

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 59

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING CERTAIN
PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW THAT EXPAND
ELIGIBILITY OR ALLOW INCREASED BENEFITS; PROVIDING THAT
EXTENDED BENEFITS SHALL BE PAID ONLY IF FULLY REIMBURSED FROM
FEDERAL SOURCES; ESTABLISHING A TEMPORARY SCHEDULE FOR
CONTRIBUTIONS.

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

SECTION 1. Section 51-1-4 NMSA 1978 (being Laws 2003,
Chapter 47, Section 8, 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 rules prescribed by the secretary through

.184706.3

underscoring material = new
[bracketed material] = delete

1 employment offices or other agencies as the secretary approves
2 by general rule.

3 B. Weekly benefits shall be as follows:

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

23 (2) an eligible individual who is unemployed
24 in any week during which the individual is in a continued
25 claims status shall be paid, with respect to the week, a

.184706.3

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

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

.184706.3

1 shall be an amount not more than twenty-six times the
2 individual's reduced weekly benefit amount. If payments
3 referred to in this section are being received by an individual
4 under the federal Social Security Act, the division shall take
5 into account the individual's contribution and make no
6 reduction in the weekly benefit amount;

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

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

.184706.3

1 provisions of Section 51-1-38 NMSA 1978.

2 C. An individual otherwise eligible for benefits
3 shall be paid for each week of unemployment, in addition to the
4 amount payable under Subsection B of this section, the sum of
5 twenty-five dollars (\$25.00) for each unemancipated child under
6 the age of eighteen, up to a maximum of [~~four~~] two and subject
7 to the maximum stated in Subsection D of this section, of the
8 individual who is in fact dependent upon and wholly or mainly
9 supported by the individual, including:

10 (1) a child in the individual's custody
11 pending the adjudication of a petition filed by the individual
12 for the adoption of the child in a court of competent
13 jurisdiction; or

14 (2) a child for whom the individual, under a
15 decree or order from a court of competent jurisdiction, is
16 required to contribute to the child's support and for whom no
17 other person is receiving allowances under the Unemployment
18 Compensation Law if the child is domiciled within the United
19 States or its territories or possessions, the payment to be
20 withheld and paid pursuant to Section 51-1-37.1 NMSA 1978.

21 D. Dependency benefits shall not exceed fifty
22 percent of the individual's weekly benefit rate. The amount of
23 dependency benefits determined as of the beginning of an
24 individual's benefit year shall not be reduced for the duration
25 of the benefit year, but this provision does not prevent the

.184706.3

1 transfer of dependents' benefits from one spouse to another in
2 accordance with this subsection. If both the husband and wife
3 receive benefits with respect to a week of unemployment, only
4 one of them is entitled to a dependency allowance with respect
5 to a child. The division shall prescribe standards as to who
6 may receive a dependency allowance when both the husband and
7 wife are eligible to receive unemployment compensation
8 benefits. Dependency benefits shall not be paid unless the
9 individual submits documentation satisfactory to the division
10 establishing the existence of the claimed dependent. If the
11 provisions of this subsection are satisfied, an otherwise
12 eligible individual who has been appointed guardian of a
13 dependent child by a court of competent jurisdiction shall be
14 paid dependency benefits.

15 E. An otherwise eligible individual is entitled
16 during any benefit year to a total amount of benefits equal to
17 whichever is the lesser of twenty-six times the individual's
18 weekly benefit amount, plus any dependency benefit amount
19 pursuant to Subsections C and D of this section, or sixty
20 percent of the individual's wages for insured work paid during
21 the individual's base period.

22 F. A benefit as determined in Subsection B or C of
23 this section, if not a multiple of one dollar (\$1.00), shall be
24 rounded to the next lower multiple of one dollar (\$1.00).

25 G. The secretary may prescribe rules to provide for

.184706.3

1 the payment of benefits that are due and payable to the legal
 2 representative, dependents, relatives or next of kin of
 3 claimants since deceased. These rules need not conform with
 4 the laws governing successions, and the payment shall be deemed
 5 a valid payment to the same extent as if made under a formal
 6 administration of the succession of the claimant.

