

# SOCIAL SECURITY

## CHAPTER 450

### HOUSE BILL NO. 1083

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

## ALIEN EMPLOYEE UNEMPLOYMENT TAX EXEMPTION

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

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

<sup>223</sup> **SECTION 1. AMENDMENT.** Subdivision m of subsection 17 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

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

- (1) Such service is performed for a person who:
  - (a) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed ~~before January 1, 1980,~~ by an alien referred to in paragraph 2); or
  - (b) For some portion of a day in each of twenty different calendar weeks, whether ~~or not~~ such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed ~~before January 1, 1980,~~ by an alien referred to in paragraph 2) ten or more individuals, regardless of whether they were employed at the same moment of time.

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<sup>223</sup> Section 52-01-01 was also amended by section 2 of House Bill No. 1083, chapter 450, and section 1 of Senate Bill No. 2172, chapter 451.

- (2) Such service is not performed in agricultural labor if performed ~~before January 4, 1980,~~ by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and ~~401(a)(15)(H)~~ 101(a)(15)(H)(ii)(A) of the Immigration and Nationality Act [Pub. L. 82-414; 66 Stat. 166; 8 U.S.C. 1101 ~~et seq.~~ (a)(15)(H)(ii)(A)].
- (3) For the purposes of this subdivision, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:
- (a) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 [Pub. L. 88-582; 78 Stat. 920; 7 U.S.C. 2041 et seq.]; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and
  - (b) If such individual is not an employee of such other person within the meaning of subdivision a.
- (4) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph 3:
- (a) Such other person and not the crew leader must be treated as the employer of such individual; and
  - (b) Such other person must be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on the crew leader's own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.
- (5) For the purposes of this subdivision, the term "crew leader" means an individual who:
- (a) Furnishes individuals to perform service in agricultural labor for any other person;
  - (b) Pays (either on the crew leader's own behalf or on behalf of such other person) the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and
  - (c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

<sup>224</sup> **SECTION 2. AMENDMENT.** Subdivision a of subsection 18 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 7, 2005  
Filed March 8, 2005

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<sup>224</sup> Section 52-01-01 was also amended by section 1 of House Bill No. 1083, chapter 450, and section 1 of Senate Bill No. 2172, chapter 451.

**CHAPTER 451****SENATE BILL NO. 2172**

(Senator Wardner)  
(Representative N. Johnson)

**AMERICORPS EXEMPTION FOR UNEMPLOYMENT  
INSURANCE**

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 exempting service in Americorps as covered employment for unemployment insurance purposes; and to declare an emergency.

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

<sup>225</sup> **SECTION 1.** 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 as a participant in an Americorps program authorized and funded by the National and Community Service Act of 1990 [Pub. L. 101-610; 42 U.S.C. 12501 et seq.].

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 16, 2005  
Filed March 17, 2005

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<sup>225</sup> Section 52-01-01 was also amended by section 1 of House Bill No. 1083, chapter 450, and section 2 of House Bill No. 1083, chapter 450.

## CHAPTER 452

### SENATE BILL NO. 2106

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

## JOB SERVICE INFORMATION EXCHANGE

AN ACT to amend and reenact subsection 3 of section 52-01-03 of the North Dakota Century Code, relating to exchange of information between job service North Dakota and other state agencies.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The bureau Job service North Dakota may provide workforce safety and insurance, the labor commissioner, the driver's license division of the department of transportation, the department of human services, the department of commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law unemployment insurance program, and may enter into interagency agreements with those entities for the exchange of information that will enhance the administration of the unemployment insurance program. Any information so provided may be used only for the purpose of administering the duties of workforce safety and insurance, the labor commissioner, the state department of commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee furnished pursuant to this subsection or pursuant to interagency agreements authorized by this subsection is to be used for governmental purposes only.

Approved March 8, 2005

Filed March 8, 2005

**CHAPTER 453****SENATE BILL NO. 2107**

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

**UNEMPLOYMENT LAWS PUBLICATION REPEAL**

AN ACT to repeal section 52-02-05 of the North Dakota Century Code, relating to publication of unemployment insurance laws and rules by job service North Dakota.

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

**SECTION 1. REPEAL.** Section 52-02-05 of the North Dakota Century Code is repealed.

Approved March 8, 2005

Filed March 8, 2005

## CHAPTER 454

### HOUSE BILL NO. 1028

(Legislative Council)  
(Commerce Committee)

## UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

AN ACT to amend and reenact section 52-02-07 of the North Dakota Century Code, relating to the establishment of an unemployment insurance advisory council.

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

**SECTION 1. AMENDMENT.** Section 52-02-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **52-02-07. State and local unemployment insurance advisory councils appointed by bureau council - Composition - Duties - Compensation.**

1. The bureau governor shall appoint a state an unemployment insurance advisory council and may appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the bureau may designate. Such councils shall aid the bureau in formulating policies, and discussing problems related to the administration of the bureau and in assuring impartiality and freedom from political influence in the solution of such problems consisting of eight members:
  - a. Five members must represent employers, two of whom must represent employers employing fewer than twenty-five employees, one of whom must represent employers employing twenty-five or more employees, one of whom must represent an employer from the positive employer rate groups, and one of whom must represent an employer from the negative employer rate groups. Each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
  - b. Two members must represent employees, one of whom must represent organized labor and one of whom does not hold a managerial position in employment.
  - c. One at-large member who must be a resident of the state.
2. Of the members first appointed, the term of office of three members is three years, the term of office of three members is two years, and the term of office of two members is one year. Thereafter, the term of office of each member is three years. The governor shall fill any vacancy on the council by appointing a member to complete the unexpired term.
3. The council shall select a chairman annually from its members.

