

SOCIAL SECURITY

CHAPTER 543

SENATE BILL NO. 2197
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION DEFINITIONS, RATES, AND LIABILITY

AN ACT to amend and reenact subsections 14 and 17 of section 52-01-01, subsection 1 of section 52-03-07, subsections 1 and 2 of section 52-04-06, sections 52-04-08, 52-04-09, 52-04-22, 52-06-16, and 52-06-32 of the North Dakota Century Code, relating to unemployment compensation definitions, administrative use of Reed Act moneys, and contribution rates, transfer experience rates, classification of employers to determine contributions, federal advance interest repayment fund, and representation of employers.

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

SECTION 1. AMENDMENT. Subsections 14 and 17 of section 52-01-01 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

14. "Employee" means every individual, whether male, female, citizen, alien, or minor, who ~~is performing, or subsequent to January 1, 1936, has performed, performs~~ services for an employer in an employment subject to the North Dakota Unemployment Compensation Law and includes an officer of a corporation, ~~but such term does not include-~~
 - a- ~~Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or~~
 - b- ~~Any individual (except an officer of a corporation) who is not an employee under such common-law rules.~~
17. "Employment" means:
 - a. Any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date, and subject to the other provisions of this

subsection, service performed after December 31, 1971, including service in interstate commerce, by:

- (1) Any officer of a corporation.
- (2) Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, provisions of subdivision e, has the status of an employee.
- (3) Any individual other than an individual who is an employee under paragraph 1 or 2 who performs services for remuneration for any person:
 - (a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal.
 - (b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of this paragraph, the term "employment" shall include services described in either subparagraph a or b performed after December 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

- b. An individual's entire service, performed within or both within and without this state if the service is localized in this state.

- c. Services covered by an election pursuant to chapter 52-05.
- d. Services covered by an arrangement pursuant to sections 52-02-14 and 52-02-15 between the bureau and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the bureau has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.
- e. Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to the North Dakota Unemployment Compensation Law unless and until it is shown that such individual, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or such individual (except an officer of a corporation) is not an employee under such common-law rules provided that this subdivision shall not operate to exclude services as defined in paragraph 3 of subdivision a: (1) such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact, and (2) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of the enterprise for which such service is performed, and (3) such individual is customarily engaged in an independently established trade, occupation, profession or business.
- f. Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this state; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] solely by reason of section 3306(c)(7) of that Act and is not excluded from "employment" under subdivision h of this subsection. Service performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided,

that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] by section 3306(c)(7) of that Act and is not excluded from "employment" as enumerated under subdivision h of this subsection.

- g. Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization but only if the following conditions are met:
- (1) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] solely by reason of section 3306(c)(8) of that Act; and
 - (2) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.
- h. For the purposes of subdivisions f and g the term "employment" does not apply to service performed:
- (1) In the employ of:
 - (a) A church or convention or association of churches; or
 - (b) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.
 - (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.
 - (3) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education and after December 31, 1977, in the employ of a governmental entity referred to in subdivision f if such service is performed by an individual in the exercise of duties:
 - (a) As an elected official.

- (b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision.
 - (c) As a member of the state national guard or air national guard.
 - (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.
 - (e) In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week.
- (4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.
 - (5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.
 - (6) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.
- i. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, and after December 31, 1976, in the case of the Virgin Islands, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision b and subsection 28 or the parallel provisions of another state's law), if:

- (1) The employer's principal place of business in the United States is located in this state; or
 - (2) The employer has no place of business in the United States, but:
 - (a) The employer is an individual who is a resident of this state;
 - (b) The employer is a corporation which is organized under the laws of this state; or
 - (c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or
 - (3) None of the criteria of paragraphs 1 and 2 is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.
 - (4) An "American employer", for purposes of this subdivision, means a person who is:
 - (a) An individual who is a resident of the United States;
 - (b) A partnership if two-thirds or more of the partners are residents of the United States;
 - (c) A trust, if all of the trustees are residents of the United States; or
 - (d) A corporation organized under the laws of the United States or of any state.
 - (5) The term "United States" for purposes of this subdivision includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- j. Notwithstanding subdivision b, all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state.

- k. Notwithstanding any other provision of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] is required to be covered under the North Dakota Unemployment Compensation Law.
- l. An individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:
- (1) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and
 - (2) The place from which the service is directed or controlled is in this state.
- 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 101(a)(15)(H) of the Immigration and Nationality Act [Pub. L. 82-414; 66 Stat. 166; 8 U.S.C. 1101 et seq.].

