

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 100

An Act to amend the Code of Virginia by adding a section numbered 60.2-507.1, relating to unemployment compensation benefits and the financing thereof for employees of Indian tribes.

[S 359]

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 60.2-507.1 as follows:

§ 60.2-507.1. Financing of benefits to employees of Indian tribes.

A. As used in this section, unless the context requires a different meaning:

"Employer" includes any Indian tribe for which service in employment as defined under this title is performed.

"Employment" includes service performed in the employ of an Indian tribe, as defined in § 3306(u) of the Federal Unemployment Tax Act (FUTA), provided such service is excluded from "employment" as defined in FUTA solely by reason of § 3306(c)(7) of FUTA, and is not otherwise excluded from "employment" under this title. For purposes of this section, any exclusions from employment in § 60.2-219 that relate to services performed in the employ of state or local government shall be applicable to services performed in the employ of an Indian tribe.

"Tribal units" means subdivisions, subsidiaries, or business enterprises wholly owned by an Indian tribe.

B. Benefits based on service included in the definition of employment as provided in subsection A shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject under this title.

C. Indian tribes or tribal units subject to this title shall pay taxes as set forth in §§ 60.2-526 through 60.2-533 under the same terms and conditions as all other subject employers, unless they elect to pay into the fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

D. Indian tribes that elect to make payments to reimburse the fund for benefits paid shall make such election in the same manner and under the same conditions as provided in subsection C of § 60.2-507 pertaining to governmental entities that elect to make payments in lieu of taxes. Indian tribes 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.

E. Indian tribes or tribal units that elect to make payments in lieu of taxes 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 nonprofit organizations that have elected to make payments in lieu of taxes as provided in § 60.2-501.

F. At the discretion of the Commission, any Indian tribe or tribal unit that elects to become liable for payments in lieu of taxes shall be required within 30 days after the effective date of its election (i) to execute and file with the Commission a surety bond approved by the Commission or (ii) to deposit with the Commission money or securities on the same basis as nonprofit organizations that are required to post a bond or deposit pursuant to § 60.2-502.

G. Failure of the Indian tribe or tribal unit to make any required payment, including any assessment of interest and penalty, within 90 days of its due date shall cause the Indian tribe to lose the option to make payments in lieu of taxes, as provided in subsection C, for the following tax year unless payment in full is received before tax rates for next tax year are computed.

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

I. Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the Commission have been exhausted, shall cause services performed for such tribe to not be treated as "employment" as provided in subsection A.

J. The Commission may determine that any Indian tribe that loses coverage under subsection I may have services performed for such tribe again included as "employment" as provided in subsection A if all taxes, payments in lieu of taxes, penalties, and interest have been paid.

K. The Commission shall notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subsection I or subsection J.

L. Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

- 1. Shall cause the Indian tribe to be liable for taxes under FUTA;*
- 2. Shall cause the Indian tribe to lose the option to make payments in lieu of taxes; and*
- 3. May cause the Indian tribe to be excepted from the definition of "employer," as provided in subsection A, and services in the employ of the Indian tribe, as provided in subsection A, to be excepted from "employment."*

M. 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 such Indian tribe.

2. That the provisions of this act shall not be deemed in any way to affect, at the effective date of this act or at any time in the future, the sovereignty of any Indian tribe recognized by the Commonwealth.