AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING THAT AN INDIVIDUAL SHALL NOT BE DISQUALIFIED FROM BENEFITS FOR LEAVING EMPLOYMENT BECAUSE OF A SPOUSE'S RELOCATION DUE TO MILITARY SERVICE; AMENDING THE UNEMPLOYMENT COMPENSATION LAW TO PROVIDE ADDITIONAL CRITERIA FOR THE TRANSFER OF EXPERIENCE HISTORY WITH THE TRANSFER OF AN EMPLOYING ENTERPRISE; PROVIDING CIVIL AND CRIMINAL PENALTIES.

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

Section 1. Section 51-1-7 NMSA 1978 (being Laws 2003, Chapter 47, Section 10, as amended by Laws 2005, Chapter 3, Section 3) is amended to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for and shall not be eligible to receive benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment. No individual shall receive benefits until the division has contacted the former employer and determined whether the individual left the employment voluntarily; provided, however, that a person shall not be denied benefits under this paragraph:

(a) solely on the basis of pregnancy or the termination of pregnancy;

(b) because of domestic abuse evidenced by medical documentation, legal documentation or a sworn statement from the claimant; or

(c) if the person voluntarily left work to relocate because of a spouse, who is in the military service of the United States or the New Mexico national guard, receiving permanent change of station orders, activation orders or unit deployment orders;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, approved training or full-time school attendance, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the

Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(1) the individual is not participating in or directly interested in the labor dispute; and

(2) the individual does not belong to a

grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an

amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section:

(1) "domestic abuse" means that term as defined in Section 40-13-2 NMSA 1978; and

(2) "employment" means employment by the individual's last employer as defined by rules of the secretary."

Section 2. Section 51-1-11 NMSA 1978 (being Laws 2003, Chapter 47, Section 11, as amended by Laws 2005, Chapter 3, Section 4) is amended to read:

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

A. The division shall maintain a separate account

for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

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

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

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

(3) is employed part time by a base-period

employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

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

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

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

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

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

E. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer

shall be five and four-tenths percent.

F. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

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

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

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

(4) an employer that, at the time of

establishing an account, is in business in another state or states and that is not currently doing business in New Mexico may elect, pursuant to Paragraph (5) of this subsection, to receive a beginning contribution rate of two percent or a contribution rate based on the current contribution rate schedule in Paragraph (4) of Subsection I of this section, whichever is lower, if:

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

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

(5) the election authorized in Paragraph (4) of this subsection shall be made in writing within thirty days after receiving notice of New Mexico liability and, if not made timely, a two percent rate will be assigned; if the election is made timely, the employer's account will receive the lesser of the computed rate determined by the condition of the account for the computation date immediately preceding the

New Mexico liable date, or the reduced rate of two percent; rates for subsequent years will be determined by the condition of the account for the computation date.

G. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the employer's record and the condition of the fund as of the computation date for such calendar year.

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

H. In the case of a transfer of an employing enterprise, notwithstanding any other provision of law, the experience history of the transferred enterprise as provided in Subsection G of this section shall be transferred from the predecessor employer to the successor under the following

conditions and in accordance with the applicable rules of the secretary:

(l) as used in this subsection:

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

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

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

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

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

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

(g) "violates or attempts to violate"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the cost of acquiring the business;

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) of this subsection;

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

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

(b) Schedule 1 of the table provided in Paragraph (4) of this subsection if the fund equals less than three and seven-tenths percent and not less than three and four-tenths percent of the total payrolls;

(c) Schedule 2 of the table provided in Paragraph (4) of this subsection if the fund equals less than three and four-tenths percent but not less than two and seven-tenths percent of the total payrolls;

(d) Schedule 3 of the table provided in Paragraph (4) of this subsection if the fund equals less than two and seven-tenths percent and not less than two percent of the total payrolls;

(e) Schedule 4 of the table provided in Paragraph (4) of this subsection if the fund equals less than two percent and not less than one and one-half percent of the total payrolls;

(f) Schedule 5 of the table provided in Paragraph (4) of this subsection if the fund equals less than

one and one-half percent and not less than one percent of the total payrolls; or

(g) Schedule 6 of the table provided in Paragraph (4) of this subsection if the fund 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	Contribution	Contribution	Contribution	Contribution

Reserve	Schedule 0	Schedule 1	Schedule 2	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%
8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

Employer Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%
5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%

3.0%-3.9%	3.0%	3.3%	3.6%
2.0%-2.9%	3.3%	3.6%	3.9%
1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%.

J. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding

involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the

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

L. The contributions, together with interest and

penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

M. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have

the same rights to review and redetermination as provided in Subsection J of this section.

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