- (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 cropdusting 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 shall be treated as the employer of such individual; and
 - (b) Such other person shall 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 his 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 his own behalf or on behalf of such other person) the individuals so furnished by him 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.

- n. The term "employment" shall include domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority, performed for a person who paid cash remuneration of one thousand dollars or more to individuals employed in such domestic service in any calendar quarter in the current or preceding calendar year.

SECTION 2. AMENDMENT. Subsection 1 of section 52-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-03-07. Administrative use.

1. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act [42 U.S.C. 1103], as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the legislative assembly; provided, that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:
- a. Specifies the purposes for which money is appropriated and the amounts appropriated therefor;
 - b. Limits the period within which such money may be expended to a period ending not more than two years after the date of the enactment of the appropriation law; and
 - c. Limits the amount which may be used during a twelve-month period beginning on July first and ending on the next June thirtieth to an amount which does not exceed the amount by which:
 - (1) The aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act [42 U.S.C. 1103], as amended, during the same twelve-month period and the ~~twenty-four~~ thirty-four preceding twelve-month periods, exceeds
 - (2) The aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such ~~twenty-five~~ thirty-five 12-month periods. For the purposes of this section, amounts used

during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount used for administration during such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the twenty-fourth thirty-fourth preceding such period.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 52-04-06 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The percent of the average annual payroll by which the cumulative contributions paid by an employer on or before October thirty-first of any year, with respect to wages paid by that employer prior to the first day of October of that calendar year, exceeds the cumulative benefits which were charged to that employer's account and paid on or before September thirtieth of that year, is that employer's reserve ratio. The contribution rate for the next calendar year of an employer eligible under section 52-04-05 will be the basic rate of contributions on the line in the schedule of basic rates opposite that employer's reserve ratio as established for that year.

| EMPLOYER'S RESERVE RATIO | BASIC RATE |
|---|------------|
| Minus balance or standard rate | 5-0% |
| 0% but less than 1% | 4-3% |
| 0% or less | 5-0% |
| More than 0% but less than 1% | 4-3% |
| 1% but less than 2% | 4-1% |
| 2% but less than 3% | 3-9% |
| 3% but less than 4% | 3-7% |
| 4% but less than 5% | 3-5% |
| 5% but less than 6% | 3-3% |
| 6% but less than 7% | 3-1% |
| 7% but less than 8% | 2-9% |
| 8% but less than 9% | 2-7% |
| 9% but less than 10% | 2-5% |
| 10% but less than 11% | 2-3% |
| 11% but less than 12% | 2-1% |
| 12% but less than 13% | 1-9% |
| 13% but less than 14% | 1-7% |
| 14% but less than 15% | 1-5% |
| 15% but less than 16% | 1-3% |
| 16% but less than 17% | 1-1% |
| 17% but less than 18% | 0-9% |
| 18% but less than 19% | 0-7% |
| 19% and over | 0-5% |

2. For the calendar year 1983 and each year thereafter, the bureau shall adjust the basic rates in the schedule of basic rates by an adjustment ratio so as to provide a

return of contributions needed to pay the projected amount of benefits payable for the following year and to provide for an adequate trust fund reserve. An adequate trust fund reserve as of October 1, 1983, will be considered to be forty percent of the average annual amount of benefits paid. As of October 1, 1984, and each October first thereafter, an adequate reserve will be considered to be fifty 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, or projected to be paid, during the previous thirty-six months by three. An adequate trust fund reserve as of October 1, 1986, must be at least fifteen percent of the average annual amount of benefits paid. An adequate trust fund reserve as of October 1, 1987, and each October first thereafter, must be at least twenty-five percent of the average annual amount of benefits paid. The eventual goal for the amount of the trust fund reserve is fifty percent of the average annual amount of benefits paid. The average annual amount of benefits paid shall be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three. Benefits financed by direct reimbursement must be omitted from this computation. After the bureau has determined the necessary adjustment ratio, each basic rate in the schedule of basic rates will be reduced or increased by that adjustment ratio with the result rounded to the nearest lower one-tenth of one percent in the case of a reduction or to the nearest higher one-tenth of one percent in the case of an increase.

