SOCIAL SECURITY

CHAPTER 594

SENATE BILL NO. 2145
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION CONTRIBUTIONS

AN ACT to create and enact three new subsections to section 52-04-12 of the North Dakota Century Code, relating to unemployment compensation contribution liens and certificates; and to amend and reenact subsection 2 of section 52-01-01, subsections 2 and 3 of section 52-04-05, subsection 4 of section 52-04-06.1, and sections 52-04-08 and 52-04-11 of the North Dakota Century Code, relating to definition of average annual payroll, determination of rates, incremental bonding of impact projects, and transfers of experience record for unemployment compensation purposes and to penalty and interest on unpaid unemployment compensation contributions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Average annual payroll" means:

a. The annual payroll for the twelve-month period immediately preceding the computation date for an employer ~~whose account has been chargeable with benefits~~ who has been liable for twelve but less than twenty-four months.

b. The average of the annual payrolls for the last two 12-month periods immediately preceding the computation date for an employer ~~whose account has been chargeable with benefits~~ who has been liable for twenty-four but less than thirty-six months.

c. The average of the annual payrolls for the last three 12-month periods immediately preceding the computation date for an employer ~~whose account has been chargeable with benefits~~ who has been liable for thirty-six ~~or more~~ months or more.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 52-04-05 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Rates must be determined as follows:

a. The income required 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.

b. The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.

c. The maximum rate for each calendar year is the average required rate, multiplied by ~~two and three-fourths~~ three, rounded to the nearest one-tenth of one percent. However, the maximum rate must be at least five and four-tenths percent.

3. a. Except as otherwise provided in this subsection, an employer's rate may not be reduced below the maximum 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.

b. If an employer has not been subject to the law as required under subdivision a, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year.

c. An employer that does not qualify under either subdivision a or b is subject to a rate determined as follows:

(1) For each calendar year new employers must be assigned a rate of three and one-fourth percent, unless the employer is classified in an industry that the bureau determines has a negative reserve on the computation date. However, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to the 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 industries that have a negative reserve on the computation date and employers that have failed to provide correct industrial classification information must be assigned the maximum rate. However, an employer who becomes subject to the North Dakota Unemployment Compensation Law after December 31, 1989, who is classified in construction services pursuant to subdivision C of the standard industrial classification manual must be assigned a rate of nine percent or the maximum rate, whichever is greater.

(3) Assignment by the bureau of an employer's industrial classification for the purposes of this paragraph must 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.

~~d. Regardless of any other provision in this subsection, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to the 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.~~

SECTION 3. AMENDMENT. Subsection 4 of section 52-04-06.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon completion of the contract requiring a bond in excess of one thousand two hundred fifty dollars, a contractor may receive a credit of ten percent of the total bond for every ~~ten~~ twenty percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. Upon completion of the contract requiring a bond of one thousand two hundred fifty dollars or less, a contractor may receive a credit of ten percent of the total bond for every ten percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. For the purposes of this subsection a person may be considered a resident provided the person has earned in covered employment in North Dakota as defined in title 52, the sum of two thousand dollars during the past four completed calendar quarters preceding the date of employment or can provide evidence of having resided in the state during the past four completed calendar quarters preceding the date of employment.

SECTION 4. AMENDMENT. Section 52-04-08 of the 1987 Supplement to 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~~ experience record. ~~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 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.~~ An employing unit that in any manner acquires all or part of the organization, business, trade, or assets of another employer and continues essentially the same business activity of the whole or part transferred, must upon request be transferred in accordance with such regulations as the bureau may prescribe, the whole or appropriate part of the experience record, reserve balance, and benefit experience of the preceding employer. Provided that 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 without opportunity for a hearing.

When an employing unit in any manner acquires all or part of the organization, business, trade, or assets of another employer, the bureau 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.

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, or assets is to the total average annual payroll of the predecessor.

