

Fifty-ninth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1083

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 subdivision m of subsection 17 and subdivision a of  
2 subsection 18 of section 52-01-01 of the North Dakota Century Code, relating to unemployment  
3 insurance taxation exemption for wages paid to an alien employee pursuant to federal law.

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

5 **SECTION 1. AMENDMENT.** Subdivision m of subsection 17 of section 52-01-01 of the  
6 North Dakota Century Code is amended and reenacted as follows:

7 m. Service performed ~~after December 31, 1977~~, by an individual in agricultural  
8 labor as defined in subdivision a of subsection 18 when:

9 (1) Such service is performed for a person who:

10 (a) During any calendar quarter in either the current or the preceding  
11 calendar year paid remuneration in cash of twenty thousand  
12 dollars or more to individuals employed in agricultural labor (not  
13 taking into account service in agricultural labor performed ~~before~~  
14 ~~January 1, 1980~~, by an alien referred to in paragraph 2); or

15 (b) For some portion of a day in each of twenty different calendar  
16 weeks, whether ~~or not~~ such weeks were consecutive, in either  
17 the current or the preceding calendar year, employed in  
18 agricultural labor (not taking into account service in agricultural  
19 labor ~~performed before January 1, 1980~~, by an alien referred to in  
20 paragraph 2) ten or more individuals, regardless of whether they  
21 were employed at the same moment of time.

22 (2) Such service is not performed in agricultural labor if performed ~~before~~  
23 ~~January 1, 1980~~, by an individual who is an alien admitted to the United  
24 States to perform service in agricultural labor pursuant to sections

1 214(c) and ~~101(a)(15)(H)~~ 101(a)(15)(H)(ii)(A) of the Immigration and  
2 Nationality Act [~~Pub. L. 82-414; 66 Stat. 166~~; 8 U.S.C. 1101 ~~et seq.~~  
3 (a)(15)(H)(ii)(A)].

4 (3) For the purposes of this subdivision, any individual who is a member of  
5 a crew furnished by a crew leader to perform service in agricultural  
6 labor for any other person shall be treated as an employee of such crew  
7 leader:

8 (a) If such crew leader holds a valid certificate of registration under  
9 the Farm Labor Contractor Registration Act of 1963  
10 [Pub. L. 88-582; 78 Stat. 920; 7 U.S.C. 2041 et seq.]; or  
11 substantially all the members of such crew operate or maintain  
12 tractors, mechanized harvesting or crop-dusting equipment, or  
13 any other mechanized equipment, which is provided by such  
14 crew leader; and

15 (b) If such individual is not an employee of such other person within  
16 the meaning of subdivision a.

17 (4) For the purposes of this subdivision, in the case of any individual who is  
18 furnished by a crew leader to perform service in agricultural labor for  
19 any other person and who is not treated as an employee of such crew  
20 leader under paragraph 3:

21 (a) Such other person and not the crew leader must be treated as  
22 the employer of such individual; and

23 (b) Such other person must be treated as having paid cash  
24 remuneration to such individual in an amount equal to the amount  
25 of cash remuneration paid to such individual by the crew leader  
26 (either on the crew leader's own behalf or on behalf of such other  
27 person) for the service in agricultural labor performed for such  
28 other person.

29 (5) For the purposes of this subdivision, the term "crew leader" means an  
30 individual who:

- 1 (a) Furnishes individuals to perform service in agricultural labor for
- 2 any other person;
- 3 (b) Pays (either on the crew leader's own behalf or on behalf of such
- 4 other person) the individuals so furnished by the crew leader for
- 5 the service in agricultural labor performed by them; and
- 6 (c) Has not entered into a written agreement with such other person
- 7 under which such individual is designated as an employee of
- 8 such other person.

9 **SECTION 2. AMENDMENT.** Subdivision a of subsection 18 of section 52-01-01 of the  
10 North Dakota Century Code is amended and reenacted as follows:

- 11 a. Service performed by an individual in agricultural labor, ~~except as provided in~~
- 12 ~~subdivision m of subsection 17.~~ For purposes of this subdivision, the term
- 13 "agricultural labor" means:
- 14 (1) Any service performed prior to January 1, 1972, which was agricultural
- 15 labor as defined in this subdivision prior to such date; and
- 16 (2) Remunerated service performed after December 31, 1971, in
- 17 agricultural labor as defined in section 3306(k) of the Federal
- 18 Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.].