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HOUSE BILL 223

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

JERRY W. SANDEL

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; DECREASING UNEMPLOYMENT
COMPENSATION TAXES; MAKING CHANGES IN THE UNEMPLOYMENT
COMPENSATION LAW TO COMPLY WITH FEDERAL REQUIREMENTS; AMENDING
AND ENACTING SECTIONS OF THE UNEMPLOYMENT COMPENSATION LAW.

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

Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969,
Chapter 213, Section 1, as amended) is amended to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS-- PAYMENT
GENERALLY. --

A. All benefits provided herein are payable from
the unemployment compensation fund. All benefits shall be
paid in accordance with such regulations as the secretary may
prescribe through employment offices or other agencies as the
secretary may by general rule approve.

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1 B. Weekly benefits shall be as follows:

2 (1) an individual's "weekly benefit amount"
3 is an amount equal to one twenty-sixth of the total wages for
4 insured work paid to him in that quarter of his base period in
5 which total wages were highest. No benefit as so computed may
6 be less than ten percent or more than fifty percent of the
7 state's average weekly wage for all insured work. The state's
8 average weekly wage shall be computed from all wages reported
9 to the department from employing units in accordance with
10 regulations of the secretary for the period ending June 30 of
11 each calendar year divided by the total number of covered
12 employees divided by fifty-two, effective for the benefit
13 years commencing on or after the first Sunday of the following
14 calendar year. Any such individual is not eligible to receive
15 benefits unless his total base-period wages equal at least one
16 and one-fourth times the wages for insured work in that
17 quarter of his base period in which such wages are highest.
18 For purposes of this subsection, "total wages" means all
19 remuneration for insured work, including commissions and
20 bonuses and the cash value of all remuneration in a medium
21 other than cash;

22 (2) each eligible individual who is
23 unemployed in any week during which he is in a continued
24 claims status shall be paid, with respect to such week, a
25 benefit in an amount equal to his weekly benefit amount, less

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1 that part of the wages, if any, or earnings from self-
2 employment, payable to him with respect to such week which is
3 in excess of one-fifth of his weekly benefit amount. For
4 purposes of this subsection only, "wages" includes all
5 remuneration for services actually performed in any week for
6 which benefits are claimed, vacation pay for any period for
7 which the individual has a definite return-to-work date, wages
8 in lieu of notice and back pay for loss of employment but does
9 not include payments through a court for time spent in jury
10 service;

11 (3) notwithstanding any other provision of
12 this section, each eligible individual who, pursuant to a plan
13 financed in whole or in part by a base-period employer of such
14 individual, is receiving a governmental or other pension,
15 retirement pay, annuity or any other similar periodic payment
16 that is based on the previous work of such individual and who
17 is unemployed with respect to any week ending subsequent to
18 April 9, 1981 shall be paid with respect to such week, in
19 accordance with regulations prescribed by the secretary,
20 compensation equal to his weekly benefit amount reduced, but
21 not below zero, by the prorated amount of such pension,
22 retirement pay, annuity or other similar periodic payment that
23 exceeds the percentage contributed to the plan by the eligible
24 individual. The maximum benefit amount payable to such
25 eligible individual shall be an amount not more than twenty-

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1 six times his reduced weekly benefit amount. If payments
2 referred to in this section are being received by any
3 individual under the federal Social Security Act, the division
4 shall take into account the individual's contribution and make
5 no reduction in the weekly benefit amount;

6 (4) in the case of a lump-sum payment of a
7 pension, retirement or retired pay, annuity or other similar
8 payment by a base-period employer that is based on the
9 previous work of such individual, such payment shall be
10 allocated, in accordance with regulations prescribed by the
11 secretary, and shall reduce the amount of unemployment
12 compensation paid, but not below zero, in accordance with
13 Paragraph (3) of this subsection; and

14 (5) the retroactive payment of a pension,
15 retirement or retired pay, annuity or any other similar
16 periodic payment as provided in Paragraphs (3) and (4) of this
17 subsection attributable to weeks during which an individual
18 has claimed or has been paid unemployment compensation shall
19 be allocated to such weeks and shall reduce the amount of
20 unemployment compensation for such weeks, but not below zero,
21 by an amount equal to the prorated amount of such pension.
22 Any overpayment of unemployment compensation benefits
23 resulting from the application of the provisions of this
24 paragraph shall be recovered from the claimant in accordance
25 with the provisions of Section 51-1-38 NMSA 1978.

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1 C. Any otherwise eligible individual is entitled
2 during any benefit year to a total amount of benefits equal to
3 whichever is the lesser of twenty-six times his weekly benefit
4 amount or sixty percent of his wages for insured work paid
5 during his base period.

6 D. Any benefit as determined in Subsection B or C
7 of this section, if not a multiple of one dollar (\$1.00),
8 shall be rounded to the next lower multiple of one dollar
9 (\$1.00).

10 E. The secretary may prescribe regulations to
11 provide for the payment of benefits that are due and payable
12 to the legal representative, dependents, relatives or next of
13 kin of claimants since deceased. These regulations need not
14 conform with the laws governing successions, and the payment
15 shall be deemed a valid payment to the same extent as if made
16 under a formal administration of the succession of the
17 claimant.

18 F. The division, on its own initiative, may
19 reconsider a monetary determination whenever it is determined
20 that an error in computation or identity has occurred or that
21 wages of the claimant pertinent to such determination but not
22 considered have been newly discovered or that the benefits
23 have been allowed or denied on the basis of misrepresentation
24 of fact, but no redetermination shall be made after one year
25 from the date of the original monetary determination. Notice

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1 of a redetermination shall be given to all interested parties
2 and shall be subject to an appeal in the same manner as the
3 original determination. In the event that an appeal involving
4 an original monetary determination is pending at the time a
5 redetermination is issued, the appeal, unless withdrawn, shall
6 be treated as an appeal from such redetermination. "

7 Section 2. Section 51-1-8 NMSA 1978 (being Laws 1936
8 (S.S.), Chapter 1, Section 6, as amended) is amended to read:

9 "51-1-8. CLAIMS FOR BENEFITS. --

10 A. Claims for benefits shall be made in accordance
11 with such regulations as the secretary may prescribe. Each
12 employer shall post and maintain printed notices, in places
13 readily accessible to employees, concerning their rights to
14 file claims for unemployment benefits upon termination of
15 their employment. Such notices shall be supplied by the
16 division to each employer without cost to him.

17 B. A representative designated by the secretary as
18 a claims examiner shall promptly examine the application and
19 each weekly claim and, on the basis of the facts found, shall
20 determine whether the claimant is unemployed, the week with
21 respect to which benefits shall commence, the weekly benefit
22 amount payable, the maximum duration of benefits, whether the
23 claimant is eligible for benefits pursuant to Section 51-1-5
24 NMSA 1978 and whether the claimant shall be disqualified
25 pursuant to Section 51-1-7 NMSA 1978. With the approval of

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1 the secretary, the claims examiner may refer, without
2 determination, claims or any specified issues involved therein
3 that raise complex questions of fact or law to a hearing
4 officer for the division for a fair hearing and decision in
5 accordance with the procedure described in Subsection D of
6 this section. The claims examiner shall promptly notify the
7 claimant and any other interested party of the determination
8 and the reasons therefor. Unless the claimant or [~~any such~~]
9 interested party, within fifteen calendar days after the date
10 of notification or mailing of [~~such~~] the determination, files
11 an appeal from [~~such~~] the determination, [~~such~~] the
12 determination shall be the final decision of the division;
13 provided that the claims examiner may reconsider a nonmonetary
14 determination if additional information not previously
15 available is provided or obtained or whenever he finds an
16 error in the application of law has occurred, but no
17 redetermination shall be made more than twenty days from the
18 date of the initial nonmonetary determination. Notice of a
19 nonmonetary redetermination shall be given to all interested
20 parties and shall be subject to appeal in the same manner as
21 the original nonmonetary determination. If an appeal is
22 pending at the time a redetermination is issued, the appeal,
23 unless withdrawn, shall be treated as an appeal from [~~such~~]
24 the redetermination.

25 C. In the case of a claim for waiting period

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1 credit or benefits, "interested party", for purposes of
2 determinations and adjudication proceedings and notices
3 thereof, means:

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

7 (2) in the event of an issue concerning a
8 separation from work for lack of work, the employer or
9 employing unit from whom the claimant separated for reasons
10 other than lack of work if he has not worked and earned wages
11 in insured work or bona fide employment other than self-
12 employment in an amount equal to or exceeding five times his
13 weekly benefit amount; or

14 (3) in all other cases involving the
15 allowance or disallowance of a claim, the secretary, the
16 claimant and any employing unit directly involved in the facts
17 at issue.

18 D. Upon appeal by any party, a hearing officer
19 designated by the secretary shall afford the parties
20 reasonable opportunity for a fair hearing to be held de novo,
21 and the hearing officer shall issue findings of fact and a
22 decision which affirms, modifies or reverses the determination
23 of the claims examiner or tax representative on the facts or
24 the law, based upon the evidence introduced at such hearing,
25 including the documents and statements in the claim or tax

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1 records of the division. All hearings shall be held in
2 accordance with regulations of the secretary and decisions
3 issued promptly in accordance with time lapse standards
4 promulgated by the secretary of the United States department
5 of labor. The parties shall be duly notified of the decision,
6 together with the reasons therefor, which shall be deemed to
7 be the final decision of the department, unless within fifteen
8 days after the date of notification or mailing of [~~such~~] the
9 decision further appeal is initiated pursuant to Subsection H
10 of this section.

11 E. Except with the consent of the parties, no
12 hearing officer or members of the board of review, established
13 in Subsection F of this section, or secretary shall sit in any
14 administrative or adjudicatory proceeding in which:

15 (1) either of the parties is related to him
16 by affinity or consanguinity within the degree of first
17 cousin;

18 (2) he was counsel for either party in that
19 action; or

20 (3) he has an interest which would prejudice
21 his rendering an impartial decision.

