

# 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 struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 26-FN – AS INTRODUCED

11-0004  
09/01

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.

**HB 26 - AS INTRODUCED**

**- Page 2 -**

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.

HB 26-FN - AS AMENDED BY THE HOUSE

17Mar2011... 0917h

2011 SESSION

11-0004  
09/01

HOUSE BILL

**26-FN**

AN ACT

relative to 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

AMENDED ANALYSIS

This bill clarifies the definition of gross misconduct for purposes of unemployment compensation and reduces the amount of a work-related theft resulting in the loss of wage credits.

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.

HB 26-FN – AS AMENDED BY THE HOUSE

17Mar2011... 0917h

11-0004  
09/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT            relative to 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]~~ **a theft or**  
5 **multiple thefts in** an amount greater than ~~[\$500]~~ **\$250**, where such conduct is connected with his  
6 or her work, shall suffer 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.

**HB 26 - AS AMENDED BY THE HOUSE**  
**- Page 2 -**

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.

CHAPTER 254  
HB 26-FN - FINAL VERSION

17Mar2011... 0917h  
05/04/11 1581s  
22June2011... 2380CofC  
22June2011... 2531EBA

2011 SESSION

11-0004  
09/01

HOUSE BILL            **26-FN**

AN ACT                relative to the definition of gross misconduct for purposes of unemployment compensation and relative to disqualification for unemployment benefits.

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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AMENDED ANALYSIS

This bill clarifies the definition of gross misconduct for purposes of unemployment compensation, reduces the amount of a work-related theft resulting in the loss of wage credits, and disqualifies an unemployed individual who is discharged for single or multiple thefts in an amount greater than \$100 but less than \$250 from receiving unemployment benefits for 4 to 26 weeks.

.....

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



CHAPTER 254  
HB 26-FN - FINAL VERSION

17Mar2011... 0917h  
05/04/11 1581s  
22June2011... 2380CofC  
22June2011... 2531EBA

11-0004  
09/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT relative to the definition of gross misconduct for purposes of unemployment compensation and relative to disqualification for unemployment benefits.

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

1 254:1 Unemployment Compensation; Definition of Gross Misconduct. Amend RSA 282-A:35 to  
2 read 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~~ **a single theft**  
5 **or multiple thefts in the aggregate of an amount equal to or greater than [\$500] \$250**, where  
6 such conduct is connected with his or her work, shall suffer the loss of all wage credits earned prior  
7 to the date of such dismissal.

8 254:2 Unemployment Compensation; Disqualification for Benefits. Amend RSA 282-A:34 to  
9 read as follows:

10 282-A:34 Intoxication; Drugs; *Theft*.

11 *I.* An unemployed individual who has been discharged for intoxication or use of controlled  
12 drugs as defined in RSA 318-B:1, VI, of such degree and rate of occurrence as to seriously hamper or  
13 interfere with the individual's work, shall be disqualified for benefits. Such disqualification shall  
14 continue until a period of not less than 4 weeks nor more than 26 weeks from the date of discharge,  
15 as may be determined by the commissioner, has passed and until such individual has earned wages  
16 as provided in RSA 282-A:32, I.

17 *II.* *An unemployed individual who has been discharged for a single theft or*  
18 *multiple thefts in the aggregate of an amount greater than \$100 but less than \$250, where*  
19 *such conduct is connected with his or her work, shall be disqualified for benefits. Such*  
20 *disqualification shall continue until a period of not less than 4 weeks nor more than 26*  
21 *weeks from the date of discharge, as may be determined by the commissioner, has passed*  
22 *and until such individual has earned wages as provided in RSA 282-A:32, I.*

23 254:3 Effective Date. This act shall take effect 60 days after its passage

24 Approved: July 13, 2011

25 Effective Date: September 11, 2011.

# Amendments

Commerce  
April 26, 2011  
2011-1581s  
09/04

Amendment to HB 26-FN

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

282-A:35 Gross Misconduct. An unemployed individual who has been discharged for arson, sabotage, felony, assault which causes bodily injury, criminal threatening, or ~~theft of~~ ***a single theft or multiple thefts in the aggregate of*** an amount greater than ~~[\$500]~~ ***\$100***, where such conduct is connected with his or her work, shall suffer the loss of all wage credits earned prior to the date of such dismissal.

