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SENATE BILL 251

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

INTRODUCED BY

Sue Wilson Beffort

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING THAT CERTAIN
BASE PERIOD WAGES SHALL BE EXCLUDED IN THE CALCULATION OF THE
WEEKLY BENEFIT AMOUNT; PROVIDING THAT THE ACCOUNTS OF CERTAIN
BASE-PERIOD EMPLOYERS SHALL NOT BE CHARGED FOR BENEFITS PAID TO
AN INDIVIDUAL WHO LEFT THE EMPLOYMENT UNDER CERTAIN CONDITIONS;
PROVIDING THAT CERTAIN PENSION PAYMENTS BE DEDUCTED FROM
BENEFITS; PROVIDING BENEFIT ELIGIBILITY CONDITIONS FOR CERTAIN
LEGISLATIVE SESSION EMPLOYEES.

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

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1 the unemployment compensation fund. All benefits shall be paid
2 in accordance with rules prescribed by the secretary through
3 employment offices or other agencies as the secretary approves
4 by general rule.

5 B. Weekly benefits shall be as follows:

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

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1 quarter of the individual's base period in which total wages
2 were the highest and whether an individual has wages in at
3 least two quarters of that individual's base period, wages paid
4 to the individual by a governmental entity shall be excluded if
5 the individual:

6 (a) voluntarily left the employ of the
7 governmental entity without good cause; and

8 (b) is receiving a retirement pension
9 from the public employees retirement association or the
10 educational retirement board based in whole or in part on the
11 employment with the governmental entity during the base period;

12 (2) an eligible individual who is unemployed
13 in any week during which the individual is in a continued
14 claims status shall be paid, with respect to the week, a
15 benefit in an amount equal to the individual's weekly benefit
16 amount, less that part of the wages, if any, or earnings from
17 self-employment, payable to the individual with respect to such
18 week that is in excess of one-fifth of the individual's weekly
19 benefit amount. For purposes of this subsection only, "wages"
20 includes all remuneration for services actually performed in a
21 week for which benefits are claimed, vacation pay for a period
22 for which the individual has a definite return-to-work date,
23 wages in lieu of notice and back pay for loss of employment but
24 does not include payments through a court for time spent in
25 jury service;

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1 (3) notwithstanding any other provision of
2 this section, an eligible individual who [~~pursuant to a plan~~
3 ~~financed in whole or in part by a base-period employer of the~~
4 ~~individual~~] is receiving a governmental or other pension,
5 retirement pay, annuity or any other similar periodic payment
6 that is based on the previous work of the individual and who is
7 unemployed with respect to any week ending subsequent to [~~April~~
8 ~~9, 1981~~] July 1, 2011 shall be paid with respect to the week,
9 in accordance with rules prescribed by the secretary,
10 compensation equal to the individual's weekly benefit amount
11 reduced, but not below zero, by the prorated amount of the
12 pension, retirement pay, annuity or other similar periodic
13 payment that exceeds the percentage contributed to the plan by
14 the eligible individual. The maximum benefit amount payable to
15 the eligible individual shall be an amount not more than
16 twenty-six times the individual's reduced weekly benefit
17 amount. If payments referred to in this section are being
18 received by an individual under the federal Social Security
19 Act, the division shall take into account the individual's
20 contribution and make no reduction in the weekly benefit
21 amount;

22 (4) in the case of a lump-sum payment of a
23 pension, retirement or retired pay, annuity or other similar
24 payment by a base-period employer that is based on the previous
25 work of the individual, the payment shall be allocated, in

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1 accordance with rules prescribed by the secretary, and shall
2 reduce the amount of unemployment compensation paid, but not
3 below zero, in accordance with Paragraph (3) of this
4 subsection; and

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

17 C. An individual otherwise eligible for benefits
18 shall be paid for each week of unemployment, in addition to the
19 amount payable under Subsection B of this section, the sum of
20 twenty-five dollars (\$25.00) for each unemancipated child under
21 the age of eighteen, up to a maximum of four and subject to the
22 maximum stated in Subsection D of this section, of the
23 individual who is in fact dependent upon and wholly or mainly
24 supported by the individual, including:

25 (1) a child in the individual's custody

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1 pending the adjudication of a petition filed by the individual
2 for the adoption of the child in a court of competent
3 jurisdiction; or

