

March 2004

Introduced by

1 A BILL for an Act to amend and reenact section 52-04-05 of the North Dakota Century Code,
2 relating to the determination of unemployment insurance tax rates.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 52-04-05 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **52-04-05. Determination of rates.**

7 1. As used in this section:

8 a. "Income needed to pay benefits" means the estimate of benefits payable in a
9 given calendar year less the estimate of interest to be earned by the
10 unemployment insurance trust fund for that calendar year.

11 b. "Solvency balance" means the sum of the estimate of the income needed to
12 pay benefits and the additional income needed in a given rate year to reach
13 the solvency target over the number of years remaining of the period within
14 which the solvency target is to be reached.

15 c. "Trust fund reserve" excludes all Reed Act [42 U.S.C. 1103] cash.

16 2. For each calendar year, the bureau separately shall estimate the amount of
17 income needed to pay benefits and ~~maintain a~~ shall estimate the amount of
18 additional income needed to reach a solvency balance in the unemployment
19 ~~compensation~~ insurance trust fund, that as of October 1, 1989, is equal to
20 ~~twenty five percent of the average annual amount of benefits paid. On each~~
21 ~~October first after October 1, 1989, the amount of the trust fund reserve must be~~
22 ~~sixty percent of the average annual amount of benefits paid. The average annual~~
23 ~~amount of benefits paid must be computed by dividing the total amount of benefits~~
24 ~~paid and projected to be paid during the previous thirty six months by three. On~~

- 1 ~~January 1, 2000, the required amount of the trust fund reserve becomes a targeted~~
2 ~~moves toward the solvency target~~ amount as determined under this subsection.
3 The solvency target is an average high-cost multiple of one. The average
4 high-cost multiple is the number of years the bureau could pay unemployment
5 compensation, based on the reserve ratio, if the bureau paid the compensation at a
6 rate equivalent to the average benefit cost rate in the one calendar year during the
7 preceding twenty calendar years and the two calendar years during the preceding
8 ten calendar years in which the benefit cost rates were the highest. "Reserve ratio"
9 means the ratio determined by dividing the balance in the trust fund reserve at the
10 end of the calendar year by the total covered wages in the state for that year.
11 "Benefit cost rate" means the rate determined by dividing the unemployment
12 compensation benefits paid during a calendar year by the total covered wages in
13 the state for that year. The computation of the reserve ratio and benefit cost rate
14 must exclude the wages and unemployment compensation paid by employers
15 covered under section 3309 of the Internal Revenue Code of 1986, as amended
16 [26 U.S.C. 3309].
- 17 3. The initial trust fund reserve solvency target ~~will~~ must be achieved over a
18 seven-year period from January 1, 2000. If the solvency target required by this
19 section is reached, the calculation of the solvency target must be continued and, if
20 the trust fund reserve as of December thirty-first of any year is less than the
21 solvency target, the rates must be adjusted to cause the solvency target to be
22 reached within a five-year period.
- 23 4. Progress toward achieving the ~~targeted amount of the trust fund reserve~~ solvency
24 target is measured by reducing any difference between one and the average
25 high-cost multiple of the state by an amount that is at least equal to the ratio of the
26 number of years left to reach the ~~targeted amount of the trust fund reserve~~
27 solvency target to the difference between the trust fund reserve and the targeted
28 amount. ~~If the calendar year annual average insured unemployment rate is above~~
29 ~~three percent and has increased one hundred ten percent of the average of the~~
30 ~~preceding two calendar years, a tax rate will be set to provide for fifty percent of the~~
31 ~~additional revenue needed for the trust fund to be derived from tax rate increases~~

1 ~~and the remaining fifty percent becomes a drawdown against the trust fund~~
2 ~~reserve.~~ In setting tax rates, the amount of the trust fund reserve may not be
3 allowed to fall below three hundred percent from a standard margin of error for the
4 targeted amount of the trust fund reserve. The executive director may make
5 reasonable adjustments to the tax rates set for a calendar year to prevent
6 significant rate variations between calendar years. When the trust fund reserve is
7 ~~being rebuilt~~ below the solvency target, rates ~~will~~ may not be lowered until the
8 solvency target level is reached. ~~If while achieving the trust fund reserve target the~~
9 ~~trigger of above three percent insured unemployment rate and an increase of more~~
10 ~~than one hundred ten percent of the average of the two preceding years has been~~
11 ~~in effect for two or more consecutive years, the period of time to achieve the trust~~
12 ~~fund reserve target is extended to seven years from the end date of the last year in~~
13 ~~which the trigger was in effect.~~ ~~If this trigger has been in effect for one year, the~~
14 ~~amount of tax increase toward achieving the targeted amount of the trust fund~~
15 ~~reserve must be determined using the number of years remaining of the~~
16 ~~seven year period, excluding the year the trigger is in effect.~~

- 17 ~~2-~~ 5. Rates must be determined as follows:
- 18 a. The income ~~required~~ needed to pay benefits for the calendar year must be
19 divided by the estimated taxable wages for the calendar year. The result
20 rounded to the next higher one one-hundredth of one percent is the average
21 required rate needed to pay benefits.
- 22 b. The tax rate necessary to generate the additional income needed to reach a
23 solvency balance must be calculated by dividing the solvency balance by the
24 income estimated as needed to pay benefits, and multiplying the resulting
25 ratio times each rate, within the positive and negative rate arrays, as
26 determined under this section to meet the average required rate needed to
27 pay benefits as defined in subdivision a. The ratio calculated under this
28 subdivision also must be multiplied by any rate calculated as required by
29 subsection 6 to arrive at a final rate for a new business. All results calculated
30 under this subdivision must be rounded to the nearest one-hundredth of one
31 percent.

