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SENATE BILL 3

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY  
Carlos R. Cisneros

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; DECREASING  
UNEMPLOYMENT COMPENSATION TAXES; AMENDING 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.

B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount"

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

21 (2) each eligible individual who is  
22 unemployed in any week during which he is in a continued  
23 claims status shall be paid, with respect to such week, a  
24 benefit in an amount equal to his weekly benefit amount, less  
25 that part of the wages, if any, or earnings from self-  
employment, payable to him with respect to such week which is  
in excess of one-fifth of his weekly benefit amount. For

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1 purposes of this subsection only, "wages" includes all  
2 remuneration for services actually performed in any week for  
3 which benefits are claimed, vacation pay for any period for  
4 which the individual has a definite return-to-work date,  
5 wages in lieu of notice and back pay for loss of employment  
6 but does not include payments through a court for time spent  
7 in jury service;

8 (3) notwithstanding any other provision of  
9 this section, each eligible individual who, pursuant to a  
10 plan financed in whole or in part by a base-period employer  
11 of such individual, is receiving a governmental or other  
12 pension, retirement pay, annuity or any other similar  
13 periodic payment that is based on the previous work of such  
14 individual and who is unemployed with respect to any week  
15 ending subsequent to April 9, 1981 shall be paid with respect  
16 to such week, in accordance with regulations prescribed by  
17 the secretary, compensation equal to his weekly benefit  
18 amount reduced, but not below zero, by the prorated amount of  
19 such pension, retirement pay, annuity or other similar  
20 periodic payment that exceeds the percentage contributed to  
21 the plan by the eligible individual. The maximum benefit  
22 amount payable to such eligible individual shall be an amount  
23 not more than twenty-six times his reduced weekly benefit  
24 amount. If payments referred to in this section are being  
25 received by any individual under the federal Social Security  
Act, the division shall take into account the individual's  
contribution and make no reduction in the weekly benefit

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1 amount;

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

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

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

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1           D. Any benefit as determined in Subsection B or C  
2 of this section, if not a multiple of one dollar (\$1.00),  
3 shall be rounded to the next lower multiple of one dollar  
4 (\$1.00).

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

13           F. The division, on its own initiative, may  
14 reconsider a monetary determination whenever it is determined  
15 that an error in computation or identity has occurred or that  
16 wages of the claimant pertinent to such determination but not  
17 considered have been newly discovered or that the benefits  
18 have been allowed or denied on the basis of misrepresentation  
19 of fact, but no redetermination shall be made after one year  
20 from the date of the original monetary determination. Notice  
21 of a redetermination shall be given to all interested parties  
22 and shall be subject to an appeal in the same manner as the  
23 original determination. In the event that an appeal  
24 involving an original monetary determination is pending at  
25 the time a redetermination is issued, the appeal, unless  
withdrawn, shall be treated as an appeal from such  
redetermination."

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1           Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969,  
2 Chapter 213, Section 2, as amended) is amended to read:

3           "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

4           A. An unemployed individual shall be eligible to  
5 receive benefits with respect to any week only if he:

6                       (1) has made a claim for benefits with  
7 respect to such week in accordance with such regulations as  
8 the secretary may prescribe;

9                       (2) has registered for work at, and  
10 thereafter continued to report at, an employment office in  
11 accordance with such regulations as the secretary may  
12 prescribe, except that the secretary may, by regulation,  
13 waive or alter either or both of the requirements of this  
14 paragraph as to individuals attached to regular jobs and as  
15 to such other types of cases or situations with respect to  
16 which he finds that compliance with such requirements would  
17 be oppressive or would be inconsistent with the purposes of  
18 the Unemployment Compensation Law. No such regulation shall  
19 conflict with Subsection A of Section 51-1-4 NMSA 1978;

20                       (3) is able to work and is available for  
21 work and is actively seeking permanent and substantially  
22 full-time work in accordance with the terms, conditions and  
23 hours common in the occupation or business in which the  
24 individual is seeking work, except that the secretary may, by  
25 regulation, waive this requirement for individuals who are on  
temporary layoff status from their regular employment with an  
assurance from their employers that the layoff shall not

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1 exceed four weeks or who have an express offer in writing of  
2 substantially full-time work that will begin within a period  
3 not exceeding four weeks;

4 (4) has been unemployed for a waiting period  
5 of one week. No week shall be counted as a week of  
6 unemployment for the purposes of this paragraph:

7 (a) unless it occurs within the benefit  
8 year that includes the week with respect to which he claims  
9 payment of benefits;

10 (b) if benefits have been paid with  
11 respect thereto; and

12 (c) unless the individual was eligible  
13 for benefits with respect thereto as provided in this section  
14 and Section 51-1-7 NMSA 1978, except for the requirements of  
15 this subsection and of Subsection E of Section 51-1-7 NMSA  
16 1978;

17 (5) has ~~[during his base period, been paid~~  
18 ~~wages for insured work totaling not less than one and~~  
19 ~~one-fourth his high-quarter wages]~~ been paid wages in at  
20 least two quarters of his base period;

