

1 grant an employer or individuals in the employer's service
2 prior claims or rights to the amounts paid by the employer into
3 the fund.

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

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

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

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

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

14 (1) separated from employment due to domestic
15 abuse; or

16 (2) is enrolled in approved training or is
17 attending school on a full-time basis.

18 E. All contributions to the fund shall be pooled
19 and available to pay benefits to any individual entitled
20 thereto, irrespective of the source of such contributions. The
21 standard rate of contributions payable by each employer shall
22 be five and four-tenths percent.

23 F. An employer's rate shall not be varied from the
24 standard rate for any calendar year unless, as of the
25 computation date for that year, the employer's account has been

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1 chargeable with benefits throughout the preceding thirty-six
2 months, except that:

3 (1) the provisions of this subsection shall
4 not apply to governmental entities;

5 (2) beginning January 1, 2005, any employing
6 unit that becomes an employer subject to the payment of
7 contributions under the Unemployment Compensation Law or has
8 been an employer subject to the payment of contributions at a
9 standard rate of two percent through December 31, 2004, shall
10 be subject to the payment of contributions at the reduced rate
11 of two percent until, as of the computation date of a
12 particular year, the employer's account has been chargeable
13 with benefits throughout the preceding thirty-six months;

14 (3) any individual, type of organization or
15 employing unit that acquires all or part of the trade or
16 business of another employing unit, pursuant to Paragraphs (2)
17 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
18 a reduced rate of contribution shall be entitled to the
19 transfer of the reduced rate to the extent permitted under
20 Subsection H of this section;

21 (4) an employer that, at the time of
22 establishing an account, is in business in another state or
23 states and that is not currently doing business in New Mexico
24 may elect, pursuant to Paragraph (5) of this subsection, to
25 receive a beginning contribution rate of two percent or a

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underscored material = new
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1 contribution rate based on the current contribution rate
2 schedule in Paragraph (4) of Subsection I of this section,
3 whichever is lower, if:

4 (a) the employer has been in operation
5 in the other state or states for at least three years
6 immediately preceding the date of becoming a liable employer in
7 New Mexico, throughout which an individual in the employer's
8 employ could have received benefits if eligible; and

9 (b) the employer provides the
10 authenticated account history as defined by rule of the
11 secretary from information accumulated from operations in the
12 other state or all the other states to compute a current New
13 Mexico rate; and

14 (5) the election authorized in Paragraph (4)
15 of this subsection shall be made in writing within thirty days
16 after receiving notice of New Mexico liability and, if not made
17 timely, a two percent rate will be assigned; if the election is
18 made timely, the employer's account will receive the lesser of
19 the computed rate determined by the condition of the account
20 for the computation date immediately preceding the New Mexico
21 liable date, or the reduced rate of two percent; rates for
22 subsequent years will be determined by the condition of the
23 account for the computation date.

24 G. The secretary shall, for the year 1942 and for
25 each calendar year thereafter, classify employers in accordance

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1 with their actual experience in the payment of contributions
2 and with respect to benefits charged against their accounts,
3 with a view of fixing such contribution rates as will reflect
4 such benefit experience. An employer's rate for any calendar
5 year shall be determined on the basis of the employer's record
6 and the condition of the fund as of the computation date for
7 such calendar year.

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

16 H. In the case of a transfer of an employing
17 enterprise, notwithstanding any other provision of law, the
18 experience history of the transferred enterprise as provided in
19 Subsection G of this section shall be transferred from the
20 predecessor employer to the successor under the following
21 conditions and in accordance with the applicable rules of the
22 secretary:

23 (1) [definitions] as used in this subsection:

24 (a) "employing enterprise" ~~[is]~~ means a
25 business activity engaged in by a contributing employing unit

1 in which one or more persons have been employed within the
 2 current or the three preceding calendar quarters. An
 3 "employing enterprise" includes the employer's workforce;

4 (b) "predecessor" means the owner and
 5 operator of an employing enterprise immediately prior to the
 6 transfer of such enterprise;

7 (c) "successor" means any ~~[individual or~~
 8 ~~any type of organization]~~ person that acquires an employing
 9 enterprise and continues to operate such business entity; ~~[and]~~

10 (d) "experience history" means the
 11 experience rating record and reserve account, including the
 12 actual contributions, benefit charges and payroll experience of
 13 the employing enterprise;

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

17 (f) "knowingly" means having actual
 18 knowledge of or acting with deliberate ignorance of or reckless
 19 disregard for the prohibition involved; and

20 (g) "violates or attempts to violate"
 21 includes an intent to evade, a misrepresentation or a willful
 22 nondisclosure;

