

Act No. 275  
Public Acts of 1993  
Approved by the Governor  
December 22, 1993  
Filed with the Secretary of State  
December 28, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Munsell and DeLange

# **ENROLLED HOUSE BILL No. 5000**

AN ACT to amend section 64 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," as amended by Act No. 172 of the Public Acts of 1984, being section 421.64 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 64 of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended by Act No. 172 of the Public Acts of 1984, being section 421.64 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 64. (1)(a) Payment of extended benefits under this section shall be made at the individual's weekly extended benefit rate as defined in subsection (6)(d), for any week of unemployment which begins in the individual's eligibility period, to each individual who is fully eligible and not disqualified under this act, who has exhausted all rights to regular benefits under this act and who is not seeking or receiving benefits with respect to that week under the unemployment compensation law of Canada and who does not have rights to benefits under the unemployment compensation law of any other state or the United States or to compensation or allowances under any other federal law, such as the trade expansion act, or the automotive products trade act or the railroad unemployment insurance act; however, if the individual is seeking benefits and the appropriate agency finally determines that the individual is not entitled to benefits under another law the individual shall be considered to have exhausted the right to benefits. For the purpose of the preceding sentence, an individual shall have exhausted the right to regular benefits under this section with respect to any week of unemployment in the individual's eligibility period:

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

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

(b) Except where inconsistent with the provisions of this section, the terms and conditions of this act which apply to claims for regular benefits and to the payment of those benefits shall apply to claims for extended benefits and to the payment of those benefits.

(c) An individual shall not be paid additional compensation and extended compensation with respect to the same week. If an individual is potentially eligible for both types of compensation in this state with respect to the same week, the commission may pay extended compensation instead of additional compensation with respect to the week. If an individual is potentially eligible for extended compensation in 1 state and potentially eligible for additional compensation for the same week in another state, the individual may elect which of the 2 types of compensation to claim.

(2) The commission will establish, for each eligible individual who files an application, an extended benefit account with respect to that individual's benefit year. The amount established in the account shall be whichever of the following is the lesser:

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

(b) Thirteen times the individual's weekly extended benefit rate.

In case any amount determined under subdivision (a) or (b) of this subsection is not an exact multiple of 1/2 of the individual's weekly extended benefit rate, the amount shall be decreased to the next lower such multiple.

(3) An extended benefit period:

(a) Shall begin with the third week after whichever of the following weeks first occurs:

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

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

(b) Shall end with the third week after the first week for which there is both a national "off" indicator and a Michigan "off" indicator.

(c) Shall not last for a period of less than 13 consecutive weeks, and shall not begin by reason of a Michigan "on" indicator before the fourteenth week after the close of a prior extended benefit period under this section, as amended. However, an extended benefit period shall terminate with the week preceding the week for which no extended benefit payments are considered to be shareable compensation under the federal-state extended unemployment compensation act of 1970, 26 U.S.C. section 3304.

(4) An individual's "eligibility period" shall consist of the weeks in his or her benefit year which begin in an extended benefit period, and if his or her benefit year ends within the extended benefit period, any weeks thereafter which begin in the period.

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

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

(c) There is a Michigan "on" indicator for a week if the rate of insured unemployment under this act for the period consisting of that week and the immediately preceding 12 weeks:

(i) Equaled or exceeded 120% of the average of the insured unemployment rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and

(ii) Equaled or exceeded 4% for weeks beginning before September 26, 1982, or 5% for weeks beginning after September 25, 1982.

(d) There is a Michigan "off" indicator for a week if, for the period consisting of that week and the immediately preceding 12 weeks, either subdivision (c)(i) or (c)(ii) was not satisfied. Notwithstanding any other provision of this act, if Michigan is in a period in which emergency unemployment compensation is payable in Michigan under section 102 of the emergency unemployment compensation act of 1991, Public Law 102-164 or another similar federal law, and if the governor has the authority under this federal act or another similar federal law, then the governor may elect to trigger

"off" the Michigan indicator for extended benefits under this act only for a period in which emergency unemployment compensation is payable in Michigan, if the election by the governor would not result in a decrease in the number of weeks of unemployment benefits payable to an individual under this act or under federal law.

(e) For purposes of subdivisions (c) and (d), the rate of insured unemployment for any 13-week period shall be determined by reference to the average monthly covered employment under this act for the first 4 of the most recent 6 calendar quarters ending before the close of that period.

(f) For purposes of this subsection, the term "rate of insured unemployment" means the percentage arrived at by dividing:

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

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

(g) Calculations under subdivisions (c) and (d) shall be made by the commission and shall conform to regulations, if any, prescribed by the United States secretary of labor under authority of the federal-state extended unemployment compensation act of 1970, as amended.

(h) Notwithstanding subdivisions (c) and (d), but subject to subsection (3)(c), for weeks of unemployment beginning after March 30, 1977 and before September 26, 1982, there is a Michigan "on" indicator for a week if the rate of insured unemployment under this act for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 5%; and for weeks beginning after September 25, 1982, there is a Michigan "on" indicator for a week if the rate of insured unemployment under this act for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 6%. However, any week for which there would otherwise be a Michigan "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a Michigan "off" indicator.

