unemployed individual must accept.**
- **Include severance pay in amounts that are considered wages in a determination of a person's unemployment status and amount of benefits.**
- **Decrease the maximum "nonchargeable benefits component" of the formula that determines an employer's contributions, depending on the number of weeks in which there were no benefit charges against the employer's account.**
- **Require an Indian tribe or tribal unit to pay reimbursements instead of contributions to the Unemployment Compensation Fund, unless it elected to make contributions.**

### **Maximum Weekly Amount**

Under the Act, an individual's weekly benefit rate is based on percentage of his or her former weekly wages, plus \$6 for each dependent, up to a maximum of five dependents, except that the maximum weekly benefit rate may not exceed \$300. Under the bill, an individual's weekly benefit rate would be based on the same percentage of former wages, but the maximum would be \$375.

(Subject to the maximum described above, an individual's weekly benefit rate is 4.1% of his or her wages paid in the calendar quarter of the base period in which the individual was paid the highest total wages. "Base period" means the first four of the last five completed calendar quarters before the first day of the individual's benefit year. "Benefit year" means the period of 52 consecutive calendar weeks beginning the first calendar week in which an individual files a claim for benefits.)

### **Duration of Benefits**

Under the Act, except in regard to a retirement benefit, the maximum benefit amount payable to an individual in a benefit year is the number of weeks of benefits payable to an individual during the benefit year, multiplied by his or her weekly benefit rate. The number of weeks of benefits payable to an individual is calculated by multiplying his or her base period wages by 40% and dividing the result by the individual's weekly benefit rate. The bill would change the multiplier from 40% to 43%.

### **Requalification**

The Act establishes specific grounds upon which an individual is disqualified from receiving benefits. Depending on which ground applies, the person may requalify, after the week in which the disqualifying act or discharge occurred, by completing a required number of requalifying weeks or earning a certain amount of wages. (A requalifying week is one in which the individual earns or receives remuneration in an amount equal to at least one-third of the minimum amount needed in a calendar quarter of the base period for the individual to qualify for benefits.)

The bill would require an individual to complete 13 requalifying weeks, instead of six as presently required, if he or she were disqualified for any of the following reasons:

- The individual failed without good cause to apply for available suitable work after receiving notice from the employment office (presently in the Department of Career Development) or the Commission (presently the Unemployment Agency) of the availability of that work.
- The individual failed without good cause while unemployed to report to his or her former employer within a reasonable time after the employer provided notice of the availability of an interview concerning available suitable work with that employer.
- The individual failed without good cause to accept suitable work offered to him or her or to return to his or her customary self-employment when directed by the employment office or the Commission.
- The individual lost his or her job due to absence from work resulting from a violation of law for which the individual was convicted and sentenced to jail or prison.
- The individual was discharged for participating in a strike in violation of a collective bargaining agreement that resulted in curtailment of work or interference with production, or for participating in a wildcat strike or other concerted action not authorized by his or her recognized bargaining representative.
- The individual was employed by a temporary help firm (under certain circumstances).

In regard to an individual's failure to accept suitable work or return to his or her customary self-employment when directed by the employment office or the Commission, the bill provides that an employer that received a monetary determination could notify the Unemployment Agency regarding the availability of suitable work with the employer, on the monetary determination or other form provided by the Agency. Upon receipt of this notice, the Agency would have to notify the claimant of the availability of suitable work. The Agency would have to consider the availability of suitable work before continuing benefits to the claimant.

The bill would require an individual to complete 26 requalifying weeks, instead of 13 as presently required, if he or she were disqualified for any of the following reasons:

- The individual was discharged for an act of assault and battery, theft, or willful destruction of property, connected with his or her work.
- After receiving notice of a layoff or discharge, before the effective date of the layoff or discharge, the individual committed a theft resulting in loss or damage to the employer.
- The individual was discharged for 1) illegally ingesting, injecting, inhaling, or possessing a controlled substance on the employer's premises; 2) refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; or 3) testing positive on a drug test that was administered in a nondiscriminatory manner.

