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HOUSE BILL 144

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; ESTABLISHING A TEMPORARY SCHEDULE FOR CONTRIBUTIONS; ABOLISHING THE STATE UNEMPLOYMENT TRUST FUND; TRANSFERRING BALANCES.

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

Section 1. Section 51-1-11 NMSA 1978 (being Laws 2003, Chapter 47, Section 11, as amended) 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

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1 the fund.

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

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

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

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

24 (4) received benefits based upon wages earned  
25 from a base-period employer who is not on a reimbursable basis

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1 while attending approved training or school on a full-time  
2 basis under the provisions of Subsection E of Section 51-1-5  
3 NMSA 1978.

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

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

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

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

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

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

25 F. For each calendar year, if, as of the

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1 computation date for that year, an employer's account has been  
2 chargeable with benefits throughout the preceding thirty-six  
3 months, the secretary shall classify the employer in accordance  
4 with its actual experience of benefits charged against its  
5 accounts. For such an employer, the contribution rate shall be  
6 determined pursuant to Subsection I of this section on the  
7 basis of the employer's record and the condition of the fund as  
8 of the computation date for the calendar year. If, as of the  
9 computation date for a calendar year, an employer's account has  
10 not been chargeable with benefits throughout the preceding  
11 thirty-six months, the contribution rate for that employer for  
12 the calendar year shall be two percent, except that:

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

20 (2) an employer that, at the time of  
21 establishing an account, is in business in another state or  
22 states and that is not currently doing business in New Mexico  
23 may elect, pursuant to Paragraph (3) of this subsection, to  
24 receive a beginning contribution rate of two percent or a  
25 contribution rate based on the current contribution rate

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1 schedule in Paragraph (4) of Subsection I of this section,  
2 whichever is lower, if:

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

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

13 (3) the election authorized in Paragraph (2)  
14 of this subsection shall be made in writing within thirty days  
15 after receiving notice of New Mexico liability and, if not made  
16 timely, a two percent rate will be assigned; if the election is  
17 made timely, the employer's account will receive the lesser of  
18 the computed rate determined by the condition of the account  
19 for the computation date immediately preceding the New Mexico  
20 liable date, or two percent; rates for subsequent years will be  
21 determined by the condition of the account for the computation  
22 date.

23 G. An employer may make voluntary payments in  
24 addition to the contributions required under the Unemployment  
25 Compensation Law, which shall be credited to the employer's

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1 account in accordance with department rule. The voluntary  
2 payments shall be included in the employer's account as of the  
3 employer's most recent computation date if they are made on or  
4 before the following March 1. Voluntary payments when accepted  
5 from an employer shall not be refunded in whole or in part.

6 H. In the case of a transfer of an employing  
7 enterprise, notwithstanding any other provision of law, the  
8 experience history of the transferred enterprise shall be  
9 transferred from the predecessor employer to the successor  
10 under the following conditions and in accordance with the  
11 applicable rules of the secretary:

12 (1) as used in this subsection:

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

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

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

24 (d) "experience history" means the  
25 experience rating record and reserve account, including the

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1 actual contributions, benefit charges and payroll experience of  
2 the employing enterprise;

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

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

9 (g) "violates or attempts to violate"  
10 includes an intent to evade, a misrepresentation or a willful  
11 nondisclosure;

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

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

23 (b) notice of the transfer has been  
24 given in accordance with the rules of the secretary during the  
25 calendar year of the transaction transferring the employing

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1 enterprise or the date of the actual transfer of control and  
2 operation of the employing enterprise;

3 (c) the successor shall notify the  
4 division of the acquisition on or before the due date of the  
5 successor's first wage and contribution report. If the  
6 successor employer fails to notify the division of the  
7 acquisition within this time limit, the division, when it  
8 receives actual notice, shall effect the transfer of the  
9 experience history and applicable rate of contribution  
10 retroactively to the date of the acquisition, and the successor  
11 shall pay a penalty of fifty dollars (\$50.00); and

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

23 (3) the applicable experience history may be  
24 transferred to the successor in the case of a partial transfer  
25 of an employing enterprise if the successor has acquired one or

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1 more of the several employing enterprises of a predecessor but  
2 not all of the employing enterprises of the predecessor and  
3 each employing enterprise so acquired was operated by the  
4 predecessor as a separate store, factory, shop or other  
5 separate employing enterprise and the predecessor, throughout  
6 the entire period of the contribution with liability applicable  
7 to each enterprise transferred, has maintained and preserved  
8 payroll records that, together with records of contribution  
9 liability and benefit chargeability, can be separated by the  
10 parties from the enterprises retained by the predecessor to the  
11 satisfaction of the secretary or the secretary's delegate. A  
12 partial experience history transfer will be made only if the  
13 successor:

