

# SOCIAL SECURITY

## CHAPTER 448

### HOUSE BILL NO. 1251

(Representative Keiser)

## PARTNERSHIP AND LLC UNEMPLOYMENT COMPENSATION

AN ACT to create and enact a new subdivision to subsection 18 of section 52-01-01 of the North Dakota Century Code, relating to unemployment compensation treatment of partnerships and limited liability companies; and to amend and reenact subsection 14 and paragraph 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code, relating to unemployment compensation coverage of managers of limited liability companies.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>198</sup> **SECTION 1. AMENDMENT.** Subsection 14 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

14. "Employee" means every individual, whether ~~male, female,~~ citizen, alien, or minor, who performs services for an employer in an employment subject to the North Dakota Unemployment Compensation Law and includes an officer of a corporation and a manager of a limited liability company that is treated as a corporation for purposes of federal income taxation or a manager of a limited liability company who is not a member.

<sup>199</sup> **SECTION 2. AMENDMENT.** Paragraph 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- (2) ~~Any manager~~ Certain managers of a limited liability ~~company~~ companies. If a limited liability company manager is employed by ~~the~~ a limited liability company in which one-fourth or more of the ownership interest, however

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<sup>198</sup> Section 52-01-01 was also amended by section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

<sup>199</sup> Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

designated, is owned or controlled by the manager or by the manager's parent, child, spouse, or by any combination of them, the limited liability company with the concurrence of the manager may exclude that manager's service from employment as of the first day of January of any calendar year if, during January of that year, the limited liability company files a written application to exclude the manager's service from employment. This exclusion from employment does not apply to any limited liability company that is wholly owned by or operates as an Indian tribe, state or local government, or nonprofit organization with respect to services performed for those entities which are required by federal law to be covered under the North Dakota unemployment compensation law.

<sup>200</sup> **SECTION 3.** A new subdivision to subsection 18 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

Service performed by an owner of a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or a limited liability company, unless the organization is treated as a corporation for purposes of federal income taxation.

Approved April 13, 2001  
Filed April 13, 2001

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<sup>200</sup> Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

## CHAPTER 449

### HOUSE BILL NO. 1450 (Representatives Severson, Dosch)

## UNEMPLOYMENT COMPENSATION DEFINITIONS AND BENEFITS

AN ACT to create and enact a new subdivision to subsection 15 of section 52-01-01, a new subdivision to subsection 17 of section 52-01-01, and a new section to chapter 52-04 of the North Dakota Century Code, relating to definitions for unemployment compensation purposes and financing of benefits paid to employees of Indian tribes; to provide an effective date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>201</sup> **SECTION 1.** A new subdivision to subsection 15 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

The term "employer" includes an Indian tribe for which service in employment as defined under the North Dakota unemployment compensation law is performed.

<sup>202</sup> **SECTION 2.** A new subdivision to subsection 17 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

The term "employment" includes service performed in the employ of an Indian tribe, as defined in section 3306(u) of the Federal Unemployment Tax Act, provided the service is excluded from "employment" as defined in Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of the Federal Unemployment Tax Act, and is not otherwise excluded from employment under the North Dakota unemployment compensation law. For purposes of this subdivision, the exclusions from employment in subdivision h is applicable to services performed in the employ of an Indian tribe.

**SECTION 3.** A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

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<sup>201</sup> Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, and section 2 of House Bill No. 1450, chapter 449.

<sup>202</sup> Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, and section 1 of House Bill No. 1450, chapter 449.

**Financing benefits paid to employees of Indian tribes.**

1. Benefits based on service in employment with an Indian tribe are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the North Dakota unemployment compensation law.
2.
  - a. Indian tribes or tribal units subdivisions, subsidiaries, or business enterprises wholly owned by the Indian tribe, subject to the North Dakota unemployment compensation law, shall pay contributions under the same terms and conditions as all other subject employers, unless it elects to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.
  - b. Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in sections 52-04-18 and 52-04-19.1. Indian tribes may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.
  - c. Indian tribes or tribal units must be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.
  - d. An Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions must, within thirty days after the effective date of its election, execute and file with the bureau a surety bond approved by the bureau.
3.
  - a. Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill causes the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection 2, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.
  - b. An Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision a, is entitled to have the option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.
  - c. Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the bureau have been exhausted, causes services performed for the tribe to not be treated as employment for purposes of subsection 17 of section 52-01-01.
  - d. The bureau may determine that an Indian tribe that loses coverage under subdivision c may have services performed for the tribe

again included as employment, for purposes of subsection 17 of section 52-01-01 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