# Committee Minutes

**SENATE CALENDAR NOTICE  
COMMERCE**

Senator Russell Prescott Chairman  
 Senator Raymond White V Chairman  
 Senator Tom De Blois  
 Senator Matthew Houde  
 Senator Andy Sanborn

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: March 24, 2011**

**HEARINGS**

**Tuesday**

**3/29/2011**

**COMMERCE**

**LOB 102**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM	HB333-FN	repealing certain provisions relating to the sale of oleomargarine.
9:10 AM	HB142-FN	relative to sales of artificial flowers and miniature flags.
9:20 AM	HB419-FN	relative to language in insurance certificates.
9:40 AM	HB262-FN	relative to beverage manufacturers.
10:00 AM	HB26-FN	(New Title) relative to the definition of gross misconduct for purposes of unemployment compensation.

**Sponsors:**

**HB333-FN**

Rep. Carol McGuire

Rep. Timothy Horrigan

Rep. Warren Groen

**HB142-FN**

Rep. Carol McGuire

Rep. Lynne Ober

**HB419-FN**

Rep. William Infantine

**HB262-FN**

Rep. Calvin Pratt

Rep. Mark Warden

**HB26-FN**

Rep. Lawrence Kappler

Rep. Carol Vita

Rep. Pamela Tucker

Rep. Robert Willette

Rep. Robert Greemore

Sen. Jeanie Forrester

Sen. Sharon Carson

Sen. John Barnes, Jr.

Patrick Murphy 271-3067

Sen. Russell Prescott

Chairman

# Commerce Committee Hearing Report

**To:** Member of the Senate

**From:** Patrick Murphy, *Legislative Aide*

**Re:** Hearing Report on HOUSE BILL 26-FN relative to the definition of gross misconduct for purposes of unemployment compensation.

**Hearing Date:** March 29, 2011

**Members of the Committee Present:**

Senator Prescott, Senator White, Senator De Blois, Senator Sanborn, Senator Houde

**Members of the Committee Absent:**

None

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**Sponsor(s):**

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

**What the bill does:**

This bill clarifies the definition of gross misconduct for purposes of unemployment compensation and reduces the amount of a work-related theft resulting in the loss of wage credits.

**Supporters of the bill:**

Rep. Infantine, Hills 13; Rep. Daniels, Hills 6; Sen. Forrester, Dist 2; Dan Feltes (NH Legal Assistance)

**Those in opposition to the bill:**

Rep. Giuda, Merr 7; Rep. Greemore, Belk 3; Claire Ebel (NH Civil Liberties Union)

**Speaking to the bill/Neutral:**

Maria Dalterio (NH Department of Employment Security)

## **Summary of testimony received:**

### **Rep. Daniels, Hills 6**

- Introduced the bill. Chair of House Labor Committee. This bill looks specifically at the definition of gross misconduct. With gross misconduct you lose all unemployment compensation. The House added the language about multiple thefts. If you are fired due to theft then you would not be able to collect unemployment.
- There was concern that \$500 was too high a threshold. As a compromise to the House business coalition we reduced it to \$250, the business coalition wanted no specific level just theft in general. Opposed because what if someone steals a paperclip? The definition of gross misconduct starts on line 3.

### **Rep. Infantine, Hills 13**

- Chair of subcommittee that dealt with this, the biggest issue was with the matter of accumulation. Some people wanted to raise the dollar amount; he had no issue with lowering it to \$250 in the subcommittee phase.
- This has to do with the difference between misconduct and gross misconduct. We do not want to give the impression that we are condoning theft at any level. We are just trying to have the crime match the penalty.

### **Rep. Giuda, Merr 7**

- This was a 2010 definition that is being amended. NH had the same statute for over 40 years. The change to \$500 was big to the business community in the 2010 change.
- The \$500 amount was almost an insult to the business community. The bill as originally introduced intended to bring this statute back to the language that was used for 40 years. The bill as passed by the House is an anti business amendment and the business community wants the original bill.
- The stealing issue isn't about how much is stolen it is the trust that is lost. Most businesses don't prosecute because it is expensive to do so.
- Please take away the amendment and pass the bill as it was introduced. The act of stealing is what matters.