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

11 D. Dependency benefits shall not exceed fifty
12 percent of the individual's weekly benefit rate. The amount of
13 dependency benefits determined as of the beginning of an
14 individual's benefit year shall not be reduced for the duration
15 of the benefit year, but this provision does not prevent the
16 transfer of dependents' benefits from one spouse to another in
17 accordance with this subsection. If both the husband and wife
18 receive benefits with respect to a week of unemployment, only
19 one of them is entitled to a dependency allowance with respect
20 to a child. The division shall prescribe standards as to who
21 may receive a dependency allowance when both the husband and
22 wife are eligible to receive unemployment compensation
23 benefits. Dependency benefits shall not be paid unless the
24 individual submits documentation satisfactory to the division
25 establishing the existence of the claimed dependent. If the

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1 provisions of this subsection are satisfied, an otherwise
2 eligible individual who has been appointed guardian of a
3 dependent child by a court of competent jurisdiction shall be
4 paid dependency benefits.

5 E. An otherwise eligible individual is entitled
6 during any benefit year to a total amount of benefits equal to
7 whichever is the lesser of twenty-six times the individual's
8 weekly benefit amount, plus any dependency benefit amount
9 pursuant to Subsections C and D of this section, or sixty
10 percent of the individual's wages for insured work paid during
11 the individual's base period.

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

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

22 H. The division, on its own initiative, may
23 reconsider a monetary determination whenever it is determined
24 that an error in computation or identity has occurred or that
25 wages of the claimant pertinent to such determination but not

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1 considered have been newly discovered or that the benefits have
2 been allowed or denied on the basis of misrepresentation of
3 fact, but no redetermination shall be made after one year from
4 the date of the original monetary determination. Notice of a
5 redetermination shall be given to all interested parties and
6 shall be subject to an appeal in the same manner as the
7 original determination. In the event that an appeal involving
8 an original monetary determination is pending at the time a
9 redetermination is issued, the appeal, unless withdrawn, shall
10 be treated as an appeal from redetermination."

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

13 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

14 A. An unemployed individual shall be eligible to
15 receive benefits with respect to any week only if the
16 individual:

17 (1) has made a claim for benefits with respect
18 to such week in accordance with such rules as the secretary may
19 prescribe;

20 (2) has registered for work at, and thereafter
21 continued to report at, an employment office in accordance with
22 such rules as the secretary may prescribe, except that the
23 secretary may, by rule, waive or alter either or both of the
24 requirements of this paragraph as to individuals attached to
25 regular jobs and as to such other types of cases or situations

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1 with respect to which the secretary finds that compliance with
2 such requirements would be oppressive or would be inconsistent
3 with the purposes of the Unemployment Compensation Law. No
4 such rule shall conflict with Subsection A of Section 51-1-4
5 NMSA 1978;

6 (3) is able to work and is available for work
7 and is actively seeking permanent full-time work or part-time
8 work in accordance with Subsection I of Section 51-1-42 NMSA
9 1978 and in accordance with the terms, conditions and hours
10 common in the occupation or business in which the individual is
11 seeking work, except that the secretary may, by rule, waive
12 this requirement for individuals who are on temporary layoff
13 status from their regular employment with an assurance from
14 their employers that the layoff shall not exceed four weeks or
15 who have an express offer in writing of substantially full-time
16 work that will begin within a period not exceeding four weeks;

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

20 (a) unless it occurs within the benefit
21 year that includes the week with respect to which the
22 individual claims payment of benefits;

23 (b) if benefits have been paid with
24 respect thereto; and

25 (c) unless the individual was eligible

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1 for benefits with respect thereto as provided in this section
2 and Section 51-1-7 NMSA 1978, except for the requirements of
3 this subsection and of Subsection D of Section 51-1-7 NMSA
4 1978;

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

7 (6) has reported to an office of the division
8 in accordance with the rules of the secretary for the purpose
9 of an examination and review of the individual's availability
10 for and search for work, for employment counseling, referral
11 and placement and for participation in a job finding or
12 employability training and development program. An individual
13 shall not be denied benefits under this section for any week
14 that the individual is participating in a job finding or
15 employability training and development program; and

16 (7) participates in reemployment services,
17 such as job search assistance services, if the division
18 determines that the individual is likely to exhaust regular
19 benefits and [~~need~~] needs reemployment services pursuant to a
20 profiling system established by the division, unless the
21 division determines that:

22 (a) the individual has completed such
23 services; or

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

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1 B. A benefit year as provided in Section 51-1-4
2 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
3 established; provided an individual may not receive benefits in
4 a benefit year unless, subsequent to the beginning of the
5 immediately preceding benefit year during which the individual
6 received benefits, the individual performed service in
7 "employment", as defined in Subsection F of Section 51-1-42
8 NMSA 1978, and earned remuneration for such service in an
9 amount equal to at least five times the individual's weekly
10 benefit amount.