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

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

23 (c) files with the application a Form  
24 ES-903A or its equivalent with a schedule of the name and  
25 social security number of and the wages paid to and the

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1 contributions paid for each employee for the three and one-half  
2 year period preceding the computation date as defined in  
3 Subparagraph (d) of Paragraph (3) of Subsection I of this  
4 section through the date of transfer or such lesser period as  
5 the enterprises transferred may have been in operation. The  
6 application and Form ES-903A shall be supported by the  
7 predecessor's permanent employment records, which shall be  
8 available for audit by the division. The application and Form  
9 ES-903A shall be reviewed by the division and, upon approval,  
10 the percentage of the predecessor's experience history  
11 attributable to the enterprises transferred shall be  
12 transferred to the successor. The percentage shall be obtained  
13 by dividing the taxable payrolls of the transferred enterprises  
14 for such three and one-half year period preceding the date of  
15 computation or such lesser period as the enterprises  
16 transferred may have been in operation by the predecessor's  
17 entire payroll;

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

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1 (5) whenever a person, who is not currently an  
2 employer, acquires the trade or business of an employing  
3 enterprise, the experience history of the acquired business  
4 shall not be transferred to the successor if the secretary or  
5 the secretary's designee finds that the successor acquired the  
6 business solely or primarily for the purpose of obtaining a  
7 lower rate of contributions. Instead, the successor shall be  
8 assigned the applicable new employer rate pursuant to this  
9 section. In determining whether the business was acquired  
10 solely or primarily for the purpose of obtaining a lower rate  
11 of contribution, the secretary or the secretary's designee  
12 shall consider:

13 (a) the cost of acquiring the business;

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

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

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

22 (6) if, following a transfer of experience  
23 history pursuant to this subsection, the department determines  
24 that a substantial purpose of the transfer of the employing  
25 enterprise was to obtain a reduced liability for contributions,

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1 then the experience rating accounts of the employers involved  
2 shall be combined into a single account and a single rate  
3 assigned to the combined account;

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

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

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

11 (8) a person who knowingly violates or  
12 attempts to violate a rule adopted pursuant to Paragraph (7) of  
13 this subsection, who transfers or acquires, or attempts to  
14 transfer or acquire, an employing enterprise for the sole or  
15 primary purpose of obtaining a reduced liability for  
16 contributions or who knowingly advises another person to  
17 violate a rule adopted pursuant to Paragraph (7) of this  
18 subsection or to transfer or acquire an employing enterprise  
19 for the sole or primary purpose of obtaining a reduced  
20 liability for contributions is guilty of a misdemeanor and  
21 shall be punished by a fine of not less than one thousand five  
22 hundred dollars (\$1,500) or more than three thousand dollars  
23 (\$3,000) or, if an individual, by imprisonment for a definite  
24 term not to exceed ninety days or both. In addition, such a  
25 person shall be subject to the following civil penalty imposed

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1 by the secretary:

2 (a) if the person is an employer, the  
3 person shall be assigned the highest contribution rate  
4 established by the provisions of this section for the calendar  
5 year in which the violation occurs and the three subsequent  
6 calendar years; provided that, if the difference between the  
7 increased penalty rate and the rate otherwise applicable would  
8 be less than two percent of the employer's payroll, the  
9 contribution rate shall be increased by two percent of the  
10 employer's payroll for the calendar year in which the violation  
11 occurs and the three subsequent calendar years; or

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

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

20 (1) the total assets in the fund and the total  
21 of the last annual payrolls of all employers subject to  
22 contributions as of the computation date for each year shall be  
23 determined. These annual totals are here called "the fund" and  
24 "total payrolls". For each year, the "reserve" of each  
25 employer shall be fixed by the excess of the employer's total

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1 contributions over total benefit charges computed as a  
2 percentage of the employer's average payroll reported for  
3 contributions. The determination of each employer's annual  
4 rate, computed as of the computation date for each calendar  
5 year, shall be made by matching the employer's reserve as shown  
6 in the reserve column with the corresponding rate in the rate  
7 column of the applicable rate schedule of the table provided in  
8 Paragraph (4) or (5) of this subsection;

9 (2) for each calendar year after ~~[2010]~~ 2011,  
10 except as otherwise provided, each employer's rate shall be the  
11 corresponding rate in:

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

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

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

23 (d) Contribution Schedule 3 of the table  
24 provided in Paragraph (4) of this subsection if the fund equals  
25 less than one and three-tenths percent but not less than one

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1 percent of the total payrolls;

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

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

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

13 (3) as used in this section:

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

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

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

25 (d) "computation date" for each calendar

1 year means the close of business on June 30 of the preceding  
 2 calendar year;