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

21 SECTION 2. Section 51-1-5 NMSA 1978 (being Laws 2003,
 22 Chapter 47, Section 9, as amended) is amended to read:

23 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

24 A. An unemployed individual shall be eligible to
 25 receive benefits with respect to any week only if the

.184706.3

1 individual:

2 (1) has made a claim for benefits with respect
3 to such week in accordance with such rules as the secretary may
4 prescribe;

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

16 (3) is able to work and is available for work
17 and is actively seeking permanent full-time work or part-time
18 work in accordance with Subsection I of Section 51-1-42 NMSA
19 1978 and in accordance with the terms, conditions and hours
20 common in the occupation or business in which the individual is
21 seeking work, except that the secretary may, by rule, waive
22 this requirement for individuals who are on temporary layoff
23 status from their regular employment with an assurance from
24 their employers that the layoff shall not exceed four weeks or
25 who have an express offer in writing of substantially full-time

.184706.3

1 work that will begin within a period not exceeding four weeks;

2 (4) has been unemployed for a waiting period
3 of one week. A week shall not be counted as a week of
4 unemployment for the purposes of this paragraph:

5 (a) unless it occurs within the benefit
6 year that includes the week with respect to which the
7 individual claims payment of benefits;

8 (b) if benefits have been paid with
9 respect thereto; and

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

15 (5) has been paid wages in at least two
16 quarters of the individual's base period;

17 (6) has reported to an office of the division
18 in accordance with the rules of the secretary for the purpose
19 of an examination and review of the individual's availability
20 for and search for work, for employment counseling, referral
21 and placement and for participation in a job finding or
22 employability training and development program. An individual
23 shall not be denied benefits under this section for any week
24 that the individual is participating in a job finding or
25 employability training and development program; and

.184706.3

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

7 (a) the individual has completed such
8 services; or

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

11 B. A benefit year as provided in Section 51-1-4
12 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
13 established; provided an individual may not receive benefits in
14 a benefit year unless, subsequent to the beginning of the
15 immediately preceding benefit year during which the individual
16 received benefits, the individual performed service in
17 "employment", as defined in Subsection F of Section 51-1-42
18 NMSA 1978, and earned remuneration for such service in an
19 amount equal to at least five times the individual's weekly
20 benefit amount.

21 C. Benefits based on service in employment defined
22 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
23 51-1-43 NMSA 1978 are to be paid in the same amount, on the
24 same terms and subject to the same conditions as compensation
25 payable on the basis of other services subject to the

.184706.3

underscoring material = new
~~[bracketed material] = delete~~

1 Unemployment Compensation Law; except that:

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

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

.184706.3

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

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

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

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

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

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

14 E. Notwithstanding any other provisions of this
15 section or Section 51-1-7 NMSA 1978, no otherwise eligible
16 individual is to be denied benefits for any week because the
17 individual is in training [~~or attending school on a full-time~~
18 ~~basis~~] with the approval of the division nor is the individual
19 to be denied benefits by reason of application of provisions in
20 Paragraph (3) of Subsection A of this section or Paragraph (3)
21 of Subsection A of Section 51-1-7 NMSA 1978 with respect to any
22 week in which the individual is in training [~~or attending~~
23 ~~school on a full-time basis~~] with the approval of the division.
24 The secretary shall provide, by rule, standards for approved
25 training and the conditions for approving training for

.184706.3

1 claimants, including any training approved or authorized for
2 approval pursuant to Section 236(a)(1) and (2) of the federal
3 Trade Act of 1974, as amended, or required to be approved as a
4 condition for certification of the state's Unemployment
5 Compensation Law by the United States secretary of labor.

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

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

21 (2) an individual shall not be denied benefits
22 because of the individual's alien status except upon a
23 preponderance of the evidence.

24 G. Notwithstanding any other provision of this
25 section, benefits shall not be paid to any individual on the

.184706.3

1 basis of any services substantially all of which consist of
2 participating in sports or athletic events or training or
3 preparing to so participate for any week that commences during
4 the period between two successive sport seasons, or similar
5 periods, if the individual performed the services in the first
6 of such seasons, or similar periods, and there is a reasonable
7 assurance that the individual will perform the services in the
8 latter of such seasons or similar periods.

9 H. Students who are enrolled in a full-time course
10 schedule in an educational or training institution or program,
11 other than those persons in an approved vocational training
12 program in accordance with Subsection E of this section, shall
13 not be eligible for unemployment benefits unless the individual
14 can demonstrate to the division's satisfaction that the
15 individual is able, available and actively seeking full- or
16 part-time work in accordance with rules prescribed by the
17 secretary.

