

Act No. 503
Public Acts of 1996
Approved by the Governor
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Rep. Prusi

ENROLLED HOUSE BILL No. 6193

AN ACT to amend sections 32, 32a, and 38 of Act No. 1 of the Public Acts of the Extra Session of 1936, entitled as amended "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," section 32 as amended by Act No. 162 of the Public Acts of 1994 and sections 32a and 38 as amended by Act No. 164 of the Public Acts of 1983, being sections 421.32, 421.32a, and 421.38 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 32, 32a, and 38 of Act No. 1 of the Public Acts of the Extra Session of 1936, section 32 as amended by Act No. 162 of the Public Acts of 1994 and sections 32a and 38 as amended by Act No. 164 of the Public Acts of 1983, being sections 421.32, 421.32a, and 421.38 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 32. (a) Claims for benefits shall be made pursuant to regulations prescribed by the commission. The commission shall designate representatives who promptly shall examine claims and make a determination on the facts. The commission may establish rules providing for the examination of claims, the determination of the validity of the claims, and the amount and duration of benefits to be paid. The claimant and other interested parties promptly shall be notified of the determination and the reasons for the determination.

(b) For benefit years established before the conversion date prescribed in section 75, the commission may prescribe regulations for notifying and shall notify the employer, whose experience account may be charged, and the employing unit where the claimant last worked that the claimant has filed an application for benefits. The notice shall require the employer and employing unit to furnish information to the commission necessary to determine the claimant's benefit rights.

Upon receipt of the employer's reports, the commission promptly shall make a determination based upon the available information. The claimant and the employer, whose experience account may be charged pursuant to the determination, promptly shall be notified of the determination. The notice shall show the name and account number of the employer whose experience account may be charged pursuant to the determination, the weekly benefit amount and the maximum number of credit weeks against which the claimant may draw benefits, and whether or not the claimant is eligible and qualified to draw benefits. An employer may designate in writing to the commission an individual or another employer or an employing unit to receive any notice required to be given by the commission to that employer or to represent that employer in any proceeding before the commission as provided in section 31.

If an employer or employing unit fails to respond within 10 days after mailing of the request for information, the commission shall make a determination upon the available information. In the absence of a showing by the employer satisfying the commission that the employer reasonably could not submit the requested information, the determination shall be final as to the noncomplying employer, as to benefits paid before the week following the receipt of the employer's reply and chargeable against the employer's experience account as a result of the employer's late reply and the payments shall be considered to have been proper payments. The commission may require an employer who consistently fails to meet the commission's requirements, as to submission of reports covering employment of individuals, to provide the reports automatically upon the separation of individuals from employment, in the manner and within the time limits the commission prescribes by regulation necessary to carry out this section. An employer may be permitted to provide the reports automatically upon separation of individuals from employment, in the manner and within the time limits prescribed by the commission.

After an application for benefits is filed, the commission's determination shall include only the most recent employer. Subsequently, as necessary, the commission shall issue determinations covering other base period employers, individually in inverse order to that in which the claimant earned his or her last credit week with the employers.

For benefit years established after the conversion date prescribed in section 75, the commission shall mail to the claimant, to each base period employer or employing unit, and to the separating employer or employing unit, a monetary determination. The monetary determination shall notify each of these employers or employing units that the claimant has filed an application for benefits and the amount the claimant reported as earned with the separating employer or employing unit, and shall state the name of each employer or employing unit in the base period and the name of the separating employer or employing unit. The monetary determination shall also state the claimant's weekly benefit rate, the amount of base period wages paid by each base period employer, the maximum benefit amount that could be charged to each employer's account or experience account, and the reason for separation reported by the claimant. The monetary determination shall also state whether the claimant is monetarily eligible to receive unemployment benefits. No further reconsideration of a separation from any base period employer will be made unless the base period employer notifies the commission of a possible disqualifying separation in accordance with this subsection. Benefits paid in accordance with the monetary determination shall be considered proper payments and shall not be changed unless the commission receives new, corrected, or additional information from the employer, within 10 calendar days after the mailing of the monetary determination, and the information results in a change in the monetary determination. New, additional, or corrected information received by the commission after the 10-day period shall be considered a request for reconsideration by the employer of the monetary determination and shall be reviewed as provided in section 32a.

For the purpose of determining a claimant's nonmonetary eligibility and qualification for benefits, if the claimant's most recent base period or benefit year separation was for a reason other than the lack of work, then a determination shall be issued concerning that separation to the claimant and to the separating employer. If a claimant is not disqualified based on his or her most recent separation from employment and has satisfied the requirements of section 29, the commission shall issue a nonmonetary determination as to that separation only. If a claimant is not disqualified based on his or her most recent separation from employment and has not satisfied the requirements of section 29, the commission shall issue 1 or more nonmonetary determinations necessary to establish the claimant's qualification for benefits based on any prior separation in inverse chronological order. The commission shall consider all base period separations involving disqualifications under section 29(1)(h), (j), (l), or (m) in determining a claimant's nonmonetary eligibility and qualification for benefits. An employer may designate in writing to the commission an individual or another employer or an employing unit to receive any notice required to be given by the commission to that employer or to represent that employer in any proceeding before the commission as provided in section 31.

