

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0197

## HOUSE BILL NO. 1040

Introduced by: The Committee on Commerce at the request of the Department of Labor

1 FOR AN ACT ENTITLED, An Act to provide for the treatment of Indian tribes for purposes  
2 of unemployment insurance.

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

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

7 Section 2. For the purposes of this Act, the term, employment, includes any service  
8 performed in the employ of an Indian tribe, as defined in section 3306(u) of the Federal  
9 Unemployment Tax Act (FUTA), as of December 21, 2000, if the service is excluded from  
10 employment as defined in FUTA solely by reason of section 3306(c)(7) FUTA as of  
11 December 21, 2000, and is not otherwise excluded from employment under this Act. For  
12 purposes of this section, the exclusions from employment in subdivisions 61-1-10.4(3) to 61-1-  
13 10.4(6), inclusive, are applicable to services performed in the employ of an Indian tribe.

14 Section 3. Benefits based on service in employment defined in this Act are payable in the  
15 same amount, on the same terms, and subject to the same conditions, as benefits payable based



1 on other services subject to Title 61. However, the provisions of §§ 61-6-1.2, 61-6-1.3, and 61-  
2 6-1.6 apply to benefits based on service in employment defined in this Act.

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

7 Section 5. Each Indian tribe electing to make payments in lieu of contributions shall make  
8 the election in the same manner and under the same conditions as provided in chapter 61-5A  
9 pertaining to state and local governments and nonprofit organizations subject to Title 61. Each  
10 Indian tribe shall determine if reimbursement for benefits paid will be elected by the tribe as a  
11 whole, by individual tribal units, or by combinations of individual tribal units.

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

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

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

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

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

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

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

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

16 (1) Shall cause the Indian tribe to be liable for taxes under the Federal Unemployment  
17 Tax Act;

18 (2) Shall cause the Indian tribe to lose the option to make payments in lieu of  
19 contributions; and

20 (3) May cause the Indian tribe to be excepted from the definition of employer as provided  
21 in section 1 of this Act, and services in the employ of the Indian tribe, as provided in  
22 section 2 of this Act, to be excepted from employment.

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

1 Indian tribe.

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