- 1 c. If the positive employer maximum rate is at least one percent, the positive
2 employer minimum rate is the positive employer maximum rate minus
3 nine-tenths of one percent. If the positive employer maximum rate is less
4 than one percent, the range for the positive employer minimum rate must be
5 at least one-tenth of one percent and must be less than two-tenths of one
6 percent (the minimum of one-tenth of one percent plus the increment of
7 one-tenth of one percent), with the positive employer minimum rate equal to
8 the positive employer maximum rate minus a multiple of the increment
9 one-tenth of one percent as provided in subsection 2 of section 52-04-06 to
10 fall within the range described above. Within the table of rate schedules for
11 each calendar year, a rate schedule may not be used if it would generate less
12 income than any rate schedule preceding it on the table of rate schedules.
13 The negative employer minimum rate is the positive employer maximum rate
14 plus five and one-tenth percent.
- 15 e- d. The positive employer maximum rate must be set so that all the rates
16 combined generate the average required rate for income needed to pay
17 benefits, multiplied by the ratio, calculated under subdivision b, needed to
18 reach the solvency balance. The negative employer maximum rate is the
19 negative employer minimum rate plus three and six-tenths percent. However,
20 the maximum rate must be at least five and four-tenths percent.
- 21 ~~3- 6.~~ a. Except as otherwise provided in this subsection, an employer's rate may not
22 be less than the negative employer minimum rate for a calendar year unless
23 the employer's account has been chargeable with benefits throughout the
24 thirty-six-consecutive-calendar-month period ending on September thirtieth of
25 the preceding calendar year. If an employer in construction services has not
26 been subject to the law as required, that employer qualifies for a reduced rate
27 if the account has been chargeable with benefits throughout the
28 twenty-four-consecutive-calendar-month period ending September thirtieth of
29 the preceding calendar year. If an employer in nonconstruction services has
30 not been subject to the law as required, the employer in nonconstruction
31 services qualifies for a reduced rate if the account has been chargeable with

1 benefits throughout the twelve-consecutive-calendar-month period ending
2 September thirtieth of the preceding calendar year. ~~During the building of the~~
3 ~~trust fund reserve, the rate assigned to an employer may not exceed one~~
4 ~~hundred thirty percent of the previous year's rate for that employer and an~~
5 ~~employer may not receive more than a ten percent decrease in that~~
6 ~~employer's rate from the previous year's rate, for the calendar years 2000,~~
7 ~~2001, and 2002. However, this rate limitation provision for calendar years~~
8 ~~2000, 2001, and 2002 does not apply to an experience-rated employer that~~
9 ~~was a new employer the previous year, a negative employer that was a~~
10 ~~positive employer the previous year, a positive employer that was a negative~~
11 ~~employer the previous year, an employer that has failed to file a report, a new~~
12 ~~employer, and an employer that chose to make payments in lieu of~~
13 ~~contributions.~~ The executive director may provide any negative employer
14 whose contributions paid into the trust fund are greater than the benefit
15 charges against that employer's account, for a minimum of three consecutive
16 years immediately preceding the computation date or subject to the law as
17 required, with up to a thirty percent reduction to that employer's rate for any
18 year if that employer has in place a plan approved by the bureau which
19 addresses substantive changes to that employer's business operation and
20 ensures that any rate reduction provided will not put the employer account
21 back into a negative status.

22 b. An employer that does not qualify under subdivision a is subject to a rate
23 determined as follows:

- 24 (1) For each calendar year new employers must be assigned a rate that is
25 one hundred fifty percent of the positive employer maximum rate or a
26 rate of one percent, whichever is greater, unless the employer is
27 classified in construction services. However, an employer must be
28 assigned within the negative employer rate ranges for any year if, as of
29 the computation date, the cumulative benefits charged to that
30 employer's account equal or exceed the cumulative contributions paid

- 1 on or before October thirty-first with respect to wages paid by that
2 employer before October first of that year.
- 3 (2) New employers in construction services must be assigned the negative
4 employer maximum rate.
- 5 (3) Assignment by the bureau of an employer's industrial classification for
6 the purposes of this section must be the three-digit major group
7 provided in the North American industrial classification system manual,
8 in accordance with established classification practices found in the
9 North American industrial classification system manual, issued by the
10 executive office of the president, office of management and budget.
11 Employers who are liable for coverage before August 1, 2001, remain
12 under an industrial classification under the two-digit major group
13 provided in the standard industrial classification manual unless they are
14 classified in the construction industry within the standard industrial
15 classification code.
- 16 ~~4.~~ 7. An employer who has ceased to be liable for contributions shall continue its
17 established experience rating account if it again becomes liable within three years
18 from the date that it ceased to be liable providing that the employer's experience
19 record has not been transferred in accordance with section 52-04-08. ~~Such~~ The
20 employer's rate, however, must be determined in accordance with subsection ~~3~~ 6.