SECTION 5. AMENDMENT. Section 52-04-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-11. Unpaid contributions to bear interest - Penalties for failure to file reports - Penalties and interest collected paid into ~~unemployment compensation fund~~ the federal advance interest repayment fund.

1. ~~Failure of any employing unit subject to the North Dakota Unemployment Compensation Law to file contribution reports and pay contributions in the manner and time prescribed by the bureau shall subject such employing unit to interest and penalty charges as follows:~~

   ~~a. Contributions unpaid when due shall bear interest at the rate of one percent per month or fraction thereof from due date.~~

   ~~b. In the event of unexcused failure to file contribution reports within sixty days from due date there shall be added a penalty in an amount equal to five percent of such contributions or the sum of ten dollars, whichever is the greater.~~

   ~~c. When such unexcused failure to file contribution reports continues for more than sixty days there shall be added an additional penalty in an amount equal to five percent of such contributions for each additional sixty days or fraction thereof, but such additional penalty shall not exceed twenty percent~~ Contributions unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from due date.

2. ~~The amount added pursuant to the provisions of this section shall be collected at the same time and in the same manner and as a part of the contributions and shall be paid into the federal advance interest repayment fund~~ Any employer who fails to submit to the bureau any employer's contribution and wage report by the date due shall pay the bureau a penalty equal to five percent of the contributions due for each month or part of a month until the report is submitted. The penalty for the first month may not be less than twenty-five dollars. The penalty for subsequent months may not exceed twenty percent of contributions due. The maximum

penalty imposed by this subsection may not exceed two hundred fifty dollars. The penalty imposed by this subsection may be waived if the bureau determines that the failure to submit the report timely was caused by circumstances beyond the control of the employer.

3. The executive director, or any bureau employee authorized in writing by him, is authorized to enter into written agreements with employers relating to their liability in respect to delinquent contributions, interest, penalties, and costs when such employers are indebted to the bureau because of failure to pay contributions required to be paid within any given period of time; provided, that such agreements shall be in accordance with regulations promulgated by the bureau and filed as provided by law, and further provided that they do not contravene any other law, rule, or regulation.

4. The amount added under this section must be collected at the same time and in the same manner and as a part of the contributions and must be paid into the federal advance interest repayment fund.

SECTION 6. Three new subsections to section 52-04-12 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Whenever any employer, liable to pay contributions, interest, or penalty, fails to pay the same, the amount of contributions, interest, penalty, and costs that may accrue is a lien in favor of the state of North Dakota upon all real or personal property and all rights to property belonging to the employer. The lien attaches at the time the contributions, interest, or penalty becomes due, and continues until the liability is satisfied. To preserve the lien against subsequent mortgages, purchasers for value and without notice of the lien, judgment creditors, and lienholders, job service North Dakota shall file with the register of deeds, in the county in which the property is located, a notice of the lien. The lien is effective from the time of filing of the notice. The register of deeds shall preserve the notice and endorse on it the day, hour, and minute when it was received. The register of deeds shall index the notice of lien in an appropriate index book and record the notice of lien in the manner provided for recording real estate mortgages. The register of deeds shall accept the notice of lien for filing without payment of a fee by job service North Dakota. Upon payment of the contributions, interest, penalty, and costs, job service North Dakota shall file with the register of deeds a satisfaction of the lien. The register of deeds shall enter the satisfaction on the notice of lien, index the satisfaction in an appropriate index book, and record the satisfaction in the manner provided for recording satisfactions of real estate mortgages. The register of deeds shall accept the satisfaction for filing without payment of a fee by job service North Dakota. The attorney general, upon request of job service North Dakota, may bring suit without bond, to foreclose the lien.