21 (6) has reported to an office of the  
22 division in accordance with the regulations of the secretary  
23 for the purpose of an examination and review of the  
24 individual's availability for and search for work, for  
25 employment counseling, referral and placement and for  
participation in a job finding or employability training and  
development program. No individual shall be denied benefits

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1 under this section for any week that he is participating in a  
2 job finding or employability training and development  
3 program; and

4 (7) participates in reemployment services,  
5 such as job search assistance services, if the division  
6 determines that the individual is likely to exhaust regular  
7 benefits and need reemployment services pursuant to a  
8 profiling system established by the division, unless the  
9 division determines that:

10 (a) the individual has completed such  
11 services; or

12 (b) there is justifiable cause for the  
13 individual's failure to participate in the services.

14 B. A benefit year as provided in Section 51-1-4  
15 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may  
16 be established; provided no individual may receive benefits  
17 in a benefit year unless, subsequent to the beginning of the  
18 immediately preceding benefit year during which he received  
19 benefits, he performed service in "employment", as defined in  
20 Subsection F of Section 51-1-42 NMSA 1978, and earned  
21 remuneration for such service in an amount equal to [~~the~~  
22 ~~lesser of three-thirteenths of the individual's high-quarter~~  
23 ~~wages and six]~~ at least five times his weekly benefit amount.

24 C. Benefits based on service in employment defined  
25 in Paragraph (8) of Subsection F of Section 51-1-42 and  
Section 51-1-43 NMSA 1978 are to be paid in the same amount,  
on the same terms and subject to the same conditions as

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1 compensation payable on the basis of other services subject  
2 to the Unemployment Compensation Law; except that:

3 (1) benefits based on services performed in  
4 an instructional, research or principal administrative  
5 capacity for an educational institution shall not be paid for  
6 any week of unemployment commencing during the period between  
7 two successive academic years or terms or, when an agreement  
8 provides for a similar period between two regular but not  
9 successive terms, during such period or during a period of  
10 paid sabbatical leave provided for in the individual's  
11 contract, to any individual if such individual performs such  
12 services in the first of such academic years or terms and if  
13 there is a contract or a reasonable assurance that such  
14 individual will perform services in any such capacity for any  
15 educational institution in the second of such academic years  
16 or terms;

17 (2) benefits based on services performed for  
18 an educational institution other than in an instructional,  
19 research or principal administrative capacity shall not be  
20 paid for any week of unemployment commencing during a period  
21 between two successive academic years or terms if such  
22 services are performed in the first of such academic years or  
23 terms and there is a reasonable assurance that such  
24 individual will perform services for any educational  
25 institution in the second of such academic years or terms.  
If compensation is denied to any individual under this  
paragraph and the individual was not offered an opportunity

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1 to perform such services for the educational institution for  
2 the second of such academic years or terms, the individual  
3 shall be entitled to a retroactive payment of benefits for  
4 each week for which the individual filed a claim and  
5 certified for benefits in accordance with the regulations of  
6 the division and for which benefits were denied solely by  
7 reason of this paragraph;

8 (3) benefits shall be denied to any  
9 individual for any week that commences during an established  
10 and customary vacation period or holiday recess if such  
11 individual performs any services described in Paragraphs (1)  
12 and (2) of this subsection in the period immediately before  
13 such period of vacation or holiday recess and there is a  
14 reasonable assurance that such individual will perform any  
15 such services in the period immediately following such  
16 vacation period or holiday recess;

17 (4) benefits shall not be payable on the  
18 basis of services specified in Paragraphs (1) and (2) of this  
19 subsection during the periods specified in Paragraphs (1),  
20 (2) and (3) of this subsection to any individual who  
21 performed such services in or to or on behalf of an  
22 educational institution while in the employ of a state or  
23 local governmental educational service agency or other  
24 governmental entity or nonprofit organization; and

25 (5) for the purpose of this subsection, to  
the extent permitted by federal law, "reasonable assurance"  
means a reasonable expectation of employment in a similar

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1 capacity in the second of such academic years or terms based  
2 upon a consideration of all relevant factors, including the  
3 historical pattern of reemployment in such capacity, a  
4 reasonable anticipation that such employment will be  
5 available and a reasonable notice or understanding that the  
6 individual will be eligible for and offered employment in a  
7 similar capacity.

8 D. Paragraphs (1), (2), (3), (4) and (5) of  
9 Subsection C of this section shall apply to services  
10 performed for all educational institutions, public or  
11 private, for profit or nonprofit, which are operated in this  
12 state or subject to an agreement for coverage under the  
13 Unemployment Compensation Law of this state, unless otherwise  
14 exempt by law.

