

1 AN ACT concerning unemployment insurance.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Unemployment Insurance Act is amended by
5 changing Sections 205, 211.1, 220, and 1405 and by adding
6 Section 205.1 as follows:

7 (820 ILCS 405/205) (from Ch. 48, par. 315)

8 Sec. 205. "Employer" means:

9 A. With respect to the years 1937, 1938, and 1939, any
10 employing unit which has or had in employment eight or more
11 individuals on some portion of a day, but not necessarily
12 simultaneously, and irrespective of whether the same
13 individuals are or were employed on each such day within each
14 of twenty or more calendar weeks, whether or not such weeks
15 are or were consecutive, within either the current or
16 preceding calendar year;

17 B. 1. With respect to the years 1940 through 1955,
18 inclusive, any employing unit which has or had in employment
19 six or more individuals within each of twenty or more
20 calendar weeks (but not necessarily simultaneously and
21 irrespective of whether the same individuals are or were
22 employed in each such week), whether or not such weeks are or
23 were consecutive, within either the current or preceding
24 calendar year;

25 2. With respect to the years 1956 through 1971,
26 inclusive, any employing unit which has or had in employment
27 four or more individuals within each of twenty or more
28 calendar weeks (but not necessarily simultaneously and
29 irrespective of whether the same individuals are or were
30 employed in each such week), whether or not such weeks are or
31 were consecutive, within either the current or preceding

1 calendar year;

2 3. With respect to the years 1972 and thereafter, except
3 as provided in subsection K and in Section 301, any employing
4 unit which (1) pays or paid, for services in employment,
5 wages of at least \$1500 within any calendar quarter in either
6 the current or preceding calendar year; or (2) has or had in
7 employment at least one individual on some portion of a day,
8 irrespective of whether the same individual is or was
9 employed on each such day, within each of twenty or more
10 calendar weeks, whether or not such weeks are or were
11 consecutive, within either the current or preceding calendar
12 year;

13 4. With respect to the years 1972 and thereafter, any
14 nonprofit organization as defined in Section 211.2, except as
15 provided in subsection K and in Section 301;

16 5. With respect to the years 1972 and thereafter, the
17 State of Illinois and each of its instrumentalities; and with
18 respect to the years 1978 and thereafter, each governmental
19 entity referred to in clause (B) of Section 211.1, except as
20 provided in Section 301;

21 6. With respect to the years 1978 and thereafter, any
22 employing unit for which service in agricultural labor is
23 performed in employment as defined in Section 211.4, except
24 as provided in subsection K and in Section 301;

25 7. With respect to the years 1978 and thereafter, any
26 employing unit for which domestic service is performed in
27 employment as defined in Section 211.5, except as provided in
28 subsection K and in Section 301;

29 C. Any individual or employing unit which succeeded to
30 the organization, trade, or business of another employing
31 unit which at the time of such succession was an employer,
32 and any individual or employing unit which succeeded to the
33 organization, trade, or business of any distinct severable
34 portion of another employing unit, which portion, if treated

1 as a separate employing unit, would have been, at the time of
2 the succession, an employer under subsections A or B of this
3 Section;

4 D. Any individual or employing unit which succeeded to
5 any of the assets of an employer or to any of the assets of a
6 distinct severable portion thereof, if such portion, when
7 treated as a separate employing unit would be an employer
8 under subsections A or B of this Section, by any means
9 whatever, otherwise than in the ordinary course of business,
10 unless and until it is proven in any proceeding where such
11 issue is involved that all of the following exist:

12 1. The successor unit has not assumed a substantial
13 amount of the predecessor unit's obligations; and

14 2. The successor unit has not acquired a
15 substantial amount of the predecessor unit's good will;
16 and

17 3. The successor unit has not continued or resumed
18 a substantial part of the business of the predecessor
19 unit in the same establishment;

20 E. Any individual or employing unit which succeeded to
21 the organization, trade, or business, or to any of the assets
22 of a predecessor unit (unless and until it is proven in any
23 proceeding where such issue is involved that all the
24 conditions enumerated in subsection D of this Section exist),
25 if the experience of the successor unit subsequent to such
26 succession plus the experience of the predecessor unit prior
27 to such succession, both within the same calendar year, would
28 equal the experience necessary to constitute an employing
29 unit an employer under subsections A or B of this Section;

30 For the purposes of this subsection, the term
31 "predecessor unit" shall include any distinct severable
32 portion of an employing unit.

