

SENATE BILL NO. 624

June 25, 1997, Introduced by Senators GEAKE, SHUGARS
and STEIL and referred to the Committee on Human
Resources, Labor and Veterans Affairs.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending sections 33, 34, and 35 (MCL 421.33, 421.34, and
421.35), as amended by 1983 PA 164.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) The commission shall appoint an adequate
2 number of impartial referees to hear and decide appeals from a
3 redetermination issued by the commission in accordance with sec-
4 tion 32a or to hear and decide a matter transferred in accordance
5 with section 32a. If the commission transfers a matter, or an
6 interested party requests a hearing before a referee on a rede-
7 termination, all matters pertinent to the claimant's benefit
8 rights or to the liability of the employing unit under this act
9 shall be referred to a referee. AN ISSUE DECIDED BY A REFEREE
10 AND SUBSEQUENTLY REMANDED FOR FURTHER REFEREE PROCEEDINGS SHALL

1 BE HEARD BY A REFEREE DIFFERENT FROM THE ORIGINAL REFEREE WHO
2 DECIDED THAT ISSUE. The referee shall afford all interested par-
3 ties a reasonable opportunity for a fair hearing and, unless the
4 appeal is withdrawn, the referee shall decide the rights of the
5 interested parties and shall notify the interested parties of the
6 decision within 60 days, setting forth the findings of fact upon
7 which the decision is based, together with the reasons for the
8 decision. However, with respect to an appeal from a denial of
9 redetermination, if the referee finds that there was good cause
10 for the issuance of a redetermination, the denial shall be a
11 redetermination affirming the determination and the appeal from
12 the denial shall be an appeal from that affirmance. However,
13 when the same or substantially similar evidence is material to
14 the matter in issue with respect to more than 1 interested party,
15 the same time and place for considering all the cases may be
16 fixed, hearing on the cases jointly conducted, a single record of
17 the proceedings made, and evidence introduced with respect to 1
18 proceeding considered as introduced in the others, if an inter-
19 ested party is not prejudiced thereby. If the appellant fails to
20 appear or prosecute the appeal the referee may dismiss the pro-
21 ceedings or take other action considered advisable. A referee
22 may, either upon application for rehearing by an interested party
23 or on his or her own motion, proceed to rehear, affirm, modify,
24 set aside, or reverse a prior decision on the basis of the evi-
25 dence previously submitted in the case, or on the basis of addi-
26 tional evidence. However, the application or motion shall be
27 made within 30 days after the date of mailing of the decision.

1 The referee may, for good cause, reopen and review a prior
2 decision of a referee and issue a new decision after the 30-day
3 appeal period has expired. However, a request for review shall
4 be made within 1 year after the date of mailing of the prior
5 decision. A referee shall not participate in a case in which he
6 or she has a direct or indirect interest.

7 (2) An interested party within 30 days after the mailing of
8 a copy of a decision of the referee or of a denial of a motion
9 for rehearing may file an appeal to the board of review, and
10 unless such an appeal is filed the decision or denial shall be
11 final.

12 (3) A writing prepared, owned, used, in the possession of,
13 or retained by a referee in the performance of an official func-
14 tion shall be made available to the public in compliance with
15 ~~Act No. 442 of the Public Acts of 1976, being sections 15.231 to~~
16 ~~15.246 of the Michigan Compiled Laws~~ THE FREEDOM OF INFORMATION
17 ACT, 1976 PA 442, MCL 15.231 TO 15.246.

18 Sec. 34. (1) An INTERESTED PARTY MAY appeal to the board of
19 review from the findings of fact and decision of the referee or
20 from a denial by the referee of a motion for a rehearing or
21 reopening ~~, shall be~~ AS a matter of right. ~~by an interested~~
22 ~~party. The board of review, on~~ ON the basis of evidence previ-
23 ously submitted and additional evidence as it requires, THE BOARD
24 OF REVIEW shall affirm, modify, set aside, REMAND, or reverse the
25 findings of fact and decision of the referee or a denial by the
26 referee of a motion for rehearing or reopening. AN ISSUE DECIDED
27 BY A REFEREE AND SUBSEQUENTLY REMANDED FOR FURTHER REFEREE

1 PROCEEDINGS SHALL BE HEARD BY A REFEREE DIFFERENT FROM THE
2 ORIGINAL REFEREE WHO DECIDED THAT ISSUE.

3 (2) The board shall conduct an oral hearing in a matter
4 before the board only after an application for the hearing is
5 made by an interested party and the application is approved by 2
6 or more members of the board assigned to review the appeal. If
7 an application for an oral hearing is not approved, the board
8 shall not consider a written argument unless all parties are rep-
9 resented or all parties agree that written argument should be
10 considered. If neither an oral hearing is held nor written argu-
11 ment considered, the board shall decide the case on the referee
12 record.

13 (3) The board shall notify each interested party of its
14 decision or order within 60 days after the date of the last board
15 of review hearing on a contested matter. The board ~~—, in its~~
16 ~~discretion, may omit the giving of~~ IS NOT REQUIRED TO GIVE rea-
17 sons FOR ITS DECISION in cases where IT AFFIRMS the decision of a
18 referee ~~is affirmed~~ without alteration or modification. If the
19 appellant fails to appear, the board of review may dismiss the
20 proceedings or take other action as it may deem advisable. ~~The~~
21 ~~board of review may, either~~ EITHER upon application by an inter-
22 ested party for rehearing or on its own motion, THE BOARD OF
23 REVIEW MAY proceed to rehear, affirm, modify, REMAND, set aside,
24 or reverse a prior decision on the basis of the evidence previ-
25 ously submitted in that case, or on the basis of additional evi-
26 dence if the application or motion is made within 30 days after
27 the date of mailing of the prior decision. The board of review