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

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

22 Employer Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
24 10.0% and over	0.9%	1.2%	2.7%
25 9.0%-9.9%	1.2%	1.5%	2.7%

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1	8.0%-8.9%	1.5%	1.8%	2.7%
2	7.0%-7.9%	1.8%	2.1%	2.7%
3	6.0%-6.9%	2.1%	2.4%	2.7%
4	5.0%-5.9%	2.4%	2.7%	3.0%
5	4.0%-4.9%	2.7%	3.0%	3.3%
6	3.0%-3.9%	3.0%	3.3%	3.6%
7	2.0%-2.9%	3.3%	3.6%	3.9%
8	1.0%-1.9%	3.6%	3.9%	4.2%
9	0.9%-0.0%	3.9%	4.2%	4.5%
10	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
11	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
12	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
13	Under (-2.0%)	5.4%	5.4%	5.4%; and

14                                   ~~[(5) from July 1, 2007 through December 31,~~  
15 ~~2010, each employer making contributions pursuant to this~~  
16 ~~subsection shall make a contribution at the rate specified in~~  
17 ~~Contribution Schedule A and a contribution at the rate~~  
18 ~~specified in Contribution Schedule B for the employer's~~  
19 ~~reserve for each of the following periods. Contributions made~~  
20 ~~pursuant to Contribution Schedule A shall be deposited in the~~  
21 ~~unemployment compensation fund and contributions made pursuant~~  
22 ~~to Contribution Schedule B shall be deposited in the state~~  
23 ~~unemployment trust fund:~~

24                                   ~~(a) for the period July 1, 2007 through~~  
25 ~~December 31, 2008:~~

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1	<del>Employer</del>	<del>Contribution</del>	<del>Contribution</del>
2	<del>Reserve</del>	<del>Schedule A</del>	<del>Schedule B</del>
3	<del>10.0% and over</del>	<del>0.015%</del>	<del>0.015%</del>
4	<del>9.0%-9.9%</del>	<del>0.03%</del>	<del>0.03%</del>
5	<del>8.0%-8.9%</del>	<del>0.045%</del>	<del>0.045%</del>
6	<del>7.0%-7.9%</del>	<del>0.05%</del>	<del>0.05%</del>
7	<del>6.0%-6.9%</del>	<del>0.15%</del>	<del>0.15%</del>
8	<del>5.0%-5.9%</del>	<del>0.25%</del>	<del>0.25%</del>
9	<del>4.0%-4.9%</del>	<del>0.4%</del>	<del>0.4%</del>
10	<del>3.0%-3.9%</del>	<del>0.6%</del>	<del>0.6%</del>
11	<del>2.0%-2.9%</del>	<del>0.75%</del>	<del>0.75%</del>
12	<del>1.0%-1.9%</del>	<del>0.9%</del>	<del>0.9%</del>
13	<del>0.9%-0.0%</del>	<del>1.2%</del>	<del>1.2%</del>
14	<del>(-0.1%) - (-0.5%)</del>	<del>1.65%</del>	<del>1.65%</del>
15	<del>(-0.5%) - (-1.0%)</del>	<del>2.1%</del>	<del>2.1%</del>
16	<del>(-1.0%) - (-2.0%)</del>	<del>2.5%</del>	<del>2.5%</del>
17	<del>Under (-2.0%)</del>	<del>5.4%</del>	<del>0.0%</del>
18		<del>(b) for the period January 1, 2009</del>	
19		<del>through December 31, 2009:</del>	
20	<del>Employer</del>	<del>Contribution</del>	<del>Contribution</del>
21	<del>Reserve</del>	<del>Schedule A</del>	<del>Schedule B</del>
22	<del>10.0% and over</del>	<del>0.018%</del>	<del>0.012%</del>
23	<del>9.0%-9.9%</del>	<del>0.036%</del>	<del>0.024%</del>
24	<del>8.0%-8.9%</del>	<del>0.054%</del>	<del>0.036%</del>
25	<del>7.0%-7.9%</del>	<del>0.06%</del>	<del>0.04%</del>

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1	<del>6.0%-6.9%</del> —————	0.18%	—————	0.12%
2	<del>5.0%-5.9%</del> —————	0.3%	—————	0.2%
3	<del>4.0%-4.9%</del> —————	0.48%	—————	0.32%
4	<del>3.0%-3.9%</del> —————	0.72%	—————	0.48%
5	<del>2.0%-2.9%</del> —————	0.9%	—————	0.6%
6	<del>1.0%-1.9%</del> —————	1.08%	—————	0.72%
7	<del>0.9%-0.0%</del> —————	1.44%	—————	0.96%
8	<del>(-0.1%)-(-0.5%)</del> —————	1.98%	—————	1.32%
9	<del>(-0.5%)-(-1.0%)</del> —————	2.52%	—————	1.68%
10	<del>(-1.0%)-(-2.0%)</del> —————	3.0%	—————	2.0%
11	<del>Under (-2.0%)</del> —————	5.4%	—————	0.0%