33 F. With respect to the years 1937 through 1955,
34 inclusive, any employing unit which together with one or more

1 other employing units is owned or controlled, directly or
2 indirectly, by legally enforceable means or otherwise, by the
3 same interests, or which owns or controls one or more other
4 employing units directly or indirectly, by legally
5 enforceable means or otherwise, and which if treated as a
6 single unit with such other employing units or interests or
7 both would be an employer under subsections A or B of this
8 Section;

9 G. Any employing unit which, having become an employer
10 under subsections A, B, C, D, E, or F of this Section, has
11 not, under Section 301, ceased to be an employer;

12 H. For the effective period of its election pursuant to
13 Section 302, any other employing unit which has elected to
14 become fully subject to this Act;

15 I. Any employing unit which is an employer under Section
16 245; ~~or~~

17 J. Any employing unit which, having become an employer
18 under Section 245, has not, with respect to the year 1960 or
19 thereafter, ceased to be an employer under Section 301; or-

20 J-1. On and after December 21, 2000, any Indian tribe
21 for which service in "employment" as defined under this Act
22 is performed.

23 K. In determining whether or not an employing unit for
24 which service other than domestic service is also performed
25 is an employer under paragraphs 3, 4, or 6 of subsection B,
26 the domestic service of an individual and the wages paid
27 therefor shall not be taken into account. In determining
28 whether or not an employing unit for which service other than
29 agricultural labor is also performed is an employer under
30 paragraphs 4 or 7 of subsection B, the service of an
31 individual in agricultural labor and the wages paid therefor
32 shall not be taken into account. An employing unit which is
33 an employer under paragraph 6 of subsection B is an employer
34 under paragraph 3 of subsection B.

1 (Source: P.A. 87-1178.)

2 (820 ILCS 405/205.1 new)

3 Sec. 205.1. Indian tribe. "Indian tribe" has the meaning
4 given to that term by Section 4(e) of the Indian
5 Self-Determination and Education Assistance Act (25 U.S.C.
6 450(e)), and includes any subdivision, subsidiary, or
7 business enterprise wholly owned by such an Indian tribe.

8 (820 ILCS 405/211.1) (from Ch. 48, par. 321.1)

9 Sec. 211.1. Except as provided in Section 220, the term
10 "employment" shall include (A) service performed after
11 December 31, 1971, by an individual in the employ of this
12 State or any of its instrumentalities (and by an individual
13 in the employ of this State or any of its instrumentalities
14 and one or more other States or their instrumentalities for a
15 hospital or institution of higher education located in this
16 State), provided that such service is excluded from the
17 definition of "employment" in the Federal Unemployment Tax
18 Act solely by reason of Section 3306(c)(7) of that Act; and
19 (B) service performed after December 31, 1977 by an
20 individual in the employ of this State or any of its
21 instrumentalities, or any political subdivision or municipal
22 corporation thereof or any of their instrumentalities, or any
23 instrumentality of more than one of the foregoing, or any
24 instrumentality of any of the foregoing and one or more other
25 States or political subdivisions, provided that such service
26 is excluded from the definition of "employment" in the
27 Federal Unemployment Tax Act by Section 3306(c)(7) of that
28 Act; and (C) service performed after December 20, 2000, by an
29 individual in the employ of an Indian tribe.

30 (Source: P.A. 80-2dSS-1.)

31 (820 ILCS 405/220) (from Ch. 48, par. 330)

1 Sec. 220. A. The term "employment" shall not include
2 service performed prior to 1972 in the employ of this State,
3 or of any political subdivision thereof, or of any wholly
4 owned instrumentality of this State or its political
5 subdivisions.

6 B. The term "employment" shall not include service,
7 performed after 1971 and before 1978, in the employ of this
8 State or any of its instrumentalities:

9 1. In an elective position;

10 2. Of a professional or consulting nature,
11 compensated on a per diem or retainer basis;

12 3. For a State prison or other State correctional
13 institution, by an inmate of the prison or correctional
14 institution;

15 4. As part of an unemployment work-relief or
16 work-training program assisted or financed in whole or in
17 part by any Federal agency or an agency of this State, by
18 an individual receiving such work-relief or
19 work-training;

