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SENATE BILL 334

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; ESTABLISHING A TEMPORARY SCHEDULE FOR EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND; ESTABLISHING A NEW FORMULA FOR EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND; PROVIDING FOR AN EXCESS CLAIMS PREMIUM; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 51-1-8 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 6, as amended) is amended to read:

"51-1-8. CLAIMS FOR BENEFITS.--

A. Claims for benefits shall be made in accordance with such regulations as the secretary may prescribe. Each employer shall post and maintain printed notices, in places readily accessible to employees, concerning their rights to

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1 file claims for unemployment benefits upon termination of their  
2 employment. Such notices shall be supplied by the division to  
3 each employer without cost to the employer.

4 B. A representative designated by the secretary as  
5 a claims examiner shall promptly examine the application and  
6 each weekly claim and, on the basis of the facts found, shall  
7 determine whether the claimant is unemployed, the week with  
8 respect to which benefits shall commence, the weekly benefit  
9 amount payable, the maximum duration of benefits, whether the  
10 claimant is eligible for benefits pursuant to Section 51-1-5  
11 NMSA 1978 and whether the claimant shall be disqualified  
12 pursuant to Section 51-1-7 NMSA 1978. With the approval of the  
13 secretary, the claims examiner may refer, without  
14 determination, claims or any specified issues involved therein  
15 that raise complex questions of fact or law to a hearing  
16 officer for the division for a fair hearing and decision in  
17 accordance with the procedure described in Subsection D of this  
18 section. The claims examiner shall promptly notify the  
19 claimant and any other interested party of the determination  
20 and the reasons therefor. Unless the claimant or interested  
21 party, within fifteen calendar days after the date of  
22 notification or mailing of the determination, files an appeal  
23 from the determination, the determination shall be the final  
24 decision of the division; provided that the claims examiner may  
25 reconsider a nonmonetary determination if additional

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1 information not previously available is provided or obtained or  
2 whenever the claims examiner finds an error in the application  
3 of law has occurred, but no redetermination shall be made more  
4 than twenty days from the date of the initial nonmonetary  
5 determination. Notice of a nonmonetary redetermination shall  
6 be given to all interested parties and shall be subject to  
7 appeal in the same manner as the original nonmonetary  
8 determination. If an appeal is pending at the time a  
9 redetermination is issued, the appeal, unless withdrawn, shall  
10 be treated as an appeal from the redetermination.

11 C. In the case of a claim for waiting period credit  
12 or benefits, "interested party", for purposes of determinations  
13 and adjudication proceedings and notices thereof, means:

14 (1) in the event of an issue concerning a  
15 separation from work for reasons other than lack of work, the  
16 claimant's most recent employer or most recent employing unit;

17 (2) in the event of an issue concerning a  
18 separation from work for lack of work, the employer or  
19 employing unit from whom the claimant separated for reasons  
20 other than lack of work if the claimant has not worked and  
21 earned wages in insured work or bona fide employment other than  
22 self-employment in an amount equal to or exceeding five times  
23 the claimant's weekly benefit amount; or

24 (3) in all other cases involving the allowance  
25 or disallowance of a claim, the secretary, the claimant and any

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1 employing unit directly involved in the facts at issue.

2 D. Upon appeal by any party, a hearing officer  
3 designated by the secretary shall afford the parties reasonable  
4 opportunity for a fair hearing to be held de novo, and the  
5 hearing officer shall issue findings of fact and a decision  
6 ~~[which]~~ that affirms, modifies or reverses the determination of  
7 the claims examiner or tax representative on the facts or the  
8 law, based upon the evidence introduced at such hearing,  
9 including the documents and statements in the claim or tax  
10 records of the division. All hearings shall be held in  
11 accordance with regulations of the secretary and decisions  
12 issued promptly in accordance with time lapse standards  
13 promulgated by the secretary of the United States department of  
14 labor. The parties shall be duly notified of the decision,  
15 together with the reasons therefor, which shall be deemed to be  
16 the final decision of the department, unless within fifteen  
17 days after the date of notification or mailing of the decision  
18 further appeal is initiated pursuant to Subsection H of this  
19 section.

20 E. Except with the consent of the parties, no  
21 hearing officer or members of the board of review, established  
22 in Subsection F of this section, or secretary shall sit in any  
23 administrative or adjudicatory proceeding in which:

24 (1) either of the parties is related to the  
25 hearing officer, member of the board of review or secretary by

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1 affinity or consanguinity within the degree of first cousin;

2 (2) the hearing officer, member of the board  
3 of review or secretary was counsel for either party in that  
4 action; or

5 (3) the hearing officer, member of the board  
6 of review or secretary has an interest ~~[which]~~ that would  
7 prejudice the rendering of an impartial decision.

8 The secretary, any member of the board of review or appeal  
9 tribunal hearing officer shall withdraw from any proceeding in  
10 which the hearing officer, member of the board of review or  
11 secretary cannot accord a fair and impartial hearing or when a  
12 reasonable person would seriously doubt whether the hearing  
13 officer, board member or secretary could be fair and impartial.  
14 Any party may request a disqualification of any appeal tribunal  
15 hearing officer or board of review member by filing an  
16 affidavit with the board of review or appeal tribunal promptly  
17 upon discovery of the alleged grounds for disqualification,  
18 stating with particularity the grounds upon which it is claimed  
19 that the person cannot be fair and impartial. The  
20 disqualification shall be mandatory if sufficient factual basis  
21 is set forth in the affidavit of disqualification. If a member  
22 of the board of review is disqualified or withdraws from any  
23 proceeding, the remaining members of the board of review may  
24 appoint an appeal tribunal hearing officer to sit on the board  
25 of review for the proceeding involved.

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1 F. There is established within the department, for  
2 the purpose of providing higher level administrative appeal and  
3 review of determinations of a claims examiner or decisions  
4 issued by a hearing officer pursuant to Subsection B or D of  
5 this section, a "board of review" consisting of three members.  
6 Two members shall be appointed by the governor with the consent  
7 of the senate. The members so appointed shall hold office at  
8 the pleasure of the governor for terms of four years. One  
9 member appointed by the governor shall be a person who, on  
10 account of previous vocation, employment or affiliation, can be  
11 classed as a representative of employers, and the other member  
12 appointed by the governor shall be a person who, on account of  
13 previous vocation, employment or affiliation, can be classed as  
14 a representative of employees. The third member shall be an  
15 employee of the department appointed by the secretary who shall  
16 serve as [~~chairman~~] chair of the board. Either member of the  
17 board of review appointed by the governor who has missed two  
18 consecutive meetings of the board may be removed from the board  
19 by the governor. Actions of the board shall be taken by  
20 majority vote. If a vacancy on the board in a position  
21 appointed by the governor occurs between sessions of the  
22 legislature, the position shall be filled by the governor until  
23 the next regular legislative session. The board shall meet at  
24 the call of the secretary. Members of the board appointed by  
25 the governor shall be paid per diem and mileage in accordance

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1 with the Per Diem and Mileage Act for necessary travel to  
2 attend regularly scheduled meetings of the board of review for  
3 the purpose of conducting the board's appellate and review  
4 duties.

5 G. The board of review shall hear and review all  
6 cases appealed in accordance with Subsection H of this section.  
7 The board of review may modify, affirm or reverse the decision  
8 of the hearing officer or remand any matter to the claims  
9 examiner, tax representative or hearing officer for further  
10 proceedings. Each member appointed by the governor shall be  
11 compensated at the rate of fifteen dollars (\$15.00) for each  
12 case reviewed up to a maximum compensation of twelve thousand  
13 dollars (\$12,000) in any one fiscal year.

14 H. Any party aggrieved by a final decision of a  
15 hearing officer may file, in accordance with regulations  
16 prescribed by the secretary, an application for appeal and  
17 review of the decision with the secretary. The secretary shall  
18 review the application and shall, within fifteen days after  
19 receipt of the application, either affirm the decision of the  
20 hearing officer, reverse the decision of the hearing officer,  
21 modify the decision of the hearing officer, remand the matter  
22 to the hearing officer, tax representative or claims examiner  
23 for an additional hearing or refer the decision to the board of  
24 review for further review and decision on the merits of the  
25 appeal. If the secretary affirms, reverses or modifies the

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1 decision of the hearing officer, that decision shall be the  
2 final administrative decision of the department and any appeal  
3 therefrom shall be taken to the district court in accordance  
4 with the provisions of Subsections M and N of this section. If  
5 the secretary remands a matter to a hearing officer, tax  
6 representative or claims examiner for an additional hearing,  
7 judicial review shall be permitted only after issuance of a  
8 final administrative decision. If the secretary refers the  
9 decision of the hearing officer to the board of review for  
10 further review, the board's decision on the merits of the  
11 appeal shall be the final administrative decision of the  
12 department, which may be appealed to the district court in  
13 accordance with the provisions of Subsections M and N of this  
14 section. If the secretary takes no action within fifteen days  
15 of receipt of the application for appeal and review, the  
16 decision shall be promptly scheduled for review by the board of  
17 review as though it had been referred by the secretary. The  
18 secretary may request the board of review to review a decision  
19 of a hearing officer that the secretary believes to be  
20 inconsistent with the law or with applicable rules of  
21 interpretation or that is not supported by the evidence, and  
22 the board of review shall grant the request if it is filed  
23 within fifteen days of the issuance of the decision of the  
24 hearing officer. The secretary may also direct that any  
25 pending determination or adjudicatory proceeding be removed to

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1 the board of review for a final decision. If the board of  
2 review holds a hearing on any matter, the hearing shall be  
3 conducted by a quorum of the board of review in accordance with  
4 regulations prescribed by the secretary for hearing appeals.  
5 The board of review shall promptly notify the interested  
6 parties of its findings of fact and decision. A decision of  
7 the board of review on any disputed matter reviewed and decided  
8 by it shall be based upon the law and the lawful rules of  
9 interpretation issued by the secretary, and it shall be the  
10 final administrative decision of the department, except in  
11 cases of remand. If the board of review remands a matter to a  
12 hearing officer, claims examiner or tax representative,  
13 judicial review shall be permitted only after issuance of a  
14 final administrative decision.

15 I. Notwithstanding any other provision of this  
16 section granting any party the right to appeal, benefits shall  
17 be paid promptly in accordance with a determination or a  
18 decision of a claims examiner, hearing officer, secretary,  
19 board of review or reviewing court, regardless of the pendency  
20 of the period to file an appeal or petition for judicial review  
21 that is provided with respect thereto in Subsection D or M of  
22 this section or the pendency of any such filing or petition  
23 until such determination or decision has been modified or  
24 reversed by a subsequent decision. The provisions of this  
25 subsection shall apply to all claims for benefits pending on

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1 the date of its enactment.

2 J. If a prior determination or decision allowing  
3 benefits is affirmed by a decision of the department, including  
4 the board of review or a reviewing court, the benefits shall be  
5 paid promptly regardless of any further appeal [~~which~~] that may  
6 thereafter be available to the parties, and no injunction,  
7 supersedeas, stay or other writ or process suspending the  
8 payment of benefits shall be issued by the secretary or board  
9 of review or any court, and no action to recover benefits paid  
10 to a claimant shall be taken. If a determination or decision  
11 allowing benefits is finally modified or reversed, the  
12 appropriate contributing [~~employer's account~~] employer will be  
13 relieved of benefit charges in accordance with Subsection [B] A  
14 of Section 51-1-11 NMSA 1978.

15 K. The manner in which disputed claims shall be  
16 presented, the reports thereon required from the claimant and  
17 from employers and the conduct of hearings and appeals shall be  
18 in accordance with rules prescribed by the secretary for  
19 determining the rights of the parties, whether or not the rules  
20 conform to common law or statutory rules of evidence and other  
21 technical rules of procedure. A hearing officer or the board  
22 of review may refer to the secretary for interpretation any  
23 question of controlling legal significance, and the secretary  
24 shall issue a declaratory interpretation, which shall be  
25 binding upon the decision of the hearing officer and the board

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1 of review. A full and complete record shall be kept of all  
2 proceedings in connection with a disputed claim. All testimony  
3 at any hearing upon a disputed claim shall be recorded but need  
4 not be transcribed unless the disputed claim is appealed to the  
5 district court.

6 L. Witnesses subpoenaed pursuant to this section  
7 shall be allowed fees at a rate fixed by the secretary. Such  
8 fees and all administrative expenses of proceedings involving  
9 disputed claims shall be deemed a part of the expense of  
10 administering the Unemployment Compensation Law.

11 M. Any determination or decision of a claims  
12 examiner or hearing officer or by a representative of the tax  
13 section of the department in the absence of an appeal therefrom  
14 as provided by this section shall become final fifteen days  
15 after the date of notification or mailing thereof, and judicial  
16 review thereof shall be permitted only after any party claiming  
17 to be aggrieved thereby has exhausted the remedies as provided  
18 in Subsection H of this section. The division and any employer  
19 or claimant who is affected by the decision shall be joined as  
20 a party in any judicial action involving the decision. All  
21 parties shall be served with an endorsed copy of the petition  
22 within thirty days from the date of filing and an endorsed copy  
23 of the order granting the petition within fifteen days from  
24 entry of the order. Service on the department shall be made on  
25 the secretary or ~~his~~ the secretary's designated legal

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1 representative either by mail with accompanying certification  
2 of service or by personal service. The division may be  
3 represented in a judicial action by an attorney employed by the  
4 department or, when requested by the secretary, by the attorney  
5 general or any district attorney.