### **Rep. Greemore, Belk 3**

- Supports the bill as it was introduced. It's difficult to catch employees who steal. The business person needs to be able to trust their employees. There should be some penalty so that the employee needs to pay back what they stole.

### **Dan Feltes, NH Legal Assistance**

- We have found that the "gross misconduct" statute, RSA 282-A: 35, prohibited workers from receiving any unemployment for up to a year or longer for very minor acts of alleged "dishonesty." The gross misconduct statute takes away benefits not only for the job from which the worker was terminated for the alleged "dishonesty," but also for future layoffs based on no fault of the worker whatsoever. This is an extreme penalty, and it is reserved for extreme offenses against employers, including arson, sabotage, felony, assault which causes bodily injury, and criminal threatening, all of which are listed in the statute.
- It makes no financial difference to tax-paying employers if the termination is called "misconduct" or "gross misconduct." Either way, the worker does not get benefits. Either way, the employer does not get charges.

- NHLA opposes efforts to put the overly broad word “dishonesty” back in the statute because:
  - Whether a termination is called “misconduct” or “gross misconduct,” the terminated employee does not get unemployment benefits.
  - Whether a termination is called “misconduct” or “gross misconduct,” the employer’s account is relieved of any financial consequences for that termination.
  - Putting the overly broad and vague word “dishonesty” back in the statute will harm low-wage workers in an economic climate in which they are especially vulnerable.
  - Putting the vague word “dishonesty” back in the statute is not necessary.

**Senator Sanborn declared that he is on the Board of Advisors to the Department of Employment Security and will participate in the process on HB 26-FN.**

Maria Deltirio, NH Employment Security

- Under current law, 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. 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. In 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.”
- In both cases, in order to remove the disqualification, the individual has to get a new job. If he then loses that job through no fault of his own, he may be able to receive benefits. It is important to not that the individual cannot get a new job and quit that job in order to make himself eligible for unemployment benefits; the job separation must not be the fault of the employee.
- 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. 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.
- A contributing employer who discharges an employee for either misconduct or gross misconduct will not have his account charges or his tax rate affected if the employee becomes eligible for benefits after working for another employer and removing the disqualification.
- On September 6, 2010 the statutory definition of gross misconduct was changed by substituting the phrase “theft in an amount greater than \$500” for the word “dishonesty.”
- The change in September of 2010 affected only a small number of claims for unemployment benefits. In the 8 months prior to the change, less than 1% (.76%) of all claims were denied for gross misconduct. In the 7 months since the change, the percentage of claims denied for gross misconduct is not much lower (.63% vs. .76%).



Claire Ebel, NH Civil Liberties Union

- The original bill was a civil liberties catastrophe. More than 40% of the House members who supported this were Republicans. Concerned about the unintended consequences that will impact the elderly. Talked about an employee who drinks coffee at work and forgets to put the 50 cents in the can for the coffee. Without a dollar amount that person could be fired.
- Sometimes it is a great benefit to the employer to fire a long time employee because they cost more to employ.
- Suggested an amendment to line 5 that would add “during a calendar year.”

**Funding:**

**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.

**Action:**

Pending

# Speakers



# Testimony

# Testimony of New Hampshire Legal Assistance on HB 26 – March 29, 2011

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New Hampshire Legal Assistance (NHLA) represents and advises unemployed workers about unemployment benefits. NHLA's testimony is based on our firsthand work and experience helping workers with unemployment benefits cases.

Through our work with many clients, we found that the "gross misconduct" unemployment statute, RSA 282-A:35, prohibited workers from receiving any unemployment for up to a year or longer for very minor acts of alleged "dishonesty." The gross misconduct statute takes away benefits not only for the job from which the worker was terminated for the alleged "dishonesty," but also for future layoffs based on no fault of the worker whatsoever. This is an extreme penalty, and it is reserved for extreme offenses against employers, including arson, sabotage, felony, assault which causes bodily injury, and criminal threatening, all of which are listed in the statute.

