

May 2004

Introduced by

1 A BILL for an Act to amend and reenact section 52-04-05 of the North Dakota Century Code,
2 relating to the determination of unemployment insurance tax rates.

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

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

6 **52-04-05. Determination of rates.**

7 1. As used in this section:

8 a. "Income needed to pay benefits" means the estimate of benefits payable in a
9 given calendar year less the estimate of interest to be earned by the
10 unemployment insurance trust fund for that calendar year.

11 b. "Solvency balance" means the income needed, whether a positive or negative
12 figure, in a given rate year to reach the solvency target over the number of
13 years remaining of the period within which the solvency target is to be
14 reached plus the estimate of the amount of income needed to pay benefits.

15 c. "Trust fund reserve" excludes all Reed Act [42 U.S.C. 1103] cash.

16 2. For each calendar year, the bureau separately shall estimate the amount of
17 income needed to pay benefits and ~~maintain a~~ shall estimate the amount of
18 income needed to reach a solvency balance in the unemployment ~~compensation~~
19 insurance trust fund, that ~~as of October 1, 1989, is equal to twenty five percent of~~
20 the average annual amount of benefits paid. ~~On each October first after October 1,~~
21 1989, the amount of the trust fund reserve must be sixty percent of the average
22 annual amount of benefits paid. ~~The average annual amount of benefits paid must~~
23 be computed by dividing the total amount of benefits paid and projected to be paid
24 during the previous thirty six months by three. ~~On January 1, 2000, the required~~

- 1 ~~amount of the trust fund reserve becomes a targeted~~ moves toward the solvency
2 target amount as determined under this subsection. The solvency target is an
3 average high-cost multiple of one. The average high-cost multiple is the number of
4 years the bureau could pay unemployment compensation, based on the reserve
5 ratio, if the bureau paid the compensation at a rate equivalent to the average
6 benefit cost rate in the one calendar year during the preceding twenty calendar
7 years and the two calendar years during the preceding ten calendar years in which
8 the benefit cost rates were the highest. "Reserve ratio" means the ratio
9 determined by dividing the balance in the trust fund reserve at the end of the
10 calendar year by the total covered wages in the state for that year. "Benefit cost
11 rate" means the rate determined by dividing the unemployment compensation
12 benefits paid during a calendar year by the total covered wages in the state for that
13 year. The computation of the reserve ratio and benefit cost rate must exclude the
14 wages and unemployment compensation paid by employers covered under section
15 3309 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3309].
- 16 3. The initial trust fund reserve solvency target ~~will~~ must be achieved over a
17 seven-year period from January 1, 2000. After the solvency target required by this
18 section is reached, the calculation of the solvency target must be continued and, if
19 the trust fund reserve as of December thirty-first of any year is less or greater than
20 the solvency target, the rates must be adjusted so that one-fifth of the difference
21 between the solvency target and the current trust fund reserve is estimated to be
22 collected in the following rate year.
- 23 4. Progress toward achieving the ~~targeted amount of the trust fund reserve~~ solvency
24 target is measured by reducing any difference between one and the average
25 high-cost multiple of the state by an amount that is at least equal to the ratio of the
26 number of years left to reach the ~~targeted amount of the trust fund reserve~~
27 solvency target to the difference between the trust fund reserve and the targeted
28 amount. ~~If the calendar year annual average insured unemployment rate is above~~
29 ~~three percent and has increased one hundred ten percent of the average of the~~
30 ~~preceding two calendar years, a tax rate will be set to provide for fifty percent of the~~
31 ~~additional revenue needed for the trust fund to be derived from tax rate increases~~