6 N. The final decision of the secretary or board of  
7 review upon any disputed matter may be reviewed both upon the  
8 law, including the lawful rules of interpretation issued by the  
9 secretary, and the facts by the district court of the county  
10 wherein the person seeking the review resides upon certiorari,  
11 unless it is determined by the district court where the  
12 petition is filed that, as a matter of equity and due process,  
13 venue should be in a different county. For the purpose of the  
14 review, the division shall return on certiorari the reports and  
15 all of the evidence heard by it on the reports and all the  
16 papers and documents in its files affecting the matters and  
17 things involved in such certiorari. The district court shall  
18 render its judgment after hearing, and either the department or  
19 any other party affected may appeal from the judgment to the  
20 court of appeals in accordance with the rules of appellate  
21 procedure. Certiorari shall not be granted unless applied for  
22 within thirty days from the date of the final decision of the  
23 secretary or board of review. Certiorari shall be heard in a  
24 summary manner and shall be given precedence over all other  
25 civil cases except cases arising under the Workers'

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1 Compensation Act. It is not necessary in any proceedings  
2 before the division to enter exceptions to the rulings, and no  
3 bond shall be required in obtaining certiorari from the  
4 district court, but certiorari shall be granted as a matter of  
5 right to the party applying therefor."

6 SECTION 2. Section 51-1-11 NMSA 1978 (being Laws 2003,  
7 Chapter 47, Section 11, as amended) is amended to read:

8 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

9 A. The division shall maintain a separate account  
10 for each contributing employer and shall credit the  
11 contributing employer's account with all contributions paid by  
12 that employer under the Unemployment Compensation Law. Nothing  
13 in the Unemployment Compensation Law shall be construed to  
14 grant an employer or individuals in the employer's service  
15 prior claims or rights to the amounts paid by the employer into  
16 the fund.

17 B. Benefits paid to an individual shall be charged  
18 against the accounts of the individual's base-period employers  
19 on a pro rata basis according to the proportion of the  
20 individual's total base-period wages received from each  
21 employer, except that no benefits paid to a claimant as  
22 extended benefits under the provisions of Section 51-1-48 NMSA  
23 1978 shall be charged to the account of any base-period  
24 employer who is not on a reimbursable basis and who is not a  
25 governmental entity and, except as the secretary shall by rule

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1 prescribe otherwise, in the case of benefits paid to an  
2 individual who:

3 (1) left the employ of a base-period employer  
4 who is not on a reimbursable basis voluntarily without good  
5 cause in connection with the individual's employment;

6 (2) was discharged from the employment of a  
7 base-period employer who is not on a reimbursable basis for  
8 misconduct connected with the individual's employment;

9 (3) is employed part time by a base-period  
10 employer who is not on a reimbursable basis and who continues  
11 to furnish the individual the same part-time work while the  
12 individual is separated from full-time work for a  
13 nondisqualifying reason; or

14 (4) received benefits based upon wages earned  
15 from a base-period employer who is not on a reimbursable basis  
16 while attending approved training under the provisions of  
17 Subsection E of Section 51-1-5 NMSA 1978.

18 C. The division shall not charge a contributing  
19 or reimbursing base-period employer's account with any  
20 portion of benefit amounts that the division can bill to or  
21 recover from the federal government as either regular or  
22 extended benefits.

23 D. The division shall not charge a contributing  
24 base-period employer's account with any portion of benefits  
25 paid to an individual for dependent allowance or because the

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1 individual to whom benefits are paid:

2 (1) separated from employment due to  
3 domestic abuse, as "domestic abuse" is defined in Section  
4 40-13-2 NMSA 1978; or

5 (2) voluntarily left work to relocate  
6 because of a spouse, who is in the military service of the  
7 United States or the New Mexico national guard, receiving  
8 permanent change of station orders, activation orders or unit  
9 deployment orders.

10 E. All contributions to the fund shall be pooled  
11 and available to pay benefits to any individual entitled  
12 thereto, irrespective of the source of the contributions.

13 F. For each calendar year, if, as of the  
14 computation date for that year, an employer's account has  
15 been chargeable with benefits throughout the preceding  
16 thirty-six months, the secretary shall classify the employer  
17 in accordance with its actual experience of benefits charged  
18 against its accounts. For such an employer, the contribution  
19 rate shall be determined pursuant to Subsection I of this  
20 section on the basis of the employer's record and the  
21 condition of the fund as of the computation date for the  
22 calendar year. If, as of the computation date for a calendar  
23 year, an employer's account has not been chargeable with  
24 benefits throughout the preceding thirty-six months, the  
25 contribution rate for that employer for the calendar year

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1 shall be two percent, except that:

2 (1) an individual, type of organization or  
3 employing unit that acquires all or part of the trade or  
4 business of another employing unit, pursuant to Paragraphs  
5 (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978,  
6 that has a rate of contribution less than two percent shall  
7 be entitled to the transfer of the reduced rate to the extent  
8 permitted under Subsection H of this section;

9 (2) an employer that, at the time of  
10 establishing an account, is in business in another state or  
11 states and that is not currently doing business in New Mexico  
12 may elect, pursuant to Paragraph (3) of this subsection, to  
13 receive a beginning contribution rate of two percent or a  
14 contribution rate based on the current contribution rate  
15 schedule in Paragraph (4) of Subsection I of this section,  
16 whichever is lower, if:

17 (a) the employer has been in operation  
18 in the other state or states for at least three years  
19 immediately preceding the date of becoming a liable employer  
20 in New Mexico, throughout which an individual in the  
21 employer's employ could have received benefits if eligible;  
22 and

23 (b) the employer provides the  
24 authenticated account history as defined by rule of the  
25 secretary from information accumulated from operations in the

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1 other state or all the other states to compute a current  
2 New Mexico rate; and

3 (3) the election authorized in Paragraph (2)  
4 of this subsection shall be made in writing within thirty  
5 days after receiving notice of New Mexico liability and, if  
6 not made timely, a two percent rate will be assigned; if the  
7 election is made timely, the employer's account will receive  
8 the lesser of the computed rate determined by the condition  
9 of the account for the computation date immediately preceding  
10 the New Mexico liable date, or two percent; rates for  
11 subsequent years will be determined by the condition of the  
12 account for the computation date.

13 G. An employer may make voluntary payments in  
14 addition to the contributions required under the Unemployment  
15 Compensation Law, which shall be credited to the employer's  
16 account in accordance with department rule. The voluntary  
17 payments shall be included in the employer's account as of  
18 the employer's most recent computation date if they are made  
19 on or before the following March 1. Voluntary payments when  
20 accepted from an employer shall not be refunded in whole or  
21 in part.

22 H. In the case of a transfer of an employing  
23 enterprise, notwithstanding any other provision of law, the  
24 experience history of the transferred enterprise shall be  
25 transferred from the predecessor employer to the successor

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1 under the following conditions and in accordance with the  
2 applicable rules of the secretary:

3 (1) as used in this subsection:

4 (a) "employing enterprise" means a  
5 business activity engaged in by a contributing employing unit  
6 in which one or more persons have been employed within the  
7 current or the three preceding calendar quarters. An  
8 "employing enterprise" includes the employer's work force;

9 (b) "predecessor" means the owner and  
10 operator of an employing enterprise immediately prior to the  
11 transfer of such enterprise;

12 (c) "successor" means any person that  
13 acquires an employing enterprise and continues to operate  
14 such business entity;

15 (d) "experience history" means the  
16 experience rating record and reserve account, including the  
17 actual contributions, benefit charges and payroll experience  
18 of the employing enterprise;

19 (e) "common ownership" means that two  
20 or more businesses are substantially owned, managed or  
21 controlled by the same person or persons;

22 (f) "knowingly" means having actual  
23 knowledge of or acting with deliberate ignorance of or  
24 reckless disregard for the prohibition involved; and

25 (g) "violates or attempts to violate"

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1 includes an intent to evade, a misrepresentation or a willful  
2 nondisclosure;

3 (2) except as otherwise provided in this  
4 subsection, for the purpose of this subsection, two or more  
5 employers who are parties to or the subject of any  
6 transaction involving the transfer of an employing enterprise  
7 shall be deemed to be a single employer and the experience  
8 history of the employing enterprise shall be transferred to  
9 the successor employer if the successor employer has acquired  
10 by the transaction all of the business enterprises of the  
11 predecessor; provided that:

12 (a) all contributions, interest and  
13 penalties due from the predecessor employer have been paid;

14 (b) notice of the transfer has been  
15 given in accordance with the rules of the secretary during  
16 the calendar year of the transaction transferring the  
17 employing enterprise or the date of the actual transfer of  
18 control and operation of the employing enterprise;

19 (c) the successor shall notify the  
20 division of the acquisition on or before the due date of the  
21 successor's first wage and contribution report. If the  
22 successor employer fails to notify the division of the  
23 acquisition within this time limit, the division, when it  
24 receives actual notice, shall effect the transfer of the  
25 experience history and applicable rate of contribution

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1 retroactively to the date of the acquisition, and the  
2 successor shall pay a penalty of fifty dollars (\$50.00); and

3 (d) where the transaction involves  
4 only a merger, consolidation or other form of reorganization  
5 without a substantial change in the ownership and controlling  
6 interest of the business entity, as determined by the  
7 secretary, the limitations on transfers stated in  
8 Subparagraphs (a), (b) and (c) of this paragraph shall not  
9 apply. A party to a merger, consolidation or other form of  
10 reorganization described in this subparagraph shall not be  
11 relieved of liability for any contributions, interest or  
12 penalties due and owing from the employing enterprise at the  
13 time of the merger, consolidation or other form of  
14 reorganization;

15 (3) the applicable experience history may be  
16 transferred to the successor in the case of a partial  
17 transfer of an employing enterprise if the successor has  
18 acquired one or more of the several employing enterprises of  
19 a predecessor but not all of the employing enterprises of the  
20 predecessor and each employing enterprise so acquired was  
21 operated by the predecessor as a separate store, factory,  
22 shop or other separate employing enterprise and the  
23 predecessor, throughout the entire period of the contribution  
24 with liability applicable to each enterprise transferred, has  
25 maintained and preserved payroll records that, together with

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1 records of contribution liability and benefit chargeability,  
2 can be separated by the parties from the enterprises retained  
3 by the predecessor to the satisfaction of the secretary or  
4 the secretary's delegate. A partial experience history  
5 transfer will be made only if the successor:

6 (a) notifies the division of the  
7 acquisition, in writing, not later than the due date of the  
8 successor's first quarterly wage and contribution report  
9 after the effective date of the acquisition;

10 (b) files an application provided by  
11 the division that contains the endorsement of the predecessor  
12 within thirty days from the delivery or mailing of such  
13 application by the division to the successor's last known  
14 address; and

15 (c) files with the application a Form  
16 ES-903A or its equivalent with a schedule of the name and  
17 social security number of and the wages paid to and the  
18 contributions paid for each employee for the three and  
19 one-half year period preceding the computation date as  
20 defined in Subparagraph (d) of Paragraph (3) of Subsection I  
21 of this section through the date of transfer or such lesser  
22 period as the enterprises transferred may have been in  
23 operation. The application and Form ES-903A shall be  
24 supported by the predecessor's permanent employment records,  
25 which shall be available for audit by the division. The

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1 application and Form ES-903A shall be reviewed by the  
2 division and, upon approval, the percentage of the  
3 predecessor's experience history attributable to the  
4 enterprises transferred shall be transferred to the  
5 successor. The percentage shall be obtained by dividing the  
6 taxable payrolls of the transferred enterprises for such  
7 three and one-half year period preceding the date of  
8 computation or such lesser period as the enterprises  
9 transferred may have been in operation by the predecessor's  
10 entire payroll;

11 (4) if, at the time of a transfer of an  
12 employing enterprise in whole or in part, both the  
13 predecessor and the successor are under common ownership,  
14 then the experience history attributable to the transferred  
15 business shall also be transferred to and combined with the  
16 experience history attributable to the successor employer.  
17 The rates of both employers shall be recalculated and made  
18 effective immediately upon the date of the transfer;

19 (5) whenever a person, who is not currently  
20 an employer, acquires the trade or business of an employing  
21 enterprise, the experience history of the acquired business  
22 shall not be transferred to the successor if the secretary or  
23 the secretary's designee finds that the successor acquired  
24 the business solely or primarily for the purpose of obtaining  
25 a lower rate of contributions. Instead, the successor shall

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1 be assigned the applicable new employer rate pursuant to this  
2 section. In determining whether the business was acquired  
3 solely or primarily for the purpose of obtaining a lower rate  
4 of contribution, the secretary or the secretary's designee  
5 shall consider:

6 (a) the cost of acquiring the  
7 business;

8 (b) whether the person continued the  
9 business enterprise of the acquired business;

10 (c) how long such business enterprise  
11 was continued; and

12 (d) whether a substantial number of  
13 new employees were hired for performance of duties unrelated  
14 to those that the business activity conducted prior to  
15 acquisition;

16 (6) if, following a transfer of experience  
17 history pursuant to this subsection, the department  
18 determines that a substantial purpose of the transfer of the  
19 employing enterprise was to obtain a reduced liability for  
20 contributions, then the experience rating accounts of the  
21 employers involved shall be combined into a single account  
22 and a single rate assigned to the combined account;

23 (7) the secretary shall adopt such rules as  
24 are necessary to interpret and carry out the provisions of  
25 this subsection, including rules that:

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1 (a) describe how experience history is  
2 to be transferred; and

3 (b) establish procedures to identify  
4 the type of transfer or acquisition of an employing  
5 enterprise; and

6 (8) a person who knowingly violates or  
7 attempts to violate a rule adopted pursuant to Paragraph (7)  
8 of this subsection, who transfers or acquires, or attempts to  
9 transfer or acquire, an employing enterprise for the sole or  
10 primary purpose of obtaining a reduced liability for  
11 contributions or who knowingly advises another person to  
12 violate a rule adopted pursuant to Paragraph (7) of this  
13 subsection or to transfer or acquire an employing enterprise  
14 for the sole or primary purpose of obtaining a reduced  
15 liability for contributions is guilty of a misdemeanor and  
16 shall be punished by a fine of not less than one thousand  
17 five hundred dollars (\$1,500) or more than three thousand  
18 dollars (\$3,000) or, if an individual, by imprisonment for a  
19 definite term not to exceed ninety days or both. In  
20 addition, such a person shall be subject to the following  
21 civil penalty imposed by the secretary:

22 (a) if the person is an employer, the  
23 person shall be assigned the highest contribution rate  
24 established by the provisions of this section for the  
25 calendar year in which the violation occurs and the three

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1 subsequent calendar years; provided that, if the difference  
2 between the increased penalty rate and the rate otherwise  
3 applicable would be less than two percent of the employer's  
4 payroll, the contribution rate shall be increased by two  
5 percent of the employer's payroll for the calendar year in  
6 which the violation occurs and the three subsequent calendar  
7 years; or

8 (b) if the person is not an employer,  
9 the secretary may impose a civil penalty not to exceed three  
10 thousand dollars (\$3,000).