One of the offenses outlined in the gross misconduct statute was vague, overly broad, and simply didn't fit: "dishonesty." Minor acts of dishonesty seemed to fit better under the ordinary "misconduct" statute, RSA 282-A:32, I (b), for acts of "dishonesty," under which workers would still be prohibited from receiving benefits based on the "dishonesty"-related termination, but wouldn't be subjected to the additional penalty under the "gross misconduct" statute.

It makes no financial difference to tax-paying employers if the termination is called "misconduct" or "gross misconduct." Either way, the worker does not get benefits. Either way, the employer does not get charged.

Last year, HB 1168 changed the "gross misconduct" law. It 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. Although HB 1168 did not allow workers terminated for "dishonesty" to receive benefits immediately, it did allow them to be eligible for benefits in the future if they were laid off through no fault of their own.

The word "theft" became the focus of HB 1168 because it represented most of the cases that fall under the word "dishonesty." The number \$500 was selected because at the time, \$500 was the monetary theft required for a felony under RSA 637:11, III (it's now \$1,000).

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.

NHLA opposes going back to the overly broad and vague word "dishonesty." There is absolutely no evidence that the word "dishonesty" is necessary. The current language of HB 26, changing RSA 282-A:35 to read "[~~theft of~~] **a theft or multiple thefts in** an amount greater than [~~\$500~~] **\$250**" is a much more workable alternative than a return to "dishonesty."

For the following reasons, NHLA respectfully recommends the Senate Commerce Committee support HB 26. NHLA opposes efforts to put the overly-broad word "dishonesty" back in the statute because:

- Whether a termination is called "misconduct" or "gross misconduct," the terminated employee does not get unemployment benefits.
- Whether a termination is called "misconduct" or "gross misconduct," the employer's account is relieved of any financial consequence for that termination.
- Putting the overly broad and vague word "dishonesty" back in the statute will harm low-wage workers in an economic climate in which they are especially vulnerable.
- Putting the vague 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)

## Will Infantine

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**From:** Dalterio, Maria [Maria.Dalterio@nhes.nh.gov]  
**Sent:** Friday, March 25, 2011 3:53 PM  
**To:** Will Infantine  
**Cc:** Reardon, Tara; Bailinson, Marie-Helene  
**Subject:** Information relevant to gross misconduct bill  
**Attachments:** Gross Misconduct numbers 3-22-11.doc; Appeals info for Rep Infantine.doc

Hi Will - Attached are some numbers recently produced by the department which should address some of the issues raised by the gross misconduct bill. Below are some examples of things that have been found to be gross misconduct by NHES under the "dishonesty" standard, but which would be misconduct, but not gross misconduct, under the "a theft or multiple thefts totaling an amount greater than \$250" language.

1. Worker at CVS ate several candy bars and a power drink without paying for them. Total value \$8.30.
  2. Worker took scraps of culled wood from worksite without owner's permission or knowledge. It is not clear they had any value except for use as kindling.
  3. Employee ate a power bar while on the job and failed to pay for it.
  4. Employee worked in the laundry of a healthcare services company. She was seen taking cookies from the storeroom.
  5. A Macy's employee used "Macy Money" that was given to her by a co-worker (it belonged to the co-worker). This was unbeknownst to the claimant, against company policy.
- Some of these have been mentioned previously.

Please let me know what else you may need, or if you need to discuss the attached charts.

Best Regards,  
Maria

Maria Dalterio, General Counsel  
New Hampshire Employment Security  
32 South Main St.  
Concord, NH 03301-4857  
Tel (603) 228-4070  
Fax (603) 228-4080  
[Maria.Dalterio@nhes.nh.gov](mailto:Maria.Dalterio@nhes.nh.gov)

<b>Query Description</b>	<b>Jan to Dec 2010</b>
Total number of appeals filed	8673
Total number of appeals filed by employer	1200
Total number of appeals filed by employer - Affirmed	557
Total number of appeals filed by employer - Reversed	370
Total number of appeals filed by claimant	7479
Total number of appeals filed by claimant - Affirmed	3937
Total number of appeals filed by claimant - Reversed	1905

<b>Query Description</b>	<b>Jan to Dec 2010</b>
Total number of appeals filed	8673
Above appeals filed by employer	13.8%
Above appeals filed by employer - Affirmed	46.4%
Above appeals filed by employer - Reversed	30.8%
Above appeals filed by claimant	86.2%
Above appeals filed by claimant - Affirmed	52.6%
Above appeals filed by claimant - Reversed	25.8%

NOTE: Appeals not affirmed or denied were those that were withdrawn. There may be a very few that are yet to be held due to postponements requested by one or both of the involved parties.