22 The secretary, any member of the board of review or
23 appeal tribunal hearing officer shall withdraw from any
24 proceeding in which he cannot accord a fair and impartial
25 hearing or when a reasonable person would seriously doubt

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1 whether the hearing officer, board member or secretary could
2 be fair and impartial. Any party may request a
3 disqualification of any appeal tribunal hearing officer or
4 board of review member by filing an affidavit with the board
5 of review or appeal tribunal promptly upon discovery of the
6 alleged grounds for disqualification, stating with
7 particularity the grounds upon which it is claimed that the
8 person cannot be fair and impartial. The disqualification
9 shall be mandatory if sufficient factual basis is set forth in
10 the affidavit of disqualification. If a member of the board
11 of review is disqualified or withdraws from any proceeding,
12 the remaining members of the board of review may appoint an
13 appeal tribunal hearing officer to sit on the board of review
14 for the proceeding involved.

15 F. There is established within the department, for
16 the purpose of providing higher level administrative appeal
17 and review of determinations of a claims examiner or decisions
18 issued by a hearing officer pursuant to Subsection B or D of
19 this section, a "board of review" consisting of three members.
20 Two members shall be appointed by the governor with the
21 consent of the senate. The members so appointed shall hold
22 office at the pleasure of the governor for terms of four
23 years. One member appointed by the governor shall be a person
24 who, on account of his previous vocation, employment or
25 affiliation, can be classed as a representative of employers,

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1 and the other member appointed by the governor shall be a
2 person who, on account of his previous vocation, employment or
3 affiliation, can be classed as a representative of employees.
4 The third member shall be an employee of the department
5 appointed by the secretary who shall serve as chairman of the
6 board. Either member of the board of review appointed by the
7 governor who has missed two consecutive meetings of the board
8 may be removed from the board by the governor. Actions of the
9 board shall be taken by majority vote. If a vacancy on the
10 board in a position appointed by the governor occurs between
11 sessions of the legislature, the position shall be filled by
12 the governor until the next regular legislative session. The
13 board shall meet at the call of the secretary. Members of the
14 board appointed by the governor shall be paid per diem and
15 mileage in accordance with the Per Diem and Mileage Act for
16 necessary travel to attend regularly scheduled meetings of the
17 board of review for the purpose of conducting the board's
18 appellate and review duties.

19 G. The board of review shall hear and review all
20 cases appealed in accordance with Subsection H of this
21 section. The board of review may modify, affirm or reverse
22 the decision of the hearing officer or remand any matter to
23 the claims examiner, tax representative or hearing officer for
24 further proceedings. Each member appointed by the governor
25 shall be compensated at the rate of fifteen dollars (\$15.00)

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1 for each case reviewed up to a maximum compensation of twelve
2 thousand dollars (\$12,000) in any one fiscal year.

3 H. Any party aggrieved by a final decision of a
4 hearing officer may file, in accordance with regulations
5 prescribed by the secretary, an application for appeal and
6 review of [~~such~~] the decision with the secretary. The
7 secretary shall review the application and shall, within
8 fifteen days after receipt of the application, either affirm
9 the decision of the hearing officer, remand the matter to the
10 hearing officer, tax representative or the claims examiner for
11 an additional hearing or refer the decision to the board of
12 review for further review and decision on the merits of the
13 appeal. If the secretary affirms the decision of the hearing
14 officer, that decision shall be the final administrative
15 decision of the department and any appeal therefrom shall be
16 taken to the district court in accordance with the provisions
17 of Subsections M and N of this section. If the secretary
18 remands a matter to a hearing officer, tax representative or
19 claims examiner for an additional hearing, judicial review
20 shall be permitted only after issuance of a final
21 administrative decision. If the secretary refers the decision
22 of the hearing officer to the board of review for further
23 review, the board's decision on the merits of the appeal will
24 be the final administrative decision of the department, which
25 may be appealed to the district court in accordance with the

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1 provisions of Subsections M and N of this section. If the
2 secretary takes no action within fifteen days of receipt of
3 the application for appeal and review, the decision will be
4 promptly scheduled for review by the board of review as though
5 it had been referred by the secretary. The secretary may
6 request the board of review to review a decision of a hearing
7 officer that the secretary believes to be inconsistent with
8 the law or with applicable rules of interpretation or that is
9 not supported by the evidence, and the board of review shall
10 grant the request if it is filed within fifteen days of the
11 issuance of the decision of the hearing officer. The
12 secretary may also direct that any pending determination or
13 adjudicatory proceeding be removed to the board of review for
14 a final decision. If the board of review holds a hearing on
15 any matter, the hearing shall be conducted by a quorum of the
16 board of review in accordance with regulations prescribed by
17 the secretary for hearing appeals. The board of review shall
18 promptly notify the interested parties of its findings of fact
19 and decision. A decision of the board of review on any
20 disputed matter reviewed and decided by it shall be based upon
21 the law and the lawful rules of interpretation issued by the
22 secretary, and it shall be the final administrative decision
23 of the department, except in cases of remand. If the board of
24 review remands a matter to a hearing officer, claims examiner
25 or tax representative, judicial review shall be permitted only

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1 after issuance of a final administrative decision.

2 I. Notwithstanding any other provision of this
3 section granting any party the right to appeal, benefits shall
4 be paid promptly in accordance with a determination or a
5 decision of a claims examiner, hearing officer, secretary,
6 board of review or a reviewing court, regardless of the
7 pendency of the period to file an appeal or petition for
8 judicial review that is provided with respect thereto in
9 Subsection D or M of this section or the pendency of any such
10 filing or petition until such determination or decision has
11 been modified or reversed by a subsequent decision. The
12 provisions of this subsection shall apply to all claims for
13 benefits pending on the date of its enactment.

14 J. If a prior determination or decision allowing
15 benefits is affirmed by a decision of the department,
16 including the board of review or a reviewing court, [~~sueh~~] the
17 benefits shall be paid promptly regardless of any further
18 appeal which may thereafter be available to the parties, and
19 no injunction, supersedeas, stay or other writ or process
20 suspending the payment of [~~sueh~~] benefits shall be issued by
21 the secretary or board of review or any court, and no action
22 to recover [~~sueh~~] benefits paid to a claimant shall be taken.
23 If a determination or decision allowing benefits is finally
24 modified or reversed, the appropriate contributing employer's
25 account will be relieved of benefit charges in accordance with

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1 Subsection B of Section 51-1-11 NMSA 1978.

2 K. The manner in which disputed claims shall be
3 presented, the reports thereon required from the claimant and
4 from employers and the conduct of hearings and appeals shall
5 be in accordance with rules prescribed by the secretary for
6 determining the rights of the parties, whether or not [~~such~~]
7 the rules conform to common law or statutory rules of evidence
8 and other technical rules of procedure. A hearing officer or
9 the board of review may refer to the secretary for
10 interpretation any question of controlling legal significance,
11 and the secretary shall issue a declaratory interpretation,
12 which shall be binding upon the decision of the hearing
13 officer and the board of review. A full and complete record
14 shall be kept of all proceedings in connection with a disputed
15 claim. All testimony at any hearing upon a disputed claim
16 shall be recorded but need not be transcribed unless the
17 disputed claim is appealed to the district court.

18 L. Witnesses subpoenaed pursuant to this section
19 shall be allowed fees at a rate fixed by the secretary. Such
20 fees and all administrative expenses of proceedings involving
21 disputed claims shall be deemed a part of the expense of
22 administering the Unemployment Compensation Law.

23 M Any determination or decision of a claims
24 examiner or hearing officer or by a representative of the tax
25 section of the department in the absence of an appeal

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1 therefrom as provided by this section shall become final
2 fifteen days after the date of notification or mailing
3 thereof, and judicial review thereof shall be permitted only
4 after any party claiming to be aggrieved thereby has exhausted
5 his remedies as provided in Subsection H of this section. The
6 division and any employer or claimant who is affected by the
7 decision shall be joined as a party in any judicial action
8 involving [~~any such~~] the decision. All parties shall be
9 served with an endorsed copy of the petition within thirty
10 days from the date of filing and an endorsed copy of the order
11 granting the petition within fifteen days from entry of the
12 order. Service on the department shall be made on the
13 secretary or his designated legal representative either by
14 mail with accompanying certification of service or by personal
15 service. The division may be represented in [~~any such~~] a
16 judicial action by an attorney employed by the department or,
17 when requested by the secretary, by the attorney general or
18 any district attorney.

19 N. The final decision of the secretary or board of
20 review upon any disputed matter may be reviewed both upon the
21 law, including the lawful rules of interpretation issued by
22 the secretary, and the facts by the district court of the
23 county wherein the person seeking the review resides upon
24 certiorari, unless it is determined by the district court
25 where the petition is filed that, as a matter of equity and

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1 due process, venue should be in a different county. For the
2 purpose of [~~such~~] the review, the division shall return on
3 [~~such~~] certiorari the reports and all of the evidence heard by
4 it on [~~any such~~] the reports and all the papers and documents
5 in its files affecting the matters and things involved in such
6 certiorari. The district court shall render its judgment
7 after hearing, and either the department or any other party
8 [~~thereto~~] affected may appeal from [~~such~~] the judgment to the
9 court of appeals in accordance with the rules of appellate
10 procedure. [~~Such~~] Certiorari shall not be granted unless [~~the~~
11 ~~same is~~] applied for within thirty days from the date of the
12 final decision of the secretary or board of review. [~~Such~~]
13 Certiorari shall be heard in a summary manner and shall be
14 given precedence over all other civil cases except cases
15 arising under the Workers' Compensation Act of this state. It
16 [~~shall~~] is not [~~be~~] necessary in any proceedings before the
17 division to enter exceptions to the rulings, and no bond shall
18 be required in obtaining certiorari from the district court
19 [~~as hereinabove provided~~], but [~~such~~] certiorari shall be
20 granted as a matter of right to the party applying therefor."