- e. The bureau will notify the United States internal revenue service and the United States department of labor of a termination or reinstatement of coverage made under subdivisions c and d.
4. Notices of payment and reporting delinquency to Indian tribes or their tribal units must include information that failure to make full payment within the prescribed timeframe:
    - a. Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act;
    - b. Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and
    - c. May cause the Indian tribe to be excepted from the definition of employer, as provided in subsection 15 of section 52-01-01, and services in the employ of the Indian tribe, as provided in subsection 17 of section 52-01-01, to be excepted from employment.
  5. Benefits paid that are attributable to service in the employ of an Indian tribe must be financed as provided in section 52-04-19.1.

**SECTION 4. EFFECTIVE DATE.** This Act is retroactively effective to December 21, 2000.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 19, 2001  
Filed March 19, 2001

## CHAPTER 450

### HOUSE BILL NO. 1319

(Representatives Koppelman, Grumbo, Kasper)  
(Senators Bercier, Christmann, Grindberg)

## CORPORATION AND LLC UNEMPLOYMENT COMPENSATION

AN ACT to amend and reenact paragraphs 1 and 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code, relating to unemployment compensation coverage for corporations and limited liability companies.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>203</sup> **SECTION 1. AMENDMENT.** Paragraphs 1 and 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code are amended and reenacted as follows:

- (1) Any officer of a corporation. If a corporate officer is employed by a corporation in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the officer or by the officer's parent, child, or spouse, or by any combination of them, the corporation with the concurrence of the officer may exclude that officer's service from employment as of the first day of January of any calendar year if, during January of that year, the corporation files a written application to exclude the officer's service from employment or as of the formation of the corporation if, within sixty days of the formation, the corporation files a written application to exclude the officer's service from employment.
- (2) Any manager of a limited liability company. If a limited liability company manager is employed by the limited liability company in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the manager or by the manager's parent, child, spouse, or by any combination of them, the limited liability company with the concurrence of the manager may exclude that manager's service from employment as of the first day of January of any calendar year if, during January of that year, the limited liability company files a written application to exclude the manager's service from employment or as of formation of the limited liability company if, within sixty days of the formation,

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<sup>203</sup> Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

the limited liability company files a written application to exclude the manager's service from employment. This exclusion from employment does not apply to any limited liability company that is wholly owned by or operates as an Indian tribe, state or local government, or nonprofit organization with respect to services performed for those entities which are required by federal law to be covered under the North Dakota unemployment compensation law.

Approved April 18, 2001  
Filed April 18, 2001

## CHAPTER 451

### HOUSE BILL NO. 1084

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

### JOB INSURANCE TRUST FUND AND REPORT

AN ACT to amend and reenact section 52-02-17 of the North Dakota Century Code, relating to the job insurance trust fund and a report to the legislative council.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 52-02-17 of the North Dakota Century Code is amended and reenacted as follows:

**52-02-17. Trust fund balance - Report to legislative council.** ~~The job insurance trust fund balance is to be maintained at a level of at least forty million dollars bureau shall report to the legislative council before March first of each year the actual trust fund balance and the targeted modified average high cost multiplier, as of December thirty-first of the previous year. In addition, the report must include a projected trust fund balance for the next three years. If the fund balance is ever projected to go below forty million dollars, job service North Dakota shall notify the members of the budget section, and at the next meeting of the budget section job service is to present a report on the condition of the fund, the circumstances leading to the decrease in the fund balance, and a proposal on how to increase the fund balance back to the minimum balance of forty million dollars.~~

Approved March 19, 2001

Filed March 19, 2001

## CHAPTER 452

### HOUSE BILL NO. 1471

(Representatives Ekstrom, Berg, Pietsch)  
(Senators D. Mathern, T. Mathern)

