

Fifty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1135

Introduced by

Industry, Business and Labor Committee

(At the request of Job Service North Dakota)

1 A BILL for an Act to amend and reenact sections 52-04-05, 52-04-06, and 52-04-09 of the North
2 Dakota Century Code, relating to the required level of the unemployment compensation trust
3 fund reserve and employer contribution rates.

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

5 **SECTION 1. AMENDMENT.** Section 52-04-05 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **52-04-05. (Effective through December 31, 2000) Determination of rates.**

8 1. For each calendar year, the bureau shall estimate the amount of income needed to
9 pay benefits and maintain a balance in the unemployment compensation fund, that
10 as of October 1, 1989, is equal to twenty-five percent of the average annual
11 amount of benefits paid. On each October first after October 1, 1989, the amount
12 of the trust fund reserve must be sixty percent of the average annual amount of
13 benefits paid. The average annual amount of benefits paid must be computed by
14 dividing the total amount of benefits paid and projected to be paid during the
15 previous thirty-six months by three. On each October first after October 1, 2000,
16 the targeted amount of the trust fund reserve is one and one-fourth times the
17 highest actual or projected benefit payout year during the previous three calendar
18 years.

19 2. Rates must be determined as follows:

20 a. The income required for the calendar year must be divided by the estimated
21 taxable wages for the calendar year. The result rounded to the next higher
22 one one-hundredth of one percent is the average required rate.

23 b. ~~The minimum rate for each calendar year is the average required rate,~~
24 ~~multiplied by one-fourth, rounded to the nearest one-tenth of one percent.~~

1 The positive employer minimum rate is one-tenth of one percent or the
2 positive employer maximum rate minus one and eight-tenths percent,
3 whichever is greater. The negative employer minimum rate is the positive
4 employer maximum rate plus six and one-tenth percent.

- 5 c. ~~The maximum rate for each calendar year is the average required rate,~~
6 ~~multiplied by three, rounded to the nearest one-tenth of one percent. The~~
7 ~~positive employer maximum rate must be set so that all the rates combined~~
8 ~~generate the average required rate. The negative employer maximum rate is~~
9 ~~the negative employer minimum rate plus one and eight-tenths percent.~~

10 However, the maximum rate must be at least five and four-tenths percent.

- 11 3. a. Except as otherwise provided in this subsection, an employer's rate may not
12 be less than the ~~maximum~~ negative employer minimum rate for a calendar
13 year unless the employer's account has been chargeable with benefits
14 throughout the thirty-six-consecutive-calendar-month period ending on
15 September thirtieth of the preceding calendar year. If an employer in
16 construction services has not been subject to the law as required, that
17 employer qualifies for a reduced rate if the account has been chargeable with
18 benefits throughout the twenty-four-consecutive-calendar-month period
19 ending September thirtieth of the preceding calendar year. ~~However, an~~
20 ~~employer in construction services must be assigned the maximum rate or~~
21 ~~seven percent, whichever is greater, for any year if, as of the computation~~
22 ~~date, the cumulative benefits charged to the employer's account equal or~~
23 ~~exceed the cumulative contributions paid on or before October thirty first with~~
24 ~~respect to wages paid by that employer before October first of that year. An~~
25 employer identified as belonging to industry group number 161, highway and
26 street construction, except elevated highways, provided in the standard
27 industrial classification manual, must be assigned ~~a maximum rate or eight~~
28 ~~and one half percent, whichever is greater, within the negative employer rate~~
29 ranges with an additional one and one-half percent added to the rate for any
30 year if, as of the computation date, the cumulative benefits charged to the
31 employer's account equal or exceed the cumulative contributions paid on or

1 before October thirty-first of that year. If an employer in nonconstruction
2 services has not been subject to the law as required, the employer in
3 nonconstruction services qualifies for a reduced rate if the account has been
4 chargeable with benefits throughout the twelve-consecutive-calendar-month
5 period ending September thirtieth of the preceding calendar year.

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

- 8 (1) For each calendar year new employers must be assigned ~~a rate of two~~
9 ~~and two tenths percent~~ the positive employer maximum rate unless the
10 employer is classified in construction services. However, an employer
11 must be assigned ~~the maximum rate~~ within the negative employer rate
12 ranges for any year if, as of the computation date, the cumulative
13 benefits charged to that employer's account equal or exceed the
14 cumulative contributions paid on or before October thirty-first with
15 respect to wages paid by that employer before October first of that year.
- 16 (2) New employers in construction services must be assigned ~~a rate of~~
17 ~~seven percent or the maximum rate, whichever is greater~~ the negative
18 employer maximum rate.
- 19 (3) Assignment by the bureau of an employer's industrial classification for
20 the purposes of this section must be the two digit major group provided
21 in the standard industrial classification manual, in accordance with
22 established classification practices found in the standard industrial
23 classification manual issued by the executive office of the president,
24 office of management and budget.