11 I. For each calendar year, if, as of the  
12 computation date for that year, an employer's account has  
13 been chargeable with benefits throughout the preceding  
14 thirty-six months, the contribution rate for that employer  
15 shall be determined as follows:

16 (1) the total assets in the fund and the  
17 total of the last annual payrolls of all employers subject to  
18 contributions as of the computation date for each year shall  
19 be determined. These annual totals are here called "the  
20 fund" and "total payrolls". For each year, the "reserve" of  
21 each employer shall be fixed by the excess of the employer's  
22 total contributions over total benefit charges computed as a  
23 percentage of the employer's average payroll reported for  
24 contributions. The determination of each employer's annual  
25 rate, computed as of the computation date for each calendar

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1 year, shall be made by matching the employer's reserve as  
2 shown in the reserve column with the corresponding rate in  
3 the rate column of the applicable rate schedule of the table  
4 provided in Paragraph (4) of this subsection;

5 (2) for each calendar year after [2013]  
6 2014, except as otherwise provided, each employer's rate  
7 shall be the corresponding rate in:

8 (a) Contribution Schedule 0 of the  
9 table provided in Paragraph (4) of this subsection if the  
10 fund equals at least two and three-tenths percent of the  
11 total payrolls;

12 (b) Contribution Schedule 1 of the  
13 table provided in Paragraph (4) of this subsection if the  
14 fund equals less than two and three-tenths percent but not  
15 less than one and seven-tenths percent of the total payrolls;

16 (c) Contribution Schedule 2 of the  
17 table provided in Paragraph (4) of this subsection if the  
18 fund equals less than one and seven-tenths percent but not  
19 less than one and three-tenths percent of the total payrolls;

20 (d) Contribution Schedule 3 of the  
21 table provided in Paragraph (4) of this subsection if the  
22 fund equals less than one and three-tenths percent but not  
23 less than one percent of the total payrolls;

24 (e) Contribution Schedule 4 of the  
25 table provided in Paragraph (4) of this subsection if the

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1 fund equals less than one percent but not less than seven-  
2 tenths percent of the total payrolls;

3 (f) Contribution Schedule 5 of the  
4 table provided in Paragraph (4) of this subsection if the  
5 fund equals less than seven-tenths percent but not less than  
6 three-tenths percent of the total payrolls; or

7 (g) Contribution Schedule 6 of the  
8 table provided in Paragraph (4) of this subsection if the  
9 fund equals less than three-tenths percent of the total  
10 payrolls;

11 (3) as used in this section:

12 (a) "annual payroll" means the total  
13 amount of remuneration from an employer for employment during  
14 a twelve-month period ending on a computation date, and  
15 "average payroll" means the average of the last three annual  
16 payrolls;

17 (b) "base-period wages" means the  
18 wages of an individual for insured work during the  
19 individual's base period on the basis of which the  
20 individual's benefit rights were determined;

21 (c) "base-period employers" means the  
22 employers of an individual during the individual's base  
23 period; and

24 (d) "computation date" for each  
25 calendar year means the close of business on June 30 of the

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1 preceding calendar year;

2 (4) table of employer reserves and  
3 contribution rate schedules:

4 Employer	Contribution	Contribution	Contribution	Contribution
5 Reserve	Schedule 0	Schedule 1	Schedule 2	Schedule 3
6 10.0% and over	0.03%	0.05%	0.1%	0.6%
7 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
8 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
9 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
10 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
11 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
12 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
13 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
14 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
15 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
16 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
17 (-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
18 (-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
19 (-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
20 Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
21 Employer	Contribution	Contribution	Contribution	
22 Reserve	Schedule 4	Schedule 5	Schedule 6	
23 10.0% and over	0.9%	1.2%	2.7%	
24 9.0%-9.9%	1.2%	1.5%	2.7%	
25 8.0%-8.9%	1.5%	1.8%	2.7%	

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1	7.0%-7.9%	1.8%	2.1%	2.7%
2	6.0%-6.9%	2.1%	2.4%	2.7%
3	5.0%-5.9%	2.4%	2.7%	3.0%
4	4.0%-4.9%	2.7%	3.0%	3.3%
5	3.0%-3.9%	3.0%	3.3%	3.6%
6	2.0%-2.9%	3.3%	3.6%	3.9%
7	1.0%-1.9%	3.6%	3.9%	4.2%
8	0.9%-0.0%	3.9%	4.2%	4.5%
9	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
10	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
11	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
12	Under (-2.0%)	5.4%	5.4%	5.4%;

13 (5) from January 1, 2011 through  
14 December 31, 2012, each employer making contributions pursuant  
15 to this subsection shall make a contribution at the rate  
16 specified in Contribution Schedule 1; and

17 (6) from January 1, 2013 through  
18 December 31, ~~[2013]~~ 2014, each employer making contributions  
19 pursuant to this subsection shall make a contribution at the  
20 rate specified in Contribution Schedule 2.

21 J. The division shall promptly notify each  
22 employer of the employer's rate of contributions as determined  
23 for any calendar year pursuant to this section. Such  
24 notification shall include the amount determined as the  
25 employer's average payroll, the total of all of the employer's

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1 contributions paid on the employer's behalf and credited to  
2 the employer's account for all past years and total benefits  
3 charged to the employer's account for all such years. Such  
4 determination shall become conclusive and binding upon the  
5 employer unless, within thirty days after the mailing of  
6 notice thereof to the employer's last known address or in the  
7 absence of mailing, within thirty days after the delivery of  
8 such notice, the employer files an application for review and  
9 redetermination, setting forth the employer's reason therefor.  
10 The employer shall be granted an opportunity for a fair  
11 hearing in accordance with rules prescribed by the secretary,  
12 but an employer shall not have standing, in any proceeding  
13 involving the employer's rate of contributions or contribution  
14 liability, to contest the chargeability to the employer's  
15 account of any benefits paid in accordance with a  
16 determination, redetermination or decision pursuant to Section  
17 51-1-8 NMSA 1978, except upon the ground that the services on  
18 the basis of which such benefits were found to be chargeable  
19 did not constitute services performed in employment for the  
20 employer and only in the event that the employer was not a  
21 party to such determination, redetermination or decision, or  
22 to any other proceedings under the Unemployment Compensation  
23 Law in which the character of such services was determined.  
24 The employer shall be promptly notified of the decision on the  
25 employer's application for redetermination, which shall become

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1 final unless, within fifteen days after the mailing of notice  
2 thereof to the employer's last known address or in the absence  
3 of mailing, within fifteen days after the delivery of such  
4 notice, further appeal is initiated pursuant to Subsection D  
5 of Section 51-1-8 NMSA 1978.

6 K. The division shall provide each contributing  
7 employer, within ninety days of the end of each calendar  
8 quarter, a written determination of benefits chargeable to the  
9 employer's account. Such determination shall become  
10 conclusive and binding upon the employer for all purposes  
11 unless, within thirty days after the mailing of the  
12 determination to the employer's last known address or in the  
13 absence of mailing, within thirty days after the delivery of  
14 such determination, the employer files an application for  
15 review and redetermination, setting forth the employer's  
16 reason therefor. The employer shall be granted an opportunity  
17 for a fair hearing in accordance with rules prescribed by the  
18 secretary, but an employer shall not have standing in any  
19 proceeding involving the employer's contribution liability to  
20 contest the chargeability to the employer's account of any  
21 benefits paid in accordance with a determination,  
22 redetermination or decision pursuant to Section 51-1-8 NMSA  
23 1978, except upon the ground that the services on the basis of  
24 which such benefits were found to be chargeable did not  
25 constitute services performed in employment for the employer

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1 and only in the event that the employer was not a party to  
2 such determination, redetermination or decision, or to any  
3 other proceedings under the Unemployment Compensation Law in  
4 which the character of such services was determined. The  
5 employer shall be promptly notified of the decision on the  
6 employer's application for redetermination, which shall become  
7 final unless, within fifteen days after the mailing of notice  
8 thereof to the employer's last known address or in the absence  
9 of mailing, within fifteen days after the delivery of such  
10 notice, further appeal is initiated pursuant to Subsection D  
11 of Section 51-1-8 NMSA 1978.

12 L. The contributions, together with interest and  
13 penalties thereon imposed by the Unemployment Compensation  
14 Law, shall not be assessed nor shall action to collect the  
15 same be commenced more than four years after a report showing  
16 the amount of the contributions was due. In the case of a  
17 false or fraudulent contribution report with intent to evade  
18 contributions or a willful failure to file a report of all  
19 contributions due, the contributions, together with interest  
20 and penalties thereon, may be assessed or an action to collect  
21 such contributions may be begun at any time. Before the  
22 expiration of such period of limitation, the employer and the  
23 secretary may agree in writing to an extension thereof and the  
24 period so agreed on may be extended by subsequent agreements  
25 in writing. In any case where the assessment has been made

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1 and action to collect has been commenced within four years of  
2 the due date of any contribution, interest or penalty,  
3 including the filing of a warrant of lien by the secretary  
4 pursuant to Section 51-1-36 NMSA 1978, such action shall not  
5 be subject to any period of limitation.

6 M. The secretary shall correct any error in the  
7 determination of an employer's rate of contribution during the  
8 calendar year to which the erroneous rate applies,  
9 notwithstanding that notification of the employer's rate of  
10 contribution may have been issued and contributions paid  
11 pursuant to the notification. Upon issuance by the division  
12 of a corrected rate of contribution, the employer shall have  
13 the same rights to review and redetermination as provided in  
14 Subsection J of this section.

15 N. Any interest required to be paid on advances to  
16 this state's unemployment compensation fund under Title 12 of  
17 the Social Security Act shall be paid in a timely manner as  
18 required under Section 1202 of Title 12 of the Social Security  
19 Act and shall not be paid, directly or indirectly, by the  
20 state from amounts in the state's unemployment compensation  
21 fund."

22 **SECTION 3.** Section 51-1-11 NMSA 1978 (being Laws 2003,  
23 Chapter 47, Section 11, as amended by Section 2 of this act)  
24 is repealed and a new Section 51-1-11 NMSA 1978 is enacted to  
25 read:

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1           "51-1-11. [NEW MATERIAL] EMPLOYER CONTRIBUTION RATES--  
2 BENEFITS CHARGEABLE--UNEMPLOYMENT COMPENSATION FUND ADEQUATE  
3 RESERVE--RESERVE FACTOR--EXCESS CLAIMS PREMIUM--DEFINITIONS.--

4           A. Benefits paid to an individual shall be charged  
5 to the individual's base-period employers on a pro rata basis  
6 according to the proportion of the individual's total base-  
7 period wages received from each employer, except that no  
8 benefits paid to a claimant as extended benefits under the  
9 provisions of Section 51-1-48 NMSA 1978 shall be charged to  
10 any base-period employer who is not on a reimbursable basis  
11 and who is not a governmental entity and, except as the  
12 secretary shall by rule prescribe otherwise, in the case of  
13 benefits paid to an individual who:

14                   (1) left the employ of a base-period  
15 employer who is not on a reimbursable basis voluntarily  
16 without good cause in connection with the individual's  
17 employment;

18                   (2) was discharged from the employment of a  
19 base-period employer who is not on a reimbursable basis for  
20 misconduct connected with the individual's employment;

21                   (3) is employed part time by a base-period  
22 employer who is not on a reimbursable basis and who continues  
23 to furnish the individual the same part-time work while the  
24 individual is separated from full-time work for a  
25 nondisqualifying reason; or

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1 (4) received benefits based upon wages  
2 earned from a base-period employer who is not on a  
3 reimbursable basis while attending approved training under the  
4 provisions of Subsection E of Section 51-1-5 NMSA 1978.

5 B. The division shall not charge a contributing or  
6 reimbursing base-period employer with any portion of benefit  
7 amounts that the division can bill to or recover from the  
8 federal government as either regular or extended benefits.