SECTION 4. AMENDMENT. Section 52-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-08. Succession to predecessor's rights, accounts, contributions, benefit experience, and ratings. For the purpose of establishing benefit experience and fixing contributions to be paid, an employing unit which in any manner succeeds to or acquired substantially all of the organization, trade, business, or the assets thereof, of any employing unit shall upon request be substituted to the position and all rights of the predecessor employing unit with respect to such predecessor employing unit's separate account, actual contributions and benefit experience, annual payroll, or otherwise, as if no change with respect to such separate account, contributions, and benefit experience, payrolls or otherwise, had occurred. The bureau upon notification thereof shall forthwith transfer to such succeeding employing unit all rights, accounts, contributions, benefit experience, and all ratings of such predecessor employing unit in accordance with such regulations as the bureau may prescribe; provided, that if good cause can be shown to the bureau why such transfer would be inequitable, the bureau may refuse the same 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.

SECTION 5. AMENDMENT. Section 52-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-09. Classification of employers to determine contributions - Regulations governing. For the year 1942 and for each calendar year thereafter, the bureau shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such benefit experience. Each employer's rate for any calendar year shall be determined on the basis of his record as of January first of that calendar year except after the year 1981, when each employer's rate for the next calendar year shall be determined on the basis of his record as of October first of the preceding year. If as of the date such classification of employers is made, the bureau finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the bureau finds incorrect or insufficient, the bureau shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the bureau at the time, and shall notify the employing unit thereof by registered or certified mail addressed to its last known address. Unless such employing unit shall file the report, or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of such notice, his rate may not be less than the standard rate for the ensuing calendar year. An employer's rate for a calendar year shall be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If when such determination is to be made an employer has failed to file a required report or filed an insufficient report, the bureau shall notify the employer thereof by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for the following calendar year may not be less than the standard rate. If, at any time, an employer has failed to file a required report or filed an insufficient report, the bureau may, at any time, estimate the wage information required by the report on the basis of reasonably available evidence. The bureau shall notify the employer of the estimate by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after the mailing of the notice, the estimate shall become final for all purposes, except that if the amount of estimated wages is less than the actual wages, the bureau may reconsider the estimate.

SECTION 6. AMENDMENT. Section 52-04-22 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-22. Federal advance interest repayment fund. There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund shall consist of all interest collected on delinquent

contributions and all penalties provided by the Unemployment Compensation Law. All moneys accruing to this fund in any manner shall be maintained in this separate account.

After all known interest charges have been paid, any remaining moneys in the fund may be transferred to the unemployment compensation fund.

Moneys in this fund may be used for the purpose of paying interest due on other than federal advances. However, moneys in this fund shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau. Any remaining moneys in the fund not used for the purposes specified above may be transferred to the unemployment compensation fund.

SECTION 7. AMENDMENT. Section 52-06-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-16. When redeterminations made by division - Notice. The job insurance division may reconsider a determination of a claim whenever it finds:

1. That an error in computation or identity has occurred in connection therewith;
2. That wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or
3. That benefits have been allowed or denied or the amount of benefits fixed on the basis of a misrepresentation of facts.

No such redetermination shall be made after ~~one year~~ two years from the day of the original determination, except that a reconsidered determination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentations of fact may be made within ~~two~~ three years from the date of the determination. Notice of any such redetermination shall be given promptly to the parties entitled to the notice or original determination, and in the manner prescribed in section 52-06-12.

SECTION 8. AMENDMENT. Section 52-06-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-32. Individual claiming benefits not to be charged fees by bureau - Fees of individual's attorney. No ~~individual claiming benefits~~ claimant shall be charged fees of any kind in any proceeding under this chapter by the bureau, its representatives, or by any court or any

officer thereof. Any individual claiming benefits in any proceeding before the bureau or its representatives or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the bureau. Any employer or claimant may be represented by counsel or other duly authorized agent in any proceeding before the bureau or its representatives. A claimant's attorney fees, for representation in district court, shall be paid by the bureau, in an amount approved by the bureau, only if the claimant finally prevails. The bureau shall not pay attorney fees for representation in any proceeding before the bureau or its representatives.

Approved April 4, 1985

CHAPTER 544

SENATE BILL NO. 2253
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFIT DISCLOSURES AND CONTRIBUTIONS

AN ACT to amend and reenact subsection 31 of section 52-01-01, sections 52-01-03, 52-04-05, and subsections 12 and 13 of section 52-06-02 of the North Dakota Century Code, relating to definitions, disclosures, contributions, and disqualification for purposes of unemployment compensation; to provide an effective date; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 31 of section 52-01-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