1 ~~and the remaining fifty percent becomes a drawdown against the trust fund~~
2 ~~reserve. In setting tax rates, the amount of the trust fund reserve may not be~~
3 ~~allowed to fall below three hundred percent from a standard margin of error for the~~
4 ~~targeted amount of the trust fund reserve. The executive director may make~~
5 ~~reasonable adjustments to the tax rates set for a calendar year to prevent~~
6 ~~significant rate variations between calendar years. When the trust fund reserve is~~
7 ~~being rebuilt below the solvency target, rates will~~ may ~~not be lowered until the~~
8 solvency ~~target level is reached. If while achieving the trust fund reserve target the~~
9 ~~trigger of above three percent insured unemployment rate and an increase of more~~
10 ~~than one hundred ten percent of the average of the two preceding years has been~~
11 ~~in effect for two or more consecutive years, the period of time to achieve the trust~~
12 ~~fund reserve target is extended to seven years from the end date of the last year in~~
13 ~~which the trigger was in effect. If this trigger has been in effect for one year, the~~
14 ~~amount of tax increase toward achieving the targeted amount of the trust fund~~
15 ~~reserve must be determined using the number of years remaining of the~~
16 ~~seven year period, excluding the year the trigger is in effect.~~

- 17 ~~2.~~ 5. Rates must be determined as follows:
- 18 a. The income ~~required~~ needed to pay benefits for the calendar year must be
19 divided by the estimated taxable wages for the calendar year. The result
20 rounded to the next higher one one-hundredth of one percent is the average
21 required rate needed to pay benefits.
- 22 b. If the positive employer maximum rate ~~is at least one percent, the positive~~
23 ~~employer minimum rate is the positive employer maximum rate minus~~
24 ~~nine tenths of one percent. If the positive employer maximum rate is less~~
25 ~~than one percent, the range for the positive employer minimum rate must be at~~
26 ~~least one tenth of one percent and must be less than two tenths of one~~
27 ~~percent (the minimum of one tenth of one percent plus the increment of~~
28 ~~one tenth of one percent), with the positive employer minimum rate equal to~~
29 ~~the positive employer maximum rate minus a multiple of the increment~~
30 ~~one tenth of one percent as provided in subsection 2 of section 52-04-06 to~~
31 ~~fall within the range described above. Within the table of rate schedules for~~

1 ~~each calendar year, a rate schedule may not be used if it would generate less~~
2 ~~income than any rate schedule preceding it on the table of rate schedules.~~
3 ~~The negative employer minimum rate is the positive employer maximum rate~~
4 ~~plus five and one-tenth percent necessary to generate the amount of income~~
5 ~~needed to pay benefits is at least one percent, the positive employer minimum~~
6 ~~rate necessary to generate the amount of income necessary to pay benefits is~~
7 ~~the foregoing positive employer maximum rate, minus nine-tenths of one~~
8 ~~percent. If the positive employer maximum rate necessary to generate the~~
9 ~~amount of income needed to pay benefits is less than one percent, the range~~
10 ~~for the positive employer minimum rate necessary to generate the amount of~~
11 ~~income needed to pay benefits must be at least one-tenth of one percent and~~
12 ~~must be less than two-tenths of one percent, with the positive employer~~
13 ~~maximum rate necessary to generate the amount of income needed to pay~~
14 ~~benefits equal to the positive employer maximum rate, as used in this~~
15 ~~subsection, minus a multiple of the increment one-tenth of one percent as~~
16 ~~provided in subsection 2 of section 52-04-06 to fall within the range described~~
17 ~~above. Within the table of rate schedules to be utilized for each calendar year~~
18 ~~to establish the tax rates necessary to generate the amount of income needed~~
19 ~~to pay benefits, a rate schedule may not be used if it would generate less~~
20 ~~income than any rate schedule preceding it on the table of rate schedules.~~
21 ~~The negative employer minimum rate needed to generate the amount of~~
22 ~~income needed to pay benefits is the positive employer maximum rate as~~
23 ~~described in this subsection plus five and one-tenth percent.~~
24 c. The positive employer maximum rate necessary to generate the amount of
25 income needed to pay benefits must be set so that all the rates combined
26 generate the average required rate for income needed to pay benefits,
27 multiplied by the ratio, calculated under subdivision b, needed to reach the
28 solvency balance. The negative employer maximum rate necessary to
29 generate the amount of income needed to pay benefits is the negative
30 employer minimum rate necessary to generate the amount of income needed

1 to pay benefits plus three and six-tenths percent. However, the maximum
2 rate must be at least five and four-tenths percent.