9 C. The division shall not charge a contributing  
10 base-period employer with any portion of benefits paid to an  
11 individual for dependent allowance or because the individual  
12 to whom benefits are paid:

13 (1) separated from employment due to  
14 domestic abuse, as "domestic abuse" is defined in Section  
15 40-13-2 NMSA 1978; or

16 (2) voluntarily left work to relocate  
17 because of a spouse, who is in the military service of the  
18 United States or the New Mexico national guard, receiving  
19 permanent change of station orders, activation orders or unit  
20 deployment orders.

21 D. All contributions to the fund shall be pooled  
22 and available to pay benefits to any individual entitled  
23 thereto, irrespective of the source of the contributions.

24 E. In the case of a transfer of an employing  
25 enterprise, notwithstanding any other provision of law, the

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1 experience history of the transferred enterprise shall be  
2 transferred from the predecessor employer to the successor  
3 under the following conditions and in accordance with the  
4 applicable rules of the secretary:

5 (1) except as otherwise provided in this  
6 subsection, for the purpose of this subsection, two or more  
7 employers who are parties to or the subject of any transaction  
8 involving the transfer of an employing enterprise shall be  
9 deemed to be a single employer and the experience history of  
10 the employing enterprise shall be transferred to the successor  
11 employer if the successor employer has acquired by the  
12 transaction all of the business enterprises of the  
13 predecessor; provided that:

14 (a) all contributions, interest and  
15 penalties due from the predecessor employer have been paid;

16 (b) notice of the transfer has been  
17 given in accordance with the rules of the secretary during the  
18 calendar year of the transaction transferring the employing  
19 enterprise or the date of the actual transfer of control and  
20 operation of the employing enterprise;

21 (c) the successor shall notify the  
22 division of the acquisition on or before the due date of the  
23 successor's first wage and contribution report. If the  
24 successor employer fails to notify the division of the  
25 acquisition within this time limit, the division, when it

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1 receives actual notice, shall effect the transfer of the  
2 experience history and applicable rate of contribution  
3 retroactively to the date of the acquisition, and the  
4 successor shall pay a penalty of fifty dollars (\$50.00); and

5 (d) where the transaction involves only  
6 a merger, consolidation or other form of reorganization  
7 without a substantial change in the ownership and controlling  
8 interest of the business entity, as determined by the  
9 secretary, the limitations on transfers stated in  
10 Subparagraphs (a), (b) and (c) of this paragraph shall not  
11 apply. A party to a merger, consolidation or other form of  
12 reorganization described in this subparagraph shall not be  
13 relieved of liability for any contributions, interest or  
14 penalties due and owing from the employing enterprise at the  
15 time of the merger, consolidation or other form of  
16 reorganization;

17 (2) the applicable experience history may be  
18 transferred to the successor in the case of a partial transfer  
19 of an employing enterprise if the successor has acquired one  
20 or more of the several employing enterprises of a predecessor  
21 but not all of the employing enterprises of the predecessor  
22 and each employing enterprise so acquired was operated by the  
23 predecessor as a separate store, factory, shop or other  
24 separate employing enterprise and the predecessor, throughout  
25 the entire period of the contribution with liability

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1 applicable to each enterprise transferred, has maintained and  
2 preserved payroll records that, together with records of  
3 contribution liability and benefit chargeability, can be  
4 separated by the parties from the enterprises retained by the  
5 predecessor to the satisfaction of the secretary or the  
6 secretary's delegate. A partial experience history transfer  
7 will be made only if the successor:

8 (a) notifies the division of the  
9 acquisition, in writing, not later than the due date of the  
10 successor's first quarterly wage and contribution report after  
11 the effective date of the acquisition;

12 (b) files an application provided by  
13 the division that contains the endorsement of the predecessor  
14 within thirty days from the delivery or mailing of such  
15 application by the division to the successor's last known  
16 address; and

17 (c) files with the application a form  
18 with a schedule of the name and social security number of and  
19 the wages paid to and the contributions paid for each employee  
20 for the three and one-half year period preceding the  
21 computation date through the date of transfer or such lesser  
22 period as the enterprises transferred may have been in  
23 operation. The application and form shall be supported by the  
24 predecessor's permanent employment records, which shall be  
25 available for audit by the division. The application and form

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1 shall be reviewed by the division and, upon approval, the  
2 percentage of the predecessor's experience history  
3 attributable to the enterprises transferred shall be  
4 transferred to the successor. The percentage shall be  
5 obtained by dividing the taxable payrolls of the transferred  
6 enterprises for such three and one-half year period preceding  
7 the date of computation or such lesser period as the  
8 enterprises transferred may have been in operation by the  
9 predecessor's entire payroll;

10 (3) if, at the time of a transfer of an  
11 employing enterprise in whole or in part, both the predecessor  
12 and the successor are under common ownership, then the  
13 experience history attributable to the transferred business  
14 shall also be transferred to and combined with the experience  
15 history attributable to the successor employer. The rates of  
16 both employers shall be recalculated and made effective  
17 immediately upon the date of the transfer;

18 (4) whenever a person, who is not currently  
19 an employer, acquires the trade or business of an employing  
20 enterprise, the experience history of the acquired business  
21 shall not be transferred to the successor if the secretary or  
22 the secretary's designee finds that the successor acquired the  
23 business solely or primarily for the purpose of obtaining a  
24 lower rate of contributions. Instead, the successor shall be  
25 assigned the applicable new employer rate pursuant to this

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1 section. In determining whether the business was acquired  
2 solely or primarily for the purpose of obtaining a lower rate  
3 of contribution, the secretary or the secretary's designee  
4 shall consider:

5 (a) the cost of acquiring the business;

6 (b) whether the person continued the  
7 business enterprise of the acquired business;

8 (c) how long such business enterprise  
9 was continued; and

10 (d) whether a substantial number of new  
11 employees were hired for performance of duties unrelated to  
12 those that the business activity conducted prior to  
13 acquisition;

14 (5) if, following a transfer of experience  
15 history pursuant to this subsection, the department determines  
16 that a substantial purpose of the transfer of the employing  
17 enterprise was to obtain a reduced liability for  
18 contributions, then the experience rating accounts of the  
19 employers involved shall be combined into a single account and  
20 a single rate assigned to the combined account;

21 (6) the secretary shall adopt such rules as  
22 are necessary to interpret and carry out the provisions of  
23 this subsection, including rules that:

24 (a) describe how experience history is  
25 to be transferred; and



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1 (b) establish procedures to identify  
2 the type of transfer or acquisition of an employing  
3 enterprise; and

4 (7) a person who knowingly violates or  
5 attempts to violate a rule adopted pursuant to Paragraph (6)  
6 of this subsection, who transfers or acquires, or attempts to  
7 transfer or acquire, an employing enterprise for the sole or  
8 primary purpose of obtaining a reduced liability for  
9 contributions or who knowingly advises another person to  
10 violate a rule adopted pursuant to Paragraph (6) of this  
11 subsection or to transfer or acquire an employing enterprise  
12 for the sole or primary purpose of obtaining a reduced  
13 liability for contributions is guilty of a misdemeanor and  
14 shall be punished by a fine of not less than one thousand five  
15 hundred dollars (\$1,500) or more than three thousand dollars  
16 (\$3,000) or, if an individual, by imprisonment for a definite  
17 term not to exceed ninety days or both. In addition, such a  
18 person shall be subject to the following civil penalty imposed  
19 by the secretary:

20 (a) if the person is an employer, the  
21 person shall be assigned the highest contribution rate  
22 established by the provisions of this section for the calendar  
23 year in which the violation occurs and the three subsequent  
24 calendar years; provided that, if the difference between the  
25 increased penalty rate and the rate otherwise applicable would

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1 be less than two percent of the employer's payroll, the  
2 contribution rate shall be increased by two percent of the  
3 employer's payroll for the calendar year in which the  
4 violation occurs and the three subsequent calendar years; or

5 (b) if the person is not an employer,  
6 the secretary may impose a civil penalty not to exceed three  
7 thousand dollars (\$3,000).

8 F. For each calendar year, if, as of the  
9 computation date for that year, an employer has been a  
10 contributing employer throughout the preceding twelve months,  
11 the contribution rate for that employer shall be determined by  
12 multiplying the employer's benefit ratio by the reserve factor  
13 as determined pursuant to Subsection H of this section;  
14 provided that an employer's contribution rate shall not exceed  
15 five and four-tenths percent. An employer's benefit ratio is  
16 determined by dividing the employer's benefit charges during  
17 the immediately preceding fiscal years, up to a maximum of  
18 four fiscal years, by the total of the annual payrolls of the  
19 same time period, calculated to four decimal places,  
20 disregarding any remaining fraction.

21 G. For each calendar year, if, as of the  
22 computation date of that year, an employer has been a  
23 contributing employer for less than twelve months, the  
24 contribution rate for that employer shall be the average of  
25 the contribution rates for all contributing employers in the

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1 employer's industry, as determined by administrative rule, not  
2 to exceed five and four-tenths percent; provided that an  
3 individual, type of organization or employing unit that  
4 acquires all or part of the trade or business of another  
5 employing unit, pursuant to Paragraphs (2) and (3) of  
6 Subsection E of Section 51-1-42 NMSA 1978, that has a rate of  
7 contribution less than average of the contribution rates for  
8 all contributing employers in the employer's industry, shall  
9 be entitled to the transfer of the contribution rate of the  
10 other employing unit to the extent permitted under Subsection  
11 E of this section.

12 H. The division shall ensure that the fund  
13 sustains an adequate reserve. An adequate reserve shall be  
14 determined to mean that the funds in the fund available for  
15 benefits equal the total amount of funds needed to pay between  
16 eighteen and twenty-four months of benefits at the average of  
17 the five highest years of benefits paid in the last twenty-  
18 five years. For the purpose of sustaining an adequate  
19 reserve, the division shall determine a reserve factor to be  
20 used when calculating an employer's contribution rate pursuant  
21 to Subsection F of this section. The reserve factor shall be  
22 set at:

23 (1) 1.0000 if, as of June 30 of each year  
24 preceding the computation date, there is an adequate reserve;

25 (2) between 0.5000 and 1.0000 if, as of June

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1 30 of each year preceding the computation date, there is  
2 greater than an adequate reserve;

3 (3) between 1.0000 and 1.5000 if, as of June  
4 30 of each year preceding the computation date, there is less  
5 than an adequate reserve; and

6 (4) 2.0000 if, as of June 30 of each year  
7 preceding the computation date, the funds in the fund  
8 available for benefits is zero or less or if the fund is  
9 indebted. The reserve factor shall remain at 2.0000 until  
10 there is an adequate reserve and the fund is no longer  
11 indebted.

12 I. If an employer's contribution rate pursuant to  
13 Subsection F of this section is calculated to be greater than  
14 five and four-tenths percent, notwithstanding the limitation  
15 pursuant to Subsection F of this section, the employer shall  
16 be charged an excess claims premium in addition to the  
17 contribution rate applicable to the employer; provided that an  
18 employer's excess claims premium shall not exceed one percent  
19 of the employer's average payroll. The excess claims premium  
20 shall be determined by multiplying the employer's excess  
21 claims rate by the employer's average payroll. An employer's  
22 excess claims rate shall be determined by multiplying the  
23 difference of the employer's contribution rate,  
24 notwithstanding the limitation pursuant to Subsection F of  
25 this section, less five and four-tenths percent by ten

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1 percent.

2 J. The division shall promptly notify each  
3 employer of the employer's rate of contributions and excess  
4 claims premium as determined for any calendar year pursuant to  
5 this section. Such notification shall include the amount  
6 determined as the employer's average payroll, the total of all  
7 of the employer's contributions paid on the employer's behalf  
8 for all past years and total benefits charged to the employer  
9 for all such years. Such determination shall become  
10 conclusive and binding upon the employer unless, within thirty  
11 days after the mailing of notice thereof to the employer's  
12 last known address or in the absence of mailing, within thirty  
13 days after the delivery of such notice, the employer files an  
14 application for review and redetermination, setting forth the  
15 employer's reason therefor. The employer shall be granted an  
16 opportunity for a fair hearing in accordance with rules  
17 prescribed by the secretary, but an employer shall not have  
18 standing, in any proceeding involving the employer's rate of  
19 contributions or contribution liability, to contest the  
20 chargeability to the employer of any benefits paid in  
21 accordance with a determination, redetermination or decision  
22 pursuant to Section 51-1-8 NMSA 1978, except upon the ground  
23 that the services on the basis of which such benefits were  
24 found to be chargeable did not constitute services performed  
25 in employment for the employer and only in the event that the

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1 employer was not a party to such determination,  
2 redetermination or decision, or to any other proceedings under  
3 the Unemployment Compensation Law in which the character of  
4 such services was determined. The employer shall be promptly  
5 notified of the decision on the employer's application for  
6 redetermination, which shall become final unless, within  
7 fifteen days after the mailing of notice thereof to the  
8 employer's last known address or in the absence of mailing,  
9 within fifteen days after the delivery of such notice, further  
10 appeal is initiated pursuant to Subsection D of Section 51-1-8  
11 NMSA 1978.