(6) For purposes of this section:

(a) "Regular benefits" means benefits payable to an individual under this act and, unless otherwise expressly provided, under any other state unemployment compensation law, including unemployment benefits payable pursuant to 5 U.S.C. 8501 to 8525, other than extended benefits, and other than additional benefits which includes training benefits under section 27(g).

(b) "Extended benefits" means benefits, including additional benefits and unemployment benefits payable pursuant to 5 U.S.C. 8501 to 8525, payable for weeks of unemployment beginning in an extended benefit period to an individual as provided under this section.

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

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

(e) "Benefits payable" includes all benefits computed in accordance with section 27(d), irrespective of whether the individual was otherwise eligible for the benefits within his or her current benefit year and irrespective of any benefit reduction by reason of a disqualification which required a reduction.

(7)(a) An extended benefit period on the basis of a national "on" indicator may not begin with a calendar week starting before January 1, 1972.

(b) With respect to calendar weeks beginning before January 1, 1972, an extended benefit period under this section shall be determined solely by reference to the Michigan "on" indicator and the Michigan "off" indicator, however an extended benefit period established on the basis of a Michigan "on" indicator may not begin with a week earlier than 60 days after the date of the enactment of the federal-state extended unemployment compensation act of 1970, as amended.

(8)(a) Notwithstanding the provisions of subsection (1)(b), an individual shall be ineligible for payment of extended benefits for any week of unemployment beginning after March 31, 1981 in the individual's eligibility period if the commission finds that during that period:

(i) The individual failed to accept any offer of suitable work, as defined in subdivision (c), or failed to apply for any suitable work, as defined in subdivision (c), to which the individual was referred by the commission; or

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

(b) Any individual who has been found ineligible for extended benefits pursuant to subdivision (a) shall also be denied benefits beginning with the first day of the week following the week in which the failure occurred and until the

individual has been employed in each of 4 subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than 4 times the extended weekly benefit amount, as determined under subsection (2).

(c) For purposes of this subsection, the term "suitable work" means, with respect to any individual, any work which is within that individual's capabilities, if the gross weekly remuneration payable for the work exceeds the sum of:

- (i) The individual's extended weekly benefit amount as determined under subsection (2), plus
- (ii) The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501(c)(17)(d) of the internal revenue code, payable to the individual for that week; and further,
- (iii) That the employer pays wages not less than the higher of the minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, 29 U.S.C. 206(a)(1), without regard to any exemption, or the applicable state or local minimum wage.

(d) An individual shall not be denied extended benefits for failure to accept an offer of, or apply for, any job which meets the definition of suitability as described in subdivision (c) if:

- (i) The position was not offered to the individual in writing and was not listed with the state employment service; or
- (ii) The failure could not result in a denial of benefits under the definition of suitable work in section 29(6) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of subdivision (c); or
- (iii) The individual furnishes satisfactory evidence to the commission that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If that evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to that individual shall be made in accordance with the definition of suitable work in section 29(6) without regard to the definition specified by subdivision (c).

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

(f) For the purposes of subdivision (a)(ii), an individual shall be treated as actively engaged in seeking work during any week if:

- (i) The individual has engaged in a systematic and sustained effort to obtain work during that week, and
- (ii) The individual furnishes tangible evidence to the commission that he or she has engaged in a systematic and sustained effort during that week.

(g) The commission shall refer any applicant for extended benefits to any suitable work which meets the criteria prescribed in subdivisions (c) and (d).

(h) With respect to initial extended benefit claims filed after March 31, 1981, an individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if that individual has been disqualified for benefits under this act because he or she voluntarily left work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work unless the individual requalified in accordance with a specific provision of this act requiring that the individual be employed subsequent to the week in which the act or discharge occurred which caused the disqualification.

(i) For weeks of unemployment beginning on or after March 7, 1993 and before January 1, 1995, subsection (8) shall not be considered in determining the eligibility of an individual for the payment of extended benefits. This subdivision shall take effect for weeks of unemployment beginning on or after March 7, 1993 and before January 1, 1995.

(9)(a) Except as provided in subdivision (b), payment of extended benefits shall not be made to any individual for any week of unemployment, beginning on or after June 1, 1981, which otherwise would have been payable pursuant to an interstate claim filed in any state under the interstate benefit payment plan, if an extended benefit period is not in effect for such week in the state in which the interstate claim is filed.

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

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

(11) This subsection shall be effective for weeks of unemployment beginning after October 30, 1982. Notwithstanding any other provision of this section, an individual's extended benefit entitlement, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts of trade readjustment allowances, paid under the trade act of 1974, as amended, 19 U.S.C. 2101 to 2487, within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

This act is ordered to take immediate effect.

-----  
Co-Clerk of the House of Representatives.

-----  
Secretary of the Senate.

Approved -----

-----  
Governor.