

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 311

Short Title: Indian Tribe Unemployment Option-AB.

(Public)

Sponsors: Representatives Redwine and Haire.

Referred to: Military, Veterans and Indian Affairs.

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE INDIAN TRIBES TO ELECT TO MAKE  
UNEMPLOYMENT PAYMENTS, IN LIEU OF CONTRIBUTIONS, TO  
REIMBURSE ACTUAL COMPENSATION PAID WITH RESPECT TO  
EMPLOYEES, AS REQUIRED BY FEDERAL LAW.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 96-8(5) is amended by adding a new sub-subdivision to  
read:

**"§ 96-8. Definitions.**

As used in this Chapter, unless the context clearly requires otherwise:

...

(5) "Employer" means:

...

s. Any Indian tribe as defined in the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq.

**SECTION 2.** G.S. 96-8(6)i. reads as rewritten:

"i. ~~On and after January 1, 1978, the~~ The term "employment" includes service performed for any State and local governmental employing ~~unit. Provided, however, unit or for any Indian tribe, except that employment shall~~ does not include service performed (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 ~~thereof; thereof or of an Indian tribe;~~ (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; or (e) in a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight

1 hours per week. The services to which clause (d) of the  
2 preceding sentence applies include but are not limited to  
3 temporary emergency services compensated solely by a fixed  
4 payment for each emergency call answered whether or not  
5 provided for by prior agreement and training in preparation for  
6 such temporary emergency service whether or not  
7 compensated."

8 **SECTION 3.** G.S. 96-8(6)k.15. reads as rewritten:

9 "k. The term "employment" ~~shall~~does not include:

10 . . .

11 15. Services performed (i) in the employ of a church or  
12 convention or association of churches, or an organization  
13 which is operated primarily for religious purposes and  
14 which is operated, supervised, controlled or principally  
15 supported by a church or convention or association of  
16 churches; or (ii) by a duly ordained, commissioned, or  
17 licensed minister of a church in the exercise of his  
18 ministry or by a member of a religious order in the  
19 exercise of duties required by such order; or (iii) in a  
20 facility conducted for the purpose of carrying out a  
21 program of rehabilitation for individuals whose earning  
22 capacity is impaired by age or physical or mental  
23 deficiency or injury or providing remunerative work for  
24 individuals who because of their impaired physical or  
25 mental capacity cannot be readily absorbed in the  
26 competitive labor market by an individual receiving such  
27 rehabilitation or remunerative work; or (iv) as a part of  
28 an unemployment work-relief or work-training program  
29 assisted or financed in whole or in part by any federal  
30 ~~agency or agency,~~ an agency of a state or political  
31 subdivision thereof, or an Indian tribe, by an individual  
32 receiving ~~such the~~ work relief or work training, unless a  
33 federal law, rule or regulation mandates unemployment  
34 insurance coverage to individuals in a particular  
35 work-relief or work-training program; (v) after  
36 December 31, 1971, by an inmate for a hospital in a  
37 State prison or other State correctional institution or by a  
38 patient in any other State-operated hospital, and services  
39 performed by patients in a hospital operated by a  
40 nonprofit organization shall be exempt; (vi) after  
41 December 31, 1971, in the employ of a hospital, if such  
42 service is performed by a patient of such hospital; (vii)  
43 after December 31, 1971, by an inmate of a custodial or  
44 penal institution."

1           **SECTION 4.** G.S. 96-9(a) is amended by adding a new subdivision to read:  
2 **"§ 96-9. Contributions.**

3       (a)    Payment. –

4           ...

5       (4a)   Indian tribes may finance benefits paid to employees either by coming  
6           under the experience rating program provided in G.S. 96-9(b) or by  
7           coming into the program on a reimbursement basis in accordance with  
8           the provisions and conditions of G.S. 96-9(i). Any election made is  
9           binding on the tribe so electing for a period of four years."

10       **SECTION 5.** G.S. 96-9(g) reads as rewritten:

11       "(g)   Nothing contained in subsections ~~(d) and (f)~~ (d), (f), and (i) of this section  
12 ~~shall be construed to prevent~~ prevents the Commission from providing any reimbursing  
13 employer with informational bills or lists of charges on a basis more frequent than  
14 yearly, if in its sole discretion, the Commission ~~deems~~ considers such action to be in the  
15 best interest of the Commission and the affected employer(s)."