## UNEMPLOYMENT COMPENSATION EMPLOYER RATES

AN ACT to amend and reenact subsection 3 of section 52-04-05 of the North Dakota Century Code, relating to unemployment compensation employer rates; to provide an effective date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>204</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's rate, for the calendar years 2000, 2001, and 2002. However, this rate limitation provision for calendar years 2000, 2001, and 2002 does not apply to an experience-rated employer that was a new employer the previous year, a negative employer that was a positive employer the previous year, a positive employer that was a negative employer the previous year, an employer that has failed to file a report, a new employer, and an employer that chose to make payments in lieu of contributions. During the building of the trust fund reserve for calendar years 2000, 2001, and 2002, a negative employer that was a negative employer the previous year may not make excess contributions under

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<sup>204</sup> Section 52-04-05 was also amended by section 1 of House Bill No. 1087, chapter 453, and section 4 of Senate Bill No. 2017, chapter 42.

subsection 4 of section 52-04-06 to become a positive employer. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
- (1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
  - (2) New employers in construction services must be assigned the negative employer maximum rate.
  - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the two-digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.

**SECTION 2. EFFECTIVE DATE.** This Act is retroactively effective to January 1, 2000.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 14, 2001  
Filed March 14, 2001

## CHAPTER 453

### HOUSE BILL NO. 1087

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

## UNEMPLOYMENT COMPENSATION CLASSIFICATION AND RECORDS

AN ACT to amend and reenact subsections 3 and 4 of section 52-04-05, section 52-04-08, and subsection 1 of section 52-04-11.1 of the North Dakota Century Code, relating to unemployment compensation employer industrial classification, employer experience record, employer experience record transfers, and corporate officer personal liability; and to provide a penalty.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>205</sup> **SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 52-04-05 of the North Dakota Century Code are amended and reenacted as follows:

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's rate, for the calendar years 2000, 2001, and 2002. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that

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<sup>205</sup> Section 52-04-05 was also amended by section 1 of House Bill No. 1471, chapter 452, and section 4 of Senate Bill No. 2017, chapter 42.

any rate reduction provided will not put the employer account back into a negative status.

- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
  - (1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
  - (2) New employers in construction services must be assigned the negative employer maximum rate.
  - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the ~~two-digit~~ three-digit major group provided in the ~~standard~~ North American industrial classification system manual, in accordance with established classification practices found in the ~~standard~~ North American industrial classification system manual, issued by the executive office of the president, office of management and budget. Employers who are liable for coverage before August 1, 2001, remain under an industrial classification under the two-digit major group provided in the standard industrial classification manual unless they are classified in the construction industry within the standard industrial classification code.
4. An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable providing that the employer's experience record has not been transferred in accordance with section 52-04-08. Such employer's rate, however, must be determined in accordance with subsection 3.

**SECTION 2. AMENDMENT.** Section 52-04-08 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-08. Succession to predecessor's experience record.** An employing unit that in any manner acquires all or part of the organization, business, trade, or assets of another employer and continues essentially the same business activity of the whole or part transferred, must upon request be transferred in accordance with such regulations as the bureau may prescribe, the whole or appropriate part of the experience record, reserve balance, and benefit experience of the preceding employer. Provided that if the predecessor files a written protest against such transfer within fifteen days of being notified of the successor's application, the transfer will not be made ~~without opportunity for a hearing.~~

When an employing unit in any manner acquires all or part of the organization, business, trade, or assets of another employer, the bureau shall

transfer all or the appropriate part of the experience record, reserve balance, whether positive or negative, and benefit experience of such predecessor to the successor if it finds that (a) the predecessor was owned or controlled by or owned or controlled the successor directly or indirectly, by legally enforceable means or otherwise or (b) both the predecessor and successor were owned or controlled either directly or indirectly, by legally enforceable means or otherwise, by the same interests.

When a part of an employer's experience record reserve account and benefit experience is to be transferred under this section, the portion of the experience record and reserve account transferred must be in the same ratio to the total experience record and reserve account as the average annual payroll of the transferred organization, trade, business, or assets is to the total average annual payroll of the predecessor.

An employing unit's experience record may not be transferred in an amount that results in the successor and predecessor portions totaling more than one hundred percent of the predecessor's history.