1 may, for good cause, reopen and review a prior decision of the
2 board of review and issue a new decision after the 30-day appeal
3 period has expired, but a review shall not be made unless the
4 request is filed with the board, or review is initiated by the
5 board with notice to the interested parties, within 1 year after
6 the date of mailing of the prior decision. ~~Unless an interested~~
7 ~~party,~~ A DECISION OF THE BOARD OF REVIEW OR A DENIAL OF A MOTION
8 FOR REHEARING IS FINAL UNLESS AN INTERESTED PARTY DOES 1 OF THE
9 FOLLOWING within 30 days after THE mailing of a copy of ~~a~~ THE
10 decision ~~of the board of review or of a~~ OR denial: ~~of a motion~~
11 ~~for a rehearing, files~~

12 (A) FILES an appeal from the decision or denial. ~~or seeks~~

13 (B) SEEKS judicial review as provided in section 38. ~~, the~~
14 ~~decision shall be final.~~

15 Sec. 35. (1) The board of review may on its own motion
16 affirm, modify, set aside, REMAND, or reverse a decision or order
17 of a referee on the basis of the evidence previously submitted in
18 the case; direct the taking of additional evidence; or permit a
19 party to the decision or order to initiate further appeals before
20 it. The board of review shall permit a further appeal by a party
21 interested in a decision or order of a referee or by the commis-
22 sion if its initial ruling has been overruled or modified by a
23 referee. The board of review may remove to itself or transfer to
24 another referee the proceedings on an appeal, rehearing, or
25 review pending before a referee. HOWEVER, AN ISSUE DECIDED BY A
26 REFEREE AND SUBSEQUENTLY REMANDED FOR FURTHER REFEREE PROCEEDINGS
27 SHALL BE HEARD BY A REFEREE DIFFERENT FROM THE ORIGINAL REFEREE

1 WHO DECIDED THAT ISSUE. The board of review shall promptly notify
2 the interested parties of its findings and decisions.

3 (2) A member of the board of review may administer oaths;
4 take depositions; and issue and enforce subpoenas requiring a
5 person to appear before it and be examined with reference to a
6 matter within the scope of the inquiry or investigation being
7 conducted by the board, and to produce books, records, and papers
8 in the same manner as provided in section 9 with respect to the
9 issuance of a subpoena by a member of the commission.

10 (3) A board of review ~~is~~ WAS created as an autonomous
11 entity within the department of ~~labor~~ CONSUMER AND INDUSTRY
12 SERVICES, effective January 1, 1978. ~~Except as provided in sub-~~
13 ~~section (4), the~~ THE board of review shall consist of 5 members
14 appointed by the governor, with the advice and consent of the
15 senate. Except for the members first appointed, the term of a
16 member appointed under this subsection is 4 years or until a suc-
17 cessor is appointed and confirmed. Two of these members shall be
18 representative of employee interests in the state; 2 members
19 shall be representative of employer interests in the state; and 1
20 member shall be a representative of the general public and shall
21 serve as chairperson. Of the members first appointed under this
22 subsection, 1 representing the employee interests and 1 repre-
23 senting the employer interests shall be appointed for 4 years.
24 Of the members first appointed under this subsection, 1 repre-
25 senting the employee interests and 1 representing the employer
26 interests shall be appointed for 2 years. The first member
27 appointed representing the general public shall be appointed for

1 3 years. A vacancy shall be filled in the same manner as the
2 original appointment, and a vacancy occurring during a term of
3 office shall be filled by appointment for the remainder of the
4 unexpired term. ~~The Michigan employment security appeal board
5 is abolished upon the creation of the board of review. A case
6 pending at the time that board is abolished shall be transferred
7 to and continued by the board of review.~~

8 ~~(4) In addition to the 5 members of the board of review as
9 provided for in subsection (3), the governor shall fill 2 tempo-
10 rary positions with the advice and consent of the senate, effec-
11 tive February 1, 1981 to April 1, 1987. One member shall be rep-
12 resentative of employee interests in the state, and 1 member
13 shall be representative of employer interests in the state. If a
14 member for any reason is not able to serve his or her 4-year
15 term, the vacancy shall be filled in the same manner as the orig-
16 inal appointment for the remainder of the unexpired term.~~

17 ~~(4) —(5)—~~ Each member appointed to the board under this sec-
18 tion, except for the member representing the general public,
19 shall have 1 of the following types of experience:

20 (a) Three years of experience in the aggregate as a Michigan
21 employment security referee or as an attorney practicing before
22 the commission, its referees, or the board.

23 (b) Three years of experience as an employer representative
24 or employee representative, or as an agent of employee or
25 employer interests responsible for commission matters.

26 (5) ~~—(6)—~~ The member representing the general public shall
27 not have been an employer representative or employee

1 representative in the 5 years immediately preceding the member's
2 appointment.

3 (6) ~~-(7)-~~ A member of the board shall not participate in a
4 case in which the member is an interested party or in which the
5 member previously participated. A member of the board shall
6 devote his or her full time to the functions of the board. Each
7 member shall personally perform the duties of the office during
8 the hours generally worked by other officers and employees of the
9 executive department of the state.

10 (7) ~~-(8)-~~ The annual salary of the members of the board and
11 the schedule for reimbursement of expenses shall be established
12 annually by the legislature. The salaries and expenses shall be
13 paid from the administration fund.

14 (8) ~~-(9)-~~ Within 6 months after the end of each fiscal year,
15 the board of review shall submit to the senate and house commit-
16 tees that have the responsibility for employment security legis-
17 lation a report covering the number of cases that were processed
18 each month during the preceding fiscal year and the backlog of
19 cases, if any, that existed at the end of each month of the pre-
20 ceding fiscal year.