Currently, an individual may requalify by earning at least seven times his or her weekly benefit rate, or 40 times the State minimum hourly wage times seven, whichever is less, if he or she is disqualified from receiving benefits for either of the following reasons:

- The individual left work voluntarily without good cause attributable to the employer.
- The individual was discharged for misconduct connected with his or her work or for intoxication while at work unless the discharge was subsequently reduced to a disciplinary layoff or suspension.

The bill provides that, if an individual were disqualified for voluntarily leaving work, the individual would have to earn 12 times his or her weekly benefit rate in order to requalify. If an individual were disqualified for intoxication, in order to requalify, he or she would have to earn at least 17 times his or her weekly benefit rate.

The bill also provides that an individual who left work would be presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual claiming benefits under the Act would have the burden of proof to establish that he or she left work involuntarily, or for good cause that was attributable to the employer or employing unit. In regard to discharges for intoxication, the bill would eliminate the exception for individuals whose discharge was subsequently reduced to disciplinary layoff or suspension.

As presently required, the amount earned to requalify for benefits would have to be earned in employment for an employer liable under

the Act or the unemployment compensation law of another state.

Under the Act, an individual is disqualified from receiving benefits for the duration of the individual's disciplinary layoff or suspension if he or she becomes unemployed because of a layoff or suspension based upon misconduct directly or indirectly connected with work; participation in a strike or other concerted activity resulting in a curtailment of work or restriction of or interference with production contrary to an applicable collective bargaining agreement; or participation in a wildcat strike or other concerted activity not authorized by the individual's recognized bargaining representative. The bill would delete these provisions.

#### Offer of Work

Under the Act, an individual must be denied benefits if he or she refuses an offer of work determined to be suitable (considering the degree of risk to the individual's health, safety, and morals, his or her physical fitness and prior training, his or her length of unemployment and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence). This requirement applies if the individual has been unemployed for a certain length of time, and if the pay rate for the suitable work is at least a certain percentage of the individual's gross pay rate immediately before becoming unemployed, as shown in Table 1.

Table 1  
Offer of Work Requirements

Weeks of Unemployment	Percentage of Prior Gross Pay
1 to 13	80%
13 to 20	75%
More than 20	70%

Under the bill, an individual would have to be denied benefits if he or she refused an offer of suitable work for which the pay rate was at least 70% of the gross pay rate the individual received immediately before becoming unemployed (regardless of how long he or she had been unemployed).

#### Reconsideration

The Act requires the Unemployment Agency to

mail to a claimant and employer a monetary determination, which must include a notice that the claimant has filed for benefits; the amount the claimant reported as earned; the claimant's weekly benefit rate; and other prescribed information, including the reason for separation from employment as reported by the claimant. The Act provides that no further reconsideration of a separation from an employer will be made unless the employer notifies the Unemployment Agency of a possible disqualifying separation. Under the bill, the provision pertaining to further reconsideration would not apply to an individual who left work voluntarily without good cause attributable to the employer.

#### Remuneration

Under the Act, an individual is considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than his or her weekly benefit rate.

The Act provides that all amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay or pay in lieu of notice, must be considered remuneration in a determination of whether an individual is unemployed and a determination of benefit payments. Under the bill, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding sub payments, also would have to be considered remuneration for these purposes.

The bill would delete a provision under which payments in the form of termination, separation, severance, or dismissal allowances, and bonuses, are not considered wages or remuneration.

#### Nonchargeable Benefits Component

The Act requires employers to pay a percentage of total wages as a contribution to the State's Unemployment Compensation Fund. The amount of an employer's contribution is based, in part, on a "nonchargeable benefits component". The maximum nonchargeable benefits component (NBC) is 1%, although the maximum is 0.1%

if there are no benefits against an employer's account for the 108 months ending as of the computation date.

