

# Bill as Introduced

HB 26-FN - AS INTRODUCED

2011 SESSION

11-0004

09/01

HOUSE BILL

**26-FN**

AN ACT clarifying the definition of gross misconduct for purposes of unemployment compensation.

SPONSORS: Rep. Kappler, Rock 2; Rep. C. Vita, Straf 3; Rep. Tucker, Rock 17; Rep. Willette, Hills 6; Rep. Greemore, Belk 3; Sen. Forrester, Dist 2; Sen. Carson, Dist 14; Sen. Barnes, Jr., Dist 17

COMMITTEE: Labor, Industrial and Rehabilitative Services

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ANALYSIS

This bill clarifies the definition of gross misconduct for purposes of unemployment compensation.

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Explanation: Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT                   clarifying the definition of gross misconduct for purposes of unemployment compensation.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Unemployment Compensation; Definition of Gross Misconduct. Amend RSA 282-A:35 to read  
2 as follows:

3           282-A:35 Gross Misconduct. An unemployed individual who has been discharged for arson,  
4 sabotage, felony, assault which causes bodily injury, criminal threatening, or ~~[theft of an amount~~  
5 ~~greater than \$500, where such conduct is]~~ **dishonesty** connected with his or her work, shall suffer  
6 the loss of all wage credits earned prior to the date of such dismissal.

7           2 Effective Date. This act shall take effect 60 days after its passage.

LBAO  
11-0004  
12/13/10

**HB 26-FN - FISCAL NOTE**

AN ACT            clarifying the definition of gross misconduct for purposes of unemployment compensation.

**FISCAL IMPACT:**

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years 2011 through 2015.

# Amendments

Rep. Infantine, Hills. 13  
March 1, 2011  
2011-0567h  
04/05

Amendment to HB 26-FN

1 Amend RSA 282-A:35 as inserted by section 1 of the bill by replacing it with the following:

2

3 282-A:35 Gross Misconduct. An unemployed individual who has been discharged for arson,  
4 sabotage, felony, assault which causes bodily injury, criminal threatening, or ~~theft of~~ **a theft or**  
5 **multiple thefts in** an amount greater than \$500, where such conduct is connected with his or her  
6 work, shall suffer the loss of all wage credits earned prior to the date of such dismissal.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 26-FN

**BILL TITLE:** clarifying the definition of gross misconduct for purposes of unemployment compensation.

**DATE:** January 18, 2011

**LOB ROOM:** 307      **Time Public Hearing Called to Order:** 1:45 p.m.

**Time Adjourned:** 3:15 p.m.

(please circle if present)

**Committee Members:** Reps. Daniels, Infantino, Richardson, Pellegrino, Sedensky, Flanagan, Laware, Leonard, Seaworth, Simmons, S. Smith, K. Sullivan, Ward, Goley, Weed, Rice and White

**Bill Sponsors:** Rep. Kappler, Rock 2; Rep. C. Vita, Straf 3; Rep. Tucker, Rock 17; Rep. Willette, Hills 6; Rep. Greemore, Belk 3; Sen. Forrester, Dist 2; Sen. Carson, Dist 14; Sen. Barnes, Jr., Dist 17

TESTIMONY

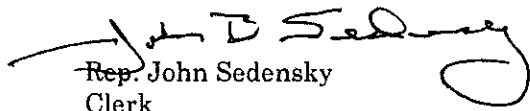
\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. L. Mike Kappler** - Prime sponsor of the bill. Testified that it should be left up to the employer to determine the fate of an employee who may commit an act of misconduct for the purpose of unemployment compensation.

\* **Maria Dalterio, NH Employment Security** - The attorney for the Department of Employment Security outlined the existing law very well. Her written testimony is attached. The Department felt there are two types of conduct, misconduct and gross conduct and they should have different results. Example: Misdemeanor vs. Felon.

\* **Daniel J. Feltes, Staff Attorney, NH Legal Assistance** - Opposes the bill.