15 E. Notwithstanding any other provisions of this  
16 section or Section 51-1-7 NMSA 1978, no otherwise eligible  
17 individual is to be denied benefits for any week because he  
18 is in training with the approval of the division nor is such  
19 individual to be denied benefits by reason of application of  
20 provisions in Paragraph (3) of Subsection A of this section  
21 or Subsection C of Section 51-1-7 NMSA 1978 with respect to  
22 any week in which he is in training with the approval of the  
23 division. The secretary shall provide, by regulation,  
24 standards for approved training and the conditions for  
25 approving such training for claimants, including any training  
approved or authorized for approval pursuant to Section  
236(a)(1) and (2) of the Trade Act of 1974, as amended, or

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1 required to be approved as a condition for certification of  
2 the state's Unemployment Compensation Law by the United  
3 States secretary of labor.

4 F. Notwithstanding any other provisions of this  
5 section, benefits shall not be payable on the basis of  
6 services performed by an alien unless such alien is an  
7 individual who was lawfully admitted for permanent residence  
8 at the time such services were performed, was lawfully  
9 present for the purposes of performing such services or was  
10 permanently residing in the United States under color of law  
11 at the time such services were performed, including an alien  
12 who was lawfully present in the United States as a result of  
13 the application of the provisions of Section 212(d)(5) of the  
14 Immigration and Nationality Act; provided that:

15 (1) any information required of individuals  
16 applying for benefits to determine their eligibility for  
17 benefits under this subsection shall be uniformly required  
18 from all applicants for benefits; and

19 (2) no individual shall be denied benefits  
20 because of his alien status except upon a preponderance of  
21 the evidence.

22 G. Notwithstanding any other provision of this  
23 section, benefits shall not be paid to any individual on the  
24 basis of any services substantially all of which consist of  
25 participating in sports or athletic events or training or  
preparing to so participate for any week that commences  
during the period between two successive sport seasons, or

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1 similar periods, if such individual performed such services  
2 in the first of such seasons, or similar periods, and there  
3 is a reasonable assurance that such individual will perform  
4 such services in the latter of such seasons or similar  
5 periods.

6 H. Students who are enrolled in a full-time course  
7 schedule in an educational or training institution or  
8 program, other than those persons in an approved vocational  
9 training program in accordance with Subsection E of this  
10 section, shall not be eligible for unemployment benefits  
11 except as provided by regulations promulgated by the  
12 secretary.

13 I. As used in this subsection, "seasonal ski  
14 employee" means an employee who has not worked for a ski area  
15 operator for more than six consecutive months of the previous  
16 twelve months or nine of the previous twelve months. Any  
17 employee of a ski area operator who has worked for a ski area  
18 operator for six consecutive months of the previous twelve  
19 months or nine of the previous twelve months shall not be  
20 considered a seasonal ski employee. The following benefit  
21 eligibility conditions apply to a seasonal ski employee:

22 (1) except as provided in Paragraphs (2) and  
23 (3) of this subsection, a seasonal ski employee employed by a  
24 ski area operator on a regular seasonal basis shall be  
25 ineligible for a week of unemployment benefits that commences  
during a period between two successive ski seasons unless  
such individual establishes to the satisfaction of the

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1 secretary that he is available for and is making an active  
2 search for permanent full-time work;

3 (2) a seasonal ski employee who has been  
4 employed by a ski area operator during two successive ski  
5 seasons shall be presumed to be unavailable for permanent new  
6 work during a period after the second successive ski season  
7 that he was employed as a seasonal ski employee; and

8 (3) the presumption described in Paragraph  
9 (2) of this subsection shall not arise as to any seasonal ski  
10 employee who has been employed by the same ski area operator  
11 during two successive ski seasons and has resided  
12 continuously for at least twelve successive months and  
13 continues to reside in the county in which the ski area  
14 facility is located.

15 J. Notwithstanding any other provision of this  
16 section, an otherwise eligible individual shall not be denied  
17 benefits for any week by reason of the application of  
18 Paragraph (3) of Subsection A of this section because he is  
19 before any court of the United States or any state pursuant  
20 to a lawfully issued summons to appear for jury duty."

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  
with all contributions paid by him under the Unemployment  
Compensation Law. Nothing in the Unemployment Compensation

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1 Law shall be construed to grant any employer or individuals  
2 in his service prior claims or rights to the amounts paid by  
3 the employer into the fund.

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

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

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

20 ~~[(3) received benefits based upon wages~~  
21 ~~earned from a base-period employer who is not on a~~  
22 ~~reimbursable basis for work performed in a work-release~~  
23 ~~program designed to give an inmate of a correctional~~  
24 ~~institution an opportunity to work while serving a term of~~  
25 ~~incarceration if the inmate's separation was caused by his~~  
~~release from prison;~~

~~(4)]~~ (3) is employed part time by a base-

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

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

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

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

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

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

                  (2) subsequent to December 31, 1984, any  
employing unit that becomes an employer subject to the

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1 payment of contributions under the Unemployment Compensation  
2 Law or has been an employer subject to the payment of  
3 contributions at a standard rate of two and seven-tenths  
4 percent through December 31, 1984 shall be subject to the  
5 payment of contributions at the reduced rate of two and  
6 seven-tenths percent until, as of the computation date of a  
7 particular year, the employer's account has been chargeable  
8 with benefits throughout the preceding thirty-six months; and

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

16 F. The secretary shall, for the year 1942 and for  
17 each calendar year thereafter, classify employers in  
18 accordance with their actual experience in the payment of  
19 contributions and with respect to benefits charged against  
20 their accounts, with a view of fixing such contribution rates  
21 as will reflect such benefit experience. Each employer's  
22 rate for any calendar year shall be determined on the basis  
23 of his record and the condition of the fund as of the  
24 computation date for such calendar year.