23 (2) except as otherwise provided in this
 24 subsection, for the purpose of this [section] subsection, two
 25 or more employers who are parties to or the subject of any

underscoring material = new
 [bracketed material] = deleted

1 transaction involving the transfer of an employing enterprise
2 shall be deemed to be a single employer and the experience
3 history of the employing enterprise shall be transferred to the
4 successor employer if the successor employer has acquired by
5 the transaction all of the business enterprises of the
6 predecessor; provided that:

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

9 (b) notice of the transfer has been
10 given in accordance with the rules of the secretary [~~within~~
11 ~~four years~~] during the calendar year of the transaction
12 transferring the employing enterprise or the date of the actual
13 transfer of control and operation of the employing enterprise;

14 (c) [~~in the case of the transfer of an~~
15 ~~employing enterprise~~] the successor [~~employer must~~] shall
16 notify the division of the acquisition on or before the due
17 date of the [~~successor employer's~~] successor's first wage and
18 contribution report. If the successor employer fails to notify
19 the division of the acquisition within this time limit, the
20 division, when it receives actual notice, shall effect the
21 transfer of the experience history and applicable rate of
22 contribution retroactively to the date of the acquisition, and
23 the successor shall pay a penalty of fifty dollars (\$50.00);
24 and

25 (d) where the transaction involves only

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

11 (3) the applicable experience history may be
12 transferred to the successor in the case of a partial transfer
13 of an employing enterprise if the successor has acquired one or
14 more of the several employing enterprises of a predecessor but
15 not all of the employing enterprises of the predecessor and
16 each employing enterprise so acquired was operated by the
17 predecessor as a separate store, factory, shop or other
18 separate employing enterprise and the predecessor, throughout
19 the entire period of the contribution with liability applicable
20 to each enterprise transferred, has maintained and preserved
21 payroll records that, together with records of contribution
22 liability and benefit chargeability, can be separated by the
23 parties from the enterprises retained by the predecessor to the
24 satisfaction of the secretary or the secretary's delegate. A
25 partial experience history transfer will be made only if the

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1 successor:

2 (a) [~~the successor~~] notifies the
3 division of the acquisition, in writing, not later than the due
4 date of the successor's first quarterly wage and contribution
5 report after the effective date of the acquisition;

6 (b) [~~the successor~~] files an application
7 provided by the division that contains the endorsement of the
8 predecessor within thirty days from the delivery or mailing of
9 such application by the division to the successor's last known
10 address; and

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

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1 by dividing the taxable payrolls of the transferred enterprises
2 for such three and one-half year period preceding the date of
3 computation or such lesser period as the enterprises
4 transferred may have been in operation by the predecessor's
5 entire payroll;

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

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

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1 (a) the cost of acquiring the business;

2 (b) whether the person continued the

3 business enterprise of the acquired business;

4 (c) how long such business enterprise
5 was continued; and

6 (d) whether a substantial number of new
7 employees were hired for performance of duties unrelated to
8 those that the business activity conducted prior to
9 acquisition;

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

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

20 (a) describe how experience history is
21 to be transferred; and

22 (b) establish procedures to identify the
23 type of transfer or acquisition of an employing enterprise; and

24 (8) a person who knowingly violates or
25 attempts to violate a rule adopted pursuant to Paragraph (7) of

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

15 (a) if the person is an employer, the
16 person shall be assigned the highest contribution rate
17 established by the provisions of this section for the calendar
18 year in which the violation occurs and the three subsequent
19 calendar years; provided that, if the difference between the
20 increased penalty rate and the rate otherwise applicable would
21 be less than two percent of the employer's payroll, the
22 contribution rate shall be increased by two percent of the
23 employer's payroll for the calendar year in which the violation
24 occurs and the three subsequent calendar years; or

25 (b) if the person is not an employer,

1 the secretary may impose a civil penalty not to exceed three
2 thousand dollars (\$3,000).

3 I. For each calendar year, adjustments of
4 contribution rates below the standard or reduced rate and
5 measures designed to protect the fund are provided in
6 Paragraphs (1) through (4) of this subsection:

7 (1) the total assets in the fund and the total
8 of the last annual payrolls of all employers subject to
9 contributions as of the computation date for each year shall be
10 determined. These annual totals are here called "the fund" and
11 "total payrolls". For each year, the "reserve" of each
12 employer qualified under Subsection F of this section shall be
13 fixed by the excess of the employer's total contributions over
14 total benefit charges computed as a percentage of the
15 employer's average payroll reported for contributions. The
16 determination of each employer's annual rate, computed as of
17 the computation date for each calendar year, shall be made by
18 matching the employer's reserve as shown in the reserve column
19 with the corresponding rate in the rate column of the
20 applicable rate schedule of the table provided in Paragraph (4)
21 of this subsection;