16       **SECTION 6.** G.S. 96-9 is amended by adding a new subsection to read:

17       "(i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units  
18 shall be financed in accordance with the provisions of this subsection. For the purposes  
19 of this subsection, an 'Indian tribe employing unit' is an Indian tribe, a subdivision or  
20 subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

21       (1)    Election. –

22           a.    An Indian tribe employing unit shall pay contributions under  
23           the provisions of this Chapter, unless it elects in accordance  
24           with this subsection to pay the Commission for the  
25           Unemployment Insurance Fund an amount equal to the amount  
26           of benefits paid that is attributable to service in the employ of  
27           the unit, to individuals for weeks of unemployment that begin  
28           within a benefit year established during the effective period of  
29           the election.

30           b.    An Indian tribe employing unit may elect to become liable for  
31           payments in lieu of contributions for a period of not less than  
32           four calendar years by filing a written notice of its election with  
33           the Commission at least 30 days before the January 1 effective  
34           date of the election.

35           c.    An Indian tribe employing unit that makes an election in  
36           accordance with this subsection will continue after the end of  
37           the four calendar years to be liable for payments in lieu of  
38           contributions until it files with the Commission a written notice  
39           terminating its election at least 30 days before the January 1  
40           effective date of the termination.

41           d.    The account of an Indian tribe employing unit that has been  
42           paying contributions under this Chapter for a period of at least  
43           four consecutive calendar years and that elects to change to a  
44           reimbursement basis shall be closed and shall not be used in any

1 future computation of the unit's contribution rate in any manner  
2 except that the unit may be relieved of the requirement to pay  
3 one percent (1%) of taxable wages as required by subdivision  
4 (2) of this subsection to the following extent and upon the  
5 following conditions:

6 1. An Indian tribe employing unit that has, for the year the  
7 election will be effective, an experience rating of 1.7 or  
8 less, will have transferred from its experience rating  
9 account an amount equal to one percent (1%) of its  
10 payroll as reported for each of the four calendar quarters  
11 that constitute the election year.

12 2. An Indian tribe employing unit that has, for the year the  
13 election will be effective, an experience rating of less  
14 than 2.7 but more than 1.7, will have transferred from its  
15 experience rating account an amount equal to one-half of  
16 one percent (.5%) of its payroll as reported for each of  
17 the four calendar quarters that constitute the election  
18 year. These employing units shall make advance  
19 payments to the Commission quarterly, computed at  
20 one-half of one percent (.5%) of the taxable wages  
21 reported as provided in subdivision (2) of this  
22 subsection.

23 3. An Indian tribe employing unit that has, for the year the  
24 election will become effective, an experience rating of  
25 2.7 or more, upon electing to change to a reimbursement  
26 basis, will meet all the requirements of subdivision (2) of  
27 this subsection, including making advance payments  
28 computed at one percent (1%) of taxable wages.

29 e. The Commission, in accordance with regulations it adopts, shall  
30 notify each Indian tribe employing unit of any determination of  
31 the effective date of any election it makes and of any  
32 termination of the election. These determinations shall be  
33 subject to reconsideration, appeal, and review.

34 (2) Procedure. – Indian tribe employing units' payments by reimbursement  
35 in lieu of contributions shall be made and processed as provided in this  
36 subdivision.

37 a. Quarterly contributions and wage reports and advance payments  
38 shall be submitted to the Commission quarterly under the same  
39 conditions and requirements of G.S. 96-9 and 96-10, except that  
40 the amount of advance payments shall be computed as one  
41 percent (1%) of taxable wages and entered on the reports, and  
42 except that the wage base shall be the same as that provided for  
43 in G.S. 96-9(a)(5). Collection of these advance payments shall

1 be made as provided for the collection of contributions in G.S.  
2 96-10.

3 Any Indian tribe employing unit paying by reimbursement  
4 having been, prior to July 1, under the reimbursement method  
5 of payment for the preceding calendar year, shall continue to  
6 file quarterly reports but shall make no payments with those  
7 reports.

8 b. The Commission shall establish a separate account for each  
9 Indian tribe employing unit paying by reimbursement. The  
10 account shall be credited and maintained as provided in G.S.  
11 96-9(c)(1), except that advance payments shall be credited in  
12 full, and voluntary contributions are not applicable.