21 Section 3. Section 51-1-11 NMSA 1978 (being Laws 1961,
22 Chapter 139, Section 3, as amended) is amended to read:

23 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE. --

24 A. The division shall maintain a separate account
25 for each contributing employer and shall credit his account

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1 with all contributions paid by him under the Unemployment
2 Compensation Law. Nothing in the Unemployment Compensation
3 Law shall be construed to grant any employer or individuals in
4 his service prior claims or rights to the amounts paid by the
5 employer into the fund.

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

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

19 (2) was discharged from the employment of a
20 base-period employer who is not on a reimbursable basis for
21 misconduct connected with his work;

22 (3) received benefits based upon wages earned
23 from a base-period employer who is not on a reimbursable basis
24 for work performed in a work-release program designed to give
25 an inmate of a correctional institution an opportunity to work

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1 while serving a term of incarceration if the inmate's
2 separation was caused by his release from prison;

3 (4) is employed part-time by a base-period
4 employer who is not on a reimbursable basis and who continues
5 to furnish the individual the same part-time work while the
6 individual is separated from full-time work for a
7 nondisqualifying reason; or

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

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

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

22 E. No employer's rate shall be varied from the
23 standard rate for any calendar year unless, as of the
24 computation date for that year, his account has been
25 chargeable with benefits throughout the preceding thirty-six

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1 months, except that:

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

4 (2) subsequent to December 31, 1984, any
5 employing unit that becomes an employer subject to the payment
6 of contributions under the Unemployment Compensation Law or
7 has been an employer subject to the payment of contributions
8 at a standard rate of two and seven-tenths percent through
9 December 31, 1984 shall be subject to the payment of
10 contributions at the reduced rate of two and seven-tenths
11 percent until, as of the computation date of a particular
12 year, the employer's account has been chargeable with benefits
13 throughout the preceding thirty-six months; and

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

21 F. The secretary shall, for the year 1942 and for
22 each calendar year thereafter, classify employers in
23 accordance with their actual experience in the payment of
24 contributions and with respect to benefits charged against
25 their accounts, with a view of fixing such contribution rates

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1 as will reflect such benefit experience. Each employer's rate
2 for any calendar year shall be determined on the basis of his
3 record and the condition of the fund as of the computation
4 date for such calendar year.

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

13 G. In the case of a transfer of an employing
14 enterprise, the experience history of the transferred
15 enterprise as provided in Subsection F of this section ~~[will]~~
16 shall be transferred from the predecessor employer to the
17 successor under the following conditions and in accordance
18 with the applicable regulations of the secretary:

19 (1) Definitions:

20 (a) "employing enterprise" is a
21 business activity engaged in by a contributing employing unit
22 in which one or more persons have been employed within the
23 current or the three preceding calendar quarters;

24 (b) "predecessor" means the owner and
25 operator of an employing enterprise immediately prior to the

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1 transfer of such enterprise;

2 (c) "successor" means any individual or
3 any type of organization that acquires an employing enterprise
4 and continues to operate such business entity; and

5 (d) "experience history" means the
6 experience rating record and reserve account, including the
7 actual contributions, benefit charges and payroll experience
8 of the employing enterprise.

9 (2) For the purpose of this section, two or
10 more employers who are parties to or the subject of any
11 transaction involving the transfer of an employing enterprise
12 shall be deemed to be a single employer and the experience
13 history of the employing enterprise shall be transferred to
14 the successor employer if the successor employer has acquired
15 by the transaction all of the business enterprises of the
16 predecessor; provided that:

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

19 (b) notice of the transfer has been
20 given in accordance with the regulations of the secretary
21 within four years of the transaction transferring the
22 employing enterprise or the date of the actual transfer of
23 control and operation of the employing enterprise;

24 (c) in the case of the transfer of an
25 employing enterprise, the successor employer must notify the

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

9 (d) where the transaction involves only
10 a merger, consolidation or other form of reorganization
11 without a substantial change in the ownership and controlling
12 interest of the business entity, as determined by the
13 secretary, the limitations on transfers stated in
14 Subparagraphs (a), (b) and (c) of this paragraph shall not
15 apply. No party to a merger, consolidation or other form of
16 reorganization described in this paragraph shall be relieved
17 of liability for any contributions, interest or penalties due
18 and owing from the employing enterprise at the time of the
19 merger, consolidation or other form of reorganization.

20 (3) The applicable experience history ~~may~~ be
21 transferred to the successor in the case of a partial transfer
22 of an employing enterprise if the successor has acquired one
23 or more of the several employing enterprises of a predecessor
24 but not all of the employing enterprises of the predecessor
25 and each employing enterprise so acquired was operated by the

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1 predecessor as a separate store, factory, shop or other
2 separate employing enterprise and the predecessor, throughout
3 the entire period of his contribution with liability
4 applicable to each enterprise transferred, has maintained and
5 preserved payroll records [~~which~~] that, together with records
6 of contribution liability and benefit chargeability, can be
7 separated by the parties from the enterprises retained by the
8 predecessor to the satisfaction of the secretary or his
9 delegate. A partial experience history transfer will be made
10 only if:

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

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

20 (c) the successor files with the
21 application a Form ES-903A or its equivalent with a schedule
22 of the name and social security number of and the wages paid
23 to and the contributions paid for each employee for the three
24 and one-half year period preceding the date of computation as
25 defined in Subparagraph (d) of Paragraph (3) of Subsection H

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1 of this section through the date of transfer or such lesser
2 period as the enterprises transferred ~~may~~ have been in
3 operation. The application and Form ES-903A [~~must~~] shall be
4 supported by the predecessor's permanent employment records,
5 which [~~must~~] shall be available for audit by the division.
6 The application and Form ES-903A shall be reviewed by the
7 division and, upon approval, the percentage of the
8 predecessor's experience history attributable to the
9 enterprises transferred shall be transferred to the successor.
10 The percentage shall be obtained by dividing the taxable
11 payrolls of the transferred enterprises for such three and
12 one-half year period preceding the date of computation or such
13 lesser period as the enterprises transferred ~~may~~ have been in
14 operation by the predecessor's entire payroll.

15 H. For each calendar year, adjustments of
16 contribution rates below the standard or reduced rate and
17 measures designed to protect the fund are provided as follows:

18 (1) The total assets in the fund and the
19 total of the last annual payrolls of all employers subject to
20 contributions as of the computation date for each year shall
21 be determined. These annual totals are here called "the fund"
22 and "total payrolls". For each year, the "reserve" of each
23 employer qualified under Subsection E of this section shall be
24 fixed by the excess of his total contributions over total
25 benefit charges computed as a percentage of his average

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

7 (2) Each employer's rate for each calendar
8 year commencing January 1, 1979 or thereafter shall be:

9 (a) the rate in schedule 1 of the table
10 provided in Paragraph (4) of this subsection on the
11 corresponding line as his reserve if the fund equals at least
12 four percent of the total payrolls;

13 (b) the rate in schedule 2 of the table
14 provided in Paragraph (4) of this subsection on the
15 corresponding line if the fund has dropped to between four
16 percent and three percent;

17 (c) the rate in schedule 3 of the table
18 provided in Paragraph (4) of this subsection on the
19 corresponding line if the fund has dropped to between three
20 percent and two percent;

21 (d) the rate in schedule 4 of the table
22 provided in Paragraph (4) of this subsection on the
23 corresponding line if the fund has dropped to between two
24 percent and one and one-half percent;

25 (e) the rate in schedule 5 of the table

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1 provided in Paragraph (4) of this subsection on the
2 corresponding line if the fund has dropped to between one and
3 one-half percent and one percent; or

4 (f) the rate in schedule 6 of the table
5 provided in Paragraph (4) of this subsection on the
6 corresponding line if the fund has dropped below one percent.

7 (3) As used in this section:

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

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

16 (c) "base-period employers" means the
17 employers of an individual during his base period; and

18 (d) "computation date" for each
19 calendar year means the close of business on June 30 of the
20 preceding calendar year.

21 (4) Table of employer reserves and
22 contribution rate schedules:

Employer Reserve	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.1%	0.3%	0.6%

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 [bracketed material] = delete

1	9.0%- 9.9%	0.3%	0.6%	0.9%
2	8.0%- 8.9%	0.6%	0.9%	1.2%
3	7.0%- 7.9%	0.9%	1.2%	1.5%
4	6.0%- 6.9%	1.2%	1.5%	1.8%
5	5.0%- 5.9%	1.5%	1.8%	2.1%
6	4.0%- 4.9%	1.8%	2.1%	2.4%
7	3.0%- 3.9%	2.1%	2.4%	2.7%
8	2.0%- 2.9%	2.4%	2.7%	3.0%
9	1.0%- 1.9%	2.7%	3.0%	3.3%
10	0.9%- 0.0%	3.0%	3.3%	3.6%
11	(- 0.1%) - (- 0.5%)	3.3%	3.6%	3.9%
12	(- 0.5%) - (- 1.0%)	4.2%	4.2%	4.2%
13	(- 1.0%) - (- 2.0%)	5.0%	5.0%	5.0%
14	Under (- 2.0%)	5.4%	5.4%	5.4%
15	Employer	Contribution	Contribution	Contribution
16	Reserve	Schedule 4	Schedule 5	Schedule 6
17	10.0% and over	0.9%	1.2%	2.7%
18	9.0%- 9.9%	1.2%	1.5%	2.7%
19	8.0%- 8.9%	1.5%	1.8%	2.7%
20	7.0%- 7.9%	1.8%	2.1%	2.7%
21	6.0%- 6.9%	2.1%	2.4%	2.7%
22	5.0%- 5.9%	2.4%	2.7%	3.0%
23	4.0%- 4.9%	2.7%	3.0%	3.3%
24	3.0%- 3.9%	3.0%	3.3%	3.6%
25	2.0%- 2.9%	3.3%	3.6%	3.9%

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1	1.0%- 1.9%	3.6%	3.9%	4.2%
2	0.9%- 0.0%	3.9%	4.2%	4.5%
3	(- 0.1%) - (- 0.5%)	4.2%	4.5%	4.8%
4	(- 0.5%) - (- 1.0%)	4.5%	4.8%	5.1%
5	(- 1.0%) - (- 2.0%)	5.0%	5.1%	5.3%
6	Under (- 2.0%)	5.4%	5.4%	5.4%.

