

**HOUSE BILL NO. 1087**

Introduced by

Industry, Business and Labor Committee

(At the request of Job Service North Dakota)

1 A BILL for an Act to amend and reenact subsections 3 and 4 of section 52-04-05, section  
2 52-04-08, and subsection 1 of section 52-04-11.1 of the North Dakota Century Code, relating to  
3 unemployment compensation employer industrial classification, employer experience record,  
4 employer experience record transfers, and corporate officer personal liability; and to provide a  
5 penalty.

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

7 **SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 52-04-05 of the North  
8 Dakota Century Code are amended and reenacted as follows:

9 3. a. Except as otherwise provided in this subsection, an employer's rate may not  
10 be less than the negative employer minimum rate for a calendar year unless  
11 the employer's account has been chargeable with benefits throughout the  
12 thirty-six-consecutive-calendar-month period ending on September thirtieth of  
13 the preceding calendar year. If an employer in construction services has not  
14 been subject to the law as required, that employer qualifies for a reduced rate  
15 if the account has been chargeable with benefits throughout the  
16 twenty-four-consecutive-calendar-month period ending September thirtieth of  
17 the preceding calendar year. If an employer in nonconstruction services has  
18 not been subject to the law as required, the employer in nonconstruction  
19 services qualifies for a reduced rate if the account has been chargeable with  
20 benefits throughout the twelve-consecutive-calendar-month period ending  
21 September thirtieth of the preceding calendar year. During the building of the  
22 trust fund reserve, the rate assigned to an employer may not exceed one  
23 hundred thirty percent of the previous year's rate for that employer and an  
24 employer may not receive more than a ten percent decrease in that

1 employer's rate from the previous year's rate, for the calendar years 2000,  
2 2001, and 2002. The executive director may provide any negative employer  
3 whose contributions paid into the trust fund are greater than the benefit  
4 charges against that employer's account, for a minimum of three consecutive  
5 years immediately preceding the computation date or subject to the law as  
6 required, with up to a thirty percent reduction to that employer's rate for any  
7 year if that employer has in place a plan approved by the bureau which  
8 addresses substantive changes to that employer's business operation and  
9 ensures that any rate reduction provided will not put the employer account  
10 back into a negative status.

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

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

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

24 (3) Assignment by the bureau of an employer's industrial classification for  
25 the purposes of this section must be the ~~two-digit~~ three-digit major  
26 group provided in the ~~standard~~ standard north American industrial classification  
27 system manual, in accordance with established classification practices  
28 found in the ~~standard~~ standard north American industrial classification system  
29 manual, issued by the executive office of the president, office of  
30 management and budget. Employers who are liable for coverage  
31 before August 1, 2001, remain under an industrial classification under

1                   the two-digit major group provided in the standard industrial  
2                   classification manual unless they are classified in the construction  
3                   industry within the standard industrial classification code.

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

9           **SECTION 2. AMENDMENT.** Section 52-04-08 of the North Dakota Century Code is  
10   amended and reenacted as follows:

11           **52-04-08. Succession to predecessor's experience record.** An employing unit that  
12   in any manner acquires all or part of the organization, business, trade, or assets of another  
13   employer and continues essentially the same business activity of the whole or part transferred,  
14   must upon request be transferred in accordance with such regulations as the bureau may  
15   prescribe, the whole or appropriate part of the experience record, reserve balance, and benefit  
16   experience of the preceding employer. Provided that if the predecessor files a written protest  
17   against such transfer within fifteen days of being notified of the successor's application, the  
18   transfer will not be made ~~without opportunity for a hearing.~~

19           When an employing unit in any manner acquires all or part of the organization,  
20   business, trade, or assets of another employer, the bureau shall transfer all or the appropriate  
21   part of the experience record, reserve balance, whether positive or negative, and benefit  
22   experience of such predecessor to the successor if it finds that (a) the predecessor was owned  
23   or controlled by or owned or controlled the successor directly or indirectly, by legally  
24   enforceable means or otherwise or (b) both the predecessor and successor were owned or  
25   controlled either directly or indirectly, by legally enforceable means or otherwise, by the same  
26   interests.

27           When a part of an employer's experience record reserve account and benefit  
28   experience is to be transferred under this section, the portion of the experience record and  
29   reserve account transferred must be in the same ratio to the total experience record and  
30   reserve account as the average annual payroll of the transferred organization, trade, business,  
31   or assets is to the total average annual payroll of the predecessor.

1           An employing unit's experience record may not be transferred in an amount that results  
2 in the successor and predecessor portions totaling more than one hundred percent of the  
3 predecessor's history.

4           **SECTION 3. AMENDMENT.** Subsection 1 of section 52-04-11.1 of the North Dakota  
5 Century Code is amended and reenacted as follows:

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