12 K. The division shall provide each contributing  
13 employer, within ninety days of the end of each calendar  
14 quarter, a written determination of benefits chargeable to the  
15 employer. Such determination shall become conclusive and  
16 binding upon the employer for all purposes unless, within  
17 thirty days after the mailing of the determination to the  
18 employer's last known address or in the absence of mailing,  
19 within thirty days after the delivery of such determination,  
20 the employer files an application for review and  
21 redetermination, setting forth the employer's reason therefor.  
22 The employer shall be granted an opportunity for a fair  
23 hearing in accordance with rules prescribed by the secretary,  
24 but an employer shall not have standing in any proceeding  
25 involving the employer's contribution liability to contest the

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1 chargeability to the employer of any benefits paid in  
2 accordance with a determination, redetermination or decision  
3 pursuant to Section 51-1-8 NMSA 1978, except upon the ground  
4 that the services on the basis of which such benefits were  
5 found to be chargeable did not constitute services performed  
6 in employment for the employer and only in the event that the  
7 employer was not a party to such determination,  
8 redetermination or decision, or to any other proceedings under  
9 the Unemployment Compensation Law in which the character of  
10 such services was determined. The employer shall be promptly  
11 notified of the decision on the employer's application for  
12 redetermination, which shall become final unless, within  
13 fifteen days after the mailing of notice thereof to the  
14 employer's last known address or in the absence of mailing,  
15 within fifteen days after the delivery of such notice, further  
16 appeal is initiated pursuant to Subsection D of Section 51-1-8  
17 NMSA 1978.

18 L. The contributions and excess claims premiums,  
19 together with interest and penalties thereon imposed by the  
20 Unemployment Compensation Law, shall not be assessed nor shall  
21 action to collect the same be commenced more than four years  
22 after a report showing the amount of the contributions was  
23 due. In the case of a false or fraudulent contribution report  
24 with intent to evade contributions or a willful failure to  
25 file a report of all contributions due, the contributions and

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1 excess claims premiums, together with interest and penalties  
2 thereon, may be assessed or an action to collect such  
3 contributions may be begun at any time. Before the expiration  
4 of such period of limitation, the employer and the secretary  
5 may agree in writing to an extension thereof and the period so  
6 agreed on may be extended by subsequent agreements in writing.  
7 In any case where the assessment has been made and action to  
8 collect has been commenced within four years of the due date  
9 of any contribution, excess claims premium, interest or  
10 penalty, including the filing of a warrant of lien by the  
11 secretary pursuant to Section 51-1-36 NMSA 1978, such action  
12 shall not be subject to any period of limitation.

13 M. The secretary shall correct any error in the  
14 determination of an employer's rate of contribution during the  
15 calendar year to which the erroneous rate applies,  
16 notwithstanding that notification of the employer's rate of  
17 contribution may have been issued and contributions paid  
18 pursuant to the notification. Upon issuance by the division  
19 of a corrected rate of contribution, the employer shall have  
20 the same rights to review and redetermination as provided in  
21 Subsection J of this section.

22 N. Any interest required to be paid on advances to  
23 this state's unemployment compensation fund under Title 12 of  
24 the Social Security Act shall be paid in a timely manner as  
25 required under Section 1202 of Title 12 of the Social Security



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1 Act and shall not be paid, directly or indirectly, by the  
2 state from amounts in the state's unemployment compensation  
3 fund.

4 0. As used in this section:

5 (1) "annual payroll" means the total amount  
6 of remuneration from an employer for employment during a  
7 twelve-month period ending on a computation date;

8 (2) "average payroll" means the average of  
9 the last four annual payrolls;

10 (3) "base-period employers" means the  
11 employers of an individual during the individual's base  
12 period;

13 (4) "base-period wages" means the wages of  
14 an individual for insured work during the individual's base  
15 period on the basis of which the individual's benefit rights  
16 were determined;

17 (5) "common ownership" means that two or  
18 more businesses are substantially owned, managed or controlled  
19 by the same person or persons;

20 (6) "computation date" for each calendar  
21 year means the close of business on June 30 of the preceding  
22 calendar year;

23 (7) "employing enterprise" means a business  
24 activity engaged in by a contributing employing unit in which  
25 one or more persons have been employed within the current or

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1 the three preceding calendar quarters. An "employing  
2 enterprise" includes the employer's work force;

3 (8) "experience history" means the benefit  
4 charges and payroll experience of the employing enterprise;

5 (9) "knowingly" means having actual  
6 knowledge of or acting with deliberate ignorance of or  
7 reckless disregard for the prohibition involved;

8 (10) "predecessor" means the owner and  
9 operator of an employing enterprise immediately prior to the  
10 transfer of such enterprise;

11 (11) "successor" means any person that  
12 acquires an employing enterprise and continues to operate such  
13 business entity; and

14 (12) "violates or attempts to violate"  
15 includes an intent to evade, a misrepresentation or a willful  
16 nondisclosure."

17 **SECTION 4.** Section 51-1-13 NMSA 1978 (being Laws 1971,  
18 Chapter 209, Section 4, as amended) is amended to read:

19 "51-1-13. FINANCING BENEFITS PAID TO EMPLOYEES OF  
20 NONPROFIT ORGANIZATIONS.--Benefits paid to employees of  
21 nonprofit organizations shall be financed in accordance with  
22 the provisions of this section. For the purpose of this  
23 section, a "nonprofit organization" is an organization or  
24 group of organizations described in Paragraph (8) of  
25 Subsection F of Section 51-1-42 NMSA 1978.

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1           A. Any nonprofit organization [~~which~~] that,  
2 pursuant to Paragraph (8) of Subsection F of Section 51-1-42  
3 NMSA 1978, is subject to the Unemployment Compensation Law  
4 shall pay contributions [~~under~~] in accordance with the  
5 provisions of Section 51-1-9 NMSA 1978, unless it elects, in  
6 accordance with this subsection, to pay to the division for  
7 the fund an amount equal to the amount of regular benefits and  
8 of one-half of the extended benefits paid, that is  
9 attributable to service in the employ of such nonprofit  
10 organization, to individuals for weeks of unemployment that  
11 begin during the effective period of such election.

12           (1) Any nonprofit organization that becomes  
13 subject to the Unemployment Compensation Law after January 1,  
14 1972 may elect to become liable for payments in lieu of  
15 contributions for a period of not less than two taxable years  
16 by filing a written notice of its election with the division  
17 not later than thirty days immediately following the date  
18 subjectivity is determined.

19           (2) Any nonprofit organization [~~which~~] that  
20 makes an election in accordance with Paragraph (1) of this  
21 subsection will continue to be liable for payments in lieu of  
22 contributions until it files with the division a written  
23 notice terminating its election not later than thirty days  
24 prior to the beginning of the taxable year for which such  
25 termination shall first be effective.

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1                   (3) Any nonprofit organization that has been  
2 paying contributions under the Unemployment Compensation Law  
3 may change to a reimbursable basis by filing with the division  
4 written notice of its election not later than thirty days  
5 prior to the beginning of the taxable year for which its  
6 election shall first be effective. Such election shall not be  
7 terminated by the organization for the following two taxable  
8 years.

9                   (4) The division, in accordance with such  
10 regulations as the secretary may prescribe, shall notify each  
11 nonprofit organization of any determination [~~which~~] that it  
12 may make of the organization's status as an employer and of  
13 the effective date of any election [~~which~~] that the  
14 organization makes and of any termination of such election.  
15 Such determination shall be subject to reconsideration, appeal  
16 and review in accordance with regulations of the secretary  
17 governing appeals by employers of their liability under  
18 Section 51-1-9 NMSA 1978.

19                   B. Payments in lieu of contributions shall be made  
20 in accordance with the provisions of this subsection.

21                   (1) At the end of each calendar quarter or  
22 at the end of any other period as determined by the secretary,  
23 the division shall bill each nonprofit organization or group  
24 of such organizations [~~which~~] that has elected to make  
25 payments in lieu of contributions for an amount equal to the

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1 full amount of regular benefits plus one-half of the amount of  
2 extended benefits paid during such quarter or other prescribed  
3 period that is attributable to service in the employ of such  
4 organization.

5 (2) Effective with the calendar quarter  
6 beginning January 1, 1987 and each succeeding calendar  
7 quarter, each employer that is liable for payments in lieu of  
8 contributions, including governmental entities, shall pay to  
9 the division an amount equal to twenty-five percent of the  
10 total benefit charges made to each such employer during the  
11 four calendar quarters ending the preceding June 30. Such  
12 payments shall be made on or before the tenth day of the first  
13 month of each calendar quarter.

14 (3) In the event that any employer liable  
15 for making payments in lieu of contributions incurred no  
16 benefit charges during the four calendar quarters ending the  
17 preceding June 30, the employer shall pay to the division,  
18 each calendar quarter, an amount equal to one-eighth of one  
19 percent of the employer's annual taxable wages paid for such  
20 period for employment as defined in Subsection F of Section  
21 51-1-42 NMSA 1978 and [~~in~~] Section 51-1-44 NMSA 1978 as  
22 estimated by the secretary. Such payments shall be paid on or  
23 before the tenth day of the first month of the calendar  
24 quarter.

25 (4) For each calendar quarter, the secretary

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1 shall determine the amount paid by each employer subject to  
2 payment in lieu of contributions and the amount of benefits  
3 charged to such [~~employer's account~~] employer. Each employer  
4 who has made payments in an amount less than the amount of  
5 benefits charged to the [~~employer's account~~] employer shall  
6 pay the balance of the amount charged within twenty-five days  
7 of the notification by the division. If the quarterly payment  
8 made by an employer pursuant to Paragraph (2) of this  
9 subsection exceeds the amount of benefits charged to such  
10 [~~employer's account~~] employer, the excess payment shall be  
11 refunded on a quarterly basis.

12 (5) Payments made by any nonprofit  
13 organization under the provisions of this subsection shall not  
14 be deducted or deductible, in whole or in part, from the  
15 remuneration of individuals in the employ of the organization.

16 C. Collection of past due payments of amounts in  
17 lieu of contributions shall be as provided in this subsection.

18 (1) Past due payments of amounts in lieu of  
19 contributions are subject to the same penalties that are  
20 applied to past due contributions [~~under~~] pursuant to Section  
21 51-1-12 NMSA 1978.

22 (2) The provisions of Section 51-1-36 NMSA  
23 1978 shall apply to all contributions or payments of amounts  
24 in lieu of contributions for which a nonprofit organization  
25 becomes liable pursuant to an election made [~~under~~] pursuant

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1 to Subsection A of this section.

2 (3) Any nonprofit organization that elects  
3 to become liable for payments in lieu of contributions shall  
4 be required, within thirty days after the effective date of  
5 its election, to execute and file with the secretary a surety  
6 bond or such other surety undertaking or security, which may  
7 consist of a cash security deposit, in a form approved by the  
8 secretary. With the consent of the secretary, a cash security  
9 deposit may be made in three annual installments. This  
10 paragraph shall not apply to:

11 (a) group accounts established pursuant  
12 to Subsection E of this section or any member of such a group  
13 account; [~~and~~] or

14 (b) governmental entities as defined in  
15 Subsection B of Section 51-1-44 NMSA 1978; except that all  
16 instrumentalities of governmental entities shall be included  
17 as part of the controlling governmental entity or entities for  
18 purposes of determining liability for the payment of  
19 unemployment compensation contributions.

20 (4) The amount of the surety bond or other  
21 surety undertaking or security required by Paragraph [~~(4)~~] (3)  
22 of this subsection shall be equal to 2.7 percent of  
23 contribution times the organization's taxable wages paid for  
24 employment, as defined in Subsection F of Section 51-1-42 NMSA  
25 1978 and Section 51-1-44 NMSA 1978, for the four calendar

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1 quarters immediately preceding the effective date of the  
2 election. If the nonprofit organization did not pay wages in  
3 each of the preceding four calendar quarters, the amount of  
4 surety bond required shall be determined by the secretary  
5 based upon an estimate of taxable wages to be paid during the  
6 succeeding four calendar quarters. Thereafter, the amount of  
7 the surety bond shall be adjusted on the basis of the  
8 organization's actual taxable payroll.

9 (5) If any nonprofit organization that is  
10 not required to execute and file a surety bond or other  
11 security is delinquent in making payments in lieu of  
12 contributions as required ~~[under]~~ pursuant to Subsection B of  
13 this section or if any nonprofit organization that is required  
14 to execute and maintain a surety bond or other security fails  
15 to do so or is delinquent in making payments as required  
16 ~~[under]~~ pursuant to Subsection B of this section, the  
17 secretary may terminate the organization's election to make  
18 payments in lieu of contributions effective as of the  
19 beginning of the next taxable year and the termination shall  
20 be effective until the organization executes and files with  
21 the department a surety bond or other security as required.

22 (6) Any bond or other surety undertaking or  
23 security required under this subsection shall be in force for  
24 a period of not less than two taxable years and shall be  
25 renewed with the approval of the secretary at such times as

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1 the secretary may prescribe.

2 D. Each employer who is liable for payments in  
3 lieu of contributions shall pay to the division for the fund  
4 the amount of regular benefits plus the amount of one-half of  
5 extended benefits paid that are attributable to service in the  
6 employ of that employer in accordance with the provisions of  
7 Subsection [B] A of Section 51-1-11 NMSA 1978, except that any  
8 employer that is liable for payments in lieu of contributions  
9 shall not be relieved of charges for benefits paid to an  
10 individual who was separated from the employ of that employer  
11 for any reason.