**SECTION 3. AMENDMENT.** Subsection 1 of section 52-04-11.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any officer, director, or any employee having twenty percent ownership interest of a corporation and any manager, governor, or employee having twenty percent ownership interest of a limited liability company, that is an employer under the North Dakota Unemployment Compensation Law who has control of or supervision over the filing of and responsibility for filing contribution reports or making payment of contributions under the North Dakota Unemployment Compensation Laws, and who ~~willfully~~ fails to file the reports or to make payments as required, is personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation or limited liability company does not pay to the bureau those amounts for which the employer is liable.

Approved March 13, 2001  
Filed March 13, 2001

## CHAPTER 454

### HOUSE BILL NO. 1086

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

## UNEMPLOYMENT COMPENSATION RISK ADJUSTMENT RATE

AN ACT to amend and reenact subsection 6 of section 52-04-06 of the North Dakota Century Code, relating to the risk adjustment rate for unemployment compensation contributions.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 6 of section 52-04-06 of the North Dakota Century Code is amended and reenacted as follows:

6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars and at least three times its established average annual payroll; or the average annual payroll is zero, and the employer's cumulative lifetime reserve balance is positive, then the tax rate for that employer is one hundred fifty percent of the positive employer maximum rate in effect that year or a rate of one percent, whichever is greater, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year. If the employer's cumulative lifetime reserve balance is negative, then the tax rate for that employer is the negative employer maximum rate of contribution in effect that year, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

Approved March 14, 2001  
Filed March 14, 2001

## CHAPTER 455

### HOUSE BILL NO. 1085

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

## IMPACT PROJECT INCREMENTAL BONDS

AN ACT to amend and reenact section 52-04-06.1 of the North Dakota Century Code, relating to impact project incremental bonds under the unemployment compensation system.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 52-04-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-06.1. Incremental bond for impact projects Construction project risk protection.**

1. Any person, firm, corporation, or limited liability company and every general contractor which will employ or contract for the employment of or which is employing, directly or indirectly through agents, independent contractors or subcontractors on any project in North Dakota this state with an estimated construction cost of at least ~~twenty-five~~ fifty million dollars including physical construction and site preparation but excluding design and engineering, a majority of which is planned to be completed or discontinued within a period of seven years, and which will require the employment of at least two hundred fifty people is subject to this section. Each employing unit working on The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a project which that meets the criteria specified under this section shall pay post the bond or irrevocable letter of credit required in subsection 2 before commencement of construction work on the project and shall report annually, within thirty days of the anniversary date the project becomes subject to this section, to the bureau any change in contract bids within the state as may have been determined under subsection 2 the construction costs of projects subject to this section.
2. If the bureau determines that the project is or will be within the criteria stated by this section, the bureau shall ~~estimate the total job insurance contributions which the employing units will make under the North Dakota Unemployment Compensation Law based on the average estimated number of covered employees during the course of the project.~~ The bureau shall also estimate the total benefits which will be required at the completion of the project, assuming that fifty percent of covered employees will claim benefits following completion or discontinuance of the project. If estimated benefits exceed estimated contributions, the bureau shall assess and collect from each employing unit an additional amount of one-half percent times the successful bid amount on the project awarded to each employing unit but not to exceed one-half percent times the total amount allowed under all bids accepted under the project. The amount is in addition to any other contribution

required under the law and must be treated as incremental bond payments to ensure payment for all benefits ultimately claimed. The payments are not contributions until the ultimate determination of liability is made under subsection 3. The bureau shall amend the amount assessed under this subsection in accordance with any increases in contract bids reported by an employing unit under subsection 1. Any employing unit failing to comply with this subsection may be enjoined by the bureau from engaging or continuing in business until all required payments are made require the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, for whom the project is being constructed, on behalf of each employing unit, to post a bond executed by a surety company authorized to do business in the state or an irrevocable letter of credit from a federal deposit insurance corporation insured state or nationally chartered bank authorized to do business in the state which will insure payment for all benefits claimed by employees of all employing units working on the project. The bureau may adjust the amount of bond or irrevocable letter of credit required under this subsection to cover any significant increases or decreases in project construction costs reported by the general or prime contractor or owner. If any general or prime contractor or owner fails to comply with this subsection, the bureau may apply to any court of this state within the jurisdiction in which the contractor or owner is found, located, or transacts business to obtain an order to compel the general or prime contractor or owner to post the required bond or irrevocable letter of credit required under this subsection. Any failure to obey an order of the court may be punished by the court as a contempt of court.