22 (2) except as otherwise provided, each
23 employer's rate for each calendar year commencing January 1,
24 1979 or thereafter shall be the corresponding rate in:

25 (a) [~~the corresponding rate in~~] Schedule

1 0 of the table provided in Paragraph (4) of this subsection if
2 the fund equals at least three and seven-tenths percent of the
3 total payrolls;

4 (b) [~~the corresponding rate in~~] Schedule
5 1 of the table provided in Paragraph (4) of this subsection if
6 the fund [~~has dropped to~~] equals less than three and seven-
7 tenths percent and not less than three and four-tenths percent
8 of the total payrolls;

9 (c) [~~the corresponding rate in~~] Schedule
10 2 of the table provided in Paragraph (4) of this subsection if
11 the fund [~~has dropped to~~] equals less than three and four-
12 tenths percent but not less than two and seven-tenths percent
13 of the total payrolls;

14 (d) [~~the corresponding rate in~~] Schedule
15 3 of the table provided in Paragraph (4) of this subsection if
16 the fund [~~has dropped to~~] equals less than two and seven-tenths
17 percent and not less than two percent of the total payrolls;

18 (e) [~~the corresponding rate in~~] Schedule
19 4 of the table provided in Paragraph (4) of this subsection if
20 the fund [~~has dropped to~~] equals less than two percent and not
21 less than one and one-half percent of the total payrolls;

22 (f) [~~the corresponding rate in~~] Schedule
23 5 of the table provided in Paragraph (4) of this subsection if
24 the fund [~~has dropped to~~] equals less than one and one-half
25 percent and not less than one percent of the total payrolls; or

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(g) ~~[the corresponding rate in]~~ Schedule 6 of the table provided in Paragraph (4) of this subsection if the fund ~~[has dropped less than]~~ equals one percent of the total payrolls;

(3) as used in this section:

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

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

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

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year; and

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

Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.03%	0.05%	0.1%	0.6%
9.0%- 9.9%	0.06%	0.1%	0.2%	0.9%

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

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1	0.9%- 0.0%	3.9%	4.2%	4.5%
2	(- 0.1%) - (- 0.5%)	4.2%	4.5%	4.8%
3	(- 0.5%) - (- 1.0%)	4.5%	4.8%	5.1%
4	(- 1.0%) - (- 2.0%)	5.0%	5.1%	5.3%
5	Under (- 2.0%)	5.4%	5.4%	5.4%.

6 J. The division shall promptly notify each
7 employer of the employer's rate of contributions as determined
8 for any calendar year pursuant to this section. Such
9 notification shall include the amount determined as the
10 employer's average payroll, the total of all of the employer's
11 contributions paid on the employer's behalf and credited to
12 the employer's account for all past years and total benefits
13 charged to the employer's account for all such years. Such
14 determination shall become conclusive and binding upon the
15 employer unless, within thirty days after the mailing of
16 notice thereof to the employer's last known address or in the
17 absence of mailing, within thirty days after the delivery of
18 such notice, the employer files an application for review and
19 redetermination, setting forth the employer's reason therefor.
20 The employer shall be granted an opportunity for a fair
21 hearing in accordance with rules prescribed by the secretary,
22 but an employer shall not have standing, in any proceeding
23 involving the employer's rate of contributions or contribution
24 liability, to contest the chargeability to the employer's
25 account of any benefits paid in accordance with a

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[bracketed material] = delete

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

16 K. The division shall provide each contributing
17 employer, within ninety days of the end of each calendar
18 quarter, a written determination of benefits chargeable to the
19 employer's account. Such determination shall become
20 conclusive and binding upon the employer for all purposes
21 unless, within thirty days after the mailing of the
22 determination to the employer's last known address or in the
23 absence of mailing, within thirty days after the delivery of
24 such determination, the employer files an application for
25 review and redetermination, setting forth the employer's

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

22 L. The contributions, together with interest and
23 penalties thereon imposed by the Unemployment Compensation
24 Law, shall not be assessed nor shall action to collect the
25 same be commenced more than four years after a report showing

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

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

25 N. Any interest required to be paid on advances to

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1 this state's unemployment compensation fund under Title 12 of
2 the Social Security Act shall be paid in a timely manner as
3 required under Section 1202 of Title 12 of the Social Security
4 Act and shall not be paid, directly or indirectly, by the
5 state from amounts in the state's unemployment compensation
6 fund. "

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[bracketed material] = delete