4. The unemployment insurance advisory council shall advise job service North Dakota regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program, and on any related issue or concern brought to the council's attention by the executive director or the executive director's designee. The council shall meet at least once each calendar year and may meet at the call of the chairman or at the call of the executive director.
5. The ~~state~~ members of the unemployment insurance advisory council must be reimbursed for any necessary expenses ~~but shall serve without further~~ and are entitled to receive compensation ~~except such as may be authorized and fixed by the bureau by regulation.~~ Local advisory councils may be reimbursed for any necessary expenses but must serve ~~without further compensation~~ in the sum of one hundred dollars per day spent in attendance at meetings.

Approved April 14, 2005

Filed April 18, 2005



## CHAPTER 455

### SENATE BILL NO. 2085

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

## JOB SERVICE PERFORMANCE AUDITS

AN ACT to amend and reenact section 52-02-18 of the North Dakota Century Code, relating to performance audits of job service North Dakota.

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

**SECTION 1. AMENDMENT.** Section 52-02-18 of the North Dakota Century Code is amended and reenacted as follows:

**52-02-18. Independent performance audit - Continuing appropriation.**

The state auditor shall, upon request of the legislative audit and fiscal review committee, cause a performance audit of job service North Dakota to be conducted within twelve months after receipt of the request. The state auditor may appoint ~~on a biennial basis~~ an independent audit firm, with extensive expertise in job service practices and standards, to complete a performance audit or the state auditor may conduct the performance audit. If the state auditor completes the audit, the state auditor may contract with a consulting firm to aid in the state audit or to complete the audit and shall charge job service North Dakota for the audit, including the services of the consulting firm. ~~The audit must evaluate divisions of job service North Dakota, as determined necessary by the state auditor, to determine whether the divisions are providing quality service in an efficient and cost-effective manner. The audit report must contain recommendations for divisional improvement or an explanation of why no recommendations are being made.~~ The executive director of job service North Dakota and the auditor shall present the audit report and any action taken as a result of the audit to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative assembly following the audit. ~~The executive director shall also provide a copy of the audit report to the state auditor.~~

Approved March 7, 2005

Filed March 8, 2005

**CHAPTER 456****HOUSE BILL NO. 1195**

(Representative Keiser)

**EMPLOYER RESTRUCTURING, HISTORY, AND TRANSFERS**

AN ACT to create and enact two new sections to chapter 52-04 and sections 52-04-08.1 and 52-04-08.2 of the North Dakota Century Code, relating to definitions, payment of unemployment insurance by staffing services, employer restructuring activities, and transfers of unemployment insurance tax account reserve history; to amend and reenact subsection 4 of section 52-04-06 and section 52-04-08 of the North Dakota Century Code, relating to voluntary contributions to lower unemployment insurance tax rates, transfer of unemployment insurance employer experience history to successor entities, and the transfer of workforce to other entities; to provide for a legislative council study; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Agency" or "bureau" means job service North Dakota.
2. "Client company" means a person that contracts to receive services, within the course of that person's usual business, from a staffing service or that contracts to lease any or all of that person's employees from a staffing service.
3. "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.
4. "Staffing service" means an employer in the business of providing the employer's employees to a client company to perform services within the course of that client company's usual business. The term includes a professional employer organization, a staff leasing company, an employee leasing organization, and a temporary staffing company. The term "staffing service" must be broadly construed to encompass an entity that offers services provided by a professional employer organization, a staff leasing company, an employee leasing organization, or a temporary staffing company, regardless of the term used.
5. "Temporary staffing" or "temporary staffing service" means an arrangement through which an employer hires its own employees and assigns the employees to a client company to support or supplement the client company's workforce in a special work situation, including an employee's temporary absence; a temporary skill shortage; a seasonal workload; or a special assignment or project with a targeted end date.

The term does not include an arrangement through which the majority of the client company's workforce has been assigned by a temporary staffing service for a period of more than twelve consecutive months.

6. "Unemployment insurance tax rate" means the rate calculated or assigned under sections 52-04-05 and 52-04-06.
7. "Violates or attempts to violate" includes intent to evade, misrepresentation, and willful nondisclosure.
8. "Workforce" means some or all of the employees of a transferring employer.

**SECTION 2.** A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

**Staffing services - Payment of unemployment insurance taxes.**

1. If a staffing service exclusively provides temporary staffing services, the staffing service is considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. If a staffing service provides temporary and long-term employee staffing services, the staffing service is subject to the reporting and tax requirements associated with the type of employee provided to the client company.
2. For the purposes of long-term employee staffing services provided by a staffing service, the staffing service shall:
  - a. Report quarterly the wages of all employees furnished to each client company and pay taxes on those wages at the client company's unemployment insurance tax rate; except as otherwise provided under subsection 3.
  - b. Maintain complete and separate records of the wages paid to employees furnished to each of the client companies. Claims for benefits must be separately identified by the staffing service for each client company.
  - c. Notify the agency of each client company's name and unemployment insurance account number and the date the staffing service began providing services to the client company. The staffing service shall provide the agency with the information required under this subdivision upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
  - d. Supply the agency with a copy of the agreement between the staffing service and the client company.
  - e. Notify the agency upon termination of any agreement with a client company, but no later than fifteen days from the effective date of the termination.

f. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between the staffing service and a client company is terminated, the employees become the sole employees of the client company.