The bill would reduce the maximum nonchargeable benefits component for calendar years after 2002, if there were no benefit charges against an employer's account for a specified number of months ending as of the computation date, as shown in Table 2.

Table 2  
Proposed Nonchargeable  
Benefits Component

Maximum NBC	Months without Charges
0.1%	60
0.09%	72
0.08%	84
0.07%	96
0.06%	108

#### Employer Accounts

The Act requires that benefits paid to an individual be based upon credit weeks earned during his or her base period and be charged against the experience accounts of the contributing employers or the reimbursing employers from whom the individual earned credit weeks. If the individual earned credit weeks from more than one employer, a separate determination must be made of the amount and duration of benefits based on the total credit weeks and wages earned with each employer. Benefits are charged against the rating account of the employers beginning with the most recent employer.

The Act further specifies that the claimant's full weekly benefit rate must be charged to the account or experience account of the claimant's most recent separating employer for each of the first two weeks of benefits payable to the claimant in the benefit year in accordance with the monetary determination that the Unemployment Agency must make under the Act. The bill provides that if the sum of wages paid by an employer totaled \$200 or less, those wages would have to be used for purposes of benefit payments, but any benefit charges attributable to those wages would be charged to the nonchargeable benefit account.

#### Internet Site

Within six months after the bill's effective date, the Unemployment Agency would have to establish and provide access to a secure Internet site to enable employers to determine if correspondence sent to the Agency by an employer had been received.

(Under Executive Order 2002-1, the Unemployment Agency will be transferred to a new Bureau of Worker's and Unemployment Compensation.)

#### Indian Tribes

The bill provides that an Indian tribe or tribal unit liable as an employer under Section 41 of the Act would have to pay reimbursements instead of contributions under the same terms and conditions as all other reimbursing employers liable under Section 41, unless the tribe or tribal unit elected to pay contributions. Under the bill, the term "Indian tribe" would be defined as it is in Section 3306(u) of the Federal Unemployment Tax Act, i.e., any Indian tribe, land, nation, or other organized group or community recognized under Federal law as eligible for the special programs and services provided by the United States to Indians. "Tribal unit" would include any subdivision, subsidiary, or business enterprise, wholly owned by an Indian tribe.

An Indian tribe or tribal unit that elected to pay contributions would have to file a written request with the Unemployment Agency before January 1 of the year in which the election would be effective, or within 30 days of the bill's effective date. The tribe or tribal unit would have to determine if the election to pay contributions would apply to the tribe as a whole, apply only to individual tribal units, or apply to stated combinations of individual tribal units. A tribe or tribal unit that paid reimbursements instead of contributions would be billed for the full amount of benefits attributable to service in the employ of the tribe or tribal unit. The tribe or tribal unit would have to reimburse the Unemployment Compensation Fund, annually, within 30 days after the final billing was mailed for the immediately preceding calendar year.

If an Indian tribe or tribal unit failed to make required payments instead of contributions, including assessments of interest and penalties, within 90 calendar days of the mailing of the notice of delinquency, the tribe immediately would lose the ability to make payments instead of contributions, unless the Unemployment Agency received full payment or collection on the required security by

December 1 of that calendar year. An Indian tribe that lost the ability to make payments instead of contributions would be made a contributing employer and could not make payments until all contributions, payments instead of contributions, interest, and penalties had been paid. The ability to make payments instead of contributions would have to be reinstated effective January 1 immediately succeeding the year in which the tribe paid these debts. If an Indian tribe failed to pay in full all contributions, payments instead of contributions, interest, and penalties within 90 calendar days of a notice of delinquency, the Unemployment Agency immediately would have to notify the U.S. Department of Labor and the Internal Revenue Service (IRS) of that delinquency. If the delinquency were satisfied, the Unemployment Agency immediately would have to notify the U.S. Department of Labor and the IRS that all contributions, payments instead of contributions, interest, and penalties had been paid.