(c) for the period January 1, 2010

through December 31, 2010:

14	<del>Employer</del> —————	<del>Contribution</del> —————	<del>Contribution</del>
15	<del>Reserve</del> —————	<del>Schedule A</del> —————	<del>Schedule B</del>
16	<del>10.0% and over</del> —————	0.0195%	0.0105%
17	<del>9.0%-9.9%</del> —————	0.039%	0.021%
18	<del>8.0%-8.9%</del> —————	0.0585%	0.0315%
19	<del>7.0%-7.9%</del> —————	0.065%	0.035%
20	<del>6.0%-6.9%</del> —————	0.195%	0.105%
21	<del>5.0%-5.9%</del> —————	0.325%	0.175%
22	<del>4.0%-4.9%</del> —————	0.52%	0.28%
23	<del>3.0%-3.9%</del> —————	0.78%	0.42%
24	<del>2.0%-2.9%</del> —————	0.975%	0.525%
25	<del>1.0%-1.9%</del> —————	1.17%	0.63%

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1	<del>0.9%-0.0%</del> —————	1.56%	—————	0.84%
2	<del>(-0.1%)-(-0.5%)</del> —————	2.145%	—————	1.155%
3	<del>(-0.5%)-(-1.0%)</del> —————	2.73%	—————	1.47%
4	<del>(-1.0%)-(-2.0%)</del> —————	3.25%	—————	1.75%
5	<del>Under (-2.0%)</del> —————	5.4%	—————	0.0%]

6                                   (5) from July 1, 2010 through December 31,  
7 2011, each employer making contributions pursuant to this  
8 subsection shall make a contribution at the rate specified in  
9 Contribution Schedule 1.

10                                   J. The division shall promptly notify each  
11 employer of the employer's rate of contributions as determined  
12 for any calendar year pursuant to this section. Such  
13 notification shall include the amount determined as the  
14 employer's average payroll, the total of all of the employer's  
15 contributions paid on the employer's behalf and credited to  
16 the employer's account for all past years and total benefits  
17 charged to the employer's account for all such years. Such  
18 determination shall become conclusive and binding upon the  
19 employer unless, within thirty days after the mailing of  
20 notice thereof to the employer's last known address or in the  
21 absence of mailing, within thirty days after the delivery of  
22 such notice, the employer files an application for review and  
23 redetermination, setting forth the employer's reason therefor.  
24 The employer shall be granted an opportunity for a fair  
25 hearing in accordance with rules prescribed by the secretary,

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

20 K. The division shall provide each contributing  
21 employer, within ninety days of the end of each calendar  
22 quarter, a written determination of benefits chargeable to the  
23 employer's account. Such determination shall become  
24 conclusive and binding upon the employer for all purposes  
25 unless, within thirty days after the mailing of the

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

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

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

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1 of a corrected rate of contribution, the employer shall have  
2 the same rights to review and redetermination as provided in  
3 Subsection J of this section.

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

11 Section 2. Section 51-1-19 NMSA 1978 (being Laws 1936  
12 (S.S.), Chapter 1, Section 9, as amended) is amended to read:

13 "51-1-19. UNEMPLOYMENT COMPENSATION FUND.--

14 A. There is hereby established as a special fund,  
15 separate and apart from all public money, or funds of this  
16 state, an "unemployment compensation fund", which shall be  
17 administered by the department exclusively for the purposes of  
18 this section. The fund shall consist of:

19 (1) [~~except for contributions deposited into~~  
20 ~~the state unemployment trust fund pursuant to Contribution~~  
21 ~~Schedule B in Paragraph (5) of Subsection I of Section 51-1-11~~  
22 ~~NMSA 1978 and Section 51-1-19.1 NMSA 1978]~~ all contributions  
23 collected and payments in lieu of contributions collected or  
24 due pursuant to the Unemployment Compensation Law;

25 (2) interest earned upon any money in the

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1 fund;

2 (3) any property or securities acquired  
3 through the use of money belonging to the fund;

4 (4) all earnings of such property or  
5 securities;

6 (5) all money received from the federal  
7 unemployment account in the unemployment trust fund in  
8 accordance with Title 12 of the Social Security Act, as  
9 amended;

10 (6) all money credited to this state's  
11 account in the unemployment trust fund pursuant to Section 903  
12 of the Social Security Act, as amended;

13 (7) all money received or due from the  
14 federal government as reimbursements pursuant to Section 204  
15 of the Federal-State Extended Unemployment Compensation Act of  
16 1970; and

17 (8) all money received for the fund from any  
18 other source. All money in the fund shall be mingled and  
19 undivided.