If the commission requests additional monetary or nonmonetary information from an employer or employing unit and the commission fails to receive a written response from the employer or employing unit within 10 calendar days after the date of mailing the request for information, the commission shall make a determination based upon the available information at the time the determination is made. The determination shall be final and any payment made shall be considered a proper payment with respect to benefits paid before the week following the receipt of the employer's reply and chargeable against the employer's account or experience account as a result of the employer's late reply.

(c) The claimant or interested party may file an application with an office of the commission for a redetermination in accordance with section 32a.

(d) The issuance of each benefit check shall be considered a determination by the commission that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits. A chargeable employer, upon receipt of a listing of the check as provided in section 21(a), may protest by requesting a redetermination as to the eligibility or qualification as to that period and a determination as to later weeks and benefits still unpaid as are affected by the protest. Upon receipt of the protest or request, the commission shall investigate and redetermine whether the claimant is eligible and qualified as to that period. If, upon the redetermination, the claimant is found ineligible or not qualified, the commission shall investigate and determine whether the claimant obtained benefits, for 1 or more preceding weeks within the series of consecutive weeks which includes the week covered by the redetermination, improperly as the result of administrative error, false statement, misrepresentation, or nondisclosure of a material fact. If the commission finds that the claimant has obtained benefits through administrative error, false statement, misrepresentation, or nondisclosure of a material fact, the commission shall proceed under the appropriate provisions of section 62.

(e) When a claimant commences to file continued claims through a different state claim office in this state or elsewhere, the commission promptly shall issue written notice of that fact to the chargeable employer.

(f) If a claimant refuses an offer of work, or fails to apply for work of which the claimant has been notified, as provided in section 29(1)(c) or (e), the commission promptly shall make a written determination as to whether or not the refusal or failure requires disqualification under section 29. Notice of the determination, specifying the name and address of the employing unit offering or giving notice of the work and of the chargeable employer, shall be sent to the claimant, the employing unit offering or giving notice of the work, and the chargeable employer.

Sec. 32a. (1) Upon application by an interested party for review of a determination, upon request for transfer to a referee for a hearing filed with the commission within 30 days after the mailing or personal service of a notice of determination, or upon the commission's own motion within that 30-day period, the commission shall review any determination. After review, the commission shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination, or may in its discretion transfer the matter to a referee for a hearing. If a redetermination is issued, the commission shall promptly notify the interested parties of the redetermination, the redetermination is final unless within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the commission for a hearing on the redetermination before a referee in accordance with section 33.

(2) The commission may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to a referee for a hearing. A reconsideration shall not be made unless the request is filed with the commission, or reconsideration is initiated by the commission with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

(3) If an interested party fails to file a protest within the 30-day period and the commission for good cause reconsiders a prior determination or redetermination and issues a redetermination, a disqualification, or an ineligibility imposed thereunder, other than an ineligibility imposed due to receipt of retroactive pay, the redetermination, disqualification, or ineligibility does not apply to a compensable period for which benefits were paid or are payable unless the benefits were obtained as a result of an administrative clerical error, a false statement, or a nondisclosure or misrepresentation of a material fact by the claimant. However, the redetermination is final unless within 30 days after the date of mailing or personal service of the notice of redetermination an appeal is filed for a hearing on the redetermination before a referee in accordance with section 33.

(4) In addition to the transfer provisions in subsections (1) and (2), both of the following apply:

(a) If both the claimant and the employer agree, the matter may be transferred directly to a referee in a case involving the payment of unemployment benefits.

(b) If both the commission and the employer agree, the matter may be transferred directly to a referee in a case involving unemployment contributions or reimbursements in lieu of contributions.

Sec. 38. (1) The circuit court in the county in which the claimant resides or the circuit court in the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, may review questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board, and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. Application for review shall be made within 30 days after the mailing of a copy of the order or decision by any method permissible under the rules and practices of the circuit court of this state.

(2) An order or decision of a hearing referee that involves a claim for unemployment benefits may be appealed directly to the circuit court if the claimant and the employer or their authorized agents or attorneys agree to do so by

written stipulation filed with the referee. A hearing referee's order or decision involving an employer's contributions or payments in lieu of contributions under this act may be appealed directly to the circuit court if the employer and commission execute and file with the hearing referee a written stipulation agreeing to the direct appeal to the circuit court.

(3) The commission is a party to any judicial action involving an order or decision of the board of review or a referee.

(4) The decision of the circuit court may be appealed in the manner provided by the laws of this state for appeals from the circuit court.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.