20 5. In a facility conducted for the purpose of
21 carrying out a program of rehabilitation for individuals
22 whose earning capacity is impaired by age or physical or
23 mental deficiency or injury or providing remunerative
24 work for individuals who because of their impaired
25 physical or mental capacity cannot be readily absorbed in
26 the competitive labor market, by an individual receiving
27 such rehabilitation or remunerative work;

28 6. Directly for the Illinois State Fair during its
29 active duration (including the week immediately preceding
30 and the week immediately following the Fair);

31 7. Directly and solely in connection with an
32 emergency, in fire-fighting, snow removal, flood control,
33 control of the effects of wind or flood, and the like, by
34 an individual hired solely for the period of such

1 emergency;

2 8. In the Illinois National Guard, directly and
3 solely in connection with its summer training camps or
4 during emergencies, by an individual called to duty
5 solely for such purposes.

6 C. Except as provided in Section 302, the term
7 "employment" shall not include service performed in the
8 employ of a political subdivision or a municipal corporation,
9 or an instrumentality of one or more of the foregoing or of
10 this State and one or more of the foregoing. This subsection
11 shall not apply to service performed after December 31, 1977.

12 D. The term "employment" shall not include service
13 performed after December 31, 1977:

14 1. In the employ of a governmental entity referred
15 to in clause (B) of Section 211.1 if such service is
16 performed in the exercise of duties

17 a. As an elected official;

18 b. As a member of a legislative body, or a
19 member of the judiciary, of this State or a
20 political subdivision or municipal corporation;

21 c. As a member of the Illinois National Guard
22 or Air National Guard;

23 d. As a worker serving on a temporary basis in
24 case of fire, storm, snow, earthquake, flood, or
25 similar emergency;

26 e. In a position which, under or pursuant to
27 the laws of this State, is designated as a major
28 nontenured policymaking or advisory position, or as
29 a policymaking position the performance of the
30 duties of which ordinarily does not require more
31 than 8 hours per week.

32 2. As part of an unemployment work-relief or
33 work-training program assisted or financed in whole or in
34 part by any Federal agency or an agency of this State, or

1 a political subdivision or municipal corporation, by an
2 individual receiving such work-relief or work-training.

3 3. In a facility conducted for the purpose of
4 carrying out a program of rehabilitation for individuals
5 whose earning capacity is impaired by age or physical or
6 mental deficiency or injury or providing remunerative
7 work for individuals who because of their impaired
8 physical or mental capacity cannot be readily absorbed in
9 the competitive labor market, by an individual receiving
10 such rehabilitation or remunerative work.

11 4. By an inmate of a custodial or penal
12 institution.

13 E. The term "employment" shall not include service
14 performed on or after January 1, 2002 in the employ of a
15 governmental entity referred to in clause (B) of Section
16 211.1 if the service is performed in the exercise of duties
17 as an election official or election worker and the amount of
18 remuneration received by the individual during the calendar
19 year for service as an election official or election worker
20 is less than \$1,000.

21 F. The term "employment" shall not include service
22 performed in the employ of an Indian tribe if such service is
23 performed in the exercise of duties:

24 1. as an elected official;

25 2. as a member of a legislative body, or a member
26 of the judiciary, of that Indian tribe;

27 3. as a worker serving on a temporary basis in case
28 of fire, storm, snow, earthquake, flood, or similar
29 emergency;

30 4. in a position which, under or pursuant to tribal
31 law, is designated as a major nontenured policymaking or
32 advisory position, or as a policymaking position the
33 performance of the duties of which ordinarily does not
34 require more than 8 hours per week;

1 5. as part of an unemployment work-relief or
 2 work-training program assisted or financed in whole or in
 3 part by any federal agency or an agency of this State, or
 4 a political subdivision or municipal corporation, or an
 5 Indian tribe, by an individual receiving such work-relief
 6 or work training;

7 6. in a facility conducted for the purpose of
 8 carrying out a program of rehabilitation for individuals
 9 whose earning capacity is impaired by age or physical or
 10 mental deficiency or injury or providing remunerative
 11 work for individuals who because of their impaired
 12 physical or mental capacity cannot be readily absorbed in
 13 the competitive labor market, by an individual receiving
 14 such rehabilitation or remunerative work;

15 7. by an inmate of a custodial or penal
 16 institution.

17 (Source: P.A. 92-441, eff. 1-1-02.)