25 An employer may make voluntary payments in addition to  
the contributions required under the Unemployment  
Compensation Law, which shall be credited to his account in

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

7 G. In the case of a transfer of an employing  
8 enterprise, the experience history of the transferred  
9 enterprise as provided in Subsection F of this section shall  
10 be transferred from the predecessor employer to the successor  
11 under the following conditions and in accordance with the  
12 applicable regulations of the secretary:

13 (1) Definitions:

14 (a) "employing enterprise" is a  
15 business activity engaged in by a contributing employing unit  
16 in which one or more persons have been employed within the  
17 current or the three preceding calendar quarters;

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

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

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

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

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

11 (b) notice of the transfer has been  
12 given in accordance with the regulations of the secretary  
13 within four years of the transaction transferring the  
14 employing enterprise or the date of the actual transfer of  
15 control and operation of the employing enterprise;

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

(d) where the transaction involves only  
a merger, consolidation or other form of reorganization

1 without a substantial change in the ownership and controlling  
2 interest of the business entity, as determined by the  
3 secretary, the limitations on transfers stated in  
4 Subparagraphs (a), (b) and (c) of this paragraph shall not  
5 apply. No party to a merger, consolidation or other form of  
6 reorganization described in this paragraph shall be relieved  
7 of liability for any contributions, interest or penalties due  
8 and owing from the employing enterprise at the time of the  
9 merger, consolidation or other form of reorganization.

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

(a) the successor notifies the division  
of the acquisition, in writing, not later than the due date

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1 of the successor's first quarterly wage and contribution  
2 report after the effective date of the acquisition;

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

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

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1 entire payroll.

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

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

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

22 (a) the rate in schedule 1 of the table  
23 provided in Paragraph (4) of this subsection on the  
24 corresponding line as his reserve if the fund equals at least  
25 [~~four~~] three and four-tenths percent of the total payrolls;

(b) the rate in schedule 2 of the table  
provided in Paragraph (4) of this subsection on the

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1 corresponding line if the fund has dropped to [~~between four~~  
2 ~~percent and~~] less than three and four-tenths percent and not  
3 less than two and seven-tenths percent;

4 (c) the rate in schedule 3 of the table  
5 provided in Paragraph (4) of this subsection on the  
6 corresponding line if the fund has dropped to [~~between three~~]  
7 less than two and seven-tenths percent and not less than two  
8 percent;

9 (d) the rate in schedule 4 of the table  
10 provided in Paragraph (4) of this subsection on the  
11 corresponding line if the fund has dropped to [~~between~~] less  
12 than two percent and not less than one and one-half percent;

13 (e) the rate in schedule 5 of the table  
14 provided in Paragraph (4) of this subsection on the  
15 corresponding line if the fund has dropped to [~~between~~] less  
16 than one and one-half percent and not less than one percent;  
17 or

18 (f) the rate in schedule 6 of the table  
19 provided in Paragraph (4) of this subsection on the  
20 corresponding line if the fund has dropped [~~below~~] less than  
21 one percent.

22 (3) As used in this section:

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

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

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

6 (d) "computation date" for each  
 7 calendar year means the close of business on June 30 of the  
 8 preceding calendar year.

9 (4) Table of employer reserves and  
 10 contribution rate schedules:

11 Employer Reserve	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
12 10.0% and over	[ <del>0.1%</del> ] <u>0.05%</u>	[ <del>0.3%</del> ] <u>0.1%</u>	0.6%
13 9.0%-9.9%	[ <del>0.3%</del> ] <u>0.1%</u>	[ <del>0.6%</del> ] <u>0.2%</u>	0.9%
14 8.0%-8.9%	[ <del>0.6%</del> ] <u>0.2%</u>	[ <del>0.9%</del> ] <u>0.4%</u>	1.2%
15 7.0%-7.9%	[ <del>0.9%</del> ] <u>0.4%</u>	[ <del>1.2%</del> ] <u>0.6%</u>	1.5%
16 6.0%-6.9%	[ <del>1.2%</del> ] <u>0.6%</u>	[ <del>1.5%</del> ] <u>0.8%</u>	1.8%
17 5.0%-5.9%	[ <del>1.5%</del> ] <u>0.8%</u>	[ <del>1.8%</del> ] <u>1.1%</u>	2.1%
18 4.0%-4.9%	[ <del>1.8%</del> ] <u>1.1%</u>	[ <del>2.1%</del> ] <u>1.4%</u>	2.4%
19 3.0%-3.9%	[ <del>2.1%</del> ] <u>1.4%</u>	[ <del>2.4%</del> ] <u>1.7%</u>	2.7%
20 2.0%-2.9%	[ <del>2.4%</del> ] <u>1.7%</u>	[ <del>2.7%</del> ] <u>2.0%</u>	3.0%
21 1.0%-1.9%	[ <del>2.7%</del> ] <u>2.0%</u>	[ <del>3.0%</del> ] <u>2.4%</u>	3.3%
22 0.9%-0.0%	[ <del>3.0%</del> ] <u>2.4%</u>	3.3%	3.6%
23 (-0.1%)-(-0.5%)	3.3%	3.6%	3.9%
24 (-0.5%)-(-1.0%)	4.2%	4.2%	4.2%
25 (-1.0%)-(-2.0%)	5.0%	5.0%	5.0%
Under (-2.0%)	5.4%	5.4%	5.4%