7 I. The division shall promptly notify each
8 employer of his rate of contributions as determined for any
9 calendar year pursuant to this section. Such notification
10 shall include the amount determined as the employer's average
11 payroll, the total of all his contributions paid on his own
12 behalf and credited to his account for all past years and
13 total benefits charged to his account for all such years.
14 Such determination shall become conclusive and binding upon
15 the employer unless, within thirty days after the mailing of
16 notice thereof to his last known address or in the absence of
17 mailing, within thirty days after the delivery of such notice,
18 the employer files an application for review and
19 redetermination, setting forth his reason therefor. The
20 employer shall be granted an opportunity for a fair hearing in
21 accordance with regulations prescribed by the secretary, but
22 no employer shall have standing, in any proceeding involving
23 his rate of contributions or contribution liability, to
24 contest the chargeability to his account of any benefits paid
25 in accordance with a determination, redetermination or

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

15 J. The division [~~will~~] shall provide each
16 contributing employer, within ninety days of the end of each
17 calendar quarter, a written determination of benefits
18 chargeable to his account. Such determination shall become
19 conclusive and binding upon the employer for all purposes
20 unless, within thirty days after the mailing of the
21 determination to his last known address or in the absence of
22 mailing, within thirty days after the delivery of such
23 determination, the employer files an application for review
24 and redetermination, setting forth his reason therefor. The
25 employer shall be granted an opportunity for a fair hearing in

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1 accordance with regulations prescribed by the secretary, but
2 no employer shall have standing in any proceeding involving
3 his contribution liability to contest the chargeability to his
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 him
9 and only in the event that he was not a party to such
10 determination, redetermination or decision, or to any other
11 proceedings under the Unemployment Compensation Law in which
12 the character of such services was determined. The employer
13 shall be promptly notified of the decision on his application
14 for redetermination, which shall become final unless, within
15 fifteen days after the mailing of notice thereof to his last
16 known address or in the absence of mailing, within fifteen
17 days after the delivery of such notice, further appeal is
18 initiated pursuant to Subsection D of Section 51-1-8 NMSA
19 1978.

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

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

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

23 M Any interest required to be paid on advances to
24 this state's unemployment compensation fund under Title [~~XII~~]
25 12 of the Social Security Act shall be paid in a timely manner

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1 as required under Section 1202 of Title [~~XII~~] 12 of the Social
2 Security Act and shall not be paid, directly or indirectly, by
3 the state from amounts in the state's unemployment
4 compensation fund.

5 N. Notwithstanding the provisions of this section,
6 the rate in schedule 1 of the table provided in Paragraph (4)
7 of Subsection H of this section shall be applied for two
8 calendar years beginning January 1, 1999. "

9 Section 4. Section 51-1-18 NMSA 1978 (being Laws 1936
10 (S.S.), Chapter 1, Section 8, as amended) is amended to read:

11 "51-1-18. PERIOD, ELECTION AND TERMINATION OF EMPLOYER'S
12 COVERAGE. --

13 A. Except as otherwise provided in Subsection C of
14 this section, any employing unit [~~which~~] that is or becomes an
15 employer subject to the Unemployment Compensation Law within
16 any calendar year shall be subject to the Unemployment
17 Compensation Law during the whole of such calendar year.

18 B. Except as otherwise provided in Subsection C of
19 this section, an employing unit shall cease to be an employer
20 subject to the Unemployment Compensation Law only as of [~~the~~]
21 January 1 of any calendar year if it files with the
22 department, between January 1 and March 15 of the year in
23 which the employing unit desires termination of coverage, a
24 written application for termination of coverage and the
25 secretary finds:

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1 (1) that there was no calendar quarter within
2 the preceding calendar year within which such employing unit
3 paid wages for employment amounting to four hundred fifty
4 dollars (\$450) or more or as otherwise provided in Paragraphs
5 (6) and (7) of Subsection F of Section 51-1-42 NMSA 1978; and

6 (2) that there were no twenty different weeks
7 within the preceding calendar year, whether or not such weeks
8 were consecutive, within which such employing unit employed an
9 individual in employment subject to the Unemployment
10 Compensation Law. For the purpose of this subsection, the two
11 or more employing units mentioned in Paragraphs (2) and (3) of
12 Subsection E of Section 51-1-42 NMSA 1978 shall be treated as
13 a single employing unit. For like cause or when the total
14 experience history of a predecessor employing unit is
15 transferred pursuant to Section 51-1-11 NMSA 1978 or when, in
16 the opinion of the secretary, it is unlikely that an employing
17 unit will have individuals in employment at any time in the
18 future, termination of coverage may be granted on the
19 secretary's own initiative; provided that due notice is given
20 to the employing unit at its last address of record with the
21 department. The provisions of this subsection shall not apply
22 to any governmental unit.

23 C. An employing unit, not otherwise subject to the
24 Unemployment Compensation Law, [~~which~~] that files with the
25 department its written election to become an employer subject

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1 hereto for not less than two calendar years shall, with the
2 written approval of such election by the secretary, become an
3 employer subject hereto to the same extent as all other
4 employers, as of the date stated in such approval, and shall
5 cease to be subject hereto as of January 1 of any calendar
6 year subsequent to such two calendar years only if, between
7 the dates of January 1 and March 15 of the year in which the
8 employing unit desires termination of coverage, it has filed
9 with the department a written notice to that effect or the
10 secretary, on his own initiative, has given notice of
11 termination of such coverage.

12 D. Any employing unit for which services that do
13 not constitute employment, as defined in the Unemployment
14 Compensation Law, are performed may file with the department a
15 written election that all such services performed by
16 individuals in its employ in one or more distinct
17 establishments or places of business shall be deemed to
18 constitute employment for all the purposes of the Unemployment
19 Compensation Law for not less than two calendar years. Upon
20 the written approval of such election by the secretary, such
21 services shall be deemed to constitute employment subject to
22 the Unemployment Compensation Law after the date stated in
23 such approval. Such services shall cease to be deemed
24 employment subject hereto as of January 1 of any calendar year
25 subsequent to such two calendar years only if, between January

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1 1 and March 15 of the year in which the employing unit desires
2 termination of coverage, it has filed with the department a
3 written notice to that effect, or the secretary, on his own
4 initiative, has given notice of termination of such coverage.

5 E. The secretary may terminate the election of an
6 employer or employing unit made pursuant to Subsection C or D
7 of this section at any time the secretary determines that the
8 employer or employing unit is not abiding by all the
9 requirements of the Unemployment Compensation Law and the
10 regulations issued pursuant thereto, or if the employer or
11 employing unit that has made an election for coverage becomes
12 delinquent in the payment of its contributions or payment in
13 lieu of contributions, interest or penalties.

14 [E-] F. The secretary, on his own initiative or
15 upon written notification from an employer, may suspend such
16 employer's obligation for filing a quarterly wage and
17 contribution report as provided in the Unemployment
18 Compensation Law or any regulation issued pursuant thereto in
19 any case where the employer has ceased to and does not in the
20 immediate future expect to have individuals in employment;
21 provided that this subsection shall not apply [~~nor shall it~~]
22 or be a bar to the collection of contributions, interest and
23 penalties if, in fact, it is determined that the employer had
24 an individual in employment subject to the Unemployment
25 Compensation Law during the period covered by the suspension. "

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1 Section 5. Section 51-1-19 NMSA 1978 (being Laws 1936
2 (S. S.), Chapter 1, Section 9, as amended) is amended to read:

3 "51-1-19. UNEMPLOYMENT COMPENSATION FUND. --

4 A. There is hereby established as a special fund,
5 separate and apart from all public money, or funds of this
6 state, an unemployment compensation fund, which shall be
7 administered by the department exclusively for the purposes of
8 this section. This fund shall consist of:

9 (1) all contributions collected and payments
10 in lieu of contributions collected or due pursuant to the
11 Unemployment Compensation Law;

12 (2) interest earned upon any money in the
13 fund;

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

16 (4) all earnings of such property or
17 securities;

18 (5) all money received from the federal
19 unemployment account in the unemployment trust fund in
20 accordance with Title 12 of the Social Security Act, as
21 amended;

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

25 (7) all money received or due from the

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1 federal government as reimbursements pursuant to Section 204
2 of the Federal-State Extended Compensation Act of 1970; and

3 (8) all money received for the fund from any
4 other source. All money in the fund shall be mingled and
5 undivided.