18 ~~[H.]~~ I. As used in this subsection, "seasonal ski
19 employee" means an employee who has not worked for a ski area
20 operator for more than six consecutive months of the previous
21 twelve months or nine of the previous twelve months. An
22 employee of a ski area operator who has worked for a ski area
23 operator for six consecutive months of the previous twelve
24 months or nine of the previous twelve months shall not be
25 considered a seasonal ski employee. The following benefit

.184706.3

1 eligibility conditions apply to a seasonal ski employee:

2 (1) except as provided in Paragraphs (2) and
3 (3) of this subsection, a seasonal ski employee employed by a
4 ski area operator on a regular seasonal basis shall be
5 ineligible for a week of unemployment benefits that commences
6 during a period between two successive ski seasons unless the
7 individual establishes to the satisfaction of the secretary
8 that the individual is available for and is making an active
9 search for permanent full-time work;

10 (2) a seasonal ski employee who has been
11 employed by a ski area operator during two successive ski
12 seasons shall be presumed to be unavailable for permanent new
13 work during a period after the second successive ski season
14 that the individual was employed as a seasonal ski employee;
15 and

16 (3) the presumption described in Paragraph (2)
17 of this subsection shall not arise as to any seasonal ski
18 employee who has been employed by the same ski area operator
19 during two successive ski seasons and has resided continuously
20 for at least twelve successive months and continues to reside
21 in the county in which the ski area facility is located.

22 [~~F~~] J. Notwithstanding any other provision of this
23 section, an otherwise eligible individual shall not be denied
24 benefits for any week by reason of the application of Paragraph
25 (3) of Subsection A of this section because the individual is

.184706.3

1 before any court of the United States or any state pursuant to
2 a lawfully issued summons to appear for jury duty."

3 SECTION 3. Section 51-1-7 NMSA 1978 (being Laws 2003,
4 Chapter 47, Section 10, as amended by Laws 2005, Chapter 3,
5 Section 3 and further amended by Laws 2005, Chapter 255,
6 Section 1) is amended to read:

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

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

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

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

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

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

.184706.3

1 or unit deployment orders;

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

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

9 B. In determining whether or not any work is
10 suitable for an individual pursuant to Paragraph (3) of
11 Subsection A of this section, the division shall consider the
12 degree of risk involved to the individual's health, safety and
13 morals, the individual's physical fitness, prior training,
14 approved training, [~~or full-time school attendance~~] experience,
15 prior earnings, length of unemployment and prospects for
16 securing local work in the individual's customary occupation
17 and the distance of available work from the individual's
18 residence. Notwithstanding any other provisions of the
19 Unemployment Compensation Law, no work shall be deemed suitable
20 and benefits shall not be denied under the Unemployment
21 Compensation Law to any otherwise eligible individual for
22 refusing to accept new work under any of the following
23 conditions:

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

.184706.3

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

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

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

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

18 (2) the individual does not belong to a grade
19 or class of workers of which, immediately before the
20 commencement of the labor dispute, there were members employed
21 at the premises at which the labor dispute occurs, any of whom
22 are participating in or directly interested in the dispute;
23 provided that if in any case separate branches of work that are
24 commonly conducted in separate businesses in separate premises
25 are conducted in separate departments of the same premises,

.184706.3

1 each such department shall, for the purposes of this
2 subsection, be deemed to be a separate factory, establishment
3 or other premises.

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

14 E. A disqualification pursuant to Paragraph (1) or
15 (2) of Subsection A of this section shall continue for the
16 duration of the individual's unemployment and until the
17 individual has earned wages in bona fide employment other than
18 self-employment, as provided by rule of the secretary, in an
19 amount equivalent to five times the individual's weekly
20 benefit otherwise payable. A disqualification pursuant to
21 Paragraph (3) of Subsection A of this section shall include
22 the week the failure occurred and shall continue for the
23 duration of the individual's unemployment and until the
24 individual has earned wages in bona fide employment other than
25 self-employment, as provided by rule of the secretary, in an

.184706.3

1 amount equivalent to five times the individual's weekly
 2 benefit amount otherwise payable; provided that no more than
 3 one such disqualification shall be imposed upon an individual
 4 for failure to apply for or accept the same position, or a
 5 similar position, with the same employer, except upon a
 6 determination by the division of disqualification pursuant to
 7 Subsection C of this section.