25 4. An employer who has ceased to be liable for contributions shall continue its
26 established experience rating account if it again becomes liable within three years
27 from the date that it ceased to be liable. Such employer's rate, however, must be
28 determined in accordance with subsection 3.

29 **(Effective after December 31, 2000) Determination of rates.**

- 30 1. For each calendar year, the bureau shall estimate the amount of income needed to
31 pay benefits and maintain a balance in the unemployment compensation fund, that

as of October 1, 1989, is equal to twenty-five percent of the average annual amount of benefits paid. On each October first after October 1, 1989, the amount of the trust fund reserve must be sixty percent of the average annual amount of benefits paid. The average annual amount of benefits paid must be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three. On each October first after October 1, 2000, the targeted amount of the trust fund reserve is one and one-fourth times the highest actual or projected benefit payout year during the previous three calendar years.

2. Rates must be determined as follows:

- a. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate.
- b. ~~The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.~~ The positive employer minimum rate is one-tenth of one percent or the positive employer maximum rate minus one and eight-tenths percent, whichever is greater. The negative employer minimum rate is the positive employer maximum rate plus six and one-tenth percent.
- c. ~~The maximum rate for each calendar year is the average required rate, multiplied by three, rounded to the nearest one-tenth of one percent.~~ The positive employer maximum rate must be set so that all the rates combined generate the average required rate. The negative employer maximum rate is the negative employer minimum rate plus one and eight-tenths percent. However, the maximum rate must be at least five and four-tenths percent.

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the ~~maximum~~ 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

1 employer qualifies for a reduced rate if the account has been chargeable with
2 benefits throughout the twenty-four-consecutive-calendar-month period
3 ending September thirtieth of the preceding calendar year. ~~However, an~~
4 ~~employer in construction services must be assigned the maximum rate or~~
5 ~~seven percent, whichever is greater, for any year if, as of the computation~~
6 ~~date, the cumulative benefits charged to the employer's account equal or~~
7 ~~exceed the cumulative contributions paid on or before October thirty first with~~
8 ~~respect to wages paid by that employer before October first of that year.~~ If an
9 employer in nonconstruction services has not been subject to the law as
10 required, the employer in nonconstruction services qualifies for a reduced rate
11 if the account has been chargeable with benefits throughout the
12 twelve-consecutive-calendar-month period ending September thirtieth of the
13 preceding calendar year.

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

- 16 (1) For each calendar year new employers must be assigned ~~a rate of two~~
17 ~~and two tenths percent~~ the positive employer maximum rate unless the
18 employer is classified in construction services. However, an employer
19 must be assigned ~~the maximum rate~~ within the negative employer rate
20 ranges for any year if, as of the computation date, the cumulative
21 benefits charged to that employer's account equal or exceed the
22 cumulative contributions paid on or before October thirty-first with
23 respect to wages paid by that employer before October first of that year.
- 24 (2) New employers in construction services must be assigned ~~a rate of~~
25 ~~seven percent or the maximum rate, whichever is greater~~ the negative
26 employer maximum rate.
- 27 (3) Assignment by the bureau of an employer's industrial classification for
28 the purposes of this section must be the two digit major group provided
29 in the standard industrial classification manual, in accordance with
30 established classification practices found in the standard industrial

classification manual issued by the executive office of the president,
office of management and budget.

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. Such employer's rate, however, must be determined in accordance with subsection 3.

SECTION 2. AMENDMENT. Section 52-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-04-06. Variations in standard rate of contributions - How determined.

1. ~~All employers eligible for an experience rate computation must be ranked in descending order by their reserve ratios.~~ An employer's reserve ratio is the percentage of the average annual payroll by which difference between the cumulative contributions paid by that employer on or before October thirty-first of any year, with respect to wages paid by that employer before October first of that same year, exceeds and the cumulative benefits charged to that employer's account before October first of that year, divided by the average annual payroll. Employers whose cumulative contributions exceed cumulative benefits must be assigned within the positive employer rate groups. Employers whose cumulative contributions are equal to or less than cumulative benefits must be assigned within the negative employer rate groups.
2. ~~For each calendar year the bureau shall establish a schedule of rates, with the minimum rate determined under section 52-04-05 assigned to the first rate group. Each successive rate group must be assigned a rate equal to the previous group's rate plus two tenths of one percent. The number of rate groups in the schedule must be the number required to provide for a rate group at each two tenths of one percent interval between the minimum rate and two and one fourth times the average required rate determined under section 52-04-05.~~ For each calendar year the bureau shall establish a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to the previous group's rate

1 plus two-tenths of one percent. The number of rate groups in the positive
2 employer schedule must be the number required to provide for a rate group at
3 each two-tenths of one percent interval between the positive employer minimum
4 rate and the positive employer maximum rate determined under section 52-04-05.
5 For each calendar year the bureau shall establish a schedule of negative employer
6 rate groups with the negative employer minimum rate and the negative employer
7 maximum rate determined under section 52-04-05. Each successive rate group for
8 negative employer rate groups must be assigned a rate equal to the previous
9 group's rate plus two-tenths of one percent. The number of rate groups in the
10 negative employer schedule must be the number required to provide for a rate
11 group at each two-tenths of one percent interval between the negative employer
12 minimum rate and the negative employer maximum rate determined under section
13 52-04-05.