3. For the purposes of long-term employee staffing services provided by a staffing service, upon authorization of the agency, the staffing service may be considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. The agency may not make an authorization under this subsection unless one of the following requirements is met:

a. In the case of a client company unemployment insurance tax rate that is higher than the staffing services tax rate:

(1) The staffing service:

(a) Calculates the difference between the staffing service's tax rate and the client company's tax rate;

(b) Applies the difference to the wages to be earned by the employees furnished to the client company in the following completed calendar quarter; and

(c) Notifies the agency that such application would, if the staffing service's tax rate were applied to those same wages, cause a reduction in the tax due on those wages which does not exceed five hundred dollars.

(2) If the reduction under paragraph 1 exceeds five hundred dollars, at the written request of the staffing service, the agency may make a written determination that it is appropriate to allow the staffing service to use the staffing service's unemployment insurance tax rate.

b. The staffing service includes in its contract with the client company a requirement that if the client company's unemployment insurance tax rate is higher than the staffing service's tax rate, the client will arrange to make payment to the agency, pursuant to subsection 4 of section 52-04-06, in the amount necessary to cause the client company's unemployment insurance tax rate should it be recomputed to be determined by the agency to be equivalent to the staffing service's unemployment insurance tax rate. Before the agency makes an authorization under this subdivision, the agency actually must receive payment of the amount required to cause the determination that the client company has complied with this subdivision.

c. The staffing service demonstrates to the agency that the staffing service has entered an agreement with a client company that has an unemployment insurance tax rate that is, at the time of execution of the contract, equal to or lower than the staffing service's tax rate.

4. If a staffing service enters a contract with a client company that has an unemployment insurance tax rate that is lower than the staffing service's tax rate, the agency shall determine the following year's tax rate for the staffing service by calculating a blended reserve ratio using the proportion of that client company's total wages paid for up to the previous six years to the total wages paid for up to the previous six years for all of that staffing service's client companies whose furnished workers are considered the staffing service's employees for unemployment insurance tax purposes pursuant to subsection 3.
5. Both a staffing service and client company are considered employers for the purposes of this title. Both parties to a contract between a staffing service and a client company are jointly liable for delinquent unemployment insurance taxes, and the agency may seek to collect such delinquent taxes, and any penalties and interest due, from either party. This chapter does not modify or impair any other provisions of the contract between the staffing service and the client company not relating to the requirements of this subsection concerning liability for payment of taxes on the wages paid to workers furnished by the staffing service to the client company, and the means of determining the tax rate to be applied to those wages.
6. The agency shall determine whether a person is a staffing service. If the agency determines a person is a staffing service, the agency may further determine if the person is a temporary staffing service. The agency's determination must be issued in writing, and within fifteen days of the date of issuance of that determination, a person aggrieved by that determination may appeal that determination. The appeal must be heard in the same manner and with the same possible results as all other administrative appeals under this title. In making a determination under this subsection, the agency may consider:

  - a. The number of client companies with which the staffing service has contracts;
  - b. The length of time the staffing service has been in existence;
  - c. The extent to which the staffing service extends services to the general public;
  - d. The degree to which the client company and the staffing services are separate and unrelated business entities;
  - e. The repetition of officers and managers between the client company and staffing service;
  - f. The scope of services provided by the staffing service;
  - g. The relationship between the staffing service and the client company's workers;
  - h. The written agreement between the staffing service and the client company; and
  - i. Any other factor determined relevant by the agency.

7. The agency may require information from any staffing service, including a list of current client company accounts, staffing assignments, and wage information. A client company shall provide any information requested by the agency regarding any staffing service.

**SECTION 3. AMENDMENT.** Subsection 4 of section 52-04-06 of the North Dakota Century Code is amended and reenacted as follows:

4. a. After each year's rate schedule has been established, an employer may pay into the fund, or cause to be paid into the fund on the employer's behalf, an amount in excess of the contributions required to be paid under this section. That amount must be credited to the employer's separate account. The employer's rate must be recomputed with the amount paid pursuant to this subsection included in the calculation only, except as allowed by subdivision b, if that amount was paid by April thirtieth of that year. Payments may not be refunded or used as credit in the payment of contributions.
- b. An employer that enters a contract with a staffing service, other than a temporary staffing service, may make the payments authorized by this subsection at any time during the rate year and the agency will determine if that payment is adequate to allow the staffing service to comply with subsection 3 of section 2 of this Act; however, the employer's tax rate will remain in effect for the remainder of the tax year. The agency will deposit any payment received pursuant to this subsection immediately and will credit it to the employer's separate account, but the agency will apply the payment to the calculation of the employer's tax rate for the following rate year. In order to take advantage of this subdivision and subsection 3 of section 2 of this Act, an employer may not be delinquent in its unemployment insurance tax payments on the date on which the payment authorized by this subdivision is made.