Respectfully submitted,

  
Rep. John Sedensky  
Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 26-FN

BILL TITLE: clarifying the definition of gross misconduct for purposes of unemployment compensation.

DATE: 1/18/11

LOB ROOM: 307

Time Public Hearing Called to Order: 1:45 pm

Time Adjourned: 3:15 pm

(please circle if present)

Committee Members: Reps. Daniels, Infantino, Richardson, Pellegrino, Sedensky, Flanagan, Laware, Leonard, Seaworth, Simmons, S. Smith, K. Sullivan, Ward, Goley, Weed, Rice and White

Bill Sponsors: Rep. Kappler, Rock 2; Rep. C. Vita, Straf 3; Rep. Tucker, Rock 17; Rep. Willette, Hills 6; Rep. Greemore, Belk 3; Sen. Forrester, Dist 2; Sen. Carson, Dist 14; Sen. Barnes, Jr., Dist 17

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

REP. KAPPLER TESTIFIED THAT IT SHOULD BE LEFT UP TO THE EMPLOYER TO DETERMINE THE FATE OF AN EMPLOYEE WHO MAY COMMIT AN ACT OF MISCONDUCT FOR THE PURPOSE OF UNEMPLOYMENT COMPENSATION

THE ATTY FOR THE DEPT. OF UNEMPLOYMENT COMPENSATION OUTLINED THE EXISTING LAW. VERY WELL. HER WRITTEN TESTIMONY IS ATTACHED. THE DEPT. FELT THERE IS TWO TYPES OF MISCONDUCT

MISCONDUCT AND GROSS MISCONDUCT  
AND THEY SHOULD HAVE DIFFERENT  
RESULTS EXAMPLE MISDEMEANOR VS  
FELONY

LBAO  
11-0004  
12/13/10

HB 26-FN - FISCAL NOTE

AN ACT clarifying the definition of gross misconduct for purposes of unemployment compensation.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years 2011 through 2015.

Mike Keenan  
have up to EMPLOYER  
VERY BLACK & WHITE

MARIA DALTERIO

NHES Does not take a position on this Bill  
MIS CONDUCT. RSA 282-A:22  
GROSS MISCONDUCT - NEW JER. BMO LOOSE  
JOB THROUGH. NO FAULT OF HIS OWN.  
EMPLOYEE WHO DISCHARGED WITH NOT BE CHARGED.

NH 2A.

WARDING  
KILL 26. REBEL.

RSA 282 - A:22.

# Sub-Committee Actions

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 26-FN

**BILL TITLE:** clarifying the definition of gross misconduct for purposes of unemployment compensation.

**DATE:** March 1, 2011

**Subcommittee Members:** Reps. Infantine, Goley, and Laware

**Comments and Recommendations:** Remove the word dishonest from the sponsors bill. Add wording regarding cumulative thefts.

**Amendments:**

Sponsor: Rep. Infantine OLS Document #: 2011 0567h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Goley

Seconded by Rep. Infantine

Vote: 3-0

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Goley

Seconded by Rep. Infantine

Vote: 3-0

Respectfully submitted,

Rep. Will Infantine  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 26-FN

**BILL TITLE:** clarifying the definition of gross misconduct for purposes of unemployment compensation.

**DATE:** 3/1/11

**Subcommittee Members:** Reps. Infantine, Goley, and Laware

**Comments and Recommendations:** Remove the word dishonest from the sponsor's bill. Add wording regarding cumulative steps

**Amendments:**

Sponsor: Rep. *Will Infantine*

OLS Document #: 2011-0567 H

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Goley*

Seconded by Rep. *Infantine*

Vote: 3-0

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. *Will Infantine*  
Subcommittee Chairman/Clerk



Rep. Infantine, Hills. 13  
March 1, 2011  
2011-0567h  
04/05

Amendment to HB 26-FN

1 Amend RSA 282-A:35 as inserted by section 1 of the bill by replacing it with the following:

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3 282-A:35 Gross Misconduct. An unemployed individual who has been discharged for arson,  
4 sabotage, felony, assault which causes bodily injury, criminal threatening, or ~~[theft of]~~ *a theft or*  
5 *multiple thefts in* an amount greater than \$500, where such conduct is connected with his or her  
6 work, shall suffer the loss of all wage credits earned prior to the date of such dismissal.

