

## AN ACT

ENTITLED, An Act to provide for the treatment of Indian tribes for purposes of unemployment insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. For the purposes of this Act, the term, employer, includes any Indian tribe for which service in employment as defined under Title 61 is performed. The term, tribal unit, means subdivisions, subsidiaries, or business enterprises, wholly owned by an Indian tribe.

Section 2. For the purposes of this Act, the term, employment, includes any service performed in the employ of an Indian tribe, as defined in section 3306(u) of the Federal Unemployment Tax Act (FUTA), as of December 21, 2000, if the service is excluded from employment as defined in FUTA solely by reason of section 3306(c)(7) FUTA as of December 21, 2000, and is not otherwise excluded from employment under this Act. For purposes of this section, the exclusions from employment in subdivisions 61-1-10.4(3) to 61-1-10.4(6), inclusive, are applicable to services performed in the employ of an Indian tribe.

Section 3. Benefits based on service in employment defined in this Act are payable in the same amount, on the same terms, and subject to the same conditions, as benefits payable based on other services subject to Title 61. However, the provisions of §§ 61-6-1.2, 61-6-1.3, and 61-6-1.6 apply to benefits based on service in employment defined in this Act.

Section 4. Each Indian tribe or tribal unit subject to this Act shall pay contributions under the same terms and conditions as any other subject employer, unless the tribe or tribal unit elects to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

Section 5. Each Indian tribe electing to make payments in lieu of contributions shall make the election in the same manner and under the same conditions as provided in chapter 61-5A pertaining

to state and local governments and nonprofit organizations subject to Title 61. Each Indian tribe shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

Section 6. Each Indian tribe or tribal unit shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

Section 7. At the discretion of the department, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions may be required, within thirty days after the effective date of its election, to:

- (1) Execute and file with the department a surety bond approved by the department; or
- (2) Deposit with the department money or securities on the same basis as other employers with the same election option.

Section 8. If any Indian tribe or any tribal unit fails to make any required payments, including assessments of interest and penalty, within ninety days of receipt of the bill, the Indian tribe or tribal unit shall lose the option to make payments in lieu of contributions for the following tax year unless payment in full is received before contribution rates for next tax year are computed.

Section 9. Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, shall have the option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

Section 10. If any Indian tribe or any tribal unit fails to make any required payments, including assessments of interest and penalty, after all collection efforts deemed necessary by the department have been exhausted, no services performed for such tribe or tribal unit may be treated as employment for purposes of section 2 of this Act.

Section 11. If any Indian tribe or tribal unit loses coverage under section 10 of this Act, the department may again include services performed for such tribe as employment for purposes of section 2 of this Act if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

Section 12. Any notice of payment and reporting delinquency to any Indian tribe or tribal unit shall include information indicating that failure to make full payment within the prescribed time frame:

- (1) Shall cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act;
- (2) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and
- (3) May cause the Indian tribe to be excepted from the definition of employer as provided in section 1 of this Act, and services in the employ of the Indian tribe, as provided in section 2 of this Act, to be excepted from employment.

Section 13. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by the Indian tribe.

Section 14. If any Indian tribe fails to make payments required under this Act, including assessments of interest and penalty, within ninety days of a final notice of delinquency, the department shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1040

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1040

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_ ,

20\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State