11 C. Benefits based on service in employment defined
12 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
13 51-1-43 NMSA 1978 are to be paid in the same amount, on the
14 same terms and subject to the same conditions as compensation
15 payable on the basis of other services subject to the
16 Unemployment Compensation Law; except that:

17 (1) benefits based on services performed in an
18 instructional, research or principal administrative capacity
19 for an educational institution shall not be paid for any week
20 of unemployment commencing during the period between two
21 successive academic years or terms or, when an agreement
22 provides for a similar period between two regular but not
23 successive terms, during such period or during a period of paid
24 sabbatical leave provided for in the individual's contract, to
25 any individual if the individual performs such services in the

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1 first of such academic years or terms and if there is a
2 contract or a reasonable assurance that the individual will
3 perform services in any such capacity for any educational
4 institution in the second of such academic years or terms;

5 (2) benefits based on services performed for
6 an educational institution other than in an instructional,
7 research or principal administrative capacity shall not be paid
8 for any week of unemployment commencing during a period between
9 two successive academic years or terms if the services are
10 performed in the first of such academic years or terms and
11 there is a reasonable assurance that the individual will
12 perform services for any educational institution in the second
13 of such academic years or terms. If compensation is denied to
14 an individual under this paragraph and the individual was not
15 offered an opportunity to perform such services for the
16 educational institution for the second of such academic years
17 or terms, the individual shall be entitled to a retroactive
18 payment of benefits for each week for which the individual
19 filed a claim and certified for benefits in accordance with the
20 rules of the division and for which benefits were denied solely
21 by reason of this paragraph;

22 (3) benefits shall be denied to any individual
23 for any week that commences during an established and customary
24 vacation period or holiday recess if the individual performs
25 any services described in Paragraphs (1) and (2) of this

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1 subsection in the period immediately before such period of
2 vacation or holiday recess and there is a reasonable assurance
3 that the individual will perform any such services in the
4 period immediately following such vacation period or holiday
5 recess;

6 (4) benefits shall not be payable on the basis
7 of services specified in Paragraphs (1) and (2) of this
8 subsection during the periods specified in Paragraphs (1), (2)
9 and (3) of this subsection to any individual who performed such
10 services in or to or on behalf of an educational institution
11 while in the employ of a state or local governmental
12 educational service agency or other governmental entity or
13 nonprofit organization; and

14 (5) for the purpose of this subsection, to the
15 extent permitted by federal law, "reasonable assurance" means a
16 reasonable expectation of employment in a similar capacity in
17 the second of such academic years or terms based upon a
18 consideration of all relevant factors, including the historical
19 pattern of reemployment in such capacity, a reasonable
20 anticipation that such employment will be available and a
21 reasonable notice or understanding that the individual will be
22 eligible for and offered employment in a similar capacity.

23 D. Paragraphs (1), (2), (3), (4) and (5) of
24 Subsection C of this section shall apply to services performed
25 for all educational institutions, public or private, for profit

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1 or nonprofit, which are operated in this state or subject to an
2 agreement for coverage under the Unemployment Compensation Law
3 of this state, unless otherwise exempt by law.

4 E. Notwithstanding any other provisions of this
5 section or Section 51-1-7 NMSA 1978, no otherwise eligible
6 individual is to be denied benefits for any week because the
7 individual is in training or attending school on a full-time
8 basis with the approval of the division nor is the individual
9 to be denied benefits by reason of application of provisions in
10 Paragraph (3) of Subsection A of this section or Paragraph (3)
11 of Subsection A of Section 51-1-7 NMSA 1978 with respect to any
12 week in which the individual is in training or attending school
13 on a full-time basis with the approval of the division. The
14 secretary shall provide, by rule, standards for approved
15 training and the conditions for approving training for
16 claimants, including any training approved or authorized for
17 approval pursuant to Section 236(a)(1) and (2) of the federal
18 Trade Act of 1974, as amended, or required to be approved as a
19 condition for certification of the state's Unemployment
20 Compensation Law by the United States secretary of labor.