<b>Query Description - Numbers</b>	<b>Jan to Aug 2010</b>	<b>Sep to Dec 2010</b>	<b>Jan 2011 to Mar 21</b>
All claimants denied based on gross misconduct	539	221	90
Number of above denials that were appealed	196	68	24
Number of above denials that were affirmed on appeal	98	26	4
Number of identified denials that were reversed on appeal	76	25	3
Total number of initial claims filed during same period	70845	28990	19596

<b>Query Description - Percentages</b>	<b>Jan to Aug 2010</b>	<b>Sep to Dec 2010</b>	<b>Jan 2011 to Mar 21</b>
All claimants denied based on gross misconduct compared to total initial claims filed	0.76%	0.76%	0.46%
Above denials that were appealed	36.36%	30.77%	26.67%
Above denials that were affirmed on appeal	50.0%	38.24%	16.67%
Above denials that were reversed on appeal	38.78%	36.76%	12.5%
Total number of initial claims filed during same period	70845	28990	19596

NOTE: Appeals not affirmed or denied were those that were withdrawn (Jan to Dec 2010) or not yet held (Jan 2011 to date).

**HB 26, as amended - Gross Misconduct  
Testimony of Maria Dalterio, NHES General Counsel  
March 29, 2011**

Good morning Mr. Chairman, members of the committee. My name is Maria Dalterio. I am general counsel for the New Hampshire Department of Employment Security.

The department is not taking a position HB 26.

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.

I'd like to start with some background information:

1. Under current law, 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. If he then loses that job through no fault of his own, he may be able to receive benefits. It is important to note that the individual cannot get a new job and quit that job in order to make himself eligible for unemployment benefits; the job separation must not be the fault of the employee.
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. It is important to note that a contributing (tax-paying) 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 and removing the disqualification. Contributing employers make up approximately 98% of all New Hampshire employers. (The remaining 2% of employers, made up of government entities and nonprofit organizations who choose to reimburse NHES for any benefits actually paid out, rather than paying a regular contribution, may have to reimburse the department for some of the benefits paid out after the disqualification is removed. The amount they would have to pay grows smaller as more time passes since the time the claimant was employed by the reimbursing employer.)

Attached to this written testimony, I have also provided the definition of "misconduct" as that has been interpreted by the New Hampshire Supreme Court.

On September 6, 2010 the statutory definition of gross misconduct was changed by substituting the phrase "theft in an amount greater than \$500" for the word "dishonesty." My understanding of the legislative intent behind this change was to bring that part of the definition of gross misconduct more in line with the rest of it, that is, "arson, sabotage, felony, assault which causes bodily injury, [and] criminal threatening." The legislature also was concerned that the term dishonesty was overly broad with the result that lesser acts of dishonesty such as eating a power bar and failing to pay for it were treated the same as theft of inventory worth over \$22,000 or assault causing severe bodily injury. The change now proposed by HB 26-FN, as amended, would continue to address this concern.

Finally, it may be helpful for you to know that the change that went into effect last September affected only a small number of claims for unemployment benefits. In the 8 months prior to the change, less than 1% (.76%, to be exact) of all claims were denied for gross misconduct. In the almost 7 months since the change, the percentage of claims denied for gross misconduct is not much lower -- .63% vs .76%.

I would be happy to answer any questions.

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: April 26, 2011

THE COMMITTEE ON Commerce

to which was referred House Bill 26-FN

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

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF:    4-1

AMENDMENT # 1581s

Senator Tom De Blois  
For the Committee

Patrick Murphy 271-3067

## New Hampshire General Court - Bill Status System

**Docket of HB26**

Docket Abbreviations

**Bill Title:** (2nd New Title) relative to the definition of gross misconduct for purposes of unemployment compensation and relative to disqualification for unemployment benefits.