6 B. The state treasurer shall be the treasurer and
7 custodian of the fund and shall administer such fund in
8 accordance with the directions of the department and shall
9 issue his checks upon it in accordance with such regulations
10 as the secretary may prescribe. He shall maintain, within the
11 fund, three separate accounts:

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

15 C. All money payable to the fund upon receipt
16 thereof by the department shall be forwarded to the treasurer
17 who shall immediately deposit it in the clearing account.
18 Refunds payable pursuant to Sections 51-1-36 and 51-1-42 NMSA
19 1978 shall be paid from the clearing account or the benefit
20 account upon checks issued by the treasurer under the
21 direction of the department. After clearance thereof, all
22 money in the clearing account, except as herein otherwise
23 provided, shall be immediately deposited with the secretary of
24 the treasury of the United States to the credit of the account
25 of this state in the unemployment trust fund, established and

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1 maintained pursuant to Section 904 of the act of congress
2 known as the Social Security Act, as amended (42 U. S. C.
3 Section 1104), any provisions of law in this state relating to
4 the deposits, administration, release or disbursements of
5 money in the possession or custody of this state to the
6 contrary notwithstanding. The benefit account shall consist
7 of all money requisitioned from this state's account in the
8 unemployment trust fund. Except as herein otherwise provided,
9 money in the clearing and benefit accounts may be deposited by
10 the treasurer, under the direction of the secretary, in any
11 bank or public depository in which general funds of the state
12 may be deposited, but no public deposit insurance charge or
13 premium shall be paid out of the fund. Money in the clearing
14 and benefit accounts shall not be commingled with other state
15 funds but shall be maintained in separate accounts on the
16 books of the depository.

17 D. All of the money not deposited in the treasury
18 of the United States shall be subject to the general laws
19 applicable to the deposit of public money in the state; and
20 collateral pledged for this purpose shall be kept separate and
21 distinct from any collateral pledged to secure other funds of
22 this state.

23 E. The state treasurer shall be liable on his
24 official bond for the faithful performance of his duties in
25 connection with the unemployment compensation fund provided

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1 for under this section. The liability on the official bond of
2 the state treasurer shall be effective immediately upon the
3 enactment of this provision, and such liability shall exist in
4 addition to the liability of any separate bond existent on the
5 effective date of this provision or which may be given in the
6 future. All sums recovered for losses sustained by the fund
7 shall be deposited therein.

8 F. All money in the clearing account established
9 under this section is hereby appropriated for the purpose of
10 making refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA
11 1978, and all money in the clearing account not needed for the
12 purpose of making the refunds shall be immediately paid over
13 to the secretary of the treasury of the United States to the
14 credit of the account of this state in the unemployment trust
15 fund, and the money in the unemployment trust fund is hereby
16 appropriated for the purposes of this section.

17 [~~E.~~] G. Money shall be requisitioned from this
18 state's account in the unemployment trust fund solely for the
19 payment of benefits and for the payment of refunds pursuant to
20 Sections 51-1-36 and 51-1-42 NMSA 1978 in accordance with
21 regulations prescribed by the secretary, except that money
22 credited to this state's account pursuant to Section 903 of
23 the Social Security Act, as amended, shall be used exclusively
24 as provided in Subsection [~~D.~~] H. of this section. The
25 secretary shall, from time to time, requisition from the

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1 unemployment trust fund such amounts not exceeding the amounts
2 standing to this state's account therein, as he deems
3 necessary for the payment of such benefits and refunds for a
4 reasonable future period. Upon receipt thereof, the treasurer
5 shall deposit such money in the benefit account and shall
6 issue his checks for the payment of benefits solely from such
7 benefit account. Expenditures of such money in the benefit
8 account and refunds from the benefit account or the clearing
9 account shall not be subject to any provisions of law
10 requiring specific appropriations or other formal release by
11 state officers of money in their custody. All money shall be
12 withdrawn from the fund only upon a warrant issued by the
13 department or its duly authorized agent upon the treasurer,
14 and the treasurer upon receipt of such warrants shall
15 [thereupon] issue his check against the fund in accordance
16 with the warrant of the secretary. Any balance of money
17 requisitioned from the unemployment trust fund [which] that
18 remains unclaimed or unpaid in the benefit account after the
19 expiration of the period for which such sums were
20 requisitioned shall either be deducted from estimates for, and
21 may be utilized for, the payment of benefits and refunds
22 during succeeding periods, or in the discretion of the
23 secretary, shall be redeposited with the secretary of the
24 treasury of the United States, to the credit of this state's
25 account in the unemployment trust fund, as provided in

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1 Subsection [~~B~~] C of this section. All money in the benefit
2 account provided for hereinabove is hereby appropriated for
3 the payment of benefits and refunds as provided herein.

4 [~~D-~~] H. Money credited to the account of this
5 state in the unemployment trust fund by the secretary of the
6 treasury of the United States pursuant to Section 903 of the
7 Social Security Act may be requisitioned from this state's
8 account or used only for:

9 (1) the payment of benefits pursuant to
10 Subsection [~~E~~] G of this section; and

11 (2) the payment of expenses incurred for the
12 administration of the Unemployment Compensation Law; provided,
13 that any money requisitioned and used for the payment of
14 expenses incurred for the administration of the Unemployment
15 Compensation Law must be authorized by the enactment of a
16 specific appropriation by the legislature [~~which~~] that:

17 (a) specifies the purpose for which
18 such money is appropriated and the amounts appropriated
19 therefor;

20 (b) limits the period within which such
21 money may be obligated to a period ending not more than two
22 years after the date of the enactment of the appropriation
23 law; [~~and~~]

24 (c) limits the amount which may be
25 obligated [~~during any twelve-month period beginning on July 1-~~

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1 ~~and ending on the next June 30]~~ to an amount which does not
2 exceed the amount by which 1) the aggregate of the amounts
3 credited to the account of this state pursuant to Section 903
4 of the Social Security Act [~~during the same twelve-month~~
5 ~~period and the thirty-four preceding twelve-month periods]~~
6 exceeds 2) the aggregate of the amounts [~~obligated for~~
7 ~~administration and paid out for benefits]~~ used by the state
8 pursuant to this subsection and charged against the amounts
9 [~~credited]~~ transferred to the account of this state [~~during~~
10 ~~such thirty-five twelve-month periods]~~; and

11 (d) notwithstanding the provisions of
12 Subparagraph (1) of this subsection, money credited with
13 respect to federal fiscal years 1999, 2000 and 2001 shall be
14 used only for the administration of the Unemployment
15 Compensation Law.

16 [~~3)] I. Amounts credited to this state's account
17 in the unemployment trust fund under Section 903 of the Social
18 Security Act [~~which]~~ that are obligated for administration [~~or~~
19 ~~paid out for benefits]~~ shall be charged against [~~equivalent~~
20 ~~amounts which were first credited and which are not already so~~
21 ~~charged; except that no amount obligated for administration~~
22 ~~during a twelve-month period specified herein may be charged~~
23 ~~against any amount credited during such a twelve-month period~~
24 ~~earlier than the thirty-fourth month preceding such period]~~
25 transferred amounts at the exact time the obligation is~~

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1 entered into. The appropriation, obligation and expenditure
2 or other disposition of money appropriated under Subsection H
3 of this section shall be accounted for in accordance with
4 standards established by the United States secretary of labor.

5 ~~[(4)]~~ J. Money ~~[requisitioned as provided herein~~
6 ~~for the payment of expenses of administration]~~ appropriated
7 under Subsection H of this section for payment of expenses of
8 administration shall be requisitioned as needed for payment of
9 the obligations incurred under such appropriations and, upon
10 requisition, [requisitioned as provided herein for the payment
11 of expenses of administration] shall be deposited in the
12 unemployment compensation administration fund but, until
13 expended, shall remain a part of the unemployment compensation
14 fund for use only in accordance with the conditions specified
15 in ~~[this]~~ Subsection H of this section, notwithstanding any
16 provision of Section 51-1-34 NMSA 1978. ~~[The department shall~~
17 ~~maintain a separate record of the deposit, obligation,~~
18 ~~expenditure and return of funds so deposited.]~~ Any money so
19 deposited ~~[which either will not be obligated within the~~
20 ~~period specified by the appropriation law or remains~~
21 ~~unobligated at the end of the period, and any money which has~~
22 ~~been obligated within the period but]~~ that will not be
23 expended shall be returned promptly to the account of the
24 state in the unemployment trust fund.

25 ~~[E.]~~ K. The provisions of Subsections A, B, C,

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

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1 compensation fund only under the direction of the secretary."

2 Section 6. Section 51-1-37 NMSA 1978 (being Laws 1936
3 (S.S.), Chapter 1, Section 15, as amended) is amended to read:

4 "51-1-37. PROTECTION OF RIGHTS AND BENEFITS. --

5 A. Except as provided by Section 51-1-37.1 NMSA
6 1978, any agreement by an individual to waive, release or
7 commute his rights to benefits or any other rights under the
8 Unemployment Compensation Law shall be void. No agreement by
9 any individual in the employ of any person or concern to pay
10 all or any portion of an employer's contributions or payments
11 in lieu of contributions, required under the Unemployment
12 Compensation Law from such employer, shall be valid. No
13 employer shall directly or indirectly make or require or
14 accept any deduction from the remuneration of individuals in
15 his employ to finance the employer's contributions or payments
16 in lieu of contributions required from him or require or
17 accept any waiver of any right hereunder by an individual in
18 his employ. Any employer or officer or agent of an employer
19 who violates any provisions of this subsection shall, for each
20 offense, be fined not less than one hundred dollars (\$100) nor
21 more than one thousand dollars (\$1,000) or be imprisoned for
22 not more than six months, or both.

23 B. No individual claiming benefits shall be
24 charged fees of any kind in any proceeding under the
25 Unemployment Compensation Law by the department or its

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1 representatives or by any court or any officer thereof. Any
2 individual claiming benefits and any employer in any
3 proceeding before the secretary, his authorized representative
4 or the board of review may be represented by counsel or any
5 other duly authorized agent, but ~~[not]~~ no such counsel or
6 agent shall either charge or receive for such services more
7 than an amount approved by the secretary. Any person who
8 violates any provision of this subsection shall, for each such
9 offense, be fined not less than fifty dollars (\$50.00) nor
10 more than five hundred dollars (\$500) or imprisoned for not
11 more than six months, or both.