**SECTION 4. 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 - Impact of substantial common ownership, management, or control.**

1. An employing unit that in any manner acquires all or part of the organization, business, trade, workforce, or assets of another employer and continues essentially the same business activity of the whole or part transferred, ~~must~~ may upon request be transferred in accordance with such regulations as the bureau may prescribe law and any relevant rules adopted by the agency, the whole or appropriate part of the experience record, reserve balance, and benefit experience of the preceding predecessor employer, unless the agency finds that the employing unit acquired the business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate. ~~Provided that if~~ 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.
2. When an employing unit in any manner acquires all or part of the organization, business, trade, workforce, or assets of another employer,

~~the bureau the agency 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 there was, at the time of acquisition, substantially common ownership, management, or control of the predecessor and the successor.~~

3. 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, workforce, or assets is to the total average annual payroll of the predecessor.
4. 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 5.** Section 52-04-08.1 of the North Dakota Century Code is created and enacted as follows:

**52-04-08.1. Implementation of federal anti-SUTA dumping legislation.**

The agency shall implement section 52-04-08.2 to ensure necessary compliance with section 303(k) of the Social Security Act [Pub. L. 108-195; 42 U.S.C. 503]. The agency shall adopt rules and procedures necessary to ensure compliance with that section. The agency may issue necessary subpoenas, in accordance with sections 52-06-23 and 52-06-25, to carry out its responsibilities under this chapter.

**SECTION 6.** Section 52-04-08.2 of the North Dakota Century Code is created and enacted as follows:

**52-04-08.2. Transfers of unemployment insurance experience - Recalculation of rates - Definitions - Civil and criminal penalties.**

Notwithstanding any other provision of law, the following applies regarding assignment of penalty tax rates and transfers and acquisitions of businesses:

1. a. If an employer transfers all or a part of its trade or business to another employer and at the time of the transfer there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the transferred trade or business is transferred to the employer to which the business is transferred. The rates of both employers must be recalculated and made effective on the first day of the quarter in which the transfer took effect. The transfer of any of the employer's workforce to another employer is considered a transfer of trade or business under this subsection if, as a result of the transfer, the transferring employer no longer performs the trade or business in which the transferred workforce was engaged, and the trade or business is performed by the employer to which the workforce was transferred.

- b. If, following a transfer of experience under subdivision a, the agency determines that a substantial purpose of the transfer of trade or business was to obtain a reduced unemployment insurance tax rate, the experience ratings of the employers involved must be combined into a single account and a single unemployment insurance tax rate must be assigned to that account.
- 2. If a person, who at the time of acquisition is not an employer under this title, acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the agency finds that the person acquired the business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate. Instead, the person must be assigned the applicable new employer rate calculated under section 52-04-05. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate, the agency shall use objective factors that may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, and whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted before acquisition.
- 3. If a person knowingly acts or attempts to transfer or acquire a trade or business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate or knowingly violates any other provision of this chapter related to determining the assignment of an unemployment insurance tax rate, or if a person knowingly advises another person in a way that results in a violation of those provisions, the person is subject to the civil penalties provided in this subsection.
  - a. If the person is an employer, the employer must be assigned, in lieu of that employer's experience rate, the highest rate assignable under this chapter for the rate year during which the violation or attempted violation occurred and the three rate years immediately following that rate year. However, if the employer's experience rate is already at the highest rate for any year of that four-year period or if the amount of increase in the person's experience rate imposed under this subdivision would be less than two percent for any year of the four-year period, the penalty unemployment insurance tax rate for the year must be determined by adding a rate increment of two percent of taxable wages to the calculated experience rate.
  - b. If the person is not an employer, the person is subject to a civil penalty of not more than twenty-five thousand dollars. Any civil penalty collected must be deposited in the penalty and interest account established under section 52-04-22.
- 4. In addition to the civil penalty imposed under subsection 3, any person that knowingly violates this section or knowingly attempts to violate this section is guilty of a class C felony.



**SECTION 7. LEGISLATIVE COUNCIL STUDY - PROFESSIONAL EMPLOYER ORGANIZATIONS.** The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of requiring professional employer organizations operating in North Dakota to register with the state. The study must include consideration of how other states address the issue of registration of professional employer organizations. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 25, 2005

Filed April 26, 2005

## CHAPTER 457

### HOUSE BILL NO. 1027

(Legislative Council)  
(Commerce Committee)

## UNEMPLOYMENT COMPENSATION TAX RATES

AN ACT to amend and reenact section 52-04-05 of the North Dakota Century Code, relating to the determination of unemployment insurance tax rates.

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

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

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

1. As used in this section:

- a. "Income needed to pay benefits" means the estimate of benefits payable in a given calendar year less the estimate of interest to be earned by the unemployment insurance trust fund for that calendar year.
- b. "Solvency balance" means the income needed, whether a positive or negative figure, in a given rate year to reach the solvency target over the number of years remaining of the period within which the solvency target is to be reached plus the estimate of the amount of income needed to pay benefits.
- c. "Trust fund reserve" excludes all Reed Act [42 U.S.C. 1103] cash.