3. The amounts collected from each employing unit under this section must be credited to individual interest bearing incremental bond trust accounts established by the bureau at the Bank of North Dakota. Eighteen The amount of bond or irrevocable letter of credit must be the difference between the estimated benefits paid and estimated contributions. The estimation of contributions expected must be made as follows: multiply the current year's negative employer minimum rate or six percent, whichever is greater, times the current year's taxable wage base times the estimated number of employees on the project using figures from project plans, times the number of years between the start date and the estimated completion date of the project. The estimation of benefits paid must be made as follows: the ratio of benefits charged to contributions paid in the most recent three fiscal years by employers in the construction industry multiplied by the estimated contributions.
4. Thirty months after the completion or discontinuance of the project or eighteen months after the employing unit completes its phase of the work, the bureau shall determine the total benefits paid to employees of the employing unit or units and if, the total amount paid to the employees of the unit or units exceeds the total amount of contributions collected from the units under the North Dakota Unemployment Compensation Law exceeds total, the general or prime contractor or the owner shall pay the total amount of benefits paid to the employees of the units; the difference plus accrued interest must be refunded to the appropriate unit or units but not exceeding the amount paid under this subsection plus accrued interest. The amount not refunded must be credited to the unemployment compensation fund which exceeded the

total amount of contributions collected from the unit or units. If the general or prime contractor or the owner does not pay the payment requirement, job service North Dakota shall collect the payment from the surety company that executed the surety bond or bank that issued the irrevocable letter of credit.

4. Upon completion of the contract requiring a bond in excess of one thousand two hundred fifty dollars, a contractor may receive a credit of ten percent of the total bond for every twenty percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. Upon completion of the contract requiring a bond of one thousand two hundred fifty dollars or less, a contractor may receive a credit of ten percent of the total bond for every ten percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. For the purposes of this subsection, a person may be considered a resident provided the person has earned in covered employment in North Dakota as defined in title 52, the sum of two thousand dollars during the past four completed calendar quarters preceding the date of employment or can provide evidence of having resided in the state during the past four completed calendar quarters preceding the date of employment.
5. Any employing unit, whether contractor, subcontractor, or otherwise, which in turn subcontracts a portion of its contract, may upon application to the bureau and proof of such subcontract receive an adjustment on its bond in direct proportion to the amount of such subcontract.
6. Failure of any employing unit, whether contractor, subcontractor, or otherwise, to inform the bureau of the issuance of a subcontract or if any subcontractor fails to pay the bond required under this section shall cause the contractor to be liable for payment of the subcontractor bond and any unpaid subcontractor contributions due on the projects.
7. 5. For the purposes of this section, a project includes all entities which that employ or contract for the employment of, or is employing directly or indirectly through agents, independent contractors, or subcontractors; regardless of the number of employees that any particular employing unit may have to perform services on a project, if the overall project involves the employment of at least two hundred fifty persons in the aggregate. In this situation, each Each employing unit, whether contractor, subcontractor, or otherwise, involved in the project is subject to this section.
8. 6. The bureau is authorized to adopt necessary rules for the effective administration and enforcement of this section Each employing unit having employees working on a project subject to this section shall maintain separate records for all employment on the project showing each individual's name, social security number, wages paid, and the dates the wages were paid. The employers shall submit separate reports from other employment subject to the North Dakota Unemployment Compensation Law under a separate reporting account established for the project.
9. 7. This section applies to projects begun after June 30, 1987. A project must be deemed to have commenced under this section at the time that

work begins under the first contract that has been let for any phase or type of work on the project for which bids are let after August 1, 2001.

8. The determination of whether a project is subject to this section must be made in the same manner as provided for in section 52-04-17.
9. This section does not apply to any project in which the state is the owner or contractor.