Whenever any employer, liable to pay contributions, interest, or penalty, fails to pay the same, job service North Dakota may file a certificate, specifying the amount of contributions, interest, and

penalty due and the name of the liable employer, with the clerk of district court in any county. The clerk shall enter and docket the certificate in the same manner as a judgment that directs the payment of money. The certificate has the force and effect of a judgment of the district court. The certificate is a lien on all the real property, except the homestead, of every person named, which the person may have in any county in which the certificate is docketed at the time of docketing or which the person thereafter acquires in the county, for ten years from the time of docketing. The certificate may be renewed in the same manner and with the same effect as a judgment that directs the payment of money. Execution of the certificate is issuable in the same manner as provided for execution of judgments. Job service North Dakota may proceed by garnishment to enforce the certificate in the same manner as a creditor is entitled to proceed by garnishment to enforce a judgment. Upon payment of the contributions, interest, penalty, and costs, job service North Dakota shall file with the clerk of court a satisfaction of the certificate. The clerk shall discharge the record in the same manner as judgments.

The foregoing remedies are cumulative and no action taken by job service may be construed to be an election to pursue any remedy to the exclusion of any other remedy provided by law.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 595

SENATE BILL NO. 2388
(Heigaard)

UNEMPLOYMENT COMPENSATION BENEFIT YEAR

AN ACT to amend and reenact subsection 6 of section 52-01-01 of the North Dakota Century Code, relating to definition of benefit year for purposes of unemployment compensation benefits; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Benefit year" means the fifty-two-week period beginning the first week in which an insured worker first files a request for determination of his insured status and thereafter the fifty-two-week period beginning the first week in which the individual next files such request after the end of his last preceding benefit year. The filing of a notice of unemployment shall be deemed a request for determination of insured status if a current benefit year has not previously been established. In a combined-wage claim, the benefit year shall be that of the paying state. <u>However, if the establishment of a benefit year for a fifty-two-week period under this subsection would result in overlapping any quarter of that base period with the base period of a subsequent valid claim, the benefit year must be fifty-three weeks. A subsequent benefit year cannot be established until the expiration of the current benefit year.</u>

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1989.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 596

SENATE BILL NO. 2115
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

EDUCATIONAL INSTITUTION EMPLOYEE UNEMPLOYMENT

AN ACT to amend and reenact subsection 13 of section 52-01-01 and subsections 9 and 10 of section 52-06-02 of the North Dakota Century Code, relating to the definition of education institutions under the unemployment compensation law and educational employee disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. "Educational institution" means an educational institution (~~except~~ including an institution of higher education as defined in section 3304(f) of the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.]) in which participants, trainees, or students are offered an organized course of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation, designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of instructors or teachers, and is approved, licensed, or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license, or issue a permit for the operation of a school.

SECTION 2. AMENDMENT. Subsections 9 and 10 of section 52-06-02 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

9. Which are based on service performed in an instructional, research, or principal administrative capacity for any educational institution, 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, if the individual performed such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the seconf of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or ~~any agency of the federal government and who is in a~~

~~noncontract full-time career position and who is placed in a nonwork and nonpay status for at least two weeks~~ to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. 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.

10. Which are based on services performed in any other capacity not described in subsection 9 for any educational institution, for any week which commences during a period between two successive academic years or terms if the individual performed such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or ~~any agency of the federal government and who is in a noncontract full-time career position and who is placed in a nonwork and nonpay status for at least two weeks~~ to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. 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 are 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 the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, that individual is 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.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 597

SENATE BILL NO. 2353
(Maixner)

UNEMPLOYED BENEFITS AND DEFINITION

AN ACT to amend and reenact subsection 30 of section 52-01-01 and section 52-06-06 of the North Dakota Century Code, relating to the definition of unemployed and the weekly benefit amount earnings reduction for unemployed individuals under the Unemployment Compensation Law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 30 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30. "Unemployed". An individual is "unemployed" with respect to any week during which he performs no services and with respect to which no wages are payable to him, or with respect to any week ~~of less than full-time work if~~ during which the individual is substantially unemployed and the wages payable to him with respect to such week are less than his weekly benefit amount. For the purposes of this subsection, wages are payable with respect to the weeks for which they were reasonably intended to be payable, irrespective of whether services were performed in those weeks. The bureau shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of ~~short time~~ work, as the bureau deems necessary.