12 E. Two or more employers who have become liable  
13 for payments in lieu of contributions, in accordance with the  
14 provisions of Subsection A of this section, Subsection B of  
15 Section 51-1-14 NMSA 1978 and Section 51-1-16 NMSA 1978, may  
16 file a joint application for the establishment of a group  
17 account for the purpose of sharing the cost of benefits paid  
18 that are attributable to service in the employ of such  
19 employers. Each application shall identify and authorize a  
20 group representative to act as the group's agent for the  
21 purpose of this subsection. Upon its approval of the  
22 application, the division shall establish a group account for  
23 the employers effective as of the beginning of the calendar  
24 quarter in which it receives the application and shall notify  
25 the group's representative of the effective date of the

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1 account. The account shall remain in effect for not less than  
2 two years and thereafter until terminated at the discretion of  
3 the secretary or upon application by the group. Each group  
4 account shall be liable for the prepayment of payments in lieu  
5 of contributions as provided in Paragraphs (2), (3) and (4) of  
6 Subsection B of this section. Each member of the group  
7 account shall be liable to the division for payments in lieu  
8 of contributions with respect to each calendar quarter in the  
9 amount that bears the same ratio to the total benefits paid in  
10 the quarter that are attributable to service performed in the  
11 employ of all members of the group, as the total wages paid  
12 for service in employment for such member during the quarter  
13 bear to the total wages paid during the quarter for service  
14 performed in the employ of all members of the group. The  
15 secretary shall prescribe regulations as [~~he~~] the secretary  
16 deems necessary with respect to applications for  
17 establishment, maintenance and termination of group accounts  
18 that are authorized by this subsection, for addition of new  
19 members to and withdrawal of active members from the accounts  
20 and for the determination of the amounts that are payable  
21 under this subsection by members of the group and the time and  
22 manner of payments.

23 F. Each group account may apportion liability for  
24 amounts due to the group representative as the group shall  
25 determine."

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1           SECTION 5. Section 51-1-42 NMSA 1978 (being Laws 2003,  
2 Chapter 47, Section 12, as amended) is amended to read:

3           "51-1-42. DEFINITIONS.--As used in the Unemployment  
4 Compensation Law:

5           A. "base period" means the first four of the last  
6 five completed calendar quarters immediately preceding the  
7 first day of an individual's benefit year, except that "base  
8 period" means for benefit years beginning on or after January  
9 1, 2005 for an individual who does not have sufficient wages  
10 in the base period as defined to qualify for benefits pursuant  
11 to Section 51-1-5 NMSA 1978, the individual's base period  
12 shall be the last four completed calendar quarters immediately  
13 preceding the first day of the individual's benefit year if  
14 that period qualifies the individual for benefits pursuant to  
15 Section 51-1-5 NMSA 1978; provided that:

16                   (1) wages that fall within the base period  
17 of claims established pursuant to this subsection are not  
18 available for reuse in qualifying for a subsequent benefit  
19 year; and

20                   (2) in the case of a combined-wage claim  
21 pursuant to the arrangement approved by the federal secretary  
22 of labor, the base period is that base period applicable under  
23 the unemployment compensation law of the paying state;

24           B. "benefits" means the cash unemployment  
25 compensation payments payable to an eligible individual

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1 pursuant to Section 51-1-4 NMSA 1978 with respect to the  
2 individual's weeks of unemployment;

3 C. "contributions" means the money payments  
4 required by Section 51-1-9 NMSA 1978 to be made into the fund  
5 by an employer on account of having individuals performing  
6 services for the employer;

7 D. "employing unit" means any individual or type  
8 of organization, including any partnership, association,  
9 cooperative, trust, estate, joint-stock company, agricultural  
10 enterprise, insurance company or corporation, whether domestic  
11 or foreign, or the receiver, trustee in bankruptcy, trustee or  
12 successor thereof, household, fraternity or club, the legal  
13 representative of a deceased person or any state or local  
14 government entity to the extent required by law to be covered  
15 as an employer, that has in its employ one or more individuals  
16 performing services for it within this state. An individual  
17 performing services for an employing unit that maintains two  
18 or more separate establishments within this state shall be  
19 deemed to be employed by a single employing unit for all the  
20 purposes of the Unemployment Compensation Law. An individual  
21 performing services for a contractor, subcontractor or agent  
22 that is performing work or services for an employing unit, as  
23 described in this subsection, that are within the scope of the  
24 employing unit's usual trade, occupation, profession or  
25 business, shall be deemed to be in the employ of the employing

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1 unit for all purposes of the Unemployment Compensation Law  
2 unless the contractor, subcontractor or agent is itself an  
3 employer within the provisions of Subsection E of this  
4 section;

5 E. "employer" includes:

6 (1) an employing unit that:

7 (a) unless otherwise provided in this  
8 section, paid for service in employment as defined in  
9 Subsection F of this section wages of four hundred fifty  
10 dollars (\$450) or more in any calendar quarter in either the  
11 current or preceding calendar year or had in employment, as  
12 defined in Subsection F of this section, for some portion of a  
13 day in each of twenty different calendar weeks during either  
14 the current or the preceding calendar year, and irrespective  
15 of whether the same individual was in employment in each such  
16 day, at least one individual;

17 (b) for the purposes of Subparagraph  
18 (a) of this paragraph, if any week includes both December 31  
19 and January 1, the days of that week up to January 1 shall be  
20 deemed one calendar week and the days beginning January 1,  
21 another such week; and

22 (c) for purposes of defining an  
23 "employer" under Subparagraph (a) of this paragraph, the wages  
24 or remuneration paid to individuals performing services in  
25 employment in agricultural labor or domestic services as

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1 provided in Paragraphs (6) and (7) of Subsection F of this  
2 section shall not be taken into account; except that any  
3 employing unit determined to be an employer of agricultural  
4 labor under Paragraph (6) of Subsection F of this section  
5 shall be an employer under Subparagraph (a) of this paragraph  
6 so long as the employing unit is paying wages or remuneration  
7 for services other than agricultural services;

8 (2) any individual or type of organization  
9 that acquired the trade or business or substantially all of  
10 the assets thereof, of an employing unit that at the time of  
11 the acquisition was an employer subject to the Unemployment  
12 Compensation Law; provided that where such an acquisition  
13 takes place, the secretary may postpone activating the  
14 ~~[separate account]~~ individual or type of organization pursuant  
15 to ~~[Subsection A of]~~ Section 51-1-11 NMSA 1978 until such time  
16 as the successor employer has employment as defined in  
17 Subsection F of this section;

18 (3) an employing unit that acquired all or  
19 part of the organization, trade, business or assets of another  
20 employing unit and that, if treated as a single unit with the  
21 other employing unit or part thereof, would be an employer  
22 under Paragraph (1) of this subsection;

23 (4) an employing unit not an employer by  
24 reason of any other paragraph of this subsection:

25 (a) for which, within either the

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1 current or preceding calendar year, service is or was  
2 performed with respect to which such employing unit is liable  
3 for any federal tax against which credit may be taken for  
4 contributions required to be paid into a state unemployment  
5 fund; or

6 (b) that, as a condition for approval  
7 of the Unemployment Compensation Law for full tax credit  
8 against the tax imposed by the Federal Unemployment Tax Act,  
9 is required, pursuant to that act, to be an "employer" under  
10 the Unemployment Compensation Law;

11 (5) an employing unit that, having become an  
12 employer under Paragraph (1), (2), (3) or (4) of this  
13 subsection, has not, under Section 51-1-18 NMSA 1978, ceased  
14 to be an employer subject to the Unemployment Compensation  
15 Law;

16 (6) for the effective period of its election  
17 pursuant to Section 51-1-18 NMSA 1978, any other employing  
18 unit that has elected to become fully subject to the  
19 Unemployment Compensation Law;

20 (7) an employing unit for which any services  
21 performed in its employ are deemed to be performed in this  
22 state pursuant to an election under an arrangement entered  
23 into in accordance with Subsection A of Section 51-1-50 NMSA  
24 1978; and

25 (8) an Indian tribe as defined in 26 USCA

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1 Section 3306(u) for which service in employment is performed;

2 F. "employment":

3 (1) means any service, including service in  
4 interstate commerce, performed for wages or under any contract  
5 of hire, written or oral, express or implied;

6 (2) means an individual's entire service,  
7 performed within or both within and without this state if:

8 (a) the service is primarily localized  
9 in this state with services performed outside the state being  
10 only incidental thereto; or

11 (b) the service is not localized in any  
12 state but some of the service is performed in this state and:  
13 1) the base of operations or, if there is no base of  
14 operations, the place from which such service is directed or  
15 controlled, is in this state; or 2) the base of operations or  
16 place from which such service is directed or controlled is not  
17 in any state in which some part of the service is performed  
18 but the individual's residence is in this state;

19 (3) means services performed within this  
20 state but not covered under Paragraph (2) of this subsection  
21 if contributions or payments in lieu of contributions are not  
22 required and paid with respect to such services under an  
23 unemployment compensation law of any other state, the federal  
24 government or Canada;

25 (4) means services covered by an election

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1 pursuant to Section 51-1-18 NMSA 1978 and services covered by  
2 an election duly approved by the secretary in accordance with  
3 an arrangement pursuant to Paragraph (1) of Subsection A of  
4 Section 51-1-50 NMSA 1978 shall be deemed to be employment  
5 during the effective period of the election;

6 (5) means services performed by an  
7 individual for an employer for wages or other remuneration  
8 unless and until it is established by a preponderance of  
9 evidence that:

10 (a) the individual has been and will  
11 continue to be free from control or direction over the  
12 performance of the services both under the individual's  
13 contract of service and in fact;

14 (b) the service is either outside the  
15 usual course of business for which the service is performed or  
16 that such service is performed outside of all the places of  
17 business of the enterprise for which such service is  
18 performed; and

19 (c) the individual is customarily  
20 engaged in an independently established trade, occupation,  
21 profession or business of the same nature as that involved in  
22 the contract of service;

23 (6) means service performed after December  
24 31, 1977 by an individual in agricultural labor as defined in  
25 Subsection Q of this section if:

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1 (a) the service is performed for an  
2 employing unit that: 1) paid remuneration in cash of twenty  
3 thousand dollars (\$20,000) or more to individuals in that  
4 employment during any calendar quarter in either the current  
5 or the preceding calendar year; or 2) employed in agricultural  
6 labor ten or more individuals for some portion of a day in  
7 each of twenty different calendar weeks in either the current  
8 or preceding calendar year, whether or not the weeks were  
9 consecutive, and regardless of whether the individuals were  
10 employed at the same time;

11 (b) the service is not performed before  
12 January 1, 1980 by an individual who is an alien admitted to  
13 the United States to perform service in agricultural labor  
14 pursuant to Sections 214(c) and 101(15)(H) of the federal  
15 Immigration and Nationality Act; and

16 (c) for purposes of this paragraph, an  
17 individual who is a member of a crew furnished by a crew  
18 leader to perform service in agricultural labor for a farm  
19 operator or other person shall be treated as an employee of  
20 the crew leader: 1) if the crew leader meets the requirements  
21 of a crew leader as defined in Subsection L of this section;  
22 or 2) substantially all the members of the crew operate or  
23 maintain mechanized agricultural equipment that is provided by  
24 the crew leader; and 3) the individuals performing the  
25 services are not, by written agreement or in fact, within the

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1 meaning of Paragraph (5) of this subsection, performing  
2 services in employment for the farm operator or other person;

3 (7) means service performed after December  
4 31, 1977 by an individual in domestic service in a private  
5 home, local college club or local chapter of a college  
6 fraternity or sorority for a person or organization that paid  
7 cash remuneration of one thousand dollars (\$1,000) in any  
8 calendar quarter in the current or preceding calendar year to  
9 individuals performing such services;

10 (8) means service performed after December  
11 31, 1971 by an individual in the employ of a religious,  
12 charitable, educational or other organization but only if the  
13 following conditions are met:

14 (a) the service is excluded from  
15 "employment" as defined in the Federal Unemployment Tax Act  
16 solely by reason of Section 3306(c)(8) of that act; and

17 (b) the organization meets the  
18 requirements of "employer" as provided in Subparagraph (a) of  
19 Paragraph (1) of Subsection E of this section;

20 (9) means service of an individual who is a  
21 citizen of the United States, performed outside the United  
22 States, except in Canada, after December 31, 1971 in the  
23 employ of an American employer, other than service that is  
24 deemed "employment" under the provisions of Paragraph (2) of  
25 this subsection or the parallel provisions of another state's

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1 law, if:

2 (a) the employer's principal place of  
3 business in the United States is located in this state;

4 (b) the employer has no place of  
5 business in the United States, but: 1) the employer is an  
6 individual who is a resident of this state; 2) the employer is  
7 a corporation organized under the laws of this state; or 3)  
8 the employer is a partnership or a trust and the number of the  
9 partners or trustees who are residents of this state is  
10 greater than the number who are residents of any one other  
11 state; or

12 (c) none of the criteria of  
13 Subparagraphs (a) and (b) of this paragraph are met, but the  
14 employer has elected coverage in this state or, the employer  
15 having failed to elect coverage in any state, the individual  
16 has filed a claim for benefits, based on such service, under  
17 the law of this state.

