

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1027
(Legislative Council)
(Commerce Committee)

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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1027.

House Vote: Yeas 75 Nays 9 Absent 10

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State