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1	Employer	Contribution	Contribution	Contribution
2	Reserve	Schedule 4	Schedule 5	Schedule 6
3	10.0% and over	0.9%	1.2%	2.7%
4	9.0%-9.9%	1.2%	1.5%	2.7%
5	8.0%-8.9%	1.5%	1.8%	2.7%
6	7.0%-7.9%	1.8%	2.1%	2.7%
7	6.0%-6.9%	2.1%	2.4%	2.7%
8	5.0%-5.9%	2.4%	2.7%	3.0%
9	4.0%-4.9%	2.7%	3.0%	3.3%
10	3.0%-3.9%	3.0%	3.3%	3.6%
11	2.0%-2.9%	3.3%	3.6%	3.9%
12	1.0%-1.9%	3.6%	3.9%	4.2%
13	0.9%-0.0%	3.9%	4.2%	4.5%
14	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
15	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
16	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
17	Under (-2.0%)	5.4%	5.4%	5.4%.

18           I. The division shall promptly notify each  
19 employer of his rate of contributions as determined for any  
20 calendar year pursuant to this section. Such notification  
21 shall include the amount determined as the employer's average  
22 payroll, the total of all his contributions paid on his own  
23 behalf and credited to his account for all past years and  
24 total benefits charged to his account for all such years.  
25 Such determination shall become conclusive and binding upon  
the employer unless, within thirty days after the mailing of  
notice thereof to his last known address or in the absence of

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1 mailing, within thirty days after the delivery of such  
2 notice, the employer files an application for review and  
3 redetermination, setting forth his reason therefor. The  
4 employer shall be granted an opportunity for a fair hearing  
5 in accordance with regulations prescribed by the secretary,  
6 but no employer shall have standing, in any proceeding  
7 involving his rate of contributions or contribution  
8 liability, to contest the chargeability to his account of any  
9 benefits paid in accordance with a determination,  
10 redetermination or decision pursuant to Section 51-1-8 NMSA  
11 1978, except upon the ground that the services on the basis  
12 of which such benefits were found to be chargeable did not  
13 constitute services performed in employment for him and only  
14 in the event that he was not a party to such determination,  
15 redetermination or decision, or to any other proceedings  
16 under the Unemployment Compensation Law in which the  
17 character of such services was determined. The employer  
18 shall be promptly notified of the decision on his application  
19 for redetermination, which shall become final unless, within  
20 fifteen days after the mailing of notice thereof to his last  
21 known address or in the absence of mailing, within fifteen  
22 days after the delivery of such notice, further appeal is  
23 initiated pursuant to Subsection D of Section 51-1-8 NMSA  
24 1978.

25 J. The division shall provide each contributing  
employer, within ninety days of the end of each calendar  
quarter, a written determination of benefits chargeable to

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1 his account. Such determination shall become conclusive and  
2 binding upon the employer for all purposes unless, within  
3 thirty days after the mailing of the determination to his  
4 last known address or in the absence of mailing, within  
5 thirty days after the delivery of such determination, the  
6 employer files an application for review and redetermination,  
7 setting forth his reason therefor. The employer shall be  
8 granted an opportunity for a fair hearing in accordance with  
9 regulations prescribed by the secretary, but no employer  
10 shall have standing in any proceeding involving his  
11 contribution liability to contest the chargeability to his  
12 account of any benefits paid in accordance with a  
13 determination, redetermination or decision pursuant to  
14 Section 51-1-8 NMSA 1978, except upon the ground that the  
15 services on the basis of which such benefits were found to be  
16 chargeable did not constitute services performed in  
17 employment for him and only in the event that he was not a  
18 party to such determination, redetermination or decision, or  
19 to any other proceedings under the Unemployment Compensation  
20 Law in which the character of such services was determined.  
21 The employer shall be promptly notified of the decision on  
22 his application for redetermination, which shall become final  
23 unless, within fifteen days after the mailing of notice  
24 thereof to his last known address or in the absence of  
25 mailing, within fifteen days after the delivery of such  
notice, further appeal is initiated pursuant to Subsection D  
of Section 51-1-8 NMSA 1978.