18 "American employer" for the purposes of this paragraph  
19 means a person who is: 1) an individual who is a resident of  
20 the United States; 2) a partnership if two-thirds or more of  
21 the partners are residents of the United States; 3) a trust if  
22 all of the trustees are residents of the United States; or 4)  
23 a corporation organized under the laws of the United States or  
24 of any state. For the purposes of this paragraph, "United  
25 States" includes the United States, the District of Columbia,

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1 the commonwealth of Puerto Rico and the Virgin Islands;

2 (10) means, notwithstanding any other  
3 provisions of this subsection, service with respect to which a  
4 tax is required to be paid under any federal law imposing a  
5 tax against which credit may be taken for contributions  
6 required to be paid into a state unemployment fund or which as  
7 a condition for full tax credit against the tax imposed by the  
8 Federal Unemployment Tax Act is required to be covered under  
9 the Unemployment Compensation Law;

10 (11) means service performed in the employ  
11 of an Indian tribe if:

12 (a) the service is excluded from  
13 "employment" as defined in 26 USCA Section 3306(c) solely by  
14 reason of 26 USCA Section 3306(c)(7); and

15 (b) the service is not otherwise  
16 excluded from employment pursuant to the Unemployment  
17 Compensation Law;

18 (12) does not include:

19 (a) service performed in the employ of:  
20 1) a church or convention or association of churches; or 2) an  
21 organization that is operated primarily for religious purposes  
22 and that is operated, supervised, controlled or principally  
23 supported by a church or convention or association of  
24 churches;

25 (b) service performed by a duly

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1 ordained, commissioned or licensed minister of a church in the  
2 exercise of such ministry or by a member of a religious order  
3 in the exercise of duties required by such order;

4 (c) service performed by an individual  
5 in the employ of the individual's son, daughter or spouse, and  
6 service performed by a child under the age of majority in the  
7 employ of the child's father or mother;

8 (d) service performed in the employ of  
9 the United States government or an instrumentality of the  
10 United States immune under the constitution of the United  
11 States from the contributions imposed by the Unemployment  
12 Compensation Law except that to the extent that the congress  
13 of the United States shall permit states to require any  
14 instrumentalities of the United States to make payments into  
15 an unemployment fund under a state unemployment compensation  
16 act, all of the provisions of the Unemployment Compensation  
17 Law shall be applicable to such instrumentalities, and to  
18 service performed for such instrumentalities in the same  
19 manner, to the same extent and on the same terms as to all  
20 other employers, employing units, individuals and services;  
21 provided that if this state shall not be certified for any  
22 year by the secretary of labor of the United States under  
23 Section 3304 of the federal Internal Revenue Code of 1986,  
24 26 U.S.C. Section 3304, the payments required of such  
25 instrumentalities with respect to such year shall be refunded

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1 by the department from the fund in the same manner and within  
2 the same period as is provided in Subsection D of Section  
3 51-1-36 NMSA 1978 with respect to contributions erroneously  
4 collected;

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

13 (f) service with respect to which  
14 unemployment compensation is payable under an unemployment  
15 compensation system established by an act of congress;

16 (g) service performed in the employ of  
17 a foreign government, including service as a consular or other  
18 officer or employee or a nondiplomatic representative;

19 (h) service performed by an individual  
20 for a person as an insurance agent or as an insurance  
21 solicitor, if all such service performed by the individual for  
22 the person is performed for remuneration solely by way of  
23 commission;

24 (i) service performed by an individual  
25 under the age of eighteen in the delivery or distribution of

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1 newspapers or shopping news, not including delivery or  
2 distribution to any point for subsequent delivery or  
3 distribution;

4 (j) service covered by an election duly  
5 approved by the agency charged with the administration of any  
6 other state or federal unemployment compensation law, in  
7 accordance with an arrangement pursuant to Paragraph (l) of  
8 Subsection A of Section 51-1-50 NMSA 1978 during the effective  
9 period of the election;

10 (k) service performed, as part of an  
11 unemployment work-relief or work-training program assisted or  
12 financed in whole or part by any federal agency or an agency  
13 of a state or political subdivision thereof, by an individual  
14 receiving the work relief or work training;

15 (l) service performed by an individual  
16 who is enrolled at a nonprofit or public educational  
17 institution that normally maintains a regular faculty and  
18 curriculum and normally has a regularly organized body of  
19 students in attendance at the place where its educational  
20 activities are carried on as a student in a full-time program,  
21 taken for credit at the institution that combines academic  
22 instruction with work experience, if the service is an  
23 integral part of such program and the institution has so  
24 certified to the employer, except that this subparagraph shall  
25 not apply to service performed in a program established for or

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1 on behalf of an employer or group of employers;

2 (m) service performed in the employ of  
3 a hospital, if the service is performed by a patient of the  
4 hospital, or services performed by an inmate of a custodial or  
5 penal institution for any employer;

6 (n) service performed by real estate  
7 salespersons for others when the services are performed for  
8 remuneration solely by way of commission;

9 (o) service performed in the employ of  
10 a school, college or university if the service is performed by  
11 a student who is enrolled and is regularly attending classes  
12 at the school, college or university;

13 (p) service performed by an individual  
14 for a fixed or contract fee officiating at a sporting event  
15 that is conducted by or under the auspices of a nonprofit or  
16 governmental entity if that person is not otherwise an  
17 employee of the entity conducting the sporting event;

18 (q) service performed for a private,  
19 for-profit person or entity by an individual as a product  
20 demonstrator or product merchandiser if the service is  
21 performed pursuant to a written contract between that  
22 individual and a person or entity whose principal business is  
23 obtaining the services of product demonstrators and product  
24 merchandisers for third parties, for demonstration and  
25 merchandising purposes and the individual: 1) is compensated

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1 for each job or the compensation is based on factors related  
2 to the work performed; 2) provides the equipment used to  
3 perform the service, unless special equipment is required and  
4 provided by the manufacturer through an agency; 3) is  
5 responsible for completion of a specific job and for any  
6 failure to complete the job; 4) pays all expenses, and the  
7 opportunity for profit or loss rests solely with the  
8 individual; and 5) is responsible for operating costs, fuel,  
9 repairs and motor vehicle insurance. For the purpose of this  
10 subparagraph, "product demonstrator" means an individual who,  
11 on a temporary, part-time basis, demonstrates or gives away  
12 samples of a food or other product as part of an advertising  
13 or sales promotion for the product and who is not otherwise  
14 employed directly by the manufacturer, distributor or  
15 retailer, and "product merchandiser" means an individual who,  
16 on a temporary, part-time basis builds or resets a product  
17 display and who is not otherwise directly employed by the  
18 manufacturer, distributor or retailer; or

19 (r) service performed for a private,  
20 for-profit person or entity by an individual as a landman if  
21 substantially all remuneration paid in cash or otherwise for  
22 the performance of the services is directly related to the  
23 completion by the individual of the specific tasks contracted  
24 for rather than to the number of hours worked by the  
25 individual. For the purposes of this subparagraph, "landman"

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1 means a land professional who has been engaged primarily in:  
2 1) negotiating for the acquisition or divestiture of mineral  
3 rights; 2) negotiating business agreements that provide for  
4 the exploration for or development of minerals; 3) determining  
5 ownership of minerals through the research of public and  
6 private records; and 4) reviewing the status of title, curing  
7 title defects and otherwise reducing title risk associated  
8 with ownership of minerals; managing rights or obligations  
9 derived from ownership of interests and minerals; or utilizing  
10 or pooling of interest in minerals; and

11 (13) for the purposes of this subsection, if  
12 the services performed during one-half or more of any pay  
13 period by an individual for the person employing the  
14 individual constitute employment, all the services of the  
15 individual for the period shall be deemed to be employment,  
16 but, if the services performed during more than one-half of  
17 any such pay period by an individual for the person employing  
18 the individual do not constitute employment, then none of the  
19 services of the individual for the period shall be deemed to  
20 be employment. As used in this paragraph, the term "pay  
21 period" means a period, of not more than thirty-one  
22 consecutive days, for which a payment of remuneration is  
23 ordinarily made to the individual by the person employing the  
24 individual. This paragraph shall not be applicable with  
25 respect to services performed in a pay period by an individual

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1 for the person employing the individual where any of such  
2 service is excepted by Subparagraph (f) of Paragraph (12) of  
3 this subsection;

4 G. "employment office" means a free public  
5 employment office, or branch thereof, operated by this state  
6 or maintained as a part of a state-controlled system of public  
7 employment offices;

8 H. "fund" means the unemployment compensation fund  
9 established by the Unemployment Compensation Law to which all  
10 contributions and payments in lieu of contributions required  
11 under the Unemployment Compensation Law and from which all  
12 benefits provided under the Unemployment Compensation Law  
13 shall be paid;

14 I. "unemployment" means, with respect to an  
15 individual, any week during which the individual performs no  
16 services and with respect to which no wages are payable to the  
17 individual and during which the individual is not engaged in  
18 self-employment or receives an award of back pay for loss of  
19 employment. The secretary shall prescribe by rule what  
20 constitutes part-time and intermittent employment, partial  
21 employment and the conditions under which individuals engaged  
22 in such employment are eligible for partial unemployment  
23 benefits, but no individual who is otherwise eligible shall be  
24 deemed ineligible for benefits solely for the reason that the  
25 individual seeks, applies for or accepts only part-time work,

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1 instead of full-time work, if the part-time work is for at  
2 least twenty hours per week;

3 J. "state", when used in reference to any state  
4 other than New Mexico, includes, in addition to the states of  
5 the United States, the District of Columbia, the commonwealth  
6 of Puerto Rico and the Virgin Islands;

7 K. "unemployment compensation administration fund"  
8 means the fund established by Subsection A of Section 51-1-34  
9 NMSA 1978 from which administrative expenses under the  
10 Unemployment Compensation Law shall be paid. "Employment  
11 security department fund" means the fund established by  
12 Subsection B of Section 51-1-34 NMSA 1978 from which certain  
13 administrative expenses under the Unemployment Compensation  
14 Law shall be paid;

15 L. "crew leader" means a person who:

16 (1) holds a valid certificate of  
17 registration as a crew leader or farm labor contractor under  
18 the federal Migrant and Seasonal Agricultural Worker  
19 Protection Act;

20 (2) furnishes individuals to perform  
21 services in agricultural labor for any other person;

22 (3) pays, either on the crew leader's own  
23 behalf or on behalf of such other person, the individuals so  
24 furnished by the crew leader for service in agricultural  
25 labor; and

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1 (4) has not entered into a written agreement  
2 with the other person for whom the crew leader furnishes  
3 individuals in agricultural labor that the individuals will be  
4 the employees of the other person;

5 M. "week" means such period of seven consecutive  
6 days, as the secretary may by rule prescribe. The secretary  
7 may by rule prescribe that a week shall be deemed to be "in",  
8 "within" or "during" the benefit year that includes the  
9 greater part of such week;

10 N. "calendar quarter" means the period of three  
11 consecutive calendar months ending on March 31, June 30,  
12 September 30 or December 31;

13 O. "insured work" means services performed for  
14 employers who are covered under the Unemployment Compensation  
15 Law;

16 P. "benefit year" with respect to an individual  
17 means the one-year period beginning with the first day of the  
18 first week of unemployment with respect to which the  
19 individual first files a claim for benefits in accordance with  
20 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the  
21 one-year period beginning with the first day of the first week  
22 of unemployment with respect to which the individual next  
23 files such a claim for benefits after the termination of the  
24 individual's last preceding benefit year; provided that at the  
25 time of filing such a claim the individual has been paid the

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underscored material = new  
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1 wage required under Paragraph (5) of Subsection A of Section  
2 51-1-5 NMSA 1978;

3 Q. "agricultural labor" includes all services  
4 performed:

5 (1) on a farm, in the employ of a person, in  
6 connection with cultivating the soil or in connection with  
7 raising or harvesting an agricultural or horticultural  
8 commodity, including the raising, shearing, feeding, caring  
9 for, training and management of livestock, bees, poultry and  
10 fur-bearing animals and wildlife;

11 (2) in the employ of the owner or tenant or  
12 other operator of a farm, in connection with the operation,  
13 management, conservation or maintenance of the farm and its  
14 tools and equipment, if the major part of the service is  
15 performed on a farm;

16 (3) in connection with the operation or  
17 maintenance of ditches, canals, reservoirs or waterways used  
18 exclusively for supplying and storing water for farming  
19 purposes when such ditches, canals, reservoirs or waterways  
20 are owned and operated by the farmers using the water stored  
21 or carried therein; and

22 (4) in handling, planting, drying, packing,  
23 packaging, processing, freezing, grading, storing or delivery  
24 to storage or to market or to a carrier for transportation to  
25 market any agricultural or horticultural commodity but only if

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1 the service is performed as an incident to ordinary farming  
2 operations. The provisions of this paragraph shall not be  
3 deemed to be applicable with respect to service performed in  
4 connection with commercial canning or commercial freezing or  
5 in connection with any agricultural or horticultural commodity  
6 after its delivery to a terminal market for distribution for  
7 consumption.