12 C. Except as provided ~~[by Section 51-1-37.1 NMSA~~
13 ~~1978]~~ in Subsection D of this section, any assignment, pledge
14 or encumbrance of any right to benefits which are or may
15 become due or payable under the Unemployment Compensation Law
16 shall be void, and such rights to benefits shall be exempt
17 from levy, execution, attachment, garnishment or any other
18 remedy ~~[whatsoever]~~ provided for the collection of debt ~~[and]~~.
19 Benefits received by any individual, so long as they are not
20 mingled with other funds of the recipient, shall be exempt
21 from ~~[any]~~ a remedy ~~[whatsoever]~~ for the collection of ~~[all]~~
22 debts except debts incurred for necessities furnished to
23 ~~[such]~~ an individual or his spouse or dependents during the
24 time when ~~[such individual]~~ he was unemployed. Any waiver of
25 any exemption provided for in this subsection ~~[shall be]~~ is

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1 void.

2 D. The following actions for collection of the
3 indicated obligations may be taken:

4 (1) deduction and withholding of amounts of
5 unpaid child support pursuant to Section 51-1-37.1 NMSA 1978;

6 (2) levy by the federal internal revenue
7 service pursuant to Section 6331(h)(2)(C) of the Internal
8 Revenue Code provided that arrangements have been made by the
9 internal revenue service for reimbursement of the division for
10 administrative costs incurred by the division that are
11 attributable to the repayment of uncollected federal internal
12 revenue taxes. Levy of federal income taxes will be made in
13 accordance with such regulations as the secretary may
14 prescribe; and

15 (3) deduction and withholding of amounts for
16 food stamp overissuances pursuant to Section 51-1-37.2 NMSA
17 1978. "

18 Section 7. Section 51-1-37.1 NMSA 1978 (being Laws 1982,
19 Chapter 41, Section 4, as amended) is amended to read:

20 "51-1-37.1. CHILD SUPPORT OBLIGATIONS. --

21 A. ~~[An individual filing a claim to establish a~~
22 ~~benefit year for unemployment compensation shall, at the time~~
23 ~~of filing the claim, disclose whether or not the individual~~
24 ~~owes child support obligations. If the individual is eligible~~
25 ~~for unemployment compensation benefits and owes child support~~

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[bracketed material] = delete

1 ~~obligations, the employment security department shall notify~~
2 ~~the human services department of the name of the applicant and~~
3 ~~the amount of benefits for which the claimant is eligible.]~~

4 The division shall notify the human services department of the
5 name of any individual who files a new claim for unemployment
6 compensation and who is determined to be eligible for
7 benefits.

8 B. The [~~employment security department~~] division
9 shall deduct and withhold from any unemployment compensation
10 otherwise payable to an individual who owes child support
11 obligations:

12 (1) the amount specified by the individual to
13 be deducted and withheld, if an amount is not specified under
14 Paragraph (2) or (3) of this subsection;

15 (2) the amount specified in an agreement
16 between the individual and the child support enforcement
17 bureau of the human services department, pursuant to Section
18 454(20)(B)(i) of the Social Security Act, a copy of which has
19 been provided to the [~~employment security department~~] division
20 by the child support enforcement bureau; or

21 (3) any amount otherwise required to be so
22 deducted and withheld from such unemployment compensation
23 pursuant to a writ of garnishment or other legal process for
24 enforcement of judgments issued by any court or administrative
25 agency of competent jurisdiction in any state, territory or

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1 possession of the United States or any foreign country with
2 which the United States has an agreement to honor such process
3 directed to the human services department for the purpose of
4 enforcing an individual's obligation to provide child support.

5 C. Any amount withheld from the unemployment
6 compensation benefits due a claimant shall be considered as
7 payment of unemployment compensation benefits to the claimant
8 and paid by the individual in satisfaction of his child
9 support obligations.

10 D. The amount of child support obligations
11 withheld by the [~~employment security department~~] division
12 pursuant to this section shall be paid to the human services
13 department.

14 E. As used in this section, "unemployment
15 compensation benefits" means [~~compensation~~] benefits payable
16 under the Unemployment Compensation Law and [~~any compensation~~]
17 amounts payable by or through the [~~employment security~~
18 ~~department~~] division pursuant to an agreement under any
19 federal law providing for compensation, assistance or
20 allowance with respect to unemployment.

21 F. As used in this section, "child support
22 obligations" includes only obligations [~~which~~] that are being
23 enforced pursuant to a plan described in Section 454 of the
24 Social Security Act [~~which~~] that has been approved by the
25 United States secretary of health and human services under

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1 Part D of Title [IV] 4 of the Social Security Act.

2 G. The human services department shall reimburse
3 the [~~employment security department~~] division for the
4 administrative costs incurred by [~~the employment security~~
5 ~~department which~~] it that are attributable to the child
6 support obligations being enforced by the human services
7 department. If the human services department and the
8 [~~employment security department~~] division fail to agree on the
9 amount of such administrative costs, the state budget division
10 of the department of finance and administration shall
11 prescribe the amount of administrative costs to be
12 reimbursed. "

13 Section 8. A new Section 51-1-37.2 NMSA 1978 is enacted
14 to read:

15 "51-1-37.2. [NEW MATERIAL] FOOD STAMP OVERISSUANCES. --

16 A. The division shall notify the human services
17 department of the name and social security number of any
18 individual who files a new claim for unemployment compensation
19 and who is determined to be eligible for benefits. This
20 information provided by the division shall be used by the
21 human services department to determine whether any eligible
22 individual owes an uncollected overissuance of food stamp
23 coupons, as defined in Section 13(c)(1) of the federal Food
24 Stamp Act of 1977.

25 B. The division shall deduct and withhold from any

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1 unemployment compensation benefits payable to an individual
2 who owes an uncollected overissuance:

3 (1) the amount specified by the individual to
4 the division to be deducted and withheld under this
5 subsection;

6 (2) the amount, if any, determined pursuant
7 to an agreement submitted to the human services department
8 pursuant to Section 13(c)(3)(A) of the federal Food Stamp Act
9 of 1977; or

10 (3) any amount otherwise required to be
11 deducted and withheld from unemployment compensation pursuant
12 to Section 13(c)(3)(B) of the federal Food Stamp Act of 1977.

13 C. Any amount deducted and withheld pursuant to
14 this section shall be paid by the division to the human
15 services department.

16 D. Any amount deducted and withheld pursuant to
17 Subsection B of this section shall for all purposes be treated
18 as if it were paid to the individual as unemployment
19 compensation and paid by such individual to the human services
20 department as repayment of the individual's uncollected
21 overissuance.

22 E. As used in this section, "unemployment
23 compensation benefits" means any benefits payable pursuant to
24 the Unemployment Compensation Law and amounts payable pursuant
25 to an agreement pursuant to any federal law providing for

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1 compensation, assistance or allowances with respect to
2 unemployment.

3 F. This section applies only if arrangements have
4 been made for reimbursement by the human services department
5 for the administrative costs incurred by the division pursuant
6 to this section that are attributable to the repayment of
7 uncollected overissuances to the human services department. "

8 Section 9. Section 51-1-42 NMSA 1978 (being Laws 1936
9 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

10 "51-1-42. DEFINITIONS. --As used in the Unemployment
11 Compensation Law:

12 A. "base period" means the first four of the last
13 five completed calendar quarters immediately preceding the
14 first day of an individual's benefit year;

15 B. "benefits" means the cash unemployment
16 compensation payments payable to an eligible individual
17 pursuant to Section 51-1-4 NMSA 1978 with respect to his weeks
18 of unemployment;

19 C. "contributions" means the money payments
20 required by Section 51-1-9 NMSA 1978 to be made into the fund
21 by an employer on account of having individuals performing
22 services for him;

23 D. "employing unit" means any individual or type
24 of organization, including any partnership, association,
25 cooperative, trust, estate, joint-stock company, agricultural

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1 enterprise, insurance company or corporation, whether domestic
2 or foreign, or the receiver, trustee in bankruptcy, trustee or
3 successor thereof, household, fraternity or club, the legal
4 representative of a deceased person or any state or local
5 government entity to the extent required by law to be covered
6 as an employer, which has in its employ one or more
7 individuals performing services for it within this state. All
8 individuals performing services for any employing unit [~~which~~]
9 that maintains two or more separate establishments within this
10 state shall be deemed to be employed by a single employing
11 unit for all the purposes of the Unemployment Compensation
12 Law. Individuals performing services for contractors,
13 subcontractors or agents [~~which~~] that are performing work or
14 services for an employing unit, as described in this
15 subsection, which is within the scope of the employing unit's
16 usual trade, occupation, profession or business, shall be
17 deemed to be in the employ of the employing unit for all
18 purposes of the Unemployment Compensation Law unless such
19 contractor, subcontractor or agent is itself an employer
20 within the provision of Subsection E of this section;

21 E. "employer" includes:

22 (1) any employing unit which:

23 (a) unless otherwise provided in this
24 section, paid for service in employment as defined in
25 Subsection F of this section wages of four hundred fifty

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1 dollars (\$450) or more in any calendar quarter in either the
2 current or preceding calendar year or had in employment, as
3 defined in Subsection F of this section, for some portion of a
4 day in each of twenty different calendar weeks during either
5 the current or the preceding calendar year, and irrespective
6 of whether the same individual was in employment in each such
7 day, at least one individual;

8 (b) for the purposes of Subparagraph
9 (a) of this paragraph, if any week includes both December 31
10 and January 1, the days of that week up to January 1 shall be
11 deemed one calendar week and the days beginning January 1,
12 another such week; and