21 F. Notwithstanding any other provisions of this
22 section, benefits shall not be payable on the basis of services
23 performed by an alien unless such alien is an individual who
24 was lawfully admitted for permanent residence at the time the
25 services were performed, was lawfully present for the purposes

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1 of performing the services or was permanently residing in the
2 United States under color of law at the time the services were
3 performed, including an alien who was lawfully present in the
4 United States as a result of the application of the provisions
5 of Section 212(d)(5) of the federal Immigration and Nationality
6 Act; provided that:

7 (1) any information required of individuals
8 applying for benefits to determine their eligibility for
9 benefits under this subsection shall be uniformly required from
10 all applicants for benefits; and

11 (2) an individual shall not be denied benefits
12 because of the individual's alien status except upon a
13 preponderance of the evidence.

14 G. Notwithstanding any other provision of this
15 section, benefits shall not be paid to any individual on the
16 basis of any services substantially all of which consist of
17 participating in sports or athletic events or training or
18 preparing to so participate for any week that commences during
19 the period between two successive sport seasons, or similar
20 periods, if the individual performed the services in the first
21 of such seasons, or similar periods, and there is a reasonable
22 assurance that the individual will perform the services in the
23 latter of such seasons or similar periods.

24 H. As used in this subsection, "seasonal ski
25 employee" means an employee who has not worked for a ski area

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1 operator for more than six consecutive months of the previous
2 twelve months or nine of the previous twelve months. An
3 employee of a ski area operator who has worked for a ski area
4 operator for six consecutive months of the previous twelve
5 months or nine of the previous twelve months shall not be
6 considered a seasonal ski employee. The following benefit
7 eligibility conditions apply to a seasonal ski employee:

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

16 (2) a seasonal ski employee who has been
17 employed by a ski area operator during two successive ski
18 seasons shall be presumed to be unavailable for permanent new
19 work during a period after the second successive ski season
20 that the individual was employed as a seasonal ski employee;
21 and

22 (3) the presumption described in Paragraph (2)
23 of this subsection shall not arise as to any seasonal ski
24 employee who has been employed by the same ski area operator
25 during two successive ski seasons and has resided continuously

.183594.2

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1 for at least twelve successive months and continues to reside
2 in the county in which the ski area facility is located.

3 I. As used in this subsection, "temporary
4 legislative session employee" means an individual who has been
5 employed by the New Mexico legislative branch but who has not
6 been so employed for more than six consecutive months of the
7 previous twelve months or nine of the of the previous twelve
8 months. The following benefit eligibility conditions apply to
9 a temporary legislative session employee:

10 (1) except as provided in Paragraph (2) of
11 this subsection, a temporary legislative session employee shall
12 be ineligible for a week of unemployment benefits that
13 commences during a period between two regular sessions of the
14 legislature unless the individual establishes to the
15 satisfaction of the secretary that the individual is available
16 for and is making an active search for permanent full-time
17 work; and

18 (2) a temporary legislative session employee
19 who has been employed by the New Mexico legislative branch
20 during two successive regular sessions of the legislature shall
21 be presumed to be unavailable for permanent new work during a
22 period after the second successive regular session of the
23 legislature that the individual was employed as a temporary
24 legislative session employee.

25 [~~F.~~] J. Notwithstanding any other provision of this

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1 section, an otherwise eligible individual shall not be denied
2 benefits for any week by reason of the application of Paragraph
3 (3) of Subsection A of this section because the individual is
4 before any court of the United States or any state pursuant to
5 a lawfully issued summons to appear for jury duty."

6 SECTION 3. Section 51-1-11 NMSA 1978 (being Laws 2003,
7 Chapter 47, Section 11, as amended) is amended to read:

8 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

9 A. The division shall maintain a separate account
10 for each contributing employer and shall credit the
11 contributing employer's account with all contributions paid by
12 that employer under the Unemployment Compensation Law. Nothing
13 in the Unemployment Compensation Law shall be construed to
14 grant an employer or individuals in the employer's service
15 prior claims or rights to the amounts paid by the employer into
16 the fund.