# Sub-Committee Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 26-FN

**BILL TITLE:** clarifying the definition of gross misconduct for purposes of unemployment compensation.

**DATE:** February 16, 2011

**Subcommittee Members:** Reps. Infantine, Goley, and Laware

**Comments and Recommendations:** Will meet again on March 1<sup>st</sup> at 9:30 a.m.

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Will Infantine  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 26-FN

**BILL TITLE:** clarifying the definition of gross misconduct for purposes of unemployment compensation.

**DATE:** February 16, 2011

**Subcommittee Members:** Reps. Infantino, Goley, & Laware

**Comments and Recommendations:** will meet again 3/1 @ 9:30.

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.  
Subcommittee Chairman/Clerk

# Testimony

**New Hampshire State Representative  
L. Mike Kappler  
Vice Chair Resources, Recreation, & Development  
Committee  
Raymond, New Hampshire**

**January 13, 2011**

**Labor, Industrial & Rehabilitative Services Committee  
LOB Rm 307, Concord, New Hampshire**

**Dear Committee,**

**HB-26-FN simply amends RSA 282-A:35, Disqualification For Benefits, back to the identical verbiage in the statute prior to the change effective September 6, 2010.**

**As a former small businessman, and an employee of both the small business and the corporate business world, I have always lived, and required others, to live by the Lords commandment, "Thou shall not steal". The commandment does not say "in an amount not greater than". Stealing is taking from another regardless of the amount, and in my humble opinion is unacceptable.**

**With this \$500 insertion into RSA 282-A:35, it tells others that it is OK to just "take a little". I totally disagree with this philosophy. The excuse that this "minor, less than \$500, dishonesty" was meant to protect low-income, blue-collar workers that frequently change jobs, is hogwash. You are either honest or not, irregardless of your position or wealth, or whether you are working or relying on unemployment benefits.**

**In this economy every single cent counts, especially for the small business. If people are given a free pass for a small amount, they will believe they have some leeway to larger things, whether it's cash or product.**

**Thank you for your attention. As the sponsor of HB-26-FN, I ask that you vote to recommend its passage.**

**L. Mike Kappler**

**HB 26 - Gross Misconduct Bill**  
**Testimony of Maria Dalterio, NHES General Counsel**  
**January 18, 2011**

NHES is not taking a position on the bill – neither supporting or opposing.

We are here to provide information to the Committee so that you have a clear understanding of the effects of whatever decision you make on this issue.

1. Under the law as it currently stands, any employee who is discharged because of any dishonest act – big or small, theft or some other type of dishonesty -- will be denied unemployment benefits.
2. That is because a dishonest act is always found to be at least “misconduct,” and if the reason for an employee’s discharge is either “misconduct” or “gross misconduct,” the employee will be disqualified from receiving unemployment benefits.
3. In both cases -- “misconduct” or “gross misconduct” -- the individual who is denied benefits can qualify for benefits at some later date. The department calls this “removing the disqualification.”
4. In both cases, in order to remove the disqualification, the individual has to get a new job. Then if he loses that job through no fault of his own, he may be able to receive benefits. However, the individual cannot get a new job and quit that job in order to make himself eligible for unemployment benefits.
5. The main difference between the consequences of a disqualification for misconduct vs. gross misconduct is the length of time it takes to remove the disqualification.
6. If an individual is denied benefits because of misconduct, he can remove the disqualification by getting a new job and working for at least 5 weeks. Then, if he loses that new job through no fault of his own, he may be eligible for benefits.
7. If, on the other hand, an individual is denied benefits because of gross misconduct, he must get a new job, work for at least 6 months, and lose the job through no fault of his own in order to be eligible.
8. Both these time periods are minimums; it usually takes an individual a lot longer to become eligible for benefits in cases of both misconduct and gross misconduct.
9. Another difference is that an individual who is discharged for gross misconduct loses credit for all the wages he has earned prior to the discharge. This means that the amount of weekly unemployment benefits he may receive if he later removes the disqualification is likely to be much lower than if he still had credit for those wages.
10. Finally, it is important to note that a contributing employer who discharges an employee for either misconduct or gross misconduct will not have his account charged or his tax rate affected if the employee becomes eligible for benefits after working for another employer.