13 (c) for purposes of defining an
14 "employer" under Subparagraph (a) of this paragraph, the wages
15 or remuneration paid to individuals performing services in
16 employment in agricultural labor or domestic services as
17 provided in Paragraphs (6) and (7) of Subsection F of this
18 section shall not be taken into account; except that any
19 employing unit determined to be an employer of agricultural
20 labor under Paragraph (6) of Subsection F of this section
21 shall be an employer under Subparagraph (a) of this paragraph
22 so long as the employing unit is paying wages or remuneration
23 for services other than agricultural services;

24 (2) any individual or type of organization
25 that acquired the trade or business or substantially all of

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1 the assets thereof, of an employing unit [~~which~~] that at the
2 time of [~~such~~] the acquisition was an employer subject to the
3 Unemployment Compensation Law; provided that where such an
4 acquisition takes place, the secretary may postpone activating
5 the separate account pursuant to Subsection A of Section
6 51-1-11 NMSA 1978 until such time as the successor employer
7 has employment as defined in Subsection F of this section;

8 (3) any employing unit [~~which~~] that acquired
9 all or part of the organization, trade, business or assets of
10 another employing unit and [~~which~~] that, if treated as a
11 single unit with such other employing unit or part thereof,
12 would be an employer under Paragraph (1) of this subsection;

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

15 (a) for which, within either the
16 current or preceding calendar year, service is or was
17 performed with respect to which such employing unit is liable
18 for any federal tax against which credit may be taken for
19 contributions required to be paid into a state unemployment
20 fund; or

21 (b) which, as a condition for approval
22 of the Unemployment Compensation Law for full tax credit
23 against the tax imposed by the Federal Unemployment Tax Act,
24 is required, pursuant to such act, to be an "employer" under
25 the Unemployment Compensation Law;

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1 (5) any employing unit ~~[which]~~ that, having
2 become an employer under Paragraph (1), (2), (3) or (4) of
3 this subsection, has not, under Section 51-1-18 NMSA 1978,
4 ceased to be an employer subject to the Unemployment
5 Compensation Law;

6 (6) for the effective period of its election
7 pursuant to Section 51-1-18 NMSA 1978, any other employing
8 unit ~~[which]~~ that has elected to become fully subject to the
9 Unemployment Compensation Law; and

10 (7) any employing unit for which any services
11 performed in its employ are deemed to be performed in this
12 state pursuant to an election under an arrangement entered
13 into in accordance with Subsection A of Section 51-1-50 NMSA
14 1978;

15 F. "employment" means:

16 (1) any service, including service in
17 interstate commerce, performed for wages or under any contract
18 of hire, written or oral, express or implied;

19 (2) ~~[and includes]~~ an individual's entire
20 service, performed within or both within and without this
21 state if:

22 (a) the service is primarily localized
23 in this state with services performed outside the state being
24 only incidental thereto; or

25 (b) the service is not localized in any

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1 state but some of the service is performed in this state and:
2 1) the base of operations or, if there is no base of
3 operations, the place from which such service is directed or
4 controlled, is in this state; or 2) the base of operations or
5 place from which such service is directed or controlled is not
6 in any state in which some part of the service is performed
7 but the individual's residence is in this state;

8 (3) services performed within this state but
9 not covered under Paragraph (2) of this subsection if
10 contributions or payments in lieu of contributions are not
11 required and paid with respect to such services under an
12 unemployment compensation law of any other state, the federal
13 government or Canada;

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

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

23 (a) such individual has been and will
24 continue to be free from control or direction over the
25 performance of such services both under his contract of

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1 service and in fact;

2 (b) such service is either outside the
3 usual course of business for which such service is performed
4 or that such service is performed outside of all the places of
5 business of the enterprise for which such service is
6 performed; and

7 (c) such individual is customarily
8 engaged in an independently established trade, occupation,
9 profession or business of the same nature as that involved in
10 the contract of service;

11 (6) service performed after December 31, 1977
12 by an individual in agricultural labor as defined in
13 Subsection Q of this section if:

14 (a) such service is performed for an
15 employing unit ~~[which]~~ that: 1) paid remuneration in cash of
16 twenty thousand dollars (\$20,000) or more to individuals in
17 such employment during any calendar quarter in either the
18 current or the preceding calendar year; or 2) employed in
19 agricultural labor ten or more individuals for some portion of
20 a day in each of twenty different calendar weeks in either the
21 current or preceding calendar year, whether or not such weeks
22 were consecutive, and regardless of whether such individuals
23 were employed at the same time;

24 (b) such service is not performed
25 before January 1, 1980 by an individual who is an alien

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1 admitted to the United States to perform service in
2 agricultural labor pursuant to Sections 214(c) and 101(15)(H)
3 of the Immigration and Nationality Act; and

4 (c) for purposes of this paragraph, any
5 individual who is a member of a crew furnished by a crew
6 leader to perform service in agricultural labor for a farm
7 operator or other person shall be treated as an employee of
8 such crew leader: 1) if such crew leader meets the
9 requirements of a crew leader as defined in Subsection L of
10 this section; or 2) substantially all the members of such crew
11 operate or maintain mechanized agricultural equipment [~~which~~
12 that is provided by the crew leader; and 3) the individuals
13 performing such services are not, by written agreement or in
14 fact, within the meaning of Paragraph (5) of this subsection,
15 performing services in employment for the farm operator or
16 other person;

17 (7) service performed after December 31, 1977
18 by an individual in domestic service in a private home, local
19 college club or local chapter of a college fraternity or
20 sorority for a person or organization that paid cash
21 remuneration of one thousand dollars (\$1,000) in any calendar
22 quarter in the current or preceding calendar year to
23 individuals performing such services;

24 (8) service performed after December 31, 1971
25 by an individual in the employ of a religious, charitable,

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1 educational or other organization but only if the following
2 conditions are met:

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

6 (b) the organization meets the
7 requirements of "employer" as provided in Subparagraph (a) of
8 Paragraph (1) of Subsection E of this section;

9 (9) service of an individual who is a citizen
10 of the United States, performed outside the United States,
11 except in Canada, after December 31, 1971 in the employ of an
12 American employer (other than service [~~which~~ that is deemed
13 "employment" under the provisions of Paragraph (2) of this
14 subsection or the parallel provisions of another state's law),
15 if:

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

18 (b) the employer has no place of
19 business in the United States, but: 1) the employer is an
20 individual who is a resident of this state; 2) the employer is
21 a corporation [~~which is~~] organized under the laws of this
22 state; or 3) the employer is a partnership or a trust and the
23 number of the partners or trustees who are residents of this
24 state is greater than the number who are residents of any one
25 other state; or

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1 (c) none of the criteria of
2 Subparagraphs (a) and (b) of this paragraph are met, but the
3 employer has elected coverage in this state or, the employer
4 having failed to elect coverage in any state, the individual
5 has filed a claim for benefits, based on such service, under
6 the law of this state.

7 "American employer" for purposes of this paragraph means
8 a person who is: 1) an individual who is a resident of the
9 United States; 2) a partnership if two-thirds or more of the
10 partners are residents of the United States; 3) a trust if all
11 of the trustees are residents of the United States; or 4) a
12 corporation organized under the laws of the United States or
13 of any state. For the purposes of this paragraph, "United
14 States" includes the United States, the District of Columbia,
15 the commonwealth of Puerto Rico and the Virgin Islands;

16 (10) notwithstanding any other provisions of
17 this subsection, service with respect to which a tax is
18 required to be paid under any federal law imposing a tax
19 against which credit may be taken for contributions required
20 to be paid into a state unemployment fund or which as a
21 condition for full tax credit against the tax imposed by the
22 Federal Unemployment Tax Act is required to be covered under
23 the Unemployment Compensation Law;

24 (11) "employment" [~~shall~~] does not include:

25 (a) service performed in the employ of:

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1 1) a church or convention or association of churches; or 2) an
2 organization [~~which~~] that is operated primarily for religious
3 purposes and [~~which~~] that is operated, supervised, controlled
4 or principally supported by a church or convention or
5 association of churches;

6 (b) service performed by a duly
7 ordained, commissioned or licensed minister of a church in the
8 exercise of his ministry or by a member of a religious order
9 in the exercise of duties required by such order;

10 (c) service performed by an individual
11 in the employ of his son, daughter or spouse, and service
12 performed by a child under the age of majority in the employ
13 of his father or mother;

14 (d) service performed in the employ of
15 the United States government or an instrumentality of the
16 United States immune under the constitution of the United
17 States from the contributions imposed by the Unemployment
18 Compensation Law except that to the extent that the congress
19 of the United States shall permit states to require any
20 instrumentalities of the United States to make payments into
21 an unemployment fund under a state unemployment compensation
22 act, all of the provisions of the Unemployment Compensation
23 Law shall be applicable to such instrumentalities, and to
24 service performed for such instrumentalities in the same
25 manner, to the same extent and on the same terms as to all

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1 other employers, employing units, individuals and services;
2 provided, that if this state shall not be certified for any
3 year by the secretary of labor of the United States under
4 Section 3304 of the federal Internal Revenue Code (26 U. S. C.
5 Section 3304), the payments required of such instrumentalities
6 with respect to such year shall be refunded by the department
7 from the fund in the same manner and within the same period as
8 is provided in Subsection D of Section 51-1-36 NMSA 1978 with
9 respect to contributions erroneously collected;

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

18 (f) service with respect to which
19 unemployment compensation is payable under an unemployment
20 compensation system established by an act of congress;

21 (g) service performed in the employ of
22 a foreign government, including service as a consular or other
23 officer or employee or a nondiplomatic representative;

24 (h) service performed by an individual
25 for a person as an insurance agent or as an insurance

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1 solicitor, if all such service performed by such individual
2 for such person is performed for remuneration solely by way of
3 commi ssi on;