8 F. As used in this section:

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

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

14 SECTION 4. Section 51-1-11 NMSA 1978 (being Laws 2003,
 15 Chapter 47, Section 11, as amended) is amended to read:

16 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

17 A. The division shall maintain a separate account
 18 for each contributing employer and shall credit the
 19 contributing employer's account with all contributions paid by
 20 that employer under the Unemployment Compensation Law.
 21 Nothing in the Unemployment Compensation Law shall be
 22 construed to grant an employer or individuals in the
 23 employer's service prior claims or rights to the amounts paid
 24 by the employer into the fund.

25 B. Benefits paid to an individual shall be charged

.184706.3

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

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

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

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

23 (4) received benefits based upon wages
24 earned from a base-period employer who is not on a
25 reimbursable basis while attending approved training [~~or~~

.184706.3

1 ~~school on a full-time basis]~~ under the provisions of
2 Subsection E of Section 51-1-5 NMSA 1978.

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

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

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

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

16 ~~(3)] (2) voluntarily left work to relocate
17 because of a spouse, who is in the military service of the
18 United States or the New Mexico national guard, receiving
19 permanent change of station orders, activation orders or unit
20 deployment orders.~~

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

24 F. For each calendar year, if, as of the
25 computation date for that year, an employer's account has been

.184706.3

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

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

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

.184706.3

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

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

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

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

24 G. An employer may make voluntary payments in
25 addition to the contributions required under the Unemployment

.184706.3

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

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

14 (1) as used in this subsection:

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

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

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

.184706.3

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

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

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

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

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

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

25 (b) notice of the transfer has been

.184706.3

1 given in accordance with the rules of the secretary during the
2 calendar year of the transaction transferring the employing
3 enterprise or the date of the actual transfer of control and
4 operation of the employing enterprise;

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

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

.184706.3

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

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

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

.184706.3

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

21 (4) if, at the time of a transfer of an
22 employing enterprise in whole or in part, both the predecessor
23 and the successor are under common ownership, then the
24 experience history attributable to the transferred business
25 shall also be transferred to and combined with the experience

1 history attributable to the successor employer. The rates of
2 both employers shall be recalculated and made effective
3 immediately upon the date of the transfer;

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

16 (a) the cost of acquiring the business;

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

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

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

25 (6) if, following a transfer of experience

.184706.3

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

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

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

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

15 (8) a person who knowingly violates or
16 attempts to violate a rule adopted pursuant to Paragraph (7)
17 of this subsection, who transfers or acquires, or attempts to
18 transfer or acquire, an employing enterprise for the sole or
19 primary purpose of obtaining a reduced liability for
20 contributions or who knowingly advises another person to
21 violate a rule adopted pursuant to Paragraph (7) of this
22 subsection or to transfer or acquire an employing enterprise
23 for the sole or primary purpose of obtaining a reduced
24 liability for contributions is guilty of a misdemeanor and
25 shall be punished by a fine of not less than one thousand five

.184706.3

1 hundred dollars (\$1,500) or more than three thousand dollars
2 (\$3,000) or, if an individual, by imprisonment for a definite
3 term not to exceed ninety days or both. In addition, such a
4 person shall be subject to the following civil penalty imposed
5 by the secretary:

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

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

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

24 (1) the total assets in the fund and the
25 total of the last annual payrolls of all employers subject to

.184706.3

1 contributions as of the computation date for each year shall
2 be determined. These annual totals are here called "the fund"
3 and "total payrolls". For each year, the "reserve" of each
4 employer shall be fixed by the excess of the employer's total
5 contributions over total benefit charges computed as a
6 percentage of the employer's average payroll reported for
7 contributions. The determination of each employer's annual
8 rate, computed as of the computation date for each calendar
9 year, shall be made by matching the employer's reserve as
10 shown in the reserve column with the corresponding rate in the
11 rate column of the applicable rate schedule of the table
12 provided in Paragraph (4) [~~or (5)~~] of this subsection;

13 (2) for each calendar year after [2011]
14 2012, except as otherwise provided, each employer's rate shall
15 be the corresponding rate in:

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

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

24 (c) Contribution Schedule 2 of the
25 table provided in Paragraph (4) of this subsection if the fund

.184706.3

1 equals less than one and seven-tenths percent but not less
2 than one and three-tenths percent of the total payrolls;

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

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

11 (f) Contribution Schedule 5 of the
12 table provided in Paragraph (4) of this subsection if the fund
13 equals less than seven-tenths percent but not less than three-
14 tenths percent of the total payrolls; or