The question before the Committee is whether, for all types of dishonesty, an individual should be not only be denied benefits, but should be disqualified from receiving benefits for a longer period of time and should receive a lower benefit amount if he does requalify.

NHES supported looking at this issue last session when Rep. Donovan introduced the legislation to change the word “dishonesty” in RSA 282-A:35, Gross Misconduct. We did so because a review of our records indicated that the department was adhering very strictly to the meaning of the term dishonesty and, as a result, someone who ate a power bar while

**working at a convenience store and failed to pay for it was being penalized equally with someone who stole \$22,000 worth of inventory or committed assault causing severe bodily injury. This seemed unfair.**

**The idea of substituting “theft in an amount greater than \$500” for “dishonesty” came from members of the Labor Committee and others who testified before the Committee last session. We know that there has been concern on the part of some members of the business community about the new language. We understand that concern and would be happy to give the Committee additional information if you wish to consider alternatives to the new language.**



# Testimony of New Hampshire Legal Assistance on HB 26 – January 18, 2011

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New Hampshire Legal Assistance (NHLA) represents and also provides advice and guidance to unemployed workers concerning unemployment benefits. NHLA's testimony is a result of our first-hand work and experience helping people with unemployment benefits.

During our work, we found that one of the unemployment statutes, RSA 282-A:35, would prohibit workers from receiving any unemployment for upwards of a year (sometimes longer), and for very simple acts of alleged "dishonesty." This is called the "gross misconduct" statute. Workers could still be disqualified under the "misconduct" statute, RSA 282-A:32, I (b), for acts of "dishonesty," but just not receive the large penalty under the "gross misconduct" statute. The "gross misconduct" penalty sometimes prevents people from receiving unemployment for up to a year, even from future layoffs where they are actually eligible for benefits and did nothing at all wrong. Obviously, this is an extreme penalty which is justly reserved for the worst offenses against an employer, including: arson, sabotage, felony, assault which causes bodily injury, and criminal threatening. Those words are in the statute. However, there was one additional word in the statute that was overly-broad and did not fit: "dishonesty."

Importantly, there is no financial consequence to tax-paying employers if the termination is called "misconduct" or "gross misconduct." It simply does not matter. And, whether it is "misconduct" or "gross misconduct," the terminated employee does not receive unemployment from that termination.

HB 1168, which changed the "gross misconduct" law last year, was a small but important step to help protect low-wage and blue collar workers. These workers, particularly in a time of recession, take what little work is available, sometimes working two jobs, and many times working short-term assignments or construction projects. These workers, and their families, cannot afford to go without any unemployment benefits for up to a year when they are laid off through no fault of their own at some future job.

The Unemployment Advisory Council, consisting of both labor and business representatives, voted unanimously to support HB 1168. New Hampshire Employment Security supported HB 1168. The business community did not oppose HB 1168 when it was considered. On Friday, January 14, 2011, the Unemployment Advisory Council voted unanimously to recommend that the Legislature study HB 26.

NHLA opposes going back to the overly-broad and confusing word of "dishonesty." There is absolutely no evidence that the current language of RSA 282-A:35 is not working or that it should re-include the word "dishonesty."

NHLA respectfully recommends the Legislature study RSA 282-A:35 to determine what language might work instead of the word "dishonesty," and opposes putting the overly-broad and confusing word of "dishonesty" back in the statute for the following reasons:

- Whether a termination is called "misconduct" or "gross misconduct," the terminated employee does not get unemployment.
- Whether a termination is called "misconduct" or "gross misconduct," the employers account is relieved of any financial consequence for that termination.
- Putting the word "dishonesty" back in the statute will harm low-wage workers.
- Putting the word "dishonesty" back in the statute is not necessary.