2. For each calendar year, the bureau separately shall estimate the amount of income needed to pay benefits and ~~maintain a~~ shall estimate the amount of income needed to reach a solvency balance in the unemployment compensation insurance trust 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 January 1, 2000, the required amount of the trust fund reserve becomes a targeted moves toward the solvency target amount as determined under this subsection. The solvency target is an average high-cost multiple of one. The average high-cost multiple is the number of years the bureau could pay unemployment compensation, based on the reserve ratio, if the bureau paid the compensation at a rate equivalent to the average benefit cost rate in the one calendar year during the preceding twenty calendar years and the two calendar years during the preceding ten calendar years in which the benefit cost rates were the highest. "Reserve ratio" means the ratio determined by dividing the balance in the trust fund reserve at the end of the calendar year by the

total covered wages in the state for that year. "Benefit cost rate" means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the state for that year. The computation of the reserve ratio and benefit cost rate must exclude the wages and unemployment compensation paid by employers covered under section 3309 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3309].

3. The initial trust fund reserve solvency target ~~will~~ must be achieved over a seven-year period from January 1, 2000. After the solvency target required by this section is reached, the calculation of the solvency target must be continued and, if the trust fund reserve as of December thirty-first of any year is less or greater than the solvency target, the rates must be adjusted so that one-fifth of the difference between the solvency target and the current trust fund reserve is estimated to be collected in the following rate year.

4. Progress toward achieving the targeted amount of the trust fund reserve solvency target is measured by reducing any difference between one and the average high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the targeted amount of the trust fund reserve solvency target to the difference between the trust fund reserve and the targeted amount. If the calendar year annual average insured unemployment rate is above three percent and has increased one hundred ten percent of the average of the preceding two calendar years, a tax rate will be set to provide for fifty percent of the additional revenue needed for the trust fund to be derived from tax rate increases and the remaining fifty percent becomes a drawdown against the trust fund reserve. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve. The executive director may make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years. ~~When the trust fund reserve is being rebuilt, rates will not be lowered until the target level is reached. If while achieving the trust fund reserve target the trigger of above three percent insured unemployment rate and an increase of more than one hundred ten percent of the average of the two preceding years has been in effect for two or more consecutive years, the period of time to achieve the trust fund reserve target is extended to seven years from the end date of the last year in which the trigger was in effect. If this trigger has been in effect for one year, the amount of tax increase toward achieving the targeted amount of the trust fund reserve must be determined using the number of years remaining of the seven-year period, excluding the year the trigger is in effect.~~

2- 5. Rates must be determined as follows:

- a. The income ~~required~~ needed to pay benefits 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 needed to pay benefits.
- b. If the positive employer maximum rate is at least one percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of one percent. If the positive employer

maximum rate is less than one percent, the range for the positive employer minimum rate must be at least one-tenth of one percent and must be less than two-tenths of one percent (the minimum of one-tenth of one percent plus the increment of one-tenth of one percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules for each calendar year, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate is the positive employer maximum rate plus five and one-tenth percent necessary to generate the amount of income needed to pay benefits is at least one percent, the positive employer minimum rate necessary to generate the amount of income necessary to pay benefits is the foregoing positive employer maximum rate, minus nine-tenths of one percent. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is less than one percent, the range for the positive employer minimum rate necessary to generate the amount of income needed to pay benefits must be at least one-tenth of one percent and must be less than two-tenths of one percent, with the positive employer maximum rate necessary to generate the amount of income needed to pay benefits equal to the positive employer maximum rate, as used in this subsection, minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules to be utilized for each calendar year to establish the tax rates necessary to generate the amount of income needed to pay benefits, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate needed to generate the amount of income needed to pay benefits is the positive employer maximum rate as described in this subsection plus five and one-tenth percent.

- c. The positive employer maximum rate necessary to generate the amount of income needed to pay benefits must be set so that all the rates combined generate the average required rate for income needed to pay benefits, multiplied by the ratio, calculated under subdivision d, needed to reach the solvency balance. The negative employer maximum rate necessary to generate the amount of income needed to pay benefits is the negative employer minimum rate necessary to generate the amount of income needed to pay benefits plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.
- d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as

required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.

- ~~3.~~ 6. 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. 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 three-digit major group provided in the North American industrial classification system manual, in accordance with established classification practices found in the 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. 7. 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~~ The employer's rate, however, must be determined in accordance with subsection ~~3~~ 6.

Approved March 9, 2005

Filed March 9, 2005

## CHAPTER 458

### SENATE BILL NO. 2108

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

## UNEMPLOYMENT BENEFITS AND STUDENT DISQUALIFICATION

AN ACT to amend and reenact subsection 2 of section 52-04-07 and subsections 1 and 6 of section 52-06-02 of the North Dakota Century Code, relating to charging of certain benefit payments to reimbursing employers' accounts, charging of benefits to base-period employers, and to the definition of a full-time student who would be disqualified from receiving benefits under the unemployment compensation insurance system.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 52-04-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding subsection 1, an employer's account may not be charged for any of the following:
  - a. With benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143; 42 U.S.C. 5122(2)], if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits.
  - b. With benefits paid to an individual who; ~~during the base period;~~ either:
    - (1) Left the employment of a the base-period employer voluntarily without good cause or with good cause not involving fault on the part of the base-period employer; or
    - (2) Who was discharged from employment by the base-period employer for misconduct.
  - c. As provided under section 52-06-29.
  - d. With benefits paid to an individual who is in training with the approval of ~~the bureau~~ job service North Dakota.
  - e. With benefits paid to an individual who is subsequently determined not entitled to receive the benefits.
  - f. With benefits paid to an individual who is currently employed part time with that employer when the hiring agreement between the individual and the employer has not changed since the individual

commenced work for that employer. This subdivision does not apply to an employee of a temporary help firm.