SECTION 2. AMENDMENT. Section 52-06-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-06. Weekly benefit for unemployment. Each eligible individual who is unemployed with respect to any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the wages, if any, payable to him with respect to such week which is in excess of ~~one-half~~ sixty percent of his weekly benefit amount. Such benefit, if not a multiple of one dollar, shall be computed to the next higher multiple of one dollar. For the purposes of this section, wages are payable with respect to the weeks for which they were reasonably intended to be payable, irrespective of whether services were performed in those weeks.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 598

SENATE BILL NO. 2117
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT INFORMATION DISCLOSURE

AN ACT to amend and reenact section 52-01-03 of the North Dakota Century Code, relating to disclosure of information obtained pursuant to the administration of the unemployment compensation program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 52-01-03 of the 1987 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 workers compensation bureau, the state labor commissioner, the state economic development commission, and the state tax

* NOTE: Section 52-01-03 was also amended by section 2 of Senate Bill No. 2367, chapter 509.

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 workers compensation bureau, the state labor commissioner, the state economic development commission, and the state tax commissioner.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 599

SENATE BILL NO. 2361
(Senators Richard, Nalewaja)
(Representative Hoffner)

ADULT EDUCATION AND TRAINING GRANTS

AN ACT to establish a grant program for students enrolled in adult education and training programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. **Adult education and training - Grants to students.** Job service North Dakota may make grants of up to five hundred dollars per person to Job Training Partnership Act eligible students enrolled in adult basic and secondary education programs and training programs for adults approved by job service North Dakota. No grants may be made unless federal funds received by the state for job training services as defined in the Job Training Partnership Act [Pub. L. 97-300; 96 Stat. 1361; 29 U.S.C. 1604] have been obligated. Job service may collect an administrative fee not to exceed ten percent of the amount of grants made under this section. Job service North Dakota shall, in cooperation with the superintendent of public instruction, the department of vocational education, and any other state agency providing or administering adult education services, coordinate the grant program established under this section. Job service North Dakota shall adopt rules to implement the grant program established under this section including rules regarding eligibility requirements and use of grant proceeds.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 600

SENATE BILL NO. 2032
(Legislative Council)
(Interim Budget Committee on Government Administration)

JOB SERVICE LOCAL ADVISORY COUNCILS

AN ACT to amend and reenact section 52-02-07 of the North Dakota Century Code, relating to the appointment of state and local advisory councils by the job service North Dakota bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

52-02-07. State and local advisory councils appointed by bureau - Composition - Duties - Compensation. The bureau shall appoint a state 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. ~~Such~~ The state advisory ~~councils~~ council shall be reimbursed for any necessary expenses but shall serve without further 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.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 601

SENATE BILL NO. 2123
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT RESERVE FUND MINIMUM

AN ACT to amend and reenact subsection 1 of section 52-04-05 of the North Dakota Century Code, relating to unemployment compensation fund minimum reserve.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-04-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For each calendar year, the bureau shall estimate the amount of income needed to pay benefits and maintain a balance in the unemployment compensation fund, that as of October 1, 1989, ~~and each succeeding October first,~~ is equal to twenty-five percent of the ~~total~~ average annual amount of benefits paid ~~during the previous twelve months~~. On each October first after October 1, 1989, the amount of the trust fund reserve shall 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.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 602

SENATE BILL NO. 2118
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT EMPLOYER RATING CONTINUATION

AN ACT to create and enact a new subsection to section 52-04-05 of the North Dakota Century Code, relating to determination of rates for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 52-04-05 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

> 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. Such employer's rate, however, must be determined in accordance with subsection 3 of this section.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 603

SENATE BILL NO. 2122
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT NONCHARGING, QUALIFYING, AND OVERPAYMENTS

AN ACT to amend and reenact subsection 2 of section 52-04-07, subsection 2 of section 52-06-04, and section 52-06-33 of the North Dakota Century Code, relating to noncharging of unemployment compensation benefits, qualifying as an insured worker for unemployment compensation purposes, and unemployment compensation overpayments.