13 c. Benefits paid shall be allocated to the employer's account in  
14 accordance with G.S. 96-9(c)(2)a. but charged to the account  
15 without the application of any multiplier, and no benefits shall  
16 be noncharged except amounts of benefits paid through error.

17 d. As of July 31 of each year, and prior to January 1 of the  
18 succeeding year, the Commission shall determine the balance of  
19 each Indian tribe employing unit's account and shall furnish the  
20 unit with a statement of all charges and credits to the account.

21 As of August 1 of each year, there shall be refunded any  
22 credit balance remaining in the Indian tribe employing unit's  
23 account (after all applicable postings) in excess of one percent  
24 (1%) of taxable wages for the 12 months ending on June 30  
25 preceding the computation date. The refund must be made  
26 before February 1 following the computation date.

27 If the balance in the account does not equal one percent  
28 (1%) of taxable wages, the Indian tribe employing unit must,  
29 upon notice and demand for payment mailed to its last known  
30 address, pay into the account an amount that will bring the  
31 balance to one percent (1%) of taxable wages. This amount  
32 becomes due on or before the 25th day after the notice and  
33 demand for payment is mailed. Any amount unpaid on the due  
34 date shall be collected in the same manner, including interest, as  
35 prescribed in G.S. 96-10.

36 Upon a change in election as to the method of payment from  
37 reimbursement to contributions, or upon termination of  
38 coverage and after all applicable benefits paid based on wages  
39 paid before the change in election or termination of coverage  
40 have been charged, any credit balance in the account shall be  
41 refunded to the Indian tribe employing unit.

42 If there is a debit balance in the account, the Indian tribe  
43 employing unit must, upon notice and demand for payment  
44 mailed to its last known address, pay into the account an

1                    amount necessary to bring the account to one percent (1%) of  
2                    taxable wages. This amount becomes due on or before the 25th  
3                    day after the notice and demand for payment is mailed. Any  
4                    amount unpaid on the due date shall be collected in the same  
5                    manner, including interest, as prescribed in G.S. 96-10.

6                    e. Notices to Indian tribe employing units of payment and  
7                    reporting delinquency must include information that failure to  
8                    make full payment within the time prescribed will cause the  
9                    unit to become liable for contributions under subsection (a) of  
10                   this section, will cause the unit to lose the option of making  
11                   payment by reimbursement in lieu of contributions, and could  
12                   cause the unit to lose coverage under this Chapter for services  
13                   performed for the unit.

14                   (3)   Forfeiture of option. – If an Indian tribe employing unit fails to make  
15                   payments, including interest and penalties, required under this  
16                   subsection within 90 days after receipt of the bill, the unit loses the  
17                   option to make payments by reimbursement in lieu of contributions for  
18                   the following calendar year unless payment in full is made before  
19                   contribution rates for the following calendar year are computed. An  
20                   Indian tribe that has lost the option to make payments by  
21                   reimbursement in lieu of contributions for a calendar year regains that  
22                   option for the following calendar year if it makes all contributions  
23                   timely during the year for which the option was lost and no payments,  
24                   penalties, or interest remain outstanding.

25                   (4)   Forfeiture of coverage. – If an Indian tribe employing unit fails to  
26                   make payments, including interest and penalties, required under this  
27                   subsection after all collection activities considered necessary by the  
28                   Commission have been exhausted, services performed for that  
29                   employing unit are no longer treated as 'employment' for the purpose  
30                   of coverage under this Chapter. An Indian tribe employing unit that  
31                   has lost coverage regains coverage under this Chapter for services  
32                   performed for the employing unit if the Commission determines that  
33                   all contributions, payments in lieu of contributions, penalties, and  
34                   interest have been paid.

35                   The Commission shall notify the Internal Revenue Service and the  
36                   United States Department of Labor of any termination or reinstatement  
37                   of coverage pursuant to this subdivision.

38                   (5)   Extended benefits. – Extended benefits paid that are attributable to  
39                   service in the employ of an Indian tribe employing unit and not  
40                   reimbursed by the federal government shall be financed in their  
41                   entirety by the Indian tribe employing unit."

42                   **SECTION 7.** This act is effective when it becomes law.