20 B. The state treasurer shall be the treasurer and  
21 custodian of the fund and shall administer ~~[such]~~ the fund in  
22 accordance with the directions of the department and shall  
23 issue checks upon it in accordance with such regulations as  
24 the secretary may prescribe. The state treasurer shall  
25 maintain, within the fund, three separate accounts:

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- 1 (1) a clearing account;
- 2 (2) an unemployment trust fund account; and
- 3 (3) a benefit account.

4 C. All money payable to the fund upon receipt  
5 thereof by the department shall be forwarded to the treasurer,  
6 who shall immediately deposit it in the clearing account.  
7 Refunds payable pursuant to Sections 51-1-36 and 51-1-42 NMSA  
8 1978 shall be paid from the clearing account or the benefit  
9 account upon checks issued by the treasurer under the  
10 direction of the department. After clearance thereof, all  
11 money in the clearing account, except as herein otherwise  
12 provided, shall be immediately deposited with the secretary of  
13 the treasury of the United States to the credit of the account  
14 of this state in the unemployment trust fund, established and  
15 maintained pursuant to Section 904 of the act of congress  
16 known as the Social Security Act, as amended (42 U.S.C.  
17 Section 1104), any provisions of law in this state relating to  
18 the deposits, administration, release or disbursements of  
19 money in the possession or custody of this state to the  
20 contrary notwithstanding. The benefit account shall consist  
21 of all money requisitioned from this state's account in the  
22 unemployment trust fund. Except as herein otherwise provided,  
23 money in the clearing and benefit accounts may be deposited by  
24 the treasurer, under the direction of the secretary, in any  
25 bank or public depository in which general funds of the state

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1 may be deposited, but no public deposit insurance charge or  
2 premium shall be paid out of the fund. Money in the clearing  
3 and benefit accounts shall not be commingled with other state  
4 funds but shall be maintained in separate accounts on the  
5 books of the depository.

6 D. All of the money not deposited in the treasury  
7 of the United States shall be subject to the general laws  
8 applicable to the deposit of public money in the state; and  
9 collateral pledged for this purpose shall be kept separate and  
10 distinct from any collateral pledged to secure other funds of  
11 this state.

12 E. The state treasurer shall be liable on the  
13 state treasurer's official bond for the faithful performance  
14 of duties in connection with the unemployment compensation  
15 fund provided for under this section. The liability on the  
16 official bond of the state treasurer shall be effective  
17 immediately upon the enactment of this provision, and such  
18 liability shall exist in addition to the liability of any  
19 separate bond existent on the effective date of this provision  
20 or that may be given in the future. All sums recovered for  
21 losses sustained by the fund shall be deposited therein.

22 F. All money in the clearing account established  
23 under this section is hereby appropriated for the purpose of  
24 making refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA  
25 1978, and all money in the clearing account not needed for the

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1 purpose of making the refunds shall be immediately paid to the  
2 secretary of the treasury of the United States to the credit  
3 of the account of this state in the unemployment trust fund,  
4 and the money in the unemployment trust fund is hereby  
5 appropriated for the purposes of this section.

6 G. Money shall be requisitioned from this state's  
7 account in the unemployment trust fund solely for the payment  
8 of benefits and for the payment of refunds pursuant to  
9 Sections 51-1-36 and 51-1-42 NMSA 1978 in accordance with  
10 regulations prescribed by the secretary, except that money  
11 credited to this state's account pursuant to Section 903 of  
12 the Social Security Act, as amended, shall be used exclusively  
13 as provided in Subsection H of this section. The secretary  
14 shall, from time to time, requisition from the unemployment  
15 trust fund such amounts not exceeding the amounts standing to  
16 this state's account therein, as the secretary deems necessary  
17 for the payment of such benefits and refunds for a reasonable  
18 future period. Upon receipt thereof, the treasurer shall  
19 deposit such money in the benefit account and shall issue  
20 checks for the payment of benefits solely from such benefit  
21 account. Expenditures of such money in the benefit account  
22 and refunds from the benefit account or the clearing account  
23 shall not be subject to any provisions of law requiring  
24 specific appropriations or other formal release by state  
25 officers of money in their custody. All money shall be

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1 withdrawn from the fund only upon a warrant issued by the  
2 department or its duly authorized agent upon the treasurer,  
3 and the treasurer upon receipt of such warrants shall issue a  
4 check against the fund in accordance with the warrant of the  
5 secretary. Any balance of money requisitioned from the  
6 unemployment trust fund that remains unclaimed or unpaid in  
7 the benefit account after the expiration of the period for  
8 which such sums were requisitioned shall either be deducted  
9 from estimates for, and may be utilized for, the payment of  
10 benefits and refunds during succeeding periods, or in the  
11 discretion of the secretary, shall be redeposited with the  
12 secretary of the treasury of the United States, to the credit  
13 of this state's account in the unemployment trust fund, as  
14 provided in Subsection C of this section. All money in the  
15 benefit account provided for hereinabove is hereby  
16 appropriated for the payment of benefits and refunds as  
17 provided herein.