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

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

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1 Subsection I of this section.

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

9 N. Notwithstanding the provisions of this section,  
10 the rate in schedule 1 of the table provided in Paragraph (4)  
11 of Subsection H of this section shall be applied for [~~two~~]  
12 four calendar years beginning January 1, 1999."

13 Section 4. Section 51-1-42 NMSA 1978 (being Laws 1936  
14 (S.S.), Chapter 1, Section 19, as amended) is amended to  
15 read:

16 "51-1-42. DEFINITIONS.--As used in the Unemployment  
17 Compensation Law:

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

21 B. "benefits" means the cash unemployment  
22 compensation payments payable to an eligible individual  
23 pursuant to Section 51-1-4 NMSA 1978 with respect to his  
24 weeks of unemployment;

25 C. "contributions" means the money payments  
required by Section 51-1-9 NMSA 1978 to be made into the fund  
by an employer on account of having individuals performing

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1 services for him;

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

E. "employer" includes:

- (1) any employing unit which:

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

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

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

(2) any individual or type of organization

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

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

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

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

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

(5) any employing unit that, having become

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1 an employer under Paragraph (1), (2), (3) or (4) of this  
2 subsection, has not, under Section 51-1-18 NMSA 1978, ceased  
3 to be an employer subject to the Unemployment Compensation  
4 Law;

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

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

14 F. "employment" means:

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

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

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

23 (b) the service is not localized in any  
24 state but some of the service is performed in this state and:  
25 1) the base of operations or, if there is no base of  
operations, the place from which such service is directed or  
controlled, is in this state; or 2) the base of operations or

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1 place from which such service is directed or controlled is  
2 not in any state in which some part of the service is  
3 performed but the individual's residence is in this state;

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

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

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

19 (a) such individual has been and will  
20 continue to be free from control or direction over the  
21 performance of such services both under his contract of  
22 service and in fact;

23 (b) such service is either outside the  
24 usual course of business for which such service is performed  
25 or that such service is performed outside of all the places  
of business of the enterprise for which such service is  
performed; and

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1 (c) such individual is customarily  
2 engaged in an independently established trade, occupation,  
3 profession or business of the same nature as that involved in  
4 the contract of service;

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

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

18 (b) such service is not performed  
19 before January 1, 1980 by an individual who is an alien  
20 admitted to the United States to perform service in  
21 agricultural labor pursuant to Sections 214(c) and 101(15)(H)  
22 of the Immigration and Nationality Act; and

23 (c) for purposes of this paragraph, any  
24 individual who is a member of a crew furnished by a crew  
25 leader to perform service in agricultural labor for a farm  
operator or other person shall be treated as an employee of  
such crew leader: 1) if such crew leader meets the

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1 requirements of a crew leader as defined in Subsection L of  
2 this section; or 2) substantially all the members of such  
3 crew operate or maintain mechanized agricultural equipment  
4 that is provided by the crew leader; and 3) the individuals  
5 performing such services are not, by written agreement or in  
6 fact, within the meaning of Paragraph (5) of this subsection,  
7 performing services in employment for the farm operator or  
8 other person;

9 (7) service performed after December 31,  
10 1977 by an individual in domestic service in a private home,  
11 local college club or local chapter of a college fraternity  
12 or sorority for a person or organization that paid cash  
13 remuneration of one thousand dollars (\$1,000) in any calendar  
14 quarter in the current or preceding calendar year to  
15 individuals performing such services;

16 (8) service performed after December 31,  
17 1971 by an individual in the employ of a religious,  
18 charitable, educational or other organization but only if the  
19 following conditions are met:

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

23 (b) the organization meets the  
24 requirements of "employer" as provided in Subparagraph (a) of  
25 Paragraph (1) of Subsection E of this section;

(9) service of an individual who is a  
citizen of the United States, performed outside the United

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1 States, except in Canada, after December 31, 1971 in the  
2 employ of an American employer (other than service that is  
3 deemed "employment" under the provisions of Paragraph (2) of  
4 this subsection or the parallel provisions of another state's  
5 law), if:

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

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

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

22 "American employer" for purposes of this paragraph means  
23 a person who is: 1) an individual who is a resident of the  
24 United States; 2) a partnership if two-thirds or more of the  
25 partners are residents of the United States; 3) a trust if  
all of the trustees are residents of the United States; or 4)  
a corporation organized under the laws of the United States

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1 or of any state. For the purposes of this paragraph, "United  
2 States" includes the United States, the District of Columbia,  
3 the commonwealth of Puerto Rico and the Virgin Islands;

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

12 (11) "employment" does not include:

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

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

23 (c) service performed by an individual  
24 in the employ of his son, daughter or spouse, and service  
25 performed by a child under the age of majority in the employ  
of his father or mother;

(d) service performed in the employ of

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

22 (e) service performed in a facility  
23 conducted for the purpose of carrying out a program of  
24 rehabilitation for individuals whose earning capacity is  
25 impaired by age or physical or mental deficiency or injury or  
providing remunerative work for individuals who because of  
their impaired physical or mental capacity cannot be readily