*Official Docket of HB26:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
12/22/2010	H	Introduced 1/5/2011 and Referred to Labor, Industrial and Rehabilitative Services; <b>HJ 8</b> , PG.128
1/10/2011	H	===CANCELLED=== Public Hearing: 1/13/2011 2:00 PM LOB 307
1/13/2011	H	Public Hearing: 1/18/2011 1:45 PM LOB 307
2/2/2011	H	Subcommittee Work Session: 2/16/2011 9:00 AM LOB 303
2/16/2011	H	Subcommittee Work Session: 3/1/2011 9:30 AM LOB 303
2/23/2011	H	Executive Session: 3/1/2011 1:00 PM LOB 307
3/3/2011	H	Committee Report: Ought to Pass with Amendment #0567h for Mar 15 (Vote 15-0; CC); <b>HC 22</b> , PG.535-536
3/3/2011	H	Proposed Committee Amendment # <b>2011-0567h</b> ; <b>HC 23</b> , PG.581
3/15/2011	H	Removed from Consent Calendar (Rep Giuda); <b>HJ 26</b> , PG.694
3/17/2011	H	Amendment #0567h Failed, <b>RC 122-152</b> ; <b>HJ 30</b> , PG.1026-1028
3/17/2011	H	Floor Amendment # <b>2011-0917h</b> (New Title) (Rep Infantine) Adopted, <b>RC 134-133</b> ; <b>HJ 30</b> , PG.1028-1030
3/17/2011	H	Call on Speaker to Vote (Rep Soltani): MF DIV 56-209; <b>HJ 30</b> , PG.1030
3/17/2011	H	Ought to Pass with Amendment #0917h(NT): MA <b>RC 216-51</b> ; <b>HJ 30</b> , PG.1026-1032
3/23/2011	S	Introduced and Referred to Commerce; <b>SJ 11</b> , Pg.190
3/24/2011	S	Hearing: 3/29/11, Room 102, LOB, 10:00 a.m.; <b>SC17</b>
4/27/2011	S	Committee Report: Ought to Pass with Amendment # <b>2011-1581s</b> , 5/4/11; <b>SC22</b>
5/4/2011	S	Committee Amendment 1581s, AA, VV; <b>SJ 15</b> , Pg.294
5/4/2011	S	Sen. Houde Floor Amendment #2011-1713s, AF, VV; <b>SJ 15</b> , Pg.294
5/4/2011	S	Ought to Pass with Amendment 1581s, MA, VV; OT3rdg; <b>SJ 15</b> , Pg.294
5/4/2011	S	Passed by Third Reading Resolution; <b>SJ 15</b> , Pg.311
5/18/2011	H	House Non-Concurs with Senate AM #1581s and Requests C of C (Rep Daniels): MA VV; <b>HJ 44</b> , PG.1531
5/18/2011	H	Speaker Appoints: Reps Daniels, Infantine, Laware, and Goley; <b>HJ 44</b> , PG.1531
5/25/2011	S	Sen. Prescott Accedes to House Request for Committee of Conference, MA, VV
5/25/2011	S	President Appoints: Senators White, Sanborn and Houde
6/6/2011	H	Conference Committee Meeting: 6/8/2011 9:00 AM LOB 307
6/13/2011	H	Conference Committee Meeting: 6/14/2011 9:00 AM LOB 307
6/14/2011	S	Conferee Change; Senator Carson Replaces Senator Sanborn
6/15/2011	S	Conferee Change; Senator Barnes Replaces Senator White

6/16/2011	S	Conference Committee Report #2011-2380c; Senate Amendment + New Amendment, Filed
6/22/2011	S	Conference Committee Report 2380c; Adopted, VV
6/22/2011	H	Conference Committee Report #2380c Adopted, VV
6/22/2011	S	Enrolled Bill Amendment #2531e Adopted
6/22/2011	H	Enrolled Bill Amendment #2011-2531e(NT) Adopted
6/22/2011	S	Enrolled
6/22/2011	H	Enrolled
7/18/2011	H	Signed By Governor 07/13/2011; Effective 09/11/2011; Chapter 0254

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NH House

NH Senate

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# Other Referrals



June 13, 2011  
2011-2380-CofC  
09/04

Committee of Conference Report on HB 26-FN, an act relative to the definition of gross misconduct for purposes of unemployment compensation.

