

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-184
HOUSE BILL 311**

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:

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

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

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

15. Services performed (i) in the employ of a church or convention or association of churches, or 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; or (ii) 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; or (iii) 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; or (iv) as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal ~~agency or agency~~, an agency of a state or political subdivision thereof, or an Indian tribe, by an individual receiving ~~such the~~ work relief or work training, unless a federal law, rule or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program; (v) after December 31, 1971, by an inmate for a hospital in a State prison or other State correctional institution or by a patient in any other State-operated hospital, and services performed by patients in a hospital operated by a nonprofit organization shall be exempt; (vi) after December 31, 1971, in the employ of a hospital, if such service is performed by a patient of such hospital; (vii) after December 31, 1971, by an inmate of a custodial or penal institution."

SECTION 4. G.S. 96-9(a) is amended by adding a new subdivision to read:

"§ 96-9. Contributions.

(a) Payment. –

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

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

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

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

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

(1) Election. –

a. An Indian tribe employing unit shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this subsection to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin

within a benefit year established during the effective period of the election.

- b. An Indian tribe employing unit may elect to become liable for payments in lieu of contributions for a period of not less than three calendar years by filing a written notice of its election with the Commission at least 30 days before the January 1 effective date of the election.
 - c. An Indian tribe employing unit that makes an election in accordance with this subsection will continue after the end of the three calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election at least 30 days before the January 1 effective date of the termination.
 - d. The account of an Indian tribe employing unit that has been paying contributions under this Chapter for a period of at least three consecutive calendar years and that elects to change to a reimbursement basis shall be closed and shall not be used in any future computation of the unit's contribution rate in any manner except that the unit may be relieved of the requirement to pay one percent (1%) of taxable wages as required by subdivision (2) of this subsection to the following extent and upon the following conditions:
 - 1. An Indian tribe employing unit that has, for the year the election will be effective, an experience rating of 1.7 or less will have transferred from its experience rating account an amount equal to one percent (1%) of its payroll as reported for each of the four calendar quarters that constitute the election year.
 - 2. An Indian tribe employing unit that has, for the year the election will be effective, an experience rating of less than 2.7 but more than 1.7 will have transferred from its experience rating account an amount equal to one-half of one percent (.5%) of its payroll as reported for each of the four calendar quarters that constitute the election year. These employing units shall make advance payments to the Commission quarterly, computed at one-half of one percent (.5%) of the taxable wages reported as provided in subdivision (2) of this subsection.
 - 3. An Indian tribe employing unit that has, for the year the election will become effective, an experience rating of 2.7 or more, upon electing to change to a reimbursement basis, will meet all the requirements of subdivision (2) of this subsection, including making advance payments computed at one percent (1%) of taxable wages.
 - e. The Commission, in accordance with regulations it adopts, shall notify each Indian tribe employing unit of any determination of the effective date of any election it makes and of any termination of the election. These determinations shall be subject to reconsideration, appeal, and review.
- (2) Procedure. – Indian tribe employing units' payments by reimbursement in lieu of contributions shall be made and processed as provided in this subdivision.
- a. Quarterly contributions and wage reports and advance payments shall be submitted to the Commission quarterly under the same

conditions and requirements of G.S. 96-9 and G.S. 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on the reports, and except that the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of these advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

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

- b. The Commission shall establish a separate account for each Indian tribe employing unit paying by reimbursement. The account shall be credited and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full, and voluntary contributions are not applicable.
- c. Benefits paid shall be allocated to the employer's account in accordance with G.S. 96-9(c)(2)a. but charged to the account without the application of any multiplier, and no benefits shall be noncharged except amounts of benefits paid through error.
- d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each Indian tribe employing unit's account and shall furnish the unit with a statement of all charges and credits to the account.

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

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

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

If there is a debit balance in the account, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount necessary to bring the account to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

- e. Notices to Indian tribe employing units of payment and reporting delinquency must include information that failure to make full payment within the time prescribed will cause the unit to become liable for contributions under subsection (a) of this section, will cause the unit to lose the option of making payment by reimbursement in lieu of contributions, and could cause the unit to lose coverage under this Chapter for services performed for the unit.
- (3) Forfeiture of option. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection within 90 days after receipt of the bill, the unit loses the option to make payments by reimbursement in lieu of contributions for the following calendar year unless payment in full is made before contribution rates for the following calendar year are computed. An Indian tribe that has lost the option to make payments by reimbursement in lieu of contributions for a calendar year regains that option for the following calendar year if it makes all contributions timely during the year for which the option was lost, and no payments, penalties, or interest remain outstanding.
- (4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection after all collection activities considered necessary by the Commission have been exhausted, services performed for that employing unit are no longer treated as 'employment' for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the Commission determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.
- The Commission shall notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subdivision.
- (5) Extended benefits. – Extended benefits paid that are attributable to service in the employ of an Indian tribe employing unit and not reimbursed by the federal government shall be financed in their entirety by the Indian tribe employing unit."

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

In the General Assembly read three times and ratified this the 31st day of May, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:11 p.m. this 7th day of June, 2001