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1 absorbed in the competitive labor market, by an individual  
2 receiving such rehabilitation or remunerative work;

3 (f) service with respect to which  
4 unemployment compensation is payable under an unemployment  
5 compensation system established by an act of congress;

6 (g) service performed in the employ of  
7 a foreign government, including service as a consular or  
8 other officer or employee or a nondiplomatic representative;

9 (h) service performed by an individual  
10 for a person as an insurance agent or as an insurance  
11 solicitor, if all such service performed by such individual  
12 for such person is performed for remuneration solely by way  
13 of commission;

14 (i) service performed by an individual  
15 under the age of eighteen in the delivery or distribution of  
16 newspapers or shopping news, not including delivery or  
17 distribution to any point for subsequent delivery or  
18 distribution;

19 (j) service covered by an election duly  
20 approved by the agency charged with the administration of any  
21 other state or federal unemployment compensation law, in  
22 accordance with an arrangement pursuant to Paragraph (1) of  
23 Subsection A of Section 51-1-50 NMSA 1978 during the  
24 effective period of such election;

25 (k) service performed, as part of an  
unemployment work-relief or work-training program assisted or  
financed in whole or part by any federal agency or an agency

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1 of a state or political subdivision thereof, by an individual  
2 receiving such work relief or work training;

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

15 (m) service performed in the employ of  
16 a hospital, if the service is performed by a patient of the  
17 hospital, or services performed by an inmate of a custodial  
18 or penal institution for ~~[a governmental entity or nonprofit~~  
19 ~~organization]~~ any employer;

20 (n) service performed by real estate  
21 salesmen for others when the services are performed for  
22 remuneration solely by way of commission;

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

(p) service performed by an individual

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1 for a fixed or contract fee officiating at a sporting event  
2 that is conducted by or under the auspices of a nonprofit or  
3 governmental entity if that person is not otherwise an  
4 employee of the entity conducting the sporting event;

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

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1 on a temporary, part-time basis builds or resets a product  
2 display and who is not otherwise directly employed by the  
3 manufacturer, distributor or retailer; or

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

21 (12) for the purposes of this subsection, if  
22 the services performed during one-half or more of any pay  
23 period by an individual for the person employing him  
24 constitute employment, all the services of such individual  
25 for such period shall be deemed to be employment but, if the  
services performed during more than one-half of any such pay  
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  
9 any of such service is excepted by Subparagraph (f) of  
10 Paragraph (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  
14 public 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 prescribe by regulation what constitutes part-time and  
intermittent employment, partial employment and the

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1 conditions under which individuals engaged in such employment  
2 are eligible for partial unemployment benefits;

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

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

15 L. "crew leader" means a person who:  
16 (1) holds a valid certificate of  
17 registration as a crew leader or farm labor contractor under  
18 the Migrant and Seasonal Agricultural Worker Protection Act;  
19 (2) furnishes individuals to perform  
20 services in agricultural labor for any other person;  
21 (3) pays, either on his own behalf or on  
22 behalf of such other person, the individuals so furnished by  
23 him for service in agricultural labor; and  
24 (4) has not entered into a written agreement  
25 with the other person for whom he furnishes individuals in  
agricultural labor that such individuals will be the  
employees of the other person;

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1 M. "week" means such period of seven consecutive  
2 days, as the secretary may by regulation prescribe. The  
3 secretary may by regulation prescribe that a week shall be  
4 deemed to be "in", "within" or "during" the benefit year that  
5 includes the greater part of such week;

6 N. "calendar quarter" means the period of three  
7 consecutive calendar months ending on March 31, June 30,  
8 September 30 or December 31;

9 O. "insured work" means services performed for  
10 employers who are covered under the Unemployment Compensation  
11 Law;

12 P. "benefit year" with respect to any individual  
13 means the one-year period beginning with the first day of the  
14 first week of unemployment with respect to which the  
15 individual first files a claim for benefits in accordance  
16 with Subsection A of Section 51-1-8 NMSA 1978 and thereafter  
17 the one-year period beginning with the first day of the first  
18 week of unemployment with respect to which the individual  
19 next files such a claim for benefits after the termination of  
20 his last preceding benefit year; provided that at the time of  
21 filing such a claim the individual has been paid the wages  
22 [~~for insured work~~] required under Paragraph (5) of Subsection  
23 A of Section 51-1-5 NMSA 1978;

24 Q. "agricultural labor" includes all services  
25 performed:

(1) on a farm, in the employ of any person,  
in connection with cultivating the soil or in connection with

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1 raising or harvesting any agricultural or horticultural  
2 commodity, including the raising, shearing, feeding, caring  
3 for, training and management of livestock, bees, poultry and  
4 fur-bearing animals and wildlife;

5 (2) in the employ of the owner or tenant or  
6 other operator of a farm, in connection with the operation,  
7 management, conservation or maintenance of such farm and its  
8 tools and equipment, if the major part of such service is  
9 performed on a farm;