Recommendation:

That the House recede from its position of nonconcurrency with the Senate amendment, and concur with the Senate amendment, and

That the Senate and House adopt the following new amendment to the bill as amended by the Senate, and pass the bill as so amended:

Amend the bill by replacing all after the enacting clause with the following:

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

282-A:35 Gross Misconduct. An unemployed individual who has been discharged for arson, sabotage, felony, assault which causes bodily injury, criminal threatening, or ~~theft of~~ **a single theft or multiple thefts in the aggregate of** an amount **equal to or** greater than ~~[\$500]~~ **\$250**, where such conduct is connected with his or her work, shall suffer the loss of all wage credits earned prior to the date of such dismissal.

2 Unemployment Compensation; Disqualification for Benefits. Amend RSA 282-A:34 to read as follows:

282-A:34 Intoxication; Drugs; **Theft**.

*I.* An unemployed individual who has been discharged for intoxication or use of controlled drugs as defined in RSA 318-B:1, VI, of such degree and rate of occurrence as to seriously hamper or interfere with the individual's work, shall be disqualified for benefits. Such disqualification shall continue until a period of not less than 4 weeks nor more than 26 weeks from the date of discharge, as may be determined by the commissioner, has passed and until such individual has earned wages as provided in RSA 282-A:32, I.

*II.* **An unemployed individual who has been discharged for a single theft or multiple thefts in the aggregate of an amount greater than \$100 but less than \$250, where such conduct is connected with his or her work, shall be disqualified for benefits. Such disqualification shall continue until a period of not less than 4 weeks nor more than 26 weeks from the date of discharge, as may be determined by the commissioner, has passed and until such individual has earned wages as provided in RSA 282-A:32, I.**

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

The signatures below attest to the authenticity of this Report on HB 26-FN, an

act relative to the definition of gross misconduct for purposes of unemployment compensation.

Conferees on the Part of the Senate

Conferees on the Part of the House

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Sen. Barnes, Jr., Dist. 17

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Rep. Daniels, Hills. 6

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Sen. Carson, Dist. 14

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Rep. Infantine, Hills. 13

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Sen. Houde, Dist. 5

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Rep. Laware, Sull. 5

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Rep. Goley, Hills. 8

2011-2380-CofC

## AMENDED ANALYSIS

This bill clarifies the definition of gross misconduct for purposes of unemployment compensation, reduces the amount of a work-related theft resulting in the loss of wage credits, and disqualifies an unemployed individual who is discharged for single or multiple thefts in an amount greater than \$100 but less than \$250 from receiving unemployment benefits for 4 to 26 weeks.

June 28, 2011  
2011-2531-EBA  
03/10

Enrolled Bill Amendment to HB 26-FN

The Committee on Enrolled Bills to which was referred HB 26-FN

AN ACT                      relative to 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 as amended ought to pass.

FOR THE COMMITTEE

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Explanation to Enrolled Bill Amendment to HB 26-FN

This enrolled bill amendment amends the title of the bill to reflect the contents of the bill.

Enrolled Bill Amendment to HB 26-FN

Amend the title of the bill by replacing it with the following:

AN ACT                      relative to the definition of gross misconduct for purposes of unemployment compensation and relative to disqualification for unemployment benefits.

# COMMITTEE REPORT FILE INVENTORY

HB 26-FN ORIGINAL REFERRAL

\_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

**ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:**

- AMENDMENT # 1581s      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_\_ - AMENDMENT # \_\_\_\_\_      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

**ALL AVAILABLE VERSIONS OF THE BILL:**

AS INTRODUCED       AS AMENDED BY THE HOUSE  
 FINAL VERSION      \_\_\_\_\_ AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): *Committee of Conference report 2380 Conf. Enrolled Bill Amendment 2531 EBA*

DATE DELIVERED TO SENATE CLERK

8-5-11

By:

Patrick Murphy  
COMMITTEE AIDE