<sup>226</sup> **SECTION 2. AMENDMENT.** Subsections 1 and 6 of section 52-06-02 of the North Dakota Century Code are 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 workforce 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~~ job service North Dakota 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, other than a reimbursing employer,

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<sup>226</sup> Section 52-06-02 was also amended by section 1 of House Bill No. 1202, chapter 460.



from whom the individual became separated as a result of the illness or injury. ~~The bureau~~ Job service North Dakota 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.

6. For any week of unemployment if such individual is a student registered for ~~full attendance~~ a full-time curriculum at, and is regularly attending, an established school, college, or university, ~~except as provided in subdivision a of~~ and the scheduled class hours are the same time period or periods as the normal work hours of the occupation from which that individual earned the majority of the wages in that individual's base period, unless that individual is authorized to receive benefits while in training pursuant to subsection 3 of section 52-06-01. However, this disqualification does not apply to ~~full-time postsecondary~~ students registered for a full-time curriculum who have earned the majority of ~~their wage credits~~ the wages in their base period periods for services performed during weeks in which the individual was so registered and

attending school as a full-time postsecondary student. As used in this subsection, the term "full-time curriculum" means a course load of twelve or more credit hours or a course load found to be equivalent by rule adopted by job service North Dakota.

Approved March 8, 2005

Filed March 8, 2005

## CHAPTER 459

### HOUSE BILL NO. 1082

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

## UNEMPLOYMENT TAX RATE APPEALS, HEARINGS, AND STATUS

AN ACT to amend and reenact section 52-04-10, subsection 3 of section 52-04-11.1, and section 52-04-17 of the North Dakota Century Code, relating to appeals from employer tax rate notices, administrative hearings concerning corporate officer personal liability, and questions of employer status for unemployment compensation insurance purposes.

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

**SECTION 1. AMENDMENT.** Section 52-04-10 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-10. Contributions for ensuing year - Notification - Review.** The bureau shall promptly make a determination and notify each employer of the employer's rate of contributions as determined for each ensuing year by the end of the first full week of December, but not later than December tenth, of the preceding year. ~~Such~~ The rate of contributions must be computed pursuant to the provisions of this chapter. ~~Such~~ The determination becomes conclusive and binding upon the employer unless, within fifteen calendar days after the mailing of the notice thereof to the employer's last-known address, or in the absence of the mailing, within fifteen calendar days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reasons therefor. If the bureau grants such review, the employer must be notified promptly thereof and must be granted an opportunity for a hearing, but a written appeal of the determination. However, no employer shall have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to the provisions of chapter 52-06, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute the services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination, or decision or to any other administrative proceeding under this chapter in which the character of these services was determined. For purposes of this section, an employer was not a party to the determination any such proceeding if notice of the determination, redetermination, or decision and the employer's right to appeal the determination, redetermination, or decision was not mailed or personally delivered to the employer. The employer must be notified promptly of the bureau's denial of the employer's application, or of the bureau's redetermination, both of which become final unless within thirty days after the mailing of notice thereof to the employer's last-known address or in the absence of mailing, within thirty days after delivery of such notice, a petition for judicial review is filed in the district court of Burleigh County. Any proceeding before the court under the terms of this section must be had in accordance with the provisions in chapter 52-06 with respect to court review.

**SECTION 2. AMENDMENT.** Subsection 3 of section 52-04-11.1 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~After notice and opportunity for a hearing, the~~ The unemployment compensation insurance division shall make a written determination as to the personal liability of a corporate officer or employee under this section. ~~A hearing must be requested within twelve days from the date of mailing of the notice.~~ The determination is final unless the person found to be personally liable ~~requests review by the bureau~~ files a written appeal of the determination within fifteen calendar days after mailing of the notice of determination to the person's last-known address.

**SECTION 3. AMENDMENT.** Section 52-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-17. Administrative determinations of coverage.** ~~The job unemployment insurance division may, upon its own motion or upon application of an employing unit, and after notice and opportunity for hearing, make findings of fact and on the basis thereof, determinations may make a written determination with respect to whether an employing unit constitutes an employer and, or whether services performed for or in connection with the business of an employing unit constitute employment, or both such determinations. Appeal from any such determination may be taken to the bureau within fifteen days after the mailing of notice of the findings and determination to the employing unit; or, in the absence of mailing, within fifteen days after the delivery of the notice. Proceedings in such appeals must be in the same manner as in appeals from a decision of an appeal tribunal. A determination of the division, in the absence of appeal therefrom, and a determination of the bureau upon an appeal, together with the record of the proceeding under this section are admissible in any subsequent proceeding under the North Dakota Unemployment Compensation Law, and if supported by substantial evidence and in the absence of fraud are conclusive, except as to errors of law, upon any employing unit which was a party to the proceeding under this section. A determination made pursuant to this section is final unless the employing unit, within fifteen calendar days of the date of mailing of the determination, files a written appeal with job service North Dakota.~~

Approved March 4, 2005

Filed March 4, 2005

## CHAPTER 460

### HOUSE BILL NO. 1202

(Representatives Keiser, Delzer, Nicholas)  
(Senators Flakoll, Warner)

## UNEMPLOYMENT COMPENSATION BENEFIT DISQUALIFICATION

AN ACT to amend and reenact subsection 15 of section 52-06-02 of the North Dakota Century Code, relating to when individuals are disqualified for unemployment compensation benefits.