Approved March 14, 2001  
Filed March 15, 2001

## CHAPTER 456

### HOUSE BILL NO. 1083

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

## UNEMPLOYMENT COMPENSATION BENEFIT DISQUALIFICATION

AN ACT to amend and reenact subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to disqualification for purposes of determining unemployment compensation benefits; to provide an effective date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

1. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
  - a. Can demonstrate that the individual has earned remuneration for personal services in employment equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
  - b. Has not left the individual's most recent employment under disqualifying circumstances.

A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's work force in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.

This subsection does not apply if the bureau determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer from whom the individual became separated as a result of the illness or injury. The bureau may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.

This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.

**SECTION 2. EFFECTIVE DATE.** This Act is retroactively effective to January 1, 2001.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 6, 2001

Filed March 6, 2001

## CHAPTER 457

### SENATE BILL NO. 2337

(Senators Lee, D. Mathern)  
(Representatives Berg, Koppang, Severson)

## SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM

AN ACT to create and enact chapter 52-06.1 of the North Dakota Century Code, relating to a shared work unemployment compensation program; and to provide an expiration date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 52-06.1 of the North Dakota Century Code is created and enacted as follows:

**52-06.1-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Affected employee" means an employee who was continuously employed as a member of the affected unit, for at least six months, on a full-time basis, before submission of the shared work plan.
2. "Affected unit" means a specified department, shift, or other unit of two or more employees which is designated by an employer to participate in a shared work plan.
3. "Approved shared work plan" means an employer's shared work plan that meets the requirements of this chapter and which the bureau approves in writing.
4. "Fringe benefit" includes health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.
5. "Normal weekly hours of work" means forty hours or the average obtained by dividing the total number of hours worked per week during the preceding twelve-week period by the number twelve, whichever is less.
6. "Participating employee" means an employee who works a reduced number of hours under an approved shared work plan.
7. "Participating employer" means an employer that has an approved shared work plan in effect.
8. "Regular unemployment compensation" means benefits payable under chapter 52-06.

9. "Shared work benefit" means unemployment compensation benefits, excluding benefits payable to federal civilian employees and to ex-servicemen under Public Law 94-183, Section 2(42), as amended [89 Stat. 1059; 5 U.S.C. 8501 et seq., as amended], payable to an individual under this section for weeks of reduced work under an approved shared work plan.
10. "Shared work employer" means an employer with a shared work plan in effect. An individual who or an employing unit that succeeds to or acquires, under section 52-04-08, an organization, a trade, or a business with a shared work plan in effect automatically becomes a shared work employer and adopts the shared work plan if the individual or employing unit certifies to shared work benefits under the previously approved shared work plan.
11. "Shared work plan" means an employer's written plan approved by the bureau under which a group of employees whose normal weekly hours of work are reduced, in order to prevent employees from being laid off due to lack of work.
12. "Shared work unemployment compensation program" means a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding proportionate reduction in wages.

**52-06.1-02. Employer qualification for shared work program.**

1. An employer that wishes to participate in the shared work unemployment compensation program shall submit a signed shared work plan to the bureau for approval. As a condition for approval, a participating employer shall agree to furnish the bureau with reports relating to the operation of the shared work plan as requested by the bureau. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the bureau and shall report the findings to the bureau.
2. The bureau may approve a shared work plan if the plan:
  - a. Identifies the employees in the affected unit by name and social security number, the usual weekly hours of work, proposed wage and hour reduction, and any other information that the bureau may require;
  - b. Applies and identifies to one specific affected unit;
  - c. Includes a certified statement by the employer that for the duration of the shared work plan the reduction in the normal weekly hours of work of the employees in the affected unit is in lieu of layoffs that otherwise would result in at least as large a reduction in the total normal weekly hours of work;
  - d. Specifies an expiration date that is no more than one year from the date the employer submits the shared work plan for approval, except that on written request by the employer, the bureau may