3 d. The tax rate necessary to generate the amount of income needed to reach a
4 solvency balance must be calculated by dividing the solvency balance by the
5 amount of income estimated as needed to pay benefits and multiplying the
6 resulting ratio times each rate, within the positive and negative rate arrays, as
7 determined under this section to meet the average required rate needed to
8 pay benefits as defined by subdivision a. The ratio calculated under this
9 subdivision must also be multiplied by any rate calculated as required by
10 subsection 6 to arrive at a final rate for a new business. All results calculated
11 under this subdivision must be rounded to the nearest one-hundredth of one
12 percent.

13 ~~3. 6.~~ a. Except as otherwise provided in this subsection, an employer's rate may not
14 be less than the negative employer minimum rate for a calendar year unless
15 the employer's account has been chargeable with benefits throughout the
16 thirty-six-consecutive-calendar-month period ending on September thirtieth of
17 the preceding calendar year. If an employer in construction services has not
18 been subject to the law as required, that employer qualifies for a reduced rate
19 if the account has been chargeable with benefits throughout the
20 twenty-four-consecutive-calendar-month period ending September thirtieth of
21 the preceding calendar year. If an employer in nonconstruction services has
22 not been subject to the law as required, the employer in nonconstruction
23 services qualifies for a reduced rate if the account has been chargeable with
24 benefits throughout the twelve-consecutive-calendar-month period ending
25 September thirtieth of the preceding calendar year. ~~During the building of the~~
26 ~~trust fund reserve, the rate assigned to an employer may not exceed one~~
27 ~~hundred thirty percent of the previous year's rate for that employer and an~~
28 ~~employer may not receive more than a ten percent decrease in that~~
29 ~~employer's rate from the previous year's rate, for the calendar years 2000,~~
30 ~~2001, and 2002. However, this rate limitation provision for calendar years~~
31 ~~2000, 2001, and 2002 does not apply to an experience-rated employer that~~

1 ~~was a new employer the previous year, a negative employer that was a~~
2 ~~positive employer the previous year, a positive employer that was a negative~~
3 ~~employer the previous year, an employer that has failed to file a report, a new~~
4 ~~employer, and an employer that chose to make payments in lieu of~~
5 ~~contributions.~~ The executive director may provide any negative employer
6 whose contributions paid into the trust fund are greater than the benefit
7 charges against that employer's account, for a minimum of three consecutive
8 years immediately preceding the computation date or subject to the law as
9 required, with up to a thirty percent reduction to that employer's rate for any
10 year if that employer has in place a plan approved by the bureau which
11 addresses substantive changes to that employer's business operation and
12 ensures that any rate reduction provided will not put the employer account
13 back into a negative status.

14 b. An employer that does not qualify under subdivision a is subject to a rate
15 determined as follows:

16 (1) For each calendar year new employers must be assigned a rate that is
17 one hundred fifty percent of the positive employer maximum rate or a
18 rate of one percent, whichever is greater, unless the employer is
19 classified in construction services. However, an employer must be
20 assigned within the negative employer rate ranges for any year if, as of
21 the computation date, the cumulative benefits charged to that
22 employer's account equal or exceed the cumulative contributions paid
23 on or before October thirty-first with respect to wages paid by that
24 employer before October first of that year.

25 (2) New employers in construction services must be assigned the negative
26 employer maximum rate.

27 (3) Assignment by the bureau of an employer's industrial classification for
28 the purposes of this section must be the three-digit major group
29 provided in the North American industrial classification system manual,
30 in accordance with established classification practices found in the
31 North American industrial classification system manual, issued by the

1 executive office of the president, office of management and budget.
2 Employers who are liable for coverage before August 1, 2001, remain
3 under an industrial classification under the two-digit major group
4 provided in the standard industrial classification manual unless they are
5 classified in the construction industry within the standard industrial
6 classification code.

7 ~~4.~~ 7. An employer who has ceased to be liable for contributions shall continue its
8 established experience rating account if it again becomes liable within three years
9 from the date that it ceased to be liable providing that the employer's experience
10 record has not been transferred in accordance with section 52-04-08. ~~Such~~ The
11 employer's rate, however, must be determined in accordance with subsection ~~3~~ 6.