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

18 (3) as used in this section:

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

24 (b) "base-period wages" means the wages
25 of an individual for insured work during the individual's base

.184706.3

1 period on the basis of which the individual's benefit rights
 2 were determined;

3 (c) "base-period employers" means the
 4 employers of an individual during the individual's base
 5 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 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
12 10.0% and over	0.03%	0.05%	0.1%	0.6%
13 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
14 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
15 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
16 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
17 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
18 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
19 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
20 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
21 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
22 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
23 (-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
24 (-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%

.184706.3

underscored material = new
 [bracketed material] = delete

1	(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
2	Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
3	Employer	Contribution	Contribution	Contribution	
4	Reserve	Schedule 4	Schedule 5	Schedule 6	
5	10.0% and over	0.9%	1.2%	2.7%	
6	9.0%-9.9%	1.2%	1.5%	2.7%	
7	8.0%-8.9%	1.5%	1.8%	2.7%	
8	7.0%-7.9%	1.8%	2.1%	2.7%	
9	6.0%-6.9%	2.1%	2.4%	2.7%	
10	5.0%-5.9%	2.4%	2.7%	3.0%	
11	4.0%-4.9%	2.7%	3.0%	3.3%	
12	3.0%-3.9%	3.0%	3.3%	3.6%	
13	2.0%-2.9%	3.3%	3.6%	3.9%	
14	1.0%-1.9%	3.6%	3.9%	4.2%	
15	0.9%-0.0%	3.9%	4.2%	4.5%	
16	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%	
17	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%	
18	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%	
19	Under (-2.0%)	5.4%	5.4%	5.4%;	

20 (5) [~~from July 1, 2010 through December 31,~~

21 ~~2010, each employer making contributions pursuant to this~~
 22 ~~subsection shall make a contribution at the rate specified in~~
 23 ~~Contribution Schedule 0; and~~

24 ~~(6)]~~ from January 1, 2011 through December
 25 31, 2011, each employer making contributions pursuant to this

.184706.3

1 subsection shall make a contribution at the rate specified in
2 Contribution Schedule 1; and

3 (6) from January 1, 2012 through December
4 31, 2012, each employer making contributions pursuant to this
5 subsection shall make a contribution at the rate specified in
6 Contribution Schedule 3.

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

.184706.3

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

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

.184706.3

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

23 L. The contributions, together with interest and
24 penalties thereon imposed by the Unemployment Compensation
25 Law, shall not be assessed nor shall action to collect the

.184706.3

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

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

.184706.3

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

8 **SECTION 5.** Section 51-1-48 NMSA 1978 (being Laws 1971,
9 Chapter 209, Section 7, as amended) is amended to read:

10 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

11 A. As used in this section, unless the context
12 clearly requires otherwise, "extended benefit period" means a
13 period that:

14 (1) begins with the third week after a week
15 for which there is a state "on indicator";

16 (2) ends with either of the following weeks,
17 whichever occurs later:

18 (a) the third week after the first week
19 for which there is a state "off indicator"; or

20 (b) the thirteenth consecutive week of
21 such period; and

22 (3) does not begin by reason of a state "on
23 indicator" before the fourteenth week following the end of a
24 prior extended benefit period that was in effect with respect
25 to this state.

.184706.3

1 B. There is a state "on indicator" for this state
 2 for a week if the rate of insured unemployment not seasonally
 3 adjusted under this section for the period consisting of that
 4 week and the immediately preceding twelve weeks:

5 (1) equaled or exceeded one hundred twenty
 6 percent of the average of the rates for the corresponding
 7 thirteen-week period ending in each of the preceding two
 8 calendar years; and

9 (2) equaled or exceeded five percent; or

10 (3) equaled or exceeded six percent,
 11 regardless of the rate of insured unemployment in the two
 12 previous years; provided that the operation of this paragraph
 13 shall not activate the state "on indicator" during a period in
 14 which the secretary has certified pursuant to Subsection I of
 15 this section that the state will not be fully reimbursed by
 16 the federal government for all extended benefits paid; or

17 (4) with respect to benefits for weeks of
 18 unemployment beginning after July 1, 2003:

19 (a) the average rate of total
 20 unemployment, seasonally adjusted, as determined by the United
 21 States secretary of labor, for the period consisting of the
 22 most recent three months for which data for all states are
 23 published before the close of such week equals or exceeds six
 24 and one-half percent; and

25 (b) the average rate of total

.184706.3

1 unemployment in this state, seasonally adjusted, as determined
2 by the United States secretary of labor, for the three-month
3 period referred to in Subparagraph (a) of this paragraph,
4 equals or exceeds one hundred ten percent of such average for
5 either or both of the corresponding three-month periods ending
6 in the two preceding calendar years; provided that the
7 operation of this paragraph shall not activate the state "on
8 indicator" during a period in which the secretary has
9 certified pursuant to Subsection I of this section that the
10 state will not be fully reimbursed by the federal government
11 for all extended benefits paid.