18 H. Money credited to the account of this state in  
19 the unemployment trust fund by the secretary of the treasury  
20 of the United States pursuant to Section 903 of the Social  
21 Security Act may be requisitioned from this state's account or  
22 used only for:

- 23 (1) the payment of benefits pursuant to  
24 Subsection G of this section; and  
25 (2) the payment of expenses incurred for the

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1 administration of the Unemployment Compensation Law and the  
2 federal Wagner-Peyser Act; provided that any money  
3 requisitioned and used for the payment of expenses incurred  
4 for the administration of the Unemployment Compensation Law  
5 and the federal Wagner-Peyser Act must be authorized by the  
6 enactment of a specific appropriation by the legislature that:

7 (a) specifies the purpose for which  
8 such money is appropriated and the amounts appropriated  
9 therefor;

10 (b) limits the period within which such  
11 money may be obligated to a period ending not more than two  
12 years after the date of the enactment of the appropriation  
13 law, except for amounts distributed to the state of New Mexico  
14 on March 13, 2002 pursuant to Section 209 of the federal  
15 Temporary Extended Unemployment Compensation Act of 2002;

16 (c) limits the amount that may be  
17 obligated to an amount that does not exceed the amount by  
18 which the aggregate of the amounts credited to the account of  
19 this state pursuant to Section 903 of the Social Security Act  
20 exceeds the aggregate of the amounts used by the state  
21 pursuant to this subsection and charged against the amounts  
22 transferred to the account of this state; and

23 (d) notwithstanding the provisions of  
24 Paragraph (1) of this subsection, money credited with respect  
25 to federal fiscal years 1999, 2000 and 2001 shall be used only

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1 for the administration of the Unemployment Compensation Law.

2 I. Amounts credited to this state's account in the  
3 unemployment trust fund under Section 903 of the Social  
4 Security Act that are obligated for administration shall be  
5 charged against transferred amounts at the exact time the  
6 obligation is entered into. The appropriation, obligation and  
7 expenditure or other disposition of money appropriated under  
8 Subsection H of this section shall be accounted for in  
9 accordance with standards established by the United States  
10 secretary of labor.

11 J. Money appropriated under Subsection H of this  
12 section for payment of expenses of administration shall be  
13 requisitioned as needed for payment of the obligations  
14 incurred under such appropriations and, upon requisition,  
15 shall be deposited in the unemployment compensation  
16 administration fund but, until expended, shall remain a part  
17 of the unemployment compensation fund for use only in  
18 accordance with the conditions specified in Subsection H of  
19 this section, notwithstanding any provision of Section 51-1-34  
20 NMSA 1978. Any money so deposited that will not be expended  
21 shall be returned promptly to the account of the state in the  
22 unemployment trust fund.

23 K. The provisions of Subsections A through J of  
24 this section to the extent that they relate to the  
25 unemployment trust fund, shall be operative only so long as

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1 such unemployment trust fund continues to exist and so long as  
2 the secretary of the treasury of the United States continues  
3 to maintain for this state a separate book account of all  
4 funds deposited therein by the state for benefit purposes,  
5 together with this state's proportionate share of the earnings  
6 of such unemployment trust fund from which no other state is  
7 permitted to make withdrawals. If and when such unemployment  
8 trust fund ceases to exist, or such separate book account is  
9 no longer maintained, all money, properties or securities  
10 therein belonging to the unemployment compensation fund of  
11 this state shall be transferred to the treasurer of the  
12 unemployment compensation fund, who shall hold, invest,  
13 transfer, sell, deposit and release such money, properties or  
14 securities in a manner approved by the secretary, in  
15 accordance with the provisions of this section; provided that  
16 such money shall be invested in the following readily  
17 marketable classes of securities; bonds or other interest-  
18 bearing obligations of the United States and of the state; and  
19 provided further that such investment shall at all times be so  
20 made that all the assets of the fund shall always be readily  
21 convertible into cash when needed for the payment of benefits.  
22 The treasurer shall dispose of securities or other properties  
23 belonging to the unemployment compensation fund only under the  
24 direction of the secretary."