4 (i) service performed by an individual
5 under the age of eighteen in the delivery or distribution of
6 newspapers or shopping news, not including delivery or
7 distribution to any point for subsequent delivery or
8 distri buti on;

9 (j) service covered by an election duly
10 approved by the agency charged with the administration of any
11 other state or federal unemployment compensation law, in
12 accordance with an arrangement pursuant to Paragraph (1) of
13 Subsection A of Section 51-1-50 NMSA 1978 during the effective
14 period of such election;

15 (k) service performed, as part of an
16 unemployment work-relief or work-training program assisted or
17 financed in whole or part by any federal agency or an agency
18 of a state or political subdivision thereof, by an individual
19 receiving such work relief or work training;

20 (l) service performed by an individual
21 who is enrolled at a nonprofit or public educational
22 institution [~~which~~] that normally maintains a regular faculty
23 and curriculum and normally has a regularly organized body of
24 students in attendance at the place where its educational
25 activities are carried on as a student in a full-time program,

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1 taken for credit at [~~such~~] the institution [~~which~~] that
2 combines academic instruction with work experience, if the
3 service is an integral part of such program and the
4 institution has so certified to the employer, except that this
5 subparagraph shall not apply to service performed in a program
6 established for or on behalf of an employer or group of
7 employers;

8 (m) service performed in the employ of
9 a hospital, if the service is performed by a patient of the
10 hospital, or services performed by an inmate of a custodial or
11 penal institution for a governmental entity or nonprofit
12 organization;

13 (n) service performed by real estate
14 salesmen for others when the services are performed for
15 remuneration solely by way of commission;

16 (o) service performed in the employ of
17 a school, college or university if such service is performed
18 by a student who is enrolled and is regularly attending
19 classes at such school, college or university;

20 (p) service performed by an individual
21 for a fixed or contract fee officiating at a sporting event
22 [~~which~~] that is conducted by or under the auspices of a
23 nonprofit or governmental entity if that person is not
24 otherwise an employee of the entity conducting the sporting
25 event;

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[bracketed material] = delete

1 (q) service performed for a private,
2 for-profit person or entity by an individual as a product
3 demonstrator or product merchandiser if the service is
4 performed pursuant to a written contract between that
5 individual and a person or entity whose principal business is
6 obtaining the services of product demonstrators and product
7 merchandisers for third parties, for demonstration and
8 merchandising purposes and the individual: 1) is compensated
9 for each job or the compensation is based on factors related
10 to the work performed; 2) provides the equipment used to
11 perform the service, unless special equipment is required and
12 provided by the manufacturer through an agency; 3) is
13 responsible for completion of a specific job and for any
14 failure to complete the job; 4) pays all expenses, and the
15 opportunity for profit or loss rests solely with the
16 individual; and 5) is responsible for operating costs, fuel,
17 repairs and motor vehicle insurance. For the purpose of this
18 subparagraph, "product demonstrator" means an individual who,
19 on a temporary, part-time basis, demonstrates or gives away
20 samples of a food or other product as part of an advertising
21 or sales promotion for the product and who is not otherwise
22 employed directly by the manufacturer, distributor or
23 retailer, and "product merchandiser" means an individual who,
24 on a temporary, part-time basis builds or resets a product
25 display and who is not otherwise directly employed by the

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1 manufacturer, distributor or retailer; or

2 (r) service performed for a private
3 for-profit person or entity by an individual as a landman if
4 substantially all remuneration paid in cash or otherwise for
5 the performance of the services is directly related to the
6 completion by the individual of the specific tasks contracted
7 for rather than to the number of hours worked by the
8 individual. For the purposes of this subparagraph, "landman"
9 means a land professional who has been engaged primarily in:
10 1) negotiating for the acquisition or divestiture of mineral
11 rights; 2) negotiating business agreements that provide for
12 the exploration for or development of minerals; 3) determining
13 ownership of minerals through the research of public and
14 private records; and 4) reviewing the status of title, curing
15 title defects and otherwise reducing title risk associated
16 with ownership of minerals; managing rights or obligations
17 derived from ownership of interests and minerals; or utilizing
18 or pooling of interest in minerals; and

19 (12) for the purposes of this subsection, if
20 the services performed during one-half or more of any pay
21 period by an individual for the person employing him
22 constitute employment, all the services of such individual for
23 such period shall be deemed to be employment but, if the
24 services performed during more than one-half of any such pay
25 period by an individual for the person employing him do not

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1 constitute employment, then none of the services of such
2 individual for such period shall be deemed to be employment.
3 As used in this paragraph, the term "pay period" means a
4 period, of not more than thirty-one consecutive days, for
5 which a payment of remuneration is ordinarily made to the
6 individual by the person employing him. This paragraph shall
7 not be applicable with respect to services performed in a pay
8 period by an individual for the person employing him where any
9 of such service is excepted by Subparagraph (f) of Paragraph
10 (11) of this subsection;

11 G. "employment office" means a free public
12 employment office, or branch thereof, operated by this state
13 or maintained as a part of a state-controlled system of public
14 employment offices;

15 H. "fund" means the unemployment compensation fund
16 established by the Unemployment Compensation Law to which all
17 contributions and payments in lieu of contributions required
18 under the Unemployment Compensation Law and from which all
19 benefits provided under the Unemployment Compensation Law
20 shall be paid;

21 I. "unemployment" means, with respect to an
22 individual, any week during which he performs no services and
23 with respect to which no wages are payable to him and during
24 which he is not engaged in self-employment or receives an
25 award of back pay for loss of employment. The secretary shall

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1 prescribe by regulation what constitutes part-time and
2 intermittent employment, partial employment and the conditions
3 under which individuals engaged in such employment are
4 eligible for partial unemployment benefits;

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

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

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

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

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

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

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

5 M. "week" means such period of seven consecutive
6 days, as the secretary may by regulation prescribe. The
7 secretary may by regulation prescribe that a week shall be
8 deemed to be "in", "within" or "during" [~~that~~] the benefit
9 year [~~which~~] that includes the 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 any 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 his
24 last preceding benefit year; provided that at the time of
25 filing such a claim the individual has been paid the wages for

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1 insured work required under Paragraph (5) of Subsection A of
2 Section 51-1-5 NMSA 1978;

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

5 (1) on a farm, in the employ of any person,
6 in connection with cultivating the soil or in connection with
7 raising or harvesting any 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 such farm and its
14 tools and equipment, if the major part of such 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

Underscored material = new
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1 such 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 A of Section 51-1-13 NMSA 1978;

15 S. "department" means the labor department; and

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

23 (1) subsequent to December 31, 1977, that
24 part of the remuneration in excess of the base wage as
25 determined by the secretary for each calendar year. The base

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

20 (2) the amount of any payment with respect to
21 services performed after June 30, 1941 to or on behalf of an
22 individual in its employ under a plan or system established by
23 an employing unit [~~which~~] that makes provision for individuals
24 in its employ generally or for a class or classes of such
25 individuals, including any amount paid by an employing unit

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1 for insurance or annuities, or into a fund, to provide for any
2 such payment, on account of:

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

13 (b) sickness or accident disability if
14 such payments are received under a workers' compensation or
15 occupational disease disablement law;

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

19 (d) death;
20 provided the individual in its employ has not the option to
21 receive, instead of provision for such death benefit, any part
22 of such payment, or, if such death benefit is insured, any
23 part of the premiums or contributions to premiums paid by his
24 employing unit and has not the right under the provisions of
25 the plan or system or policy of insurance providing for such

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1 death benefit to assign such benefit, or to receive a cash
2 consideration in lieu of such benefit either upon his
3 withdrawal from the plan or system providing for such benefit
4 or upon termination of such plan or system or policy of
5 insurance or of his service with such employing unit;

6 (3) remuneration for agricultural labor paid
7 in any medium other than cash;

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

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

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

21 (7) any payment made to, or on behalf of, an
22 employee or his beneficiary under an arrangement to which
23 Section 408(p) of the federal Internal Revenue code of 1986
24 applies, other than any elective contributions under Paragraph
25 (2)(A)(i) of that section;

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

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

Section 10. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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4
5
6 February 2, 1998

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8 Mr. Speaker:

9 Your JUDICIARY COMMITTEE, to whom has been referred

10
11 HOUSE BILL 223

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15
16 1. On page 2, line 6, after the second occurrence of
17 "than" strike "fifty" and insert in lieu thereof "fifty-two and
18 one-half percent".,

19 and thence referred to the TAXATION AND REVENUE
20 COMMITTEE.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HJC/ HB 223

Page 79

4 The roll call vote on Amendment #1 was 7 For 3 Against

5 Yes: 7

6 No: Alwin, Larranaga, Rios

7 Excused: King, Luna, Sanchez

8 Absent: None

9
10 Respectfully submitted,

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13 _____
14 Thomas P. Foy, Chairman

15
16
17 Adopted _____ Not Adopted _____

18 (Chief Clerk)

(Chief Clerk)

19 Date _____
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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

HJC/ HB 223

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The roll call vote was 10 For 0 Against

Yes: 10

Excused: King, Luna, Sanchez

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HTRC/HB 223/a

Page 82

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

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10 The roll call vote was 10 For 0 Against

11 Yes: 10

12 Excused: Lujan, Russell, Sandoval

13 Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HTRC/HB 223/a

Page 83

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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February 16, 1998

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Mr. President:

10

Your WAYS AND MEANS COMMITTEE, to whom has been
referred

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13

HOUSE BILL 223, as amended

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has had it under consideration and reports same with
recommendation that it DO PASS.

16

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Respectfully submitted,

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Carlos R. Cisneros, Chairman

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HTRC/HB 223/a

Page 84

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Adopted _____ Not

4

Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 7 For 0 Against

12

Yes: 7

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No: 0

14

Excused: McSorley, Nava

15

Absent: None

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