- 14 3. ~~Employers must be assigned to the groups in the rate schedule in the rank order of~~
15 ~~their reserve ratios, as determined in subsection 1, with the highest reserve ratio~~
16 ~~employers assigned to the first rate group. Each successively ranked employer~~
17 ~~must be assigned to the groups in the rate schedule so that those employers~~
18 ~~reporting seventy-eight percent of the eligible employer's prior year's taxable~~
19 ~~wages are equally distributed in those rate groups at or below the average rate~~
20 ~~required of employers eligible for experience rating or the minimum rate group,~~
21 ~~whichever is greater, and twenty-two percent of those wages are equally~~
22 ~~distributed in the remaining rate groups. Positive employers must be assigned to~~
23 ~~the rate in the positive employer rate schedule in the rank order of their reserve~~
24 ~~ratios, as determined in subsection 1, with the highest reserve ratio positive~~
25 ~~employers assigned to the first positive employer rate. Each successively ranked~~
26 ~~positive employer must be assigned to a rate within the positive employer rate~~
27 ~~schedule so that each rate within the rate schedule is assigned the same~~
28 ~~proportion of the positive employers prior year's taxable wages. Negative~~
29 ~~employers must be assigned to the rate in the negative employer rate schedule in~~
30 ~~the rank order of their reserve ratios, as determined in subsection 1, with the~~
31 ~~highest reserve ratio negative employers assigned to the first negative employer~~

1 rate. Each successively ranked negative employer must be assigned to a rate
2 within the negative employer rate schedule so that each rate within the rate
3 schedule is assigned the same proportion of the negative employer's prior year's
4 taxable wages.

5 4. ~~The average rate of employers eligible for experience rating is determined as~~
6 ~~follows:~~

7 a. ~~The estimated amount of taxes to be paid each year by employers not eligible~~
8 ~~for experience rating must be subtracted from the total required income for the~~
9 ~~year determined under section 52-04-05.~~

10 b. ~~The remainder must be divided by the estimated taxable wages of those~~
11 ~~employers eligible for experience rating, with the result rounded to the nearest~~
12 ~~one-tenth of one percent.~~

13 5. After each year's rate schedule has been established, an employer may pay into
14 the fund an amount in excess of the contributions required to be paid under this
15 section. That amount must be credited to the employer's separate account. The
16 employer's rate must be recomputed with the amount included in the calculation
17 only if that amount was paid by April thirtieth of that year. Payments may not be
18 refunded or used as credit in the payment of contributions.

19 6. 5. In the bureau's determination of the projected income requirements for computing
20 contribution rates and taxable wage base, only the wages paid by, and the cost of
21 benefits attributable to, tax-rated employers may be taken into account.

22 7. 6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars
23 and at least three times its established average annual payroll, the tax rate for that
24 employer is the negative employer maximum rate of contribution in effect that year,
25 beginning the first day of the calendar quarter in which it occurred and for the
26 remainder of the calendar year.

27 **SECTION 3. AMENDMENT.** Section 52-04-09 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **52-04-09. Classification of employers to determine contributions - Regulations**
30 **governing.** An employer's rate for a calendar year must be determined on the basis of the
31 employer's experience with contribution payments and benefit charges as of October first of the

1 preceding year. If when such determination is to be made an employer has failed to file a
2 required report or filed an insufficient report, the bureau shall notify the employer thereof by
3 certified mail addressed to the employer's last known address. Unless the employer files the
4 report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for
5 the following calendar year may not be less than the negative employer maximum rate. For
6 employers identified as belonging to industry group number 161, highway and street
7 construction, except elevated highways, for the effective period set forth in section 52-04-05,
8 the employer's rate for the following calendar year may not be less than the negative employer
9 maximum rate plus one and one-half percent. If, at any time, an employer has failed to file a
10 required report or filed an insufficient report, the bureau may, at any time, estimate the wage
11 information required by the report on the basis of reasonably available evidence. The bureau
12 shall notify the employer of the estimate by certified mail addressed to the employer's last
13 known address. Unless the employer files the report or a sufficient report within fifteen days
14 after the mailing of the notice, the estimate becomes final for all purposes, except that if the
15 amount of estimated wages is less than the actual wages, the bureau may reconsider the
16 estimate.