18 (820 ILCS 405/1405) (from Ch. 48, par. 555)

19 Sec. 1405. Financing Benefits for Employees of Local
 20 Governments. A. 1. For the year 1978 and for each calendar
 21 year thereafter, contributions shall accrue and become
 22 payable, pursuant to Section 1400, by each governmental
 23 entity (other than the State of Illinois and its wholly owned
 24 instrumentalities) referred to in clause (B) of Section
 25 211.1, upon the wages paid by such entity with respect to
 26 employment after 1977, unless the entity elects to make
 27 payments in lieu of contributions pursuant to the provisions
 28 of subsection B. Notwithstanding the provisions of Sections
 29 1500 to 1510, inclusive, a governmental entity which has not
 30 made such election shall, for liability for contributions
 31 incurred prior to January 1, 1984, pay contributions equal to
 32 1 percent with respect to wages for insured work paid during
 33 each such calendar year or portion of such year as may be

1 applicable. As used in this subsection, the word "wages",
2 defined in Section 234, is subject to all of the provisions
3 of Section 235.

4 2. An Indian tribe for which service is exempted from
5 the federal unemployment tax under Section 3306(c)(7) of the
6 Federal Unemployment Tax Act may elect to make payments in
7 lieu of contributions in the same manner and subject to the
8 same conditions as provided in this Section with regard to
9 governmental entities, except as otherwise provided in
10 paragraphs 7, 8, and 9 of subsection B.

11 B. Any governmental entity subject to subsection A may
12 elect to make payments in lieu of contributions, in amounts
13 equal to the amounts of regular and extended benefits paid to
14 individuals, for any weeks which begin on or after the
15 effective date of the election, on the basis of wages for
16 insured work paid to them by the entity during the effective
17 period of such election. Notwithstanding the preceding
18 provisions of this subsection and the provisions of
19 subsection D of Section 1404, with respect to benefit years
20 beginning prior to July 1, 1989, any adjustment after
21 September 30, 1989 to the base period wages paid to the
22 individual by any employer shall not affect the ratio for
23 determining payments in lieu of contributions of a
24 governmental entity which has elected to make payments in
25 lieu of contributions. Provided, however, that with respect
26 to benefit years beginning on or after July 1, 1989, the
27 governmental entity shall be required to make payments equal
28 to 100% of regular benefits, including dependents'
29 allowances, and 100% of extended benefits, including
30 dependents' allowances, paid to an individual with respect to
31 benefit years beginning during the effective period of the
32 election, but only if the governmental entity: (a) is the
33 last employer as provided in Section 1502.1 and (b) paid to
34 the individual receiving benefits, wages for insured work

1 during his base period. If the governmental entity described
2 in this paragraph meets the requirements of (a) but not (b),
3 with respect to benefit years beginning on or after July 1,
4 1989, it shall be required to make payments in an amount
5 equal to 50% of regular benefits, including dependents'
6 allowances, and 50% of extended benefits, including
7 dependents' allowances, paid to an individual with respect to
8 benefit years beginning during the effective period of the
9 election.

10 1. Any such governmental entity which becomes an
11 employer on January 1, 1978 pursuant to Section 205 may elect
12 to make payments in lieu of contributions for not less than
13 one calendar year beginning with January 1, 1978, provided
14 that it files its written election with the Director not
15 later than January 31, 1978.

16 2. A governmental entity newly created after January 1,
17 1978, may elect to make payments in lieu of contributions for
18 a period of not less than one calendar year beginning as of
19 the first day with respect to which it would, in the absence
20 of its election, incur liability for the payment of
21 contributions, provided that it files its written election
22 with the Director not later than 30 days immediately
23 following the end of the calendar quarter in which it has
24 been created.

25 3. A governmental entity which has incurred liability
26 for the payment of contributions for at least 2 calendar
27 years, and is not delinquent in such payment and in the
28 payment of any interest or penalties which may have accrued,
29 may elect to make payments in lieu of contributions beginning
30 January 1 of any calendar year, provided that it files its
31 written election with the Director prior to such January 1,
32 and provided, further, that such election shall be for a
33 period of not less than 2 calendar years.

34 4. An election to make payments in lieu of contributions

1 shall not terminate any liability incurred by a governmental
2 entity for the payment of contributions, interest or
3 penalties with respect to any calendar quarter which ends
4 prior to the effective period of the election.