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 hereby amended and reenacted to read as follows:

2. Notwithstanding subsection 1, an employer's account shall 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 left the employment of the employer voluntarily without good cause or with good cause not involving fault on the part of the employer or who was discharged from employment by the 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.

SECTION 2. AMENDMENT. Subsection 2 of section 52-06-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. To qualify as an insured worker an individual must have been paid wages for insured work in at least two calendar quarters of the individual's base period totaling not less than one and one-half times the individual's total wages paid during the quarter of the individual's base period in which the individual's wages were the highest. However, the wage credits of an individual earned during the period commencing with the end of the prior base period and

ending on the date on which the individual filed a valid claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned wages for insured work in an amount equal to at least ten times the individual's current weekly benefit amount. Base period wages used to determine an individual's monetary eligibility under this subsection, as a result of the following employment, shall not exceed ten times the individual's weekly benefit amount:

a. Employment by a partnership, if one-fourth or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.

b. Employment by a corporation, if one-fourth or more of the ownership interest, however designated or evidenced in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.

c. This provision does not apply if, at the time of the claim, such ownership interest has been ceded.

SECTION 3. AMENDMENT. Section 52-06-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-33. Recovery and recoupment. A person who has received any amount of benefits under the North Dakota Unemployment Compensation Law to which he is not entitled shall be liable to refund to the bureau for the fund the amount so paid, or to have such amount deducted from any future benefits payable to him under the North Dakota Unemployment Compensation Law or the unemployment compensation law of another state or the federal government following a finding that such payment occurred. Such findings shall have become final and shall specify the reason for such finding, the week or weeks for which such benefits were paid, and the amount of benefits so paid. The bureau, in its discretion, may release such person from liability to refund when it finds that recovery would be contrary to equity and good conscience. Amounts determined collectible ~~shall be free of interest and~~ may be so collected by civil action in the name of the bureau. Amounts unpaid on the date on which they are due and payable, as determined by the bureau may bear interest at the rate of one and one-half percent per month from and after that date until payment plus accrued interest is received by the bureau. However, no interest may be assessed for the first one hundred and eighty days on any overpayment occurring without fault on the part of the individual.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 604

SENATE BILL NO. 2121
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

CORPORATE OFFICER UNEMPLOYMENT CONTRIBUTION LIABILITY

AN ACT to create and enact a new section to chapter 52-04 of the North Dakota Century Code, relating to personal liability of corporate officers for unemployment compensation purposes.

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 hereby created and enacted to read as follows:

Corporate officer personal liability.

1. Any officer, director, or any employee having twenty percent ownership interest of a corporation that is an employer under the North Dakota Unemployment Compensation Law who has control of or supervision over the filing of and responsibility for filing contribution reports or making payment of contributions under the North Dakota Unemployment Compensation Laws, and who willfully fails to file the reports or to make payments as required, is personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the bureau those amounts for which the employer is liable.

2. The personal liability of any person as provided herein shall survive dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation must be considered earned from the person determined to be personally liable.

3. After notice and opportunity for a hearing the unemployment compensation division shall make a determination as to the personal liability 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 within fifteen days after mailing of the notice of determination to the person's last known address.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 605

HOUSE BILL NO. 1603
(Representatives Frey, Haugland, Oban)
(Senators Yockim, Keller)

UNEMPLOYMENT DISQUALIFICATION TRAVEL CONSIDERATIONS

AN ACT to amend and reenact subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For the week in which he has left his most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as he:

   a. Can demonstrate that he has earned remuneration for personal services in employment equivalent to at least eight times his weekly benefit amount as determined under section 52-06-04; and

   b. Has not left his most recent employment under disqualifying circumstances.