12 C. There is a state "off indicator" for this state
13 for a week only if, for the period consisting of that week and
14 the immediately preceding twelve weeks, none of the options
15 specified in Subsection B of this section result in a state
16 "on indicator".

17 D. Except as provided in Subsection E of this
18 section, the total extended benefit amount payable to an
19 eligible individual with respect to the applicable benefit
20 year shall be the least of the following amounts:

21 (1) fifty percent of the total amount of
22 regular benefits that were payable to the individual pursuant
23 to this section in the individual's applicable benefit year;

24 (2) thirteen times the individual's average
25 weekly benefit amount that was payable to the individual

.184706.3

1 pursuant to this section for a week of total unemployment in
2 the applicable benefit year; or

3 (3) thirty-nine times the individual's
4 average weekly benefit amount that was payable to the
5 individual pursuant to this section for a week of total
6 unemployment in the applicable benefit year, reduced by the
7 total amount of regular benefits that were paid, or deemed
8 paid, to the individual pursuant to this section with respect
9 to the benefit year; provided that the amount determined
10 pursuant to this paragraph shall be reduced by the total
11 amount of additional benefits paid, or deemed paid, to the
12 individual under the provisions of this section for weeks of
13 unemployment in the individual's benefit year that began prior
14 to the effective date of the extended benefit period that is
15 current in the week for which the individual first claims
16 extended benefits; and provided further, if the benefit year
17 of the individual ends within an extended benefit period, the
18 remaining balance of the extended benefits that the individual
19 would, but for this paragraph, be entitled to receive in that
20 extended benefit period, with respect to weeks of unemployment
21 beginning after the end of the benefit year, shall be reduced,
22 but not below zero, by the product of the number of weeks for
23 which the individual received any amounts as readjustment
24 allowances within that benefit year multiplied by the
25 individual weekly benefit amount for extended benefits.

.184706.3

1 E. Effective with respect to weeks beginning in a
2 high-unemployment period, the total extended benefit amount
3 payable to an eligible individual with respect to the
4 applicable benefit year shall be the least of the following
5 amounts; provided that no benefits shall be calculated and
6 paid pursuant to this subsection during a period in which the
7 secretary has certified pursuant to Subsection I of this
8 section that the state will not be fully reimbursed by the
9 federal government for all extended benefits paid:

10 (1) eighty percent of the total amount of
11 regular benefits that were payable to the individual pursuant
12 to this section in the individual's applicable benefit year;

13 (2) twenty times the individual's average
14 weekly benefit amount that was payable to the individual
15 pursuant to this section for a week of total unemployment in
16 the applicable benefit year; or

17 (3) forty-six times the individual's average
18 weekly benefit amount that was payable to the individual
19 pursuant to this section for a week of total unemployment in
20 the applicable benefit year reduced by the total amount of
21 regular benefits that were paid, or deemed paid, to the
22 individual pursuant to this section with respect to the
23 benefit year; provided that the amount determined pursuant to
24 this paragraph shall be reduced by the total amount of
25 additional benefits paid, or deemed paid, to the individual

.184706.3

1 under the provisions of this section for weeks of unemployment
2 in the individual's benefit year that began prior to the
3 effective date of the extended benefit period that is current
4 in the week for which the individual first claims extended
5 benefits; and provided further, if the benefit year of an
6 individual ends within an extended benefit period, the
7 remaining balance of the extended benefits that the individual
8 would, but for this paragraph, be entitled to receive in that
9 extended benefit period, with respect to weeks of unemployment
10 beginning after the end of the benefit year, shall be reduced,
11 but not below zero, by the product of the number of weeks for
12 which the individual received any amounts as readjustment
13 allowances within that benefit year multiplied by the
14 individual weekly benefit amount for extended benefits.