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

<sup>227</sup> **SECTION 1. AMENDMENT.** Subsection 15 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

15. For any week with respect to which an individual is receiving a pension, ~~which shall include including a governmental or pension other than federal social security retirement benefits, and any other pension, retirement or pay, retired pay, annuity, or and any other similar periodic payment; under a plan maintained or contributed to by a base-period or chargeable employer; as determined under applicable law, unless the weekly benefit amount payable to such individual for such week shall be is reduced, but not below zero:~~
  - a. By the prorated weekly amount of the pension after deduction of three-fourths of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed ~~on or after July 4 June 30, 1985,~~ and by the prorated weekly amount of the pension after deduction of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed ~~on or after July 4 June 30, 1986;~~
  - b. By the entire prorated weekly amount of the pension if subdivision a or c does not apply; or
  - c. By one-fourth of the pension if the entire contributions to the plan were provided by such individual, ~~or by the individual and an employer, or by any other person or organization, who that is not a base-period or chargeable employer; as determined under applicable law, for claims filed on or after July 4 June 30, 1985,~~ and by no part of the pension if the entire contributions to the plan were provided by such individual, ~~or by the individual and an employer, or by any other person or organization, who that is not a~~

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<sup>227</sup> Section 52-06-02 was also amended by section 2 of Senate Bill No. 2108, chapter 458.

base-period or chargeable employer; as determined under applicable law, for claims filed ~~on or~~ after ~~July 4~~ June 30, 1986.

~~No~~ A reduction may not be made under this subsection by reason of the receipt of a pension if the services performed by the individual during the base period, or remuneration received for such services, for the employer did not affect the individual's eligibility for, or increase the amount of, the pension, retirement pay, ~~or~~ retired pay, annuity, or similar payment. This limitation does not apply to pensions paid under the ~~Social Security Act or the~~ Railroad Retirement Act of 1974, or the corresponding provisions of prior law. Payments made under ~~those Acts~~ the Railroad Retirement Act of 1974 must be treated solely in the manner specified by subdivisions a, b, and c. A reduction may not be made under this subsection by reason of receipt of federal social security retirement benefits.

Approved March 15, 2005

Filed March 16, 2005

## CHAPTER 461

### SENATE BILL NO. 2086

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

### JOB SERVICE FEES

AN ACT to amend and reenact section 52-08-13 of the North Dakota Century Code, relating to charging of fees for services; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 52-08-13 of the North Dakota Century Code is amended and reenacted as follows:

**52-08-13. Job task analysis services - Testing services - Job fair services - Personal reemployment account services - Authorization to charge fees - Continuing appropriation.** Job service North Dakota may provide job task analysis services, testing services, and job fair services to an employer requesting these services and may provide personal reemployment account services to an individual requesting those services. Notwithstanding the reference to free public employment offices in this chapter or in any other provision of law, job service North Dakota may charge reasonable fees ~~to employers~~ for providing job task analysis services, testing services, job fair services, and personal reemployment account services. All fees collected under this section must be deposited in a separate interest-bearing account at the Bank of North Dakota and must be used for the purpose of providing job task analysis services, testing services, job fair services, and personal reemployment account services. Moneys in this fund are appropriated on a continuing basis for the purpose of providing job task analysis services, testing services, job fair services, and personal reemployment account services.

Approved March 7, 2005

Filed March 8, 2005

## CHAPTER 462

### HOUSE BILL NO. 1059

(Representatives R. Kelsch, Porter, Carlisle)  
(Senators Cook, Wardner, Grindberg)

## WORKFORCE 20/20 ELIGIBILITY

AN ACT to amend and reenact sections 52-08.1-01, 52-08.1-02, 52-08.1-03, 52-08.1-04, 52-08.1-05, and 52-08.1-06 of the North Dakota Century Code, relating to changing the name of work force 2000 to workforce 20/20 and eligibility for workforce 20/20 funds.

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

**SECTION 1. AMENDMENT.** Section 52-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**52-08.1-01. North Dakota ~~work force 2000~~ workforce 20/20 policy and goals.**

1. The legislative assembly finds that a highly skilled work force is critical to the present and future competitiveness of North Dakota's economy. The legislative assembly, therefore, declares that it is the policy of the state to support and promote skill training, retraining, and upgrade training for North Dakota workers. It is the goal of the state to:
  - a. Improve the skills of North Dakota workers;
  - b. Promote and sponsor effective and responsive training programs for employed and unemployed North Dakotans who need job-related training;
  - c. Promote programs that lead to family wage jobs;
  - d. Secure the active participation and full cooperation of North Dakota industry leaders, business owners, and employee representatives in developing programs to increase and improve worker skill training;
  - e. Promote the coordination of North Dakota's education and job training systems to more fully respond to the increasingly complex training needs of workers; and
  - f. Promote access to education and job training programs for all North Dakotans regardless of their economic status or geographic location within the state.
2. The legislative assembly declares that it is the policy of this state to integrate skill training and development programs into its economic development strategies.