   This subsection does not apply if the bureau 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 shall 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 shall not be charged against the account of the employer from whom the individual became separated as a result of the illness or injury. The bureau may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual shall be charged fees of any kind for the cost of such second opinion.

This subsection shall 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 his 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.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 606

HOUSE BILL NO. 1515
(Representatives Scherber, Graba, R. Larson)
(Senators Krauter, Schoenwald)

STUDENTS UNDER UNEMPLOYMENT

AN ACT to amend and reenact subsection 6 of section 52-06-02 of the North Dakota Century Code, relating to student disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 52-06-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. For any week of unemployment if such individual is a student registered for full attendance at and is regularly attending an established school, college, or university, except as provided in subdivision a of subsection 3 of section 52-06-01. <u>However, this disqualification does not apply to full-time postsecondary students who have earned the majority of their wage credits in their base period for services performed during weeks in which the individual was attending school as a full-time postsecondary student.</u>

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 607

SENATE BILL NO. 2119
(Committee on Judiciary)
(At the request of Job Service North Dakota)

UNEMPLOYMENT SUBPOENA PENALTY

AN ACT to amend and reenact section 52-06-23 of the North Dakota Century Code, relating to subpoenas for unemployment compensation purposes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-06-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-23. Administering oaths - Taking depositions - Compelling attendance of witnesses and memoranda - Penalty. In the discharge of the duties imposed by the North Dakota Unemployment Compensation Law, the chairman of an appeal tribunal, or any duly authorized representative or member of the bureau, may administer oaths and affirmations, take depositions, certify to official acts, and issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of the North Dakota Unemployment Compensation Law. Any person who willfully fails to obey a subpoena issued under this section, unless good cause for failure to obey is shown, is guilty of a class B misdemeanor.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 608

HOUSE BILL NO. 1118
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

OASIS ASSESSMENTS AND BENEFITS

AN ACT to amend and reenact section 52-09-09 and subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to rates of contributions and primary insurance benefits under the old-age and survivor insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-09-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-09-09. Rate of contribution. In addition to all other taxes there is hereby levied upon each employer, as defined in section 52-09-20, and also upon each employee, as defined in section 52-09-20, a tax, equal to one per centum of the wages paid before July 1, 1955, and two per centum of the wages paid after June 1955, up to July 1, 1957, to be paid by each employer and each employee. The above tax imposed by this chapter shall be collected by the employer from the employee by deducting the amount of the tax from the wages as and when paid. From and after July 1, 1957, and until July 1, 1959, the tax upon each employer shall be equal to four percent of the wages paid to each employee, and after June 30, 1959, up to July 1, 1961, such tax shall be equal to three and one-half percent, and after June 30, 1961, and until July 1, 1963, such tax shall be equal to three percent, and after June 30, 1963, such tax shall be equal to two percent, and after December 31, 1965, such tax shall be equal to one percent. After June 30, 1957, there shall be no tax hereunder upon the employee. Provided, however, if on the first day of October in any year the accumulated contributions under this chapter equal or exceed an amount one and one-half times the sum of the benefit payments and costs of administration of this chapter and chapter 52-10 for the twelve months ending on September thirtieth of that year, the tax shall be suspended during the succeeding year, and until such year in which, on the first day of October of the previous year, the accumulated contributions are less than one and one-half times the sum of the benefit payments and costs of administration of this chapter and chapter 52-10 for the twelve months ending on September thirtieth of that year. <u>However, for the calendar year 1989 the tax on each employer may be imposed only on wages paid through June 30, 1989.</u>

SECTION 2. AMENDMENT. Subsection 9 of section 52-09-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 July 1, ~~1987~~ 1989, two hundred ~~twenty~~ sixty dollars; or

(2) Effective July 1, ~~1988~~ 1990, two hundred ~~forty~~ eighty dollars.

Approved March 9, 1989
Filed March 9, 1989