15 F. For purposes of Subsection E of this section,
16 "high-unemployment period" means a period during which an
17 extended benefit period would be in effect if Paragraph (4) of
18 Subsection B of this section were applied by substituting
19 "eight percent" for "six and one-half percent".

20 G. A benefit paid to an individual pursuant to
21 this section shall be charged pursuant to Subsection B of
22 Section 51-1-11 NMSA 1978.

23 H. As used in this section:

24 (1) "rate of insured unemployment" means the
25 percentage derived by dividing:

.184706.3

1 (a) the average weekly number of
2 individuals filing claims for regular benefits in this state
3 for weeks of unemployment with respect to the most recent
4 thirteen-consecutive-week period, as determined by the
5 secretary on the basis of ~~[his]~~ the secretary's reports to the
6 United States secretary of labor; by

7 (b) the average monthly employment
8 covered under the Unemployment Compensation Law for the first
9 four of the most recent six completed calendar quarters ending
10 before the end of such thirteen-week period;

11 (2) "regular benefits" means benefits
12 payable to an individual under the Unemployment Compensation
13 Law or under any other state law, including benefits payable
14 to federal civilian employees and to ex-servicemen pursuant to
15 5 U.S.C., Chapter 85, other than extended benefits;

16 (3) "extended benefits" means benefits,
17 including benefits payable to federal civilian employees and
18 to ex-servicemen pursuant to 5 U.S.C., Chapter 85, payable to
19 an individual under the provisions of this section for weeks
20 of unemployment in the individual's eligibility period;

21 (4) "eligibility period" of an individual
22 means the period consisting of the weeks in the individual's
23 benefit year that begin in an extended benefit period and, if
24 the individual's benefit year ends within such extended
25 benefit period, any weeks thereafter that begin in such

1 period;

2 (5) "exhaustee" means an individual who,
3 with respect to any week of unemployment in the individual's
4 eligibility period:

5 (a) has received, prior to such week,
6 all of the regular benefits that were available to the
7 individual under the Unemployment Compensation Law or any
8 other state law, including dependent's allowance and benefits
9 payable to federal civilian employees and ex-servicemen under
10 5 U.S.C., Chapter 85, in the individual's current benefit year
11 that includes such week; provided that, for the purposes of
12 this subparagraph, an individual shall be deemed to have
13 received all of the regular benefits that were available to
14 the individual, although, as a result of a pending appeal with
15 respect to wages that were not considered in the original
16 monetary determination in the individual's benefit year, the
17 individual may subsequently be determined to be entitled to
18 added regular benefits; or

19 (b) if the individual's benefit year
20 has expired prior to such week, has no, or insufficient, wages
21 on the basis of which the individual could establish a new
22 benefit year that would include such week; and

23 (c) has no right to unemployment
24 benefits or allowances, as the case may be, under the Railroad
25 Unemployment Insurance Act, the Trade Expansion Act of 1962,

.184706.3

1 the Trade Act of 1974, the Automotive Products Trade Act of
2 1965 and such other federal laws as are specified in
3 regulations issued by the United States secretary of labor;
4 and has not received and is not seeking unemployment benefits
5 under the unemployment compensation law of Canada, but if the
6 individual is seeking such benefits and the appropriate agency
7 finally determines that the individual is not entitled to
8 benefits under such law, the individual is considered an
9 exhaustee; and

10 (6) "state law" means the unemployment
11 insurance law of any state, approved by the United States
12 secretary of labor under Section 3304 of the Internal Revenue
13 Code of 1986.

14 I. If the secretary certifies to the governor that
15 the state will not be fully reimbursed by the federal
16 government for all extended benefits paid, then, until the
17 secretary subsequently certifies to the governor that the
18 state will be fully reimbursed by the federal government for
19 all extended benefits paid:

20 (1) the state "on indicator" shall not be
21 activated by the operation of Paragraph (3) or (4) of
22 Subsection B of this section; and

23 (2) benefits shall not be calculated and
24 paid pursuant to Subsection E of this section."

25 SECTION 6. TEMPORARY PROVISION--APPLICABILITY OF ACT.--

1 The amendments to the Unemployment Compensation Law made in
2 Sections 1, 2 and 3 of this act and the amendments to
3 Subsections B and D of Section 51-1-11 NMSA 1978 in Section 4
4 of this act shall apply to benefit years beginning on or after
5 July 1, 2011.

6 SECTION 7. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2011.

underscoring material = new
~~bracketed material~~ = delete