25 Section 3. Section 51-1-42 NMSA 1978 (being Laws 2003,

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1 Chapter 47, Section 12, as amended) is amended to read:

2 "51-1-42. DEFINITIONS.--As used in the Unemployment  
3 Compensation Law:

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

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

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

23 B. "benefits" means the cash unemployment  
24 compensation payments payable to an eligible individual  
25 pursuant to Section 51-1-4 NMSA 1978 with respect to the

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1 individual's weeks of unemployment;

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

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

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

4 E. "employer" includes:

5 (1) an employing unit that:

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

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

21 (c) for purposes of defining an  
22 "employer" under Subparagraph (a) of this paragraph, the wages  
23 or remuneration paid to individuals performing services in  
24 employment in agricultural labor or domestic services as  
25 provided in Paragraphs (6) and (7) of Subsection F of this

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

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

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

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

23 (a) for which, within either the  
24 current or preceding calendar year, service is or was  
25 performed with respect to which such employing unit is liable

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1 for any federal tax against which credit may be taken for  
2 contributions required to be paid into a state unemployment  
3 fund; or

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

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

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

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

23 (8) an Indian tribe as defined in 26 USCA  
24 Section 3306(u) for which service in employment is performed;

25 F. "employment":

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

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

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

9 (b) the service is not localized in any  
10 state but some of the service is performed in this state and:

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

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

23 (4) means services covered by an election  
24 pursuant to Section 51-1-18 NMSA 1978 and services covered by  
25 an election duly approved by the secretary in accordance with

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1 an arrangement pursuant to Paragraph (1) of Subsection A of  
2 Section 51-1-50 NMSA 1978 shall be deemed to be employment  
3 during the effective period of the election;

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

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

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

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

20 (6) means service performed after December  
21 31, 1977 by an individual in agricultural labor as defined in  
22 Subsection Q of this section if:

23 (a) the service is performed for an  
24 employing unit that: 1) paid remuneration in cash of twenty  
25 thousand dollars (\$20,000) or more to individuals in that

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1 employment during any calendar quarter in either the current  
2 or the preceding calendar year; or 2) employed in agricultural  
3 labor ten or more individuals for some portion of a day in  
4 each of twenty different calendar weeks in either the current  
5 or preceding calendar year, whether or not the weeks were  
6 consecutive, and regardless of whether the individuals were  
7 employed at the same time;

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

13 (c) for purposes of this paragraph, an  
14 individual who is a member of a crew furnished by a crew  
15 leader to perform service in agricultural labor for a farm  
16 operator or other person shall be treated as an employee of  
17 the crew leader: 1) if the crew leader meets the requirements  
18 of a crew leader as defined in Subsection L of this section;  
19 or 2) substantially all the members of the crew operate or  
20 maintain mechanized agricultural equipment that is provided by  
21 the crew leader; and 3) the individuals performing the  
22 services are not, by written agreement or in fact, within the  
23 meaning of Paragraph (5) of this subsection, performing  
24 services in employment for the farm operator or other person;

25 (7) means service performed after December



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

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

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

14 (b) the organization meets the  
15 requirements of "employer" as provided in Subparagraph (a) of  
16 Paragraph (1) of Subsection E of this section;

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

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

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

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

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

24 (10) means, notwithstanding any other  
25 provisions of this subsection, service with respect to which a

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1 tax is required to be paid under any federal law imposing a  
2 tax against which credit may be taken for contributions  
3 required to be paid into a state unemployment fund or which as  
4 a condition for full tax credit against the tax imposed by the  
5 Federal Unemployment Tax Act is required to be covered under  
6 the Unemployment Compensation Law;

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

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

12 (b) the service is not otherwise  
13 excluded from employment pursuant to the Unemployment  
14 Compensation Law;

15 (12) does not include:

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

22 (b) service performed by a duly  
23 ordained, commissioned or licensed minister of a church in the  
24 exercise of such ministry or by a member of a religious order  
25 in the exercise of duties required by such order;

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

5 (d) service performed in the employ of  
6 the United States government or an instrumentality of the  
7 United States immune under the constitution of the United  
8 States from the contributions imposed by the Unemployment  
9 Compensation Law except that to the extent that the congress  
10 of the United States shall permit states to require any  
11 instrumentalities of the United States to make payments into  
12 an unemployment fund under a state unemployment compensation  
13 act, all of the provisions of the Unemployment Compensation  
14 Law shall be applicable to such instrumentalities, and to  
15 service performed for such instrumentalities in the same  
16 manner, to the same extent and on the same terms as to all  
17 other employers, employing units, individuals and services;  
18 provided that if this state shall not be certified for any  
19 year by the secretary of labor of the United States under  
20 Section 3304 of the federal Internal Revenue Code of 1986,  
21 26 U.S.C. Section 3304, the payments required of such  
22 instrumentalities with respect to such year shall be refunded  
23 by the department from the fund in the same manner and within  
24 the same period as is provided in Subsection D of Section  
25 51-1-36 NMSA 1978 with respect to contributions erroneously