31. "Wages" means all remuneration for service from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his service from persons other than his employing unit shall be treated as wages received from his employing unit. After January 1, 1951, backpay awarded under any statute of this state or of the United States shall be treated as wages. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules as prescribed by the bureau. For the purpose of a determination of insured status only, backpay awards after January 1, 1951, shall be allocated to the quarters with respect to which they were paid. If the remuneration of an individual is not based upon a fixed period or duration of time or if his wages are paid at irregular intervals or in such manner as not to extend regularly over a period of employment, for the purposes of a determination of insured status only, the wages shall be allocated to weeks or quarters in accordance with regulations prescribed by the bureau. Such regulations shall, so far as possible, produce results reasonably similar to those which would prevail if

the individual were paid his wages at regular intervals. The term "wages" shall not include:

- a. The amount of any payment made after January 1, 1951, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it or for such individuals generally and their dependents or for a class or classes of such individuals, or for a class or classes of such individuals and their dependents, on account of:
 - (1) Retirement;
 - (2) Sickness or accident disability, but, in the case of payments made to an employee or any of his dependents, this paragraph shall exclude from the term "wages" only payments which are received under a workman's compensation law, or
 - (3) (2) Medical and hospitalization expenses in connection with sickness or accident disability, or
 - (4) (3) Death.
- b. The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made after January 1, 1951, by an employing unit to, or on behalf of an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit.
- c. The amount of any payment made after January 1, 1951, by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (1) from or to a trust described in section 401(a) of the federal Internal Revenue Code which is exempt from tax under section 401 501(a) of the federal Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payments, meets the requirements of section 401 is a plan described in section 403(a) of the federal Internal Revenue Code.

- d. The amount of any payment made by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under section 3101 of the federal Internal Revenue Code with respect to services performed after January 1, 1951.
- e. Remuneration paid after January 1, 1951, in any medium other than cash to an individual for services not in the course of the employing unit's trade or business.
- f. The amount of any payment, other than vacation or sick pay, made after January 1, 1951, to an individual after the month in which he attains the age of sixty-five, if he did not perform services for the employing unit in the period for which such payment is made.
- g- Dismissal payments before December 31, 1951, which the employing unit legally is not required to make.
- g. Any payment made to, or on behalf of, an employee or his beneficiary under or to an annuity contract described in section 403(b) of the federal Internal Revenue Code, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise, under or to an exempt governmental deferred compensation plan as defined in section 3121 (v)(3) of the federal Internal Revenue Code, or to supplemental pension benefits under a plan or trust described in any of the foregoing provisions to take into account some portion or all of the increase in the cost of living as determined by the secretary of labor since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974.
- h. Any payment made to, on behalf of, an employee or his beneficiary under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of the federal Internal Revenue Code for such payment.
- i. The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal Internal Revenue Code.
- j. Nothing in this subsection shall exclude from the term "wages" any employer contribution under a qualified

cash or deferred arrangement as defined in section 401(k) of the federal Internal Revenue Code to the extent not included in gross income by reason of section 402(a)(8) of the federal Internal Revenue Code, or any amount treated as an amount treated as an employer contribution under section 414(h)(2) of the federal Internal Revenue Code.

- k. Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this subdivision and the income attributable thereto shall not thereafter be treated as wages for purposes of this chapter. For purposes of this subdivision, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subdivisions c, g, and h.

SECTION 2. AMENDMENT. Section 52-01-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or his legal representative shall be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of his claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by regulations may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an

examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workmen's compensation bureau, the state labor commissioner and the state tax commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the workmen's compensation bureau, the state labor commissioner and the state tax commissioner.

SECTION 3. AMENDMENT. Section 52-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-05. Standard rate of contributions - Reduction of rates.

1. For the calendar year 1979 and each calendar year thereafter, the standard rate of contributions payable by each employer shall be the rate fixed for employers who have a minus balance reserve ratio which is applicable for the given year in the schedule of rates under section 52-04-06 or five and four-tenths percent, whichever is greater. No employer's rate shall be reduced below the standard rate for any calendar year unless and until his account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year, except that an employer who has not been subject to the law for a period of time sufficient to meet this requirement may qualify for a reduced rate if his account has been chargeable with benefits throughout a lesser period of time but in no event less than the twelve-consecutive-calendar-month period, the twenty-four-consecutive-calendar-month period for 1985 and each year thereafter, ending on September thirtieth of the preceding calendar year. Employers who have not been subject to the law for a sufficient period of time to meet the requirements of this subsection shall have their rate determined under subsection 2.
2. For the calendar year 1981 and each year thereafter, an employer who is not eligible for an experience rate computation, as provided in subsection 1 and section 52-04-06, shall pay contribution at a rate equal to the average industry tax rate as determined by the bureau on computation date, provided that the rate shall not be less than one percent. This subsection shall not apply to