Respectfully submitted,



Daniel J. Feltes

Staff Attorney

New Hampshire Legal Assistance

117 North State Street

Concord, NH 03301

603-223-9750

[dfeltes@nhla.org](mailto:dfeltes@nhla.org)

# Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 26-FN

**BILL TITLE:** clarifying the definition of gross misconduct for purposes of unemployment compensation.

**DATE:** March 1, 2011

**LOB ROOM:** 307

**Amendments:**

Sponsor: Rep. Infantine OLS Document #: 2011 0567h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTPA, ITL, Interim Study (Please circle one.)

Moved by Rep. Infantine

Seconded by Rep. Sullivan

Vote: 15-0 (Please attach record of roll call vote.)

**Motions:** ~~OTR~~ OTPA, ITL, Interim Study (Please circle one.)

Moved by Rep. Infantine

Seconded by Rep. Sullivan

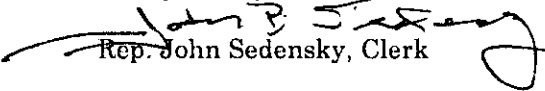
Vote: 15-0 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE: 15-0**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

  
Rep. John Sedensky, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 26-FN

**BILL TITLE:** clarifying the definition of gross misconduct for purposes of unemployment compensation.

**DATE:**

**LOB ROOM:** 307

**Amendments:**

Sponsor: Rep. *V. Fontaine*

OLS Document #: *2011-0567h*

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *V. Fontaine*

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *V. Fontaine*

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: *15-0*

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

*John B Sedensky*  
Rep. John Sedensky, Clerk

**LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES**

Bill #: \_\_\_\_\_ Title: \_\_\_\_\_

PH Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Exec Session Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Motion: \_\_\_\_\_

Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Daniels, Gary L, Chairman	✓	
Infantine, William J, V Chairman	✓	
Richardson, Herbert D	✓	
Pellegrino, Tony J		
Sedensky, John B, Clerk	✓	
Flanagan, Jack B		
Laware, Thomas W	✓	
Seaworth, G. Brian	✓	
Simmons, Tammy A	✓	
Smith, Steven D	✓	
Sullivan, Kevin P	✓	
Ward, Joanne A	✓	
Peckham, Michele S	✓	
Goley, Jeffrey P	✓	
Weed, Charles F	✓	
Rice, Chip L <i>Keans</i>	✓	
White, Andrew A	✓	
TOTAL VOTE:	15	0

# Committee Report

**CONSENT CALENDAR**

**March 3, 2011**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on LABOR, INDUSTRIAL AND  
REHABILITATIVE SERVICES to which was referred  
HB26-FN,**

**AN ACT clarifying the definition of gross misconduct  
for purposes of unemployment compensation. Having  
considered the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.**

**Rep. William J Infantine**

**FOR THE COMMITTEE**



## COMMITTEE REPORT

Committee:	<b>LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES</b>
Bill Number:	<b>HB26-FN</b>
Title:	<b>clarifying the definition of gross misconduct for purposes of unemployment compensation.</b>
Date:	<b>March 3, 2011</b>
Consent Calendar:	<b>YES</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT</b>

### STATEMENT OF INTENT

The original bill would make any dishonest act of an employee that was fired for that act be classified as "gross misconduct" under the law. Gross misconduct results in the employee's inability to receive unemployment compensation and losing all their earned unemployment credits. Misconduct has a lesser penalty in that the employee would still be ineligible to receive employment compensation but they would not lose their earned unemployment credits. A subcommittee determined that the word dishonest was too vague and open to severe penalties for an infraction worth \$0.01 and utilized by unscrupulous employers as a means to keep their unemployment tax law. The subcommittee felt it was better to amend the current threshold of a theft of greater than \$500.00 to include accumulation of multiple thefts in an amount greater than \$500.00. Employees who have committed misconduct or gross misconduct will not be able to obtain benefits from their previous employers if the employer is an unemployment tax paying employer. Contributing employers could be responsible for paying unemployment benefits however they have access to an appeals process at the department of employment security to request non payment of benefits.