5 5. The termination by a governmental entity of the
6 effective period of its election to make payments in lieu of
7 contributions, and the filing of and subsequent action upon
8 written notices of termination of election, shall be governed
9 by the provisions of paragraphs 5 and 6 of Section 1404A,
10 pertaining to nonprofit organizations.

11 6. With respect to benefit years beginning prior to July
12 1, 1989, wages paid to an individual during his base period
13 by a governmental entity which elects to make payments in
14 lieu of contributions for less than full time work, performed
15 during the same weeks in the base period during which the
16 individual had other insured work, shall not be subject to
17 payments in lieu of contribution (upon such employer's
18 request pursuant to the regulation of the Director) so long
19 as the employer continued after the end of the base period,
20 and continues during the applicable benefit year, to furnish
21 such less than full time work to the individual on the same
22 basis and in substantially the same amount as during the base
23 period. If the individual is paid benefits with respect to a
24 week (in the applicable benefit year) after the employer has
25 ceased to furnish the work hereinabove described, the
26 governmental entity shall be liable for payments in lieu of
27 contributions with respect to the benefits paid to the
28 individual after the date on which the governmental entity
29 ceases to furnish the work.

30 7. An Indian tribe may elect to make payments in lieu of
31 contributions for calendar year 2003, provided that it files
32 its written election with the Director not later than January
33 31, 2003, and provided further that it is not delinquent in
34 the payment of any contributions, interest, or penalties.

1 8. Failure of an Indian tribe to make a payment in lieu
2 of contributions, or a payment of interest or penalties due
3 under this Act, within 90 days after the Department serves
4 notice of the finality of a determination and assessment
5 shall cause the Indian tribe to lose the option of making
6 payments in lieu of contributions, effective as of the
7 calendar year immediately following the date on which the
8 Department serves the notice. Notice of the loss of the
9 option to make payments in lieu of contributions may be
10 protested in the same manner as a determination and
11 assessment under Section 2200 of this Act.

12 9. An Indian tribe that, pursuant to paragraph 8, loses
13 the option of making payments in lieu of contributions may
14 again elect to make payments in lieu of contributions for a
15 calendar year if: (a) the Indian tribe has incurred liability
16 for the payment of contributions for at least one calendar
17 year since losing the option pursuant to paragraph 8, (b) the
18 Indian tribe is not delinquent in the payment of any
19 liabilities under the Act, including interest or penalties,
20 and (c) the Indian tribe files its written election with the
21 Director not later than January 31 of the year with respect
22 to which it is making the election.

23 C. As soon as practicable following the close of each
24 calendar quarter, the Director shall mail to each
25 governmental entity which has elected to make payments in
26 lieu of contributions a Statement of the amount due from it
27 for all the regular and extended benefits paid during the
28 calendar quarter, together with the names of its workers or
29 former workers and the amounts of benefits paid to each of
30 them during the calendar quarter with respect to benefit
31 years beginning prior to July 1, 1989, on the basis of wages
32 for insured work paid to them by the governmental entity; or,
33 with respect to benefit years beginning after June 30, 1989,
34 if such governmental entity was the last employer as provided

1 in Section 1502.1 with respect to a benefit year beginning
2 during the effective period of the election. All of the
3 provisions of subsection B of Section 1404 pertaining to
4 nonprofit organizations, not inconsistent with the preceding
5 sentence, shall be applicable to payments in lieu of
6 contributions by a governmental entity.

7 D. The provisions of subsections C through F, inclusive,
8 of Section 1404, pertaining to nonprofit organizations, shall
9 be applicable to each governmental entity which has elected
10 to make payments in lieu of contributions.

11 E. 1. If an Indian tribe fails to pay any liability
12 under this Act (including assessments of interest or penalty)
13 within 90 days after the Department issues a notice of the
14 finality of a determination and assessment, the Director
15 shall immediately notify the United States Internal Revenue
16 Service and the United States Department of Labor.

17 2. Notices of payment and reporting delinquencies to
18 Indian tribes shall include information that failure to make
19 full payment within the prescribed time frame:

20 a. will cause the Indian tribe to lose the
21 exemption provided by Section 3306(c)(7) of the Federal
22 Unemployment Tax Act with respect to the federal
23 unemployment tax;

24 b. will cause the Indian tribe to lose the option
25 to make payments in lieu of contributions.

26 (Source: P.A. 86-3.)

27 Section 99. Effective date. This Act takes effect upon
28 becoming law.