8 As used in this subsection, the term "farm" includes  
9 stock, dairy, poultry, fruit, fur-bearing animal and truck  
10 farms, plantations, ranches, nurseries, greenhouses, ranges  
11 and orchards;

12 R. "payments in lieu of contributions" means the  
13 money payments made into the fund by an employer pursuant to  
14 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or  
15 Subsection E of Section 51-1-59 NMSA 1978;

16 S. "department" means the workforce solutions  
17 department; and

18 T. "wages" means all remuneration for services,  
19 including commissions and bonuses and the cash value of all  
20 remuneration in any medium other than cash. The reasonable  
21 cash value of remuneration in any medium other than cash shall  
22 be established and determined in accordance with rules  
23 prescribed by the secretary; provided that the term "wages"  
24 shall not include:

25 (1) subsequent to December 31, 1977, that

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1 part of the remuneration in excess of the base wage as  
2 determined by the secretary for each calendar year. The base  
3 wage upon which contribution shall be paid during any calendar  
4 year shall be sixty percent of the state's average annual  
5 earnings computed by the division by dividing total wages  
6 reported to the division by contributing employers for the  
7 second preceding calendar year before the calendar year the  
8 computed base wage becomes effective by the average annual  
9 employment reported by contributing employers for the same  
10 period rounded to the next higher multiple of one hundred  
11 dollars (\$100); provided that the base wage so computed for  
12 any calendar year shall not be less than seven thousand  
13 dollars (\$7,000). Wages paid by an employer to an individual  
14 in the employer's employ during any calendar year in excess of  
15 the base wage in effect for that calendar year shall be  
16 reported to the department but shall be exempt from the  
17 payment of contributions unless such wages paid in excess of  
18 the base wage become subject to tax under a federal law  
19 imposing a tax against which credit may be taken for  
20 contributions required to be paid into a state unemployment  
21 fund;

22 (2) the amount of any payment with respect  
23 to services performed after June 30, 1941 to or on behalf of  
24 an individual in the employ of an employing unit under a plan  
25 or system established by the employing unit that makes

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underscoring material = new  
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1 provision for individuals in its employ generally or for a  
2 class or classes of individuals, including any amount paid by  
3 an employing unit for insurance or annuities, or into a fund,  
4 to provide for any payment, on account of:

5 (a) retirement if the payments are made  
6 by an employer to or on behalf of an employee under a  
7 simplified employee pension plan that provides for payments by  
8 an employer in addition to the salary or other remuneration  
9 normally payable to the employee or class of employees and  
10 does not include any payments that represent deferred  
11 compensation or other reduction of an employee's normal  
12 taxable wages or remuneration or any payments made to a third  
13 party on behalf of an employee as part of an agreement of  
14 deferred remuneration;

15 (b) sickness or accident disability if  
16 the payments are received under a workers' compensation or  
17 occupational disease disablement law;

18 (c) medical and hospitalization  
19 expenses in connection with sickness or accident disability;  
20 or

21 (d) death; provided the individual in  
22 its employ has not the option to receive, instead of provision  
23 for the death benefit, any part of such payment, or, if such  
24 death benefit is insured, any part of the premiums or  
25 contributions to premiums paid by the individual's employing

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1 unit and has not the right under the provisions of the plan or  
2 system or policy of insurance providing for the death benefit  
3 to assign the benefit, or to receive a cash consideration in  
4 lieu of the benefit either upon the individual's withdrawal  
5 from the plan or system providing for the benefit or upon  
6 termination of the plan or system or policy of insurance or of  
7 the individual's service with the employing unit;

8 (3) remuneration for agricultural labor paid  
9 in any medium other than cash;

10 (4) a payment made to, or on behalf of, an  
11 employee or an employee's beneficiary under a cafeteria plan  
12 within the meaning of Section 125 of the federal Internal  
13 Revenue Code of 1986;

14 (5) a payment made, or benefit furnished to  
15 or for the benefit of an employee if at the time of the  
16 payment or such furnishing it is reasonable to believe that  
17 the employee will be able to exclude the payment or benefit  
18 from income under Section 129 of the federal Internal Revenue  
19 Code of 1986;

20 (6) a payment made by an employer to a  
21 survivor or the estate of a former employee after the calendar  
22 year in which the employee died;

23 (7) a payment made to, or on behalf of, an  
24 employee or the employee's beneficiary under an arrangement to  
25 which Section 408(p) of the federal Internal Revenue Code of

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1 1986 applies, other than any elective contributions under  
2 Paragraph (2)(A)(i) of that section;

3 (8) a payment made to or for the benefit of  
4 an employee if at the time of the payment it is reasonable to  
5 believe that the employee will be able to exclude the payment  
6 from income under Section 106 of the federal Internal Revenue  
7 Code of 1986; or

8 (9) the value of any meals or lodging  
9 furnished by or on behalf of the employer if at the time the  
10 benefit is provided it is reasonable to believe that the  
11 employee will be able to exclude such items from income under  
12 Section 119 of the federal Internal Revenue Code of 1986."

13 SECTION 6. Section 51-1-48 NMSA 1978 (being Laws 1971,  
14 Chapter 209, Section 7, as amended) is amended to read:

15 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

16 A. As used in this section, unless the context  
17 clearly requires otherwise, "extended benefit period" means a  
18 period that:

19 (1) begins with the third week after a week  
20 for which there is a state "on indicator";

21 (2) ends with either of the following weeks,  
22 whichever occurs later:

23 (a) the third week after the first week  
24 for which there is a state "off indicator"; or

25 (b) the thirteenth consecutive week of

1 such period; and

2 (3) does not begin by reason of a state "on  
3 indicator" before the fourteenth week following the end of a  
4 prior extended benefit period that was in effect with respect  
5 to this state.

6 B. There is a state "on indicator" for this state  
7 for a week if the rate of insured unemployment not seasonally  
8 adjusted under this section for the period consisting of that  
9 week and the immediately preceding twelve weeks:

10 (1) equaled or exceeded one hundred twenty  
11 percent of the average of the rates for the corresponding  
12 thirteen-week period ending in each of the preceding two  
13 calendar years; and

14 (2) equaled or exceeded five percent; or

15 (3) equaled or exceeded six percent,  
16 regardless of the rate of insured unemployment in the two  
17 previous years; provided that the operation of this paragraph  
18 shall not activate the state "on indicator" any time after  
19 four weeks prior to the last week for which one hundred  
20 percent federal sharing funding is available under Section  
21 2005(a) of Public Law No. 111-5, without regard to the  
22 extension of federal sharing for certain claims as provided  
23 under Section 2005(c) of that law; or

24 (4) with respect to benefits for weeks of  
25 unemployment beginning after July 1, 2003 and ending four

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1 weeks prior to the last week for which one hundred percent  
2 federal sharing funding is available under Section 2005(a) of  
3 Public Law No. 111-5, without regard to the extension of  
4 federal sharing for certain claims as provided under Section  
5 2005(c) of that law:

6 (a) the average rate of total  
7 unemployment, seasonally adjusted, as determined by the United  
8 States secretary of labor, for the period consisting of the  
9 most recent three months for which data for all states are  
10 published before the close of such week equals or exceeds six  
11 and one-half percent; and

12 (b) the average rate of total  
13 unemployment in this state, seasonally adjusted, as determined  
14 by the United States secretary of labor, for the three-month  
15 period referred to in Subparagraph (a) of this paragraph,  
16 equals or exceeds one hundred ten percent of such average: 1)  
17 for either or both of the corresponding three-month periods  
18 ending in the two preceding calendar years; or 2) for weeks of  
19 unemployment beginning after December 17, 2010 and ending  
20 before December 31, 2011, for any or all of the corresponding  
21 three-month periods ending in the three preceding calendar  
22 years.

23 C. There is a state "off indicator" for this state  
24 for a week only if, for the period consisting of that week and  
25 the immediately preceding twelve weeks, none of the options

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1 specified in Subsection B of this section result in a state  
2 "on indicator".

3 D. Except as provided in Subsection E of this  
4 section, the total extended benefit amount payable to an  
5 eligible individual with respect to the applicable benefit  
6 year shall be the least of the following amounts:

7 (1) fifty percent of the total amount of  
8 regular benefits that were payable to the individual pursuant  
9 to this section in the individual's applicable benefit year;

10 (2) thirteen times the individual's average  
11 weekly benefit amount that was payable to the individual  
12 pursuant to this section for a week of total unemployment in  
13 the applicable benefit year; or

14 (3) thirty-nine times the individual's  
15 average weekly benefit amount that was payable to the  
16 individual pursuant to this section for a week of total  
17 unemployment in the applicable benefit year, reduced by the  
18 total amount of regular benefits that were paid, or deemed  
19 paid, to the individual pursuant to this section with respect  
20 to the benefit year; provided that the amount determined  
21 pursuant to this paragraph shall be reduced by the total  
22 amount of additional benefits paid, or deemed paid, to the  
23 individual under the provisions of this section for weeks of  
24 unemployment in the individual's benefit year that began prior  
25 to the effective date of the extended benefit period that is

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1 current in the week for which the individual first claims  
2 extended benefits; and provided further, if the benefit year  
3 of the individual ends within an extended benefit period, the  
4 remaining balance of the extended benefits that the individual  
5 would, but for this paragraph, be entitled to receive in that  
6 extended benefit period, with respect to weeks of unemployment  
7 beginning after the end of the benefit year, shall be reduced,  
8 but not below zero, by the product of the number of weeks for  
9 which the individual received any amounts as readjustment  
10 allowances within that benefit year multiplied by the  
11 individual weekly benefit amount for extended benefits.

12 E. Effective with respect to weeks beginning in a  
13 high-unemployment period, the total extended benefit amount  
14 payable to an eligible individual with respect to the  
15 applicable benefit year shall be the least of the following  
16 amounts:

17 (1) eighty percent of the total amount of  
18 regular benefits that were payable to the individual pursuant  
19 to this section in the individual's applicable benefit year;

20 (2) twenty times the individual's average  
21 weekly benefit amount that was payable to the individual  
22 pursuant to this section for a week of total unemployment in  
23 the applicable benefit year; or

24 (3) forty-six times the individual's average  
25 weekly benefit amount that was payable to the individual

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1 pursuant to this section for a week of total unemployment in  
2 the applicable benefit year reduced by the total amount of  
3 regular benefits that were paid, or deemed paid, to the  
4 individual pursuant to this section with respect to the  
5 benefit year; provided that the amount determined pursuant to  
6 this paragraph shall be reduced by the total amount of  
7 additional benefits paid, or deemed paid, to the individual  
8 under the provisions of this section for weeks of unemployment  
9 in the individual's benefit year that began prior to the  
10 effective date of the extended benefit period that is current  
11 in the week for which the individual first claims extended  
12 benefits; and provided further, if the benefit year of an  
13 individual ends within an extended benefit period, the  
14 remaining balance of the extended benefits that the individual  
15 would, but for this paragraph, be entitled to receive in that  
16 extended benefit period, with respect to weeks of unemployment  
17 beginning after the end of the benefit year, shall be reduced,  
18 but not below zero, by the product of the number of weeks for  
19 which the individual received any amounts as readjustment  
20 allowances within that benefit year multiplied by the  
21 individual weekly benefit amount for extended benefits.

22 F. For purposes of Subsection E of this section,  
23 "high-unemployment period" means a period during which an  
24 extended benefit period would be in effect if Paragraph (4) of  
25 Subsection B of this section were applied by substituting

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1 "eight percent" for "six and one-half percent".

2 G. A benefit paid to an individual pursuant to  
3 this section shall be charged pursuant to Subsection ~~[B]~~ A of  
4 Section 51-1-11 NMSA 1978.

5 H. As used in this section:

6 (1) "rate of insured unemployment" means the  
7 percentage derived by dividing:

8 (a) the average weekly number of  
9 individuals filing claims for regular benefits in this state  
10 for weeks of unemployment with respect to the most recent  
11 thirteen-consecutive-week period, as determined by the  
12 secretary on the basis of the secretary's reports to the  
13 United States secretary of labor; by

14 (b) the average monthly employment  
15 covered under the Unemployment Compensation Law for the first  
16 four of the most recent six completed calendar quarters ending  
17 before the end of such thirteen-week period;

18 (2) "regular benefits" means benefits  
19 payable to an individual under the Unemployment Compensation  
20 Law or under any other state law, including benefits payable  
21 to federal civilian employees and to ex-servicemen pursuant to  
22 5 U.S.C., Chapter 85, other than extended benefits;

23 (3) "extended benefits" means benefits,  
24 including benefits payable to federal civilian employees and  
25 to ex-servicemen pursuant to 5 U.S.C., Chapter 85, payable to

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1 an individual under the provisions of this section for weeks  
2 of unemployment in the individual's eligibility period;

3 (4) "eligibility period" of an individual  
4 means the period consisting of the weeks in the individual's  
5 benefit year that begin in an extended benefit period and, if  
6 the individual's benefit year ends within such extended  
7 benefit period, any weeks thereafter that begin in such  
8 period;

9 (5) "exhaustee" means an individual who,  
10 with respect to any week of unemployment in the individual's  
11 eligibility period:

12 (a) has received, prior to such week,  
13 all of the regular benefits that were available to the  
14 individual under the Unemployment Compensation Law or any  
15 other state law, including dependent's allowance and benefits  
16 payable to federal civilian employees and ex-servicemen under  
17 5 U.S.C., Chapter 85, in the individual's current benefit year  
18 that includes such week; provided that, for the purposes of  
19 this subparagraph, an individual shall be deemed to have  
20 received all of the regular benefits that were available to  
21 the individual, although, as a result of a pending appeal with  
22 respect to wages that were not considered in the original  
23 monetary determination in the individual's benefit year, the  
24 individual may subsequently be determined to be entitled to  
25 added regular benefits; or

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1 (b) if the individual's benefit year  
2 has expired prior to such week, has no, or insufficient, wages  
3 on the basis of which the individual could establish a new  
4 benefit year that would include such week; and

5 (c) has no right to unemployment  
6 benefits or allowances, as the case may be, under the Railroad  
7 Unemployment Insurance Act, the Trade Expansion Act of 1962,  
8 the Trade Act of 1974, the Automotive Products Trade Act of  
9 1965 and such other federal laws as are specified in  
10 regulations issued by the United States secretary of labor;  
11 and has not received and is not seeking unemployment benefits  
12 under the unemployment compensation law of Canada, but if the  
13 individual is seeking such benefits and the appropriate agency  
14 finally determines that the individual is not entitled to  
15 benefits under such law, the individual is considered an  
16 exhaustee; and

17 (6) "state law" means the unemployment  
18 insurance law of any state, approved by the United States  
19 secretary of labor under Section 3304 of the Internal Revenue  
20 Code of 1986."

21 SECTION 7. EFFECTIVE DATE.--

22 A. The effective date of the provisions of Section  
23 2 of this act is January 1, 2014.

24 B. The effective date of the provisions of  
25 Sections 1 and 3 through 6 of this act is January 1, 2015.

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