10 (3) in connection with the operation or  
11 maintenance of ditches, canals, reservoirs or waterways used  
12 exclusively for supplying and storing water for farming  
13 purposes when such ditches, canals, reservoirs or waterways  
14 are owned and operated by the farmers using the water stored  
15 or carried therein; and

16 (4) in handling, planting, drying, packing,  
17 packaging, processing, freezing, grading, storing or delivery  
18 to storage or to market or to a carrier for transportation to  
19 market any agricultural or horticultural commodity but only  
20 if such service is performed as an incident to ordinary  
21 farming operations. The provisions of this paragraph shall  
22 not be deemed to be applicable with respect to service  
23 performed in connection with commercial canning or commercial  
24 freezing or in connection with any agricultural or  
25 horticultural commodity after its delivery to a terminal  
market for distribution for consumption.

As used in this subsection, the term "farm" includes

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1 stock, dairy, poultry, fruit, fur-bearing animal and truck  
2 farms, plantations, ranches, nurseries, greenhouses, ranges  
3 and orchards;

4 R. "payments in lieu of contributions" means the  
5 money payments made into the fund by an employer pursuant to  
6 the provisions of Subsection A of Section 51-1-13 NMSA 1978;

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

8 T. "wages" means all remuneration for services,  
9 including commissions and bonuses and the cash value of all  
10 remuneration in any medium other than cash. The reasonable  
11 cash value of remuneration in any medium other than cash  
12 shall be established and determined in accordance with  
13 regulations prescribed by the secretary; provided that the  
14 term "wages" shall not include:

15 (1) subsequent to December 31, 1977, that  
16 part of the remuneration in excess of the base wage as  
17 determined by the secretary for each calendar year. The base  
18 wage upon which contribution shall be paid during any  
19 calendar year shall be sixty percent of the state's average  
20 annual earnings computed by the division by dividing total  
21 wages reported to the division by contributing employers for  
22 the second preceding calendar year before the calendar year  
23 the computed base wage becomes effective by the average  
24 annual employment reported by contributing employers for the  
25 same period rounded to the next higher multiple of one  
hundred dollars (\$100); provided that the base wage so  
computed for any calendar year shall not be less than seven

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1 thousand dollars (\$7,000). Wages paid by an employer to an  
2 individual in his employ during any calendar year in excess  
3 of the base wage in effect for that calendar year shall be  
4 reported to the department but shall be exempt from the  
5 payment of contributions unless such wages paid in excess of  
6 the base wage become subject to tax under a federal law  
7 imposing a tax against which credit may be taken for  
8 contributions required to be paid into a state unemployment  
9 fund;

10 (2) the amount of any payment with respect  
11 to services performed after June 30, 1941 to or on behalf of  
12 an individual in its employ under a plan or system  
13 established by an employing unit that makes provision for  
14 individuals in its employ generally or for a class or classes  
15 of such individuals, including any amount paid by an  
16 employing unit for insurance or annuities, or into a fund, to  
17 provide for any such payment, on account of:

18 (a) retirement if such payments are  
19 made by an employer to or on behalf of any employee under a  
20 simplified employee pension plan that provides for payments  
21 by an employer in addition to the salary or other  
22 remuneration normally payable to such employee or class of  
23 such employees and does not include any payments that  
24 represent deferred compensation or other reduction of an  
25 employee's normal taxable wages or remuneration or any  
payments made to a third party on behalf of an employee as  
part of an agreement of deferred remuneration;

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1 (b) sickness or accident disability if  
2 such payments are received under a workers' compensation or  
3 occupational disease disablement law;

4 (c) medical and hospitalization  
5 expenses in connection with sickness or accident disability;  
6 or

7 (d) death; provided the individual in  
8 its employ has not the option to receive, instead of  
9 provision for such death benefit, any part of such payment,  
10 or, if such death benefit is insured, any part of the  
11 premiums or contributions to premiums paid by his employing  
12 unit and has not the right under the provisions of the plan  
13 or system or policy of insurance providing for such death  
14 benefit to assign such benefit, or to receive a cash  
15 consideration in lieu of such benefit either upon his  
16 withdrawal from the plan or system providing for such benefit  
17 or upon termination of such plan or system or policy of  
18 insurance or of his service with such employing unit;

19 (3) remuneration for agricultural labor paid  
20 in any medium other than cash;

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

25 (5) any payment made, or benefit furnished  
to or for the benefit of an employee if at the time of such  
payment or such furnishing it is reasonable to believe that

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1 the employee will be able to exclude such payment or benefit  
2 from income under Section 129 of the federal Internal Revenue  
3 Code of 1986;

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

7 (7) any payment made to, or on behalf of, an  
8 employee or his beneficiary under an arrangement to which  
9 Section 408(p) of the federal Internal Revenue Code of 1986  
10 applies, other than any elective contributions under  
11 Paragraph (2)(A)(i) of that section;

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

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

22 Section 5. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2000.