- approve an extension of the shared work plan for a period of not more than one year from the date of the request;
- e. Reduces the normal weekly hours of work for an employee in the affected unit by not less than five percent and not more than seventy percent, and the reduction in hours in the affected unit are spread equally among employees in the affected unit;
  - f. Will not serve as a subsidy of seasonal employment during the off-season, as a subsidy for intermittent employment, nor as a subsidy of employers that have traditionally used part-time employees; and
  - g. Is approved in writing by the collective bargaining agent for each collective bargaining agreement that covers any employee in the affected unit.
3. To qualify, the employer must have and maintain at least fifty full-time employees.
  4. To qualify, the employer must have filed all reports required to be filed under the unemployment compensation law for all past and current periods and must have paid all contributions, benefit cost payments, interest, and penalty charges or if a reimbursing employer must have made all payments in lieu of contributions due for all past and current periods and interest and penalty charges.
  5. To qualify, a contributing employer must be eligible for a rate computation under subdivision a of subsection 3 of section 52-04-05, and may not be a negative account employer as defined under subdivision b of subsection 3 of section 52-04-05.
  6. A shared work plan is effective on the date specified in the plan or on the first Sunday following the date on which the plan is approved by the bureau, whichever is later. The shared work plan expires at the end of the twelfth full calendar month after the plan's effective date or on the date specified in the plan if that date is earlier; provided, the plan is not previously revoked by the bureau. If a shared work plan is revoked by the bureau, the plan terminates on the date specified in the bureau's written order of revocation.
  7. The bureau shall approve or disapprove the proposal within thirty days of receipt of the proposal by the bureau. The bureau shall notify the employer of the reasons for denial of a shared work plan within ten days of the determination.
  8. Disapproval of a plan may be reconsidered at the discretion of the executive director of job service North Dakota. Approval of a shared work plan may be revoked if the approval was based, in whole or in part, upon information that was false or misleading.
  9. An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the bureau. The employer shall report the changes made to the shared work plan in writing to the bureau before implementing the changes. If the original

shared work plan is substantially modified, the bureau shall reevaluate the shared work plan and may approve the modified shared work plan if the modified plan meets the requirements for approval under subsection 2. The approval of a modified shared work plan does not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the bureau shall deny approval to the modifications as provided by subsection 7.

10. The bureau may terminate a shared work plan for good cause if the bureau determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

### **52-06.1-03. Employee qualification.**

1. Notwithstanding any other provision of the unemployment compensation law, an individual is unemployed and is eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly hours of work in accordance with an approved shared work plan under subsection 2 of section 52-06.1-02 in effect for that week.
2. An individual is eligible to receive shared work benefits with respect to any week if, in addition to meeting the requirements of regular unemployment compensation as modified by subsection 7, the bureau finds that:
  - a. The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;
  - b. The individual is able to work and is available for additional hours of work or full-time work with the participating employer;
  - c. The individual's normal weekly hours of work have been reduced, in accordance with the shared work plan, not less than five percent but not more than seventy percent, with a corresponding proportionate reduction in wages; and
  - d. The individual's normal weekly hours of work and wages have been reduced as described in subdivision c for a waiting period of one week that occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.
3. An individual may not receive shared work benefits and regular unemployment compensation benefits in an amount exceeding the maximum total amount of benefits payable to that individual in a benefit year as provided by sections 52-06-04 and 52-06-05.
4. The bureau may not pay an individual shared work benefits for more than twenty-six weeks, whether or not consecutive, in any benefit year.
5. If an employer approves time off and the worker has performed some work during the week, the individual is eligible for shared work benefits

based on the combined work and paid leave hours for that week. If the employer does not grant time off, the question of availability must be investigated.

6. If an employee was sick and consequently did not work all the hours offered by the shared work employer in a given week, the employee will not be denied shared work benefits for that week.
7. The bureau may not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the unemployment compensation law which relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the individual's shared work employer.
8. An individual who has received all the shared work benefits and regular employment compensation benefits available in a benefit year is an exhaustee under subsection 3 of section 52-07.1-03 and is entitled to receive extended benefits under such statutes if the individual is otherwise eligible under such statutes.
9. A shared work benefit payment may not be made under any shared work plan or this section for any week commencing before July 7, 2002.
10. The bureau shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's approved shared work plan. If the shared benefit amount is not a multiple of one dollar, the bureau shall reduce the amount to the next highest multiple of one dollar. All shared work benefits under this section are payable from the fund.
11. In any week an individual performs services for a work-sharing employer and an employer other than the work-sharing employer, the weekly work-sharing benefit is reduced by the amount of remuneration received from the non-work-sharing employer in accordance with the weekly benefit amount wage reduction provision in section 52-06-06.
12. The provisions of section 52-06-06.1 which require the bureau to deduct and withhold certain amounts payable to an individual who is liable for child support obligations apply to this subsection.
13. An applicant is not eligible for shared work benefits for any week that employment is performed for the shared work employer in excess of the reduced hours set forth in the approved shared work plan.
14. Notwithstanding any other provision of this chapter relating to charges, the employer must be charged and billed for all shared work benefits paid in accordance with sections 52-04-18, 52-04-19, and 52-04-19.1 as if the employer had elected to make payment in lieu of contributions.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2003, and after that date is ineffective.