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1 collected;

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

10 (f) service with respect to which  
11 unemployment compensation is payable under an unemployment  
12 compensation system established by an act of congress;

13 (g) service performed in the employ of  
14 a foreign government, including service as a consular or other  
15 officer or employee or a nondiplomatic representative;

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

21 (i) service performed by an individual  
22 under the age of eighteen in the delivery or distribution of  
23 newspapers or shopping news, not including delivery or  
24 distribution to any point for subsequent delivery or  
25 distribution;

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

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

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

24 (m) service performed in the employ of  
25 a hospital, if the service is performed by a patient of the

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1 hospital, or services performed by an inmate of a custodial or  
2 penal institution for any employer;

3 (n) service performed by real estate  
4 salespersons for others when the services are performed for  
5 remuneration solely by way of commission;

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

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

15 (q) service performed for a private,  
16 for-profit person or entity by an individual as a product  
17 demonstrator or product merchandiser if the service is  
18 performed pursuant to a written contract between that  
19 individual and a person or entity whose principal business is  
20 obtaining the services of product demonstrators and product  
21 merchandisers for third parties, for demonstration and  
22 merchandising purposes and the individual: 1) is compensated  
23 for each job or the compensation is based on factors related  
24 to the work performed; 2) provides the equipment used to  
25 perform the service, unless special equipment is required and

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

16 (r) service performed for a private,  
17 for-profit person or entity by an individual as a landman if  
18 substantially all remuneration paid in cash or otherwise for  
19 the performance of the services is directly related to the  
20 completion by the individual of the specific tasks contracted  
21 for rather than to the number of hours worked by the  
22 individual. For the purposes of this subparagraph, "landman"  
23 means a land professional who has been engaged primarily in:  
24 1) negotiating for the acquisition or divestiture of mineral  
25 rights; 2) negotiating business agreements that provide for

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1 the exploration for or development of minerals; 3) determining  
2 ownership of minerals through the research of public and  
3 private records; and 4) reviewing the status of title, curing  
4 title defects and otherwise reducing title risk associated  
5 with ownership of minerals; managing rights or obligations  
6 derived from ownership of interests and minerals; or utilizing  
7 or pooling of interest in minerals; and

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

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

5           H. "fund" means the unemployment compensation fund  
6 established by the Unemployment Compensation Law to which all  
7 contributions and payments in lieu of contributions required  
8 under the Unemployment Compensation Law and from which all  
9 benefits provided under the Unemployment Compensation Law  
10 shall be paid [~~provided that, for the purposes of paying~~  
11 ~~contributions, "fund" may also include the state unemployment~~  
12 ~~trust fund and contributions paid to that fund pursuant to~~  
13 ~~Contribution Schedule B in Paragraph (5) of Subsection I of~~  
14 ~~Section 51-1-11 NMSA 1978 and Section 51-1-19.1 NMSA 1978~~];

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

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1 individual seeks, applies for or accepts only part-time work,  
2 instead of full-time work, if the part-time work is for at  
3 least twenty hours per week;

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

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

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

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

20 (2) furnishes individuals to perform services  
21 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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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 [~~labor~~] workforce  
17 solutions 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 to  
23 services performed after June 30, 1941 to or on behalf of an  
24 individual in the employ of an employing unit under a plan or  
25 system established by the employing unit that makes provision

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1 for individuals in its employ generally or for a class or  
2 classes of individuals, including any amount paid by an  
3 employing unit for insurance or annuities, or into a fund, to  
4 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 4. TEMPORARY PROVISION--TRANSFER OF BALANCES IN  
14 THE STATE UNEMPLOYMENT TRUST FUND.--On the effective date of  
15 this act, the balance of the state unemployment trust fund,  
16 including any accrued earnings credited to the fund, is  
17 transferred to the unemployment compensation fund. On or  
18 after the effective date of this act, the workforce solutions  
19 department shall deposit all contributions received under  
20 Section 51-1-11 NMSA 1978 in the unemployment compensation  
21 fund notwithstanding the requirement of that section, as it  
22 existed prior to the effective date of this act, to deposit  
23 money in the state unemployment trust fund.

24 Section 5. REPEAL.--Section 51-1-19.1 NMSA 1978 (being  
25 Laws 2007, Chapter 137, Section 4) is repealed.

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1           Section 6. EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is July 1, 2010.

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