**SECTION 2. AMENDMENT.** Section 52-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:



**52-08.1-02. North Dakota work force 2000 workforce 20/20 program administration.** Job service North Dakota shall administer the North Dakota ~~work force 2000~~ workforce 20/20 program within the state.

1. Program priorities Job service North Dakota shall give priority to applicants that:
  - a. Are compatible with statewide economic development strategies.
  - b. Demonstrate business and community financial support and participation.
  - c. Coordinate activities and resources with other training programs.
  - d. Provide for followup and evaluation of program results.
  - e. Provide customized training, retraining, and upgrade training in occupations that pay not less than two hundred percent of the federal and state minimum wage.
  - f. Provide training to unemployed and employed residents of North Dakota for new businesses creating new jobs and expanding businesses.
2. Program requirements:
  - a. ~~Only~~ Funding through the program is limited to training for permanent jobs or occupations which that have significant career opportunities and which require substantive instructions will be considered for funding resulting from:
    - a. Introduction of new technologies or new equipment; or
    - b. Significant changes in business operations or production methods.
- ~~b.~~ 3. An applicant may be eligible for funding of sales and marketing training that is necessitated due to technology or equipment changes that affect manufacturing or production.
4. ~~Training can include only~~ funded through the program is limited to upgrade training or retraining of current workers in situations where in which training is required for continued employment or and to training of trainees as long as if the company gives successful graduates hiring priority.
  - e. ~~Only trainees approved by participating parties will be~~ are eligible for training funded through the program.
- ~~d.~~ 5. ~~Training will be funded through the program~~ is limited to state residents.
- ~~e.~~ 6. All direct training costs are allowable and can for funding through the program. Direct training costs may include the following:
  - (1) a. Program promotion.
  - (2) b. Instructor wages, per diem, and travel.

- (3) c. Curriculum development and training materials.
- (4) d. Lease of training equipment and training space.
- (5) e. Miscellaneous direct training costs.
- (6) f. Administrative costs.
- (7) g. Assessment and testing.

**SECTION 3. AMENDMENT.** Section 52-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**52-08.1-03. North Dakota ~~work force 2000~~ workforce 20/20 priority of industry requirements.**

1. ~~Assist~~ The program is designed to assist companies that are undergoing major technological changes and where training is deemed critical to the company and in occupations that are deemed to have inadequate trained personnel.
2. ~~Training~~ Job service North Dakota shall encourage training assistance must be encouraged for small companies and companies located in rural areas.
3. ~~Companies must be encouraged~~ Job service North Dakota shall encourage companies to participate with in-kind contributions of training space, training equipment, training supplies, and technical assistance.
4. ~~Training programs must be designed with~~ require the direct participation of the sponsoring company and an employee representative.
5. If new job openings are created through upgrade training, the sponsoring company should give priority consideration to individuals eligible for other state and federal job training programs.
6. Job service North Dakota shall encourage training assistance for a company that manufactures or otherwise produces a product. However, the class of occupations eligible to receive training through such a company is not limited to manufacturing or production.

**SECTION 4. AMENDMENT.** Section 52-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**52-08.1-04. North Dakota ~~work force 2000~~ workforce 20/20 program implementation and coordination.**

1. All programs must be conducted through contractual arrangements made with job service North Dakota.
2. Programs must be conducted in cooperation with appropriate state board for career and technical education approved training providers and institutions.
3. Final screening of trainees must be conducted by the company with the assistance of job service North Dakota when required.

4. Program effectiveness will be determined by post-training monitoring that will address such issues as:
  - a. Company satisfaction with the program.
  - b. Company transition to new technologies or products.
  - c. Post-training wage levels versus pretraining wage levels.
  - d. Number of trainees successfully completing the program.
  - e. Number of trainees who are retained by the company as a result of the training program.
  - f. Number of new jobs created at entry level as a result of upgrade training.

**SECTION 5. AMENDMENT.** Section 52-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**52-08.1-05. North Dakota ~~work force 2000~~ workforce 20/20 application procedure.**

1. A proposal or concept paper must be submitted by the appropriate company, trade representative, or employee representative to job service North Dakota.
2. The proposal or concept paper should address the key guideline points but be kept brief.

**SECTION 6. AMENDMENT.** Section 52-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**52-08.1-06. North Dakota ~~work force 2000~~ workforce 20/20 gifts and grants.** Job service North Dakota is authorized to accept and use any funds, including gifts and grants, made available for the purpose of defraying expenses involved in carrying out this chapter.

Approved March 4, 2005

Filed March 4, 2005

## CHAPTER 463

### HOUSE BILL NO. 1073

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

### 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; and to provide an appropriation.

#### 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, ~~2003~~ 2005, ~~eight~~ nine hundred ~~seventy-nine~~ thirty-three dollars and ~~ninety-six~~ twenty-eight cents; or
  - (2) Effective August 1, ~~2004~~ 2006, nine hundred ~~six~~ fifty-nine dollars and ~~sixty-two~~ ninety-four cents.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$19,000, or so much of the sum as may be necessary, to the public employees retirement system for transfer to the old-age and survivors' insurance trust fund for the purpose of paying old-age and survivor insurance benefits to remaining beneficiaries, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved March 23, 2005  
Filed March 23, 2005