A notice of delinquency to an Indian tribe or tribal unit would have to include information that failure to make full payment within 90 days of the date the notice was mailed would cause the tribe to lose the ability to make payments instead of contributions until the delinquency and all contributions, payments instead of contributions, interest, and penalties had been paid.

Any Indian tribe or tribal unit that made reimbursement payments instead of contributions would have to post a security if the payment of gross wages in a calendar year were \$100,000 or more. The tribe or tribal unit would have to post the security either within 30 days of the bill's effective date, or by November 30 of the year before the year for which the security was required. The security would have to be in the form of a surety bond, irrevocable letter of credit, or other banking device that was acceptable to the Unemployment Agency and that provided for payment to the Agency, on demand, of an amount equal to the security required to be posted. The required security could be posted by a third-party guarantor.

The requirement for a security would not apply to an Indian tribe or tribal unit that was expected to have less than \$100,000 per calendar year in total wage payments, as determined by the Agency. The employer would have to notify the Agency within 60 days from the date its payroll equaled or

exceeded \$100,000. The security would have to be posted within 30 days of notice by the Agency of a requirement to post a security.

The amount of the required security would be 4% of the employer's estimated total annual wage payments, as determined by the Agency. Indian tribes or tribal units that had a previous wage payment history would be required to file a security equal to 4% of the gross wages paid for the 12-month period ending June 30 of the year immediately preceding the year for which the security was required, or 4% of the employer's estimated total annual wages, whichever was greater.

Any Indian tribe or tribal unit that was liable for reimbursements instead of contributions could form a group account with another tribe or tribal unit, as provided under the Act.

The bill specifies that after December 20, 2000, the term "employer" would include an Indian tribe or tribal unit for which services were performed in employment as defined in the bill, and "employment" would include services performed in the employ of a tribe or tribal unit if the service were excluded from employment under Section 3306(c)(7) of the Federal Unemployment Tax Act and were not otherwise excluded from employment under the Michigan Employment Security Act. (Section 3306(c)(7) excludes services performed in the employ of an Indian tribe from the definition of "employment" in the Federal Act.)

MCL 421.19 et al.

Legislative Analyst: George Towne

### **FISCAL IMPACT**

The bill's potential fiscal impact on State government is described below. The bill would have no fiscal impact on local government, except as employers.

**Increase in Unemployment Insurance Payment Maximum.** Increasing the maximum weekly benefit payment from \$300 to \$375 would benefit recipients at the current \$300 maximum, raising their weekly benefit by up to \$75. Based on 2001 data, it is estimated that this would increase unemployment benefits by an estimated \$226 million. In any particular year the cost of increasing the maximum weekly benefit level by \$75 would depend on how well the economy is doing. For example, during a

period of very strong economic growth, such as Michigan experienced in 1994, increasing the weekly benefit level by \$75 would increase unemployment benefits about \$125 million; however, during a severe recession, similar to what Michigan experienced in the early 1980s, the cost of such an increase would rise to over \$300 million. Over time, the increased benefit payments would increase the chargeable benefit component of the unemployment tax rate for those employers not already at the maximum.

**Increase in Duration Multiplier.** Increasing the duration multiplier from .40 to .43 would increase unemployment benefits by an estimated \$12 million. Without this change, the increase in the maximum weekly benefit level to \$375, would automatically reduce the number of weeks of eligibility for claimants who work more intermittently during the year and therefore offset a portion of the increase in benefits they would receive because of the higher maximum. Increasing the duration multiplier to .43 would help these workers realize the entire increase in the maximum weekly payment. It also would increase the number of weeks of eligibility for claimants below the maximum payment who are eligible for less than 26 weeks of benefits.