newly liable employers in industries with an average tax rate exceeding three percent. Newly liable employers in these industries shall pay the standard rate. The computation of the average industry rate shall exclude those employer accounts which are not eligible for the computation of an experience rate solely by reason of insufficient experience. For the calendar year 1985 and each year thereafter, an employer who is not eligible for an experience rate as provided in subsection 1 and section 52-04-06, shall be assigned the average tax rate of all employers as determined by the bureau on the computation date, but in no event shall this rate be less than one percent. This provision shall not apply to employers classified in an industry which the bureau determines had a negative reserve on the computation date. Newly liable employers in these industries shall be assigned the standard rate. An employer with an industry classification code that is without experience in this state for twelve consecutive chargeable months or who has failed to provide correct industrial classification information shall pay at the standard rate. Assignment by the bureau of employer's industrial classification, for the purpose of this subsection, shall be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual, issued by the executive office of the president, office of management and budget. The standard rate shall be assigned an employer account which on computation date has a minus balance reserve, or has failed to file a contribution report or a corrected or sufficient report as provided in section 52-04-09.

SECTION 4. AMENDMENT. Subsections 12 and 13 of section 52-06-02 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

12. Which are based on service performed ~~after December 31, 1977,~~ in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services or in an educational institution while in the employ of an educational service agency, for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, or during an established and customary vacation period or holiday recess, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms

or if the individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess. For the purposes of this subsection and subsection 13, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law.

13. Which are based on services performed after December 31, 1977, in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual or in an educational institution while in the employ of an educational service agency, for any week which commences during a period between two successive academic years or terms, or during an established and customary vacation period or holiday recess, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or if the individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law. If compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 1985.

SECTION 6. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

CHAPTER 545

SENATE BILL NO. 2160
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFIT REDUCTION FOR
PENSIONS

AN ACT to amend and reenact subsection 16 of section 52-06-02 of the North Dakota Century Code, relating to reduction of unemployment compensation benefits due to receipt of pensions.

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

SECTION 1. AMENDMENT. Subsection 16 of section 52-06-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16. For any week with respect to which an individual is receiving a pension (which shall include a governmental or other pension, retirement or retired pay, annuity, or 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 reduced (but not below zero):
 - a. By the prorated weekly amount of the pension after deduction of ~~one-half~~ 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 1, 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 1, 1986;
 - b. By the entire prorated weekly amount of the pension if subdivision a or subdivision c does not apply; or
 - c. By ~~one-half~~ 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 any other person or organization) who is not a

base-period or chargeable employer (as determined under applicable law) for claims filed on or after July 1, 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 any other person or organization) who is not a base-period or chargeable employer (as determined under applicable law) for claims filed on or after July 1, 1986.

- d. No reduction may 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, 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 must be treated solely in the manner specified by subdivisions a, b, and c.

Approved April 4, 1985

CHAPTER 546

SENATE BILL NO. 2306
(Wenstrom)

OASIS PRIMARY 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 North Dakota old-age and survivor insurance system.

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

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Primary insurance benefit" means an amount equal to the sum of the following:
- a. (1) Fifty per centum of the amount of an individual's average monthly wage if ~~such~~ the average monthly wage does not exceed seventy-five dollars, or
 - (2) If ~~such~~ the average monthly wage exceeds seventy-five dollars, fifty per centum of seventy-five dollars, plus fifteen per centum of the amount by which ~~such~~ the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars; and
 - b. An amount equal to one per centum 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 ~~such~~ the individual.

Effective July 1, 1983 1985, the term "primary insurance benefit" shall be the total of the sums determined in subdivisions a and b plus one hundred ~~fifty~~ eighty dollars. Where the primary insurance benefit thus computed is less than one hundred ~~fifty~~ eighty dollars, ~~such~~ the benefit shall be one hundred ~~fifty~~ eighty dollars. Effective July 1, ~~1984~~ 1986, the term "primary insurance benefit" shall be the total of the sums

determined in subdivisions a and b plus ~~one~~ one ~~two~~ two hundred ~~sixty~~ sixty dollars. Where the primary insurance benefit thus computed is less than ~~one~~ one ~~two~~ two hundred ~~sixty~~ sixty dollars, ~~such~~ the benefit shall be ~~one~~ one ~~two~~ two hundred ~~sixty~~ sixty dollars. The provisions ~~herein shall~~ apply to valid claims filed before and after the specified date.

Approved April 11, 1985