Vote 15-0.

Rep. William J Infantine  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

**HB26-FN**, clarifying the definition of gross misconduct for purposes of unemployment compensation.  
**OUGHT TO PASS WITH AMENDMENT.**

Rep. William J Infantine for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. The original bill would make any dishonest act of an employee that was fired for that act be classified as "gross misconduct" under the law. Gross misconduct results in the employee's inability to receive unemployment compensation and losing all their earned unemployment credits. Misconduct has a lesser penalty in that the employee would still be ineligible to receive employment compensation but they would not lose their earned unemployment credits. A subcommittee determined that the word dishonest was too vague and open to severe penalties for an infraction worth \$0.01 and utilized by unscrupulous employers as a means to keep their unemployment tax law. The subcommittee felt it was better to amend the current threshold of a theft of greater than \$500.00 to include accumulation of multiple thefts in an amount greater than \$500.00. Employees who have committed misconduct or gross misconduct will not be able to obtain benefits from their previous employers if the employer is an unemployment tax paying employer. Contributing employers could be responsible for paying unemployment benefits however they have access to an appeals process at the department of employment security to request non payment of benefits. **Vote 15-0.**

Original: House Clerk

Cc: Committee Bill File

HB 26-FN

OTP/A

The original bill would make any dishonest act of an employee that was fired for that act be classified as "gross misconduct" under the law. Gross misconduct results in the employee's inability to receive unemployment compensation and losing all their earned unemployment credits. Misconduct has a lesser penalty in that the employee would still be ineligible to receive employment compensation but they would not lose their earned unemployment credits. A subcommittee determined that the word dishonest was too vague and open to severe penalties for an infraction worth \$0.01 and utilized by unscrupulous employers as a means to keep their unemployment tax law. The subcommittee felt it was better to amend the current threshold of a theft of greater than \$500.00 to include accumulation of multiple thefts in an amount greater than \$500.00. Employees who have committed misconduct or gross misconduct will not be able to obtain benefits from their previous employers if the employer is an unemployment tax paying employer. Contributing employers could be responsible for paying unemployment benefits however they have access to an appeals process at the department of employment security to request non payment of benefits.

William Infantine

# COMMITTEE REPORT

COMMITTEE:   Labor    
BILL NUMBER: ~~HB 236~~ HB 26-FN  
TITLE:   Clarifying the definition of gross misconduct for purposes of unemployment compensation    
DATE:   3/1/11   CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- RE-REFER
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.
---------------

## STATEMENT OF INTENT:

The original bill would make any dishonest act of an employee that was paid for that ~~act~~ act be classified as "gross misconduct" under the law. Gross misconduct results in the employees inability to receive unemployment compensation and losing all their earned unemployment credits. Misconduct has a lesser penalty in that the employee would still be ineligible to receive employment compensation but they would not lose their earned unemployment credits.

A subcommittee determined that the word dishonest was too vague and open to serve.

COMMITTEE VOTE:   15-0  

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep.   [Signature]  

For the Committee

OK

penalties for an infraction worth \$0.01 and utilized by unscrupulous employees as a means to keep their unemployment tax low.

The subcommittee felt it was better to ~~amend~~ <sup>amend</sup> the current ~~threshold~~ threshold of ~~\$100~~ a theft of greater than \$50.00 to include a cumulation of multiple thefts in an amount greater than \$500.00

Employees who have committed ~~misconduct~~ <sup>committed</sup> misconduct or gross misconduct will not be able to claim benefits from their previous employers if the employer is a <sup>tax</sup> paying employer. Contributory employees could  
unemployment

be responsible for paying unemployment ~~benefits~~ benefits however they have access to an appeals process at the department of employment securities to request non payment of benefits.