

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

HOUSE BILL NO. 1083
(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

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:

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.
 - (2) Such service is not performed in agricultural labor if performed ~~before January 1, 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.

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.].

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. 1083.

House Vote: Yeas 87 Nays 2 Absent 5

Senate Vote: Yeas 45 Nays 0 Absent 2

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