Approved April 19, 2001

Filed April 19, 2001

## CHAPTER 458

### HOUSE BILL NO. 1135 (Representative Weisz) (Senator Klein)

## COUNTY HEALTH CARE INSURANCE LEVY LIMITATIONS

AN ACT to amend and reenact section 52-09-08, subsection 36 of section 57-15-06.7, and subsection 6 of section 57-15-28.1 of the North Dakota Century Code, relating to limitations on the levy by counties for comprehensive health care insurance programs; and to provide an effective date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 52-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**52-09-08. Default in taxes - Interest - Action to collect - Levy of tax by political subdivisions.** Taxes unpaid on the date on which they are due and payable, as prescribed by the bureau, must bear interest at the rate of one-half of one per centum per month from and after that date until payment plus accrued interest is received by the bureau; provided, that the bureau may prescribe fair and reasonable regulations pursuant to which interest does not accrue with respect to taxes required. The amount of interest imposed may not be less than five dollars. Interest collected pursuant to this section must be paid into the old-age and survivors' fund. A political subdivision, except a school district, a multidistrict special education board, or a center board of an area vocational and technology center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1 or, for counties, the limitation in subsection 36 of section 57-15-06.7. Within the levy limitations set out in subsection 6 of section 57-15-28.1 and subsection 36 of section 57-15-06.7, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section must be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter must be made out of the school district's general fund established pursuant to section 57-15-14.2.

<sup>206</sup> **SECTION 2. AMENDMENT.** Subsection 36 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

36. A county levying a tax for old-age and survivors' insurance or comprehensive health care insurance employee benefit programs according to section 52-09-08, for social security, for an employee

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<sup>206</sup> Section 57-15-06.7 was also amended by section 15 of House Bill No. 1202, chapter 246, and section 1 of House Bill No. 1405, chapter 511.

retirement program established by the governing body, for county automation and telecommunications under section 57-15-62, or for any combination of those purposes, may levy a tax not exceeding thirty mills. The portion of the levy under this subsection for county automation and telecommunications under section 57-15-62 may not exceed five mills. The portion of the levy under this subsection for comprehensive health care insurance employee benefit programs under section 52-09-08 may not exceed four mills.

<sup>207</sup> **SECTION 3. AMENDMENT.** Subsection 6 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

6. A county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding four mills and the limitation in subsection 36 of section 57-15-06.7.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2000.

Approved March 14, 2001

Filed March 15, 2001

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<sup>207</sup> Section 57-15-28.1 was also amended by section 10 of House Bill No. 1031, chapter 510.

## CHAPTER 459

### SENATE BILL NO. 2072

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

### OASIS BENEFITS

AN ACT to amend and reenact subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to primary insurance benefits under the old-age and survivor insurance system.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 9 of section 52-09-20 of the North Dakota Century Code is amended and reenacted as follows:

9. "Primary insurance benefit" means the sum of the following:
  - a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
  - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
  - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
  - c. (1) Effective August 1, ~~1999~~ 2001, ~~seven~~ eight hundred ~~thirty-three~~ twenty-six dollars and ~~thirty-two~~ sixty-four cents; or
  - (2) Effective August 1, ~~2000~~ 2002, ~~seven~~ eight hundred ~~ninety-nine~~ fifty-three dollars and ~~ninety-eight~~ thirty cents.

Approved March 14, 2001  
Filed March 14, 2001