In addition, the increase in this multiplier, referred to in statute as the “percentage factor of base period wages”, would automatically trigger an increase in the maximum chargeable benefits component of the unemployment tax described in MCL 421.19(1)(3)(ii). The increase in the percentage factor of base period wages would increase the maximum chargeable benefits component of the unemployment tax rate from 6.0% to 6.3%. This would raise the unemployment taxes of employers currently at the maximum rate.

**Reduction of Nonchargeable Benefit Rate.** The Unemployment Agency has estimated that this change (shown in [Table 2](#), above) would reduce unemployment taxes for approximately 61,000 employers, reducing revenue by \$6.3 million annually.

**Change in Treatment of Wages up to \$200.** For a claimant with multiple employers during the year, the bill would exclude an employer who paid the claimant up to \$200 in that year from being charged with the employer’s portion of the benefits. Instead, the portion of benefits attributable to that income would be paid as part of the

nonchargeable costs of the unemployment program. This would reduce the administrative expense of apportioning this small amount of benefits attributable to that income. The costs would be shifted to the nonchargeable benefit account.

**Demonstration of Good Cause for Voluntary Termination.** The bill specifies that an employee who voluntarily left a position would have the burden of proof to demonstrate that the termination was for good cause attributable to the employer in order to become eligible for unemployment benefits. This would codify current practice and would have no fiscal impact.

**Treatment of Severance Pay as Remuneration in Benefit Calculation.** No data have been found on the number of unemployed workers who receive some type of severance pay from their former employer. However, based on national data comparing total and production employees, and an assumption that nonproduction employees are more likely to receive some type of severance pay, it is estimated (very roughly) that treating severance pay as remuneration in the same way that pension income currently offsets benefit levels, would reduce unemployment benefits by about \$10 million.

**Permitting Indian Tribes to Become Reimbursing Employers.** House Bill 5763 (H-8) would allow Indian tribes to become reimbursing employers, reimbursing the State for actual unemployment costs at year end, instead of being required to be contributing employers. This change is required to be consistent with Federal law. Failure to make this change by June 30 would result in reduction of Federal payments to the State.

**Other Provisions.** The bill includes several items that would tend to reduce eligibility for unemployment benefits and costs to the Unemployment Compensation Fund by an unknown amount. These are:

- Broadening the definition of being dismissed for misconduct at work.
- Increasing the earning requirement to requalify for benefits after leaving a job voluntarily or being fired for misconduct.
- Reducing the amount of salary that a worker is required to accept without forfeiting benefits.
- Increasing the number of weeks a disqualified person must work to requalify.

House Bill 5763 (H-8) also includes provisions that would increase the administrative costs of the Unemployment Agency by an unknown amount. These would:

- Require the Unemployment Agency to receive an offer of employment from an employer and convey that offer to a former employee. Currently, an employer makes an offer through the Employment Services Agency in the Department of Career Development.
- Require creation of an Internet site within six months of the effective date to track employer correspondence with the Unemployment Agency. The development and maintenance of this new system would increase administrative costs by an unknown amount.

**Summary.** It is estimated that House Bill 5763 (H-8) would increase costs to the Unemployment Trust Fund by \$234.3 million as shown in Table 3 below.

<b>Table 3</b> <b>Estimated Fiscal Impact of H.B. 5763 (H-8) on the</b> <b>Unemployment Compensation Fund</b> <b>(dollars in millions)</b>	
Proposed Change	Estimated Fiscal Impact
<u>Impact on State Unemployment Benefit Costs</u>	
Increase Maximum Benefit to \$375 . . . . .	\$226.0
Increase the Duration Multiplier to .43 . . . . .	12.0
Treat Severance Pay as Remuneration . . . . .	(10.0)
Net Increase in Costs . . . . .	\$228.0
<u>Impact on State Unemployment Fund Revenue</u>	
Reduce Nonchargeable Benefits Rate . . . . .	(6.3)
Net Impact of H.B. 5763 (H-8) (Costs Less Revenue) . . . . .	\$234.3

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.