17 B. Benefits paid to an individual shall be charged
18 against the accounts of the individual's base-period employers
19 on a pro rata basis according to the proportion of the
20 individual's total base-period wages received from each
21 employer, except that:

22 (1) no benefits paid to an individual shall be
23 charged to the account of a base-period employer that is a
24 governmental entity if the individual:

25 (a) voluntarily left the employ of the

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1 governmental entity without good cause; and

2 (b) is receiving a retirement pension
3 from the public employees retirement association or the
4 educational retirement board based in whole or in part on the
5 employment with the governmental entity during the base period;
6 and

7 (2) no benefits paid to a claimant as extended
8 benefits under the provisions of Section 51-1-48 NMSA 1978
9 shall be charged to the account of any base-period employer who
10 is not on a reimbursable basis and who is not a governmental
11 entity and, except as the secretary shall by rule prescribe
12 otherwise, in the case of benefits paid to an individual who:

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

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

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

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

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

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

14 (1) separated from employment due to domestic
15 abuse, as "domestic abuse" is defined in Section 40-13-2 NMSA
16 1978;

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

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

24 E. All contributions to the fund shall be pooled
25 and available to pay benefits to any individual entitled

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1 thereto, irrespective of the source of the contributions.

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

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

22 (2) an employer that, at the time of
23 establishing an account, is in business in another state or
24 states and that is not currently doing business in New Mexico
25 may elect, pursuant to Paragraph (3) of this subsection, to

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1 receive a beginning contribution rate of two percent or a
2 contribution rate based on the current contribution rate
3 schedule in Paragraph (4) of Subsection I of this section,
4 whichever is lower, if:

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

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

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

25 G. An employer may make voluntary payments in

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

.183594.2

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

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

8 (f) "knowingly" means having actual
9 knowledge of or acting with deliberate ignorance of or reckless
10 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 predecessor;
22 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

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

25 (3) the applicable experience history may be

.183594.2

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

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

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

25 (c) files with the application a Form

.183594.2

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

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

.183594.2

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1 both employers shall be recalculated and made effective
2 immediately upon the date of the transfer;

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

- 15 (a) the cost of acquiring the business;
16 (b) whether the person continued the
17 business enterprise of the acquired business;
18 (c) how long such business enterprise
19 was continued; and
20 (d) whether a substantial number of new
21 employees were hired for performance of duties unrelated to
22 those that the business activity conducted prior to
23 acquisition;

24 (6) if, following a transfer of experience
25 history pursuant to this subsection, the department determines

.183594.2

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

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

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

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

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

.183594.2

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1 term not to exceed ninety days or both. In addition, such a
2 person shall be subject to the following civil penalty imposed
3 by the secretary:

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

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

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

22 (1) the total assets in the fund and the total
23 of the last annual payrolls of all employers subject to
24 contributions as of the computation date for each year shall be
25 determined. These annual totals are here called "the fund" and

.183594.2

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

11 (2) for each calendar year after 2011,
12 except as otherwise provided, each employer's rate shall be
13 the corresponding rate in:

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

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

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

.183594.2

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

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

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

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

16 (3) as used in this section:

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

22 (b) "base-period wages" means the wages
23 of an individual for insured work during the individual's base
24 period on the basis of which the individual's benefit rights
25 were determined;

.183594.2

1 (c) "base-period employers" means the
 2 employers of an individual during the individual's base
 3 period; and

4 (d) "computation date" for each
 5 calendar year means the close of business on June 30 of the
 6 preceding calendar year;

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

9 Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
11 10.0% and over	0.03%	0.05%	0.1%	0.6%
12 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
13 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
14 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
15 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
16 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
17 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
18 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
19 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
20 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
21 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
22 (-0.1%) - (-0.5%)	3.30%	3.3%	3.6%	3.9%
23 (-0.5%) - (-1.0%)	4.20%	4.2%	4.2%	4.2%
24 (-1.0%) - (-2.0%)	5.00%	5.0%	5.0%	5.0%
25 Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

.183594.2

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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 (5) from July 1, 2010 through December 31,
19 2010, each employer making contributions pursuant to this
20 subsection shall make a contribution at the rate specified in
21 Contribution Schedule 0; and

22 (6) from January 1, 2011 through December
23 31, 2011, each employer making contributions pursuant to this
24 subsection shall make a contribution at the rate specified in
25 Contribution Schedule 1.

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1 J. The division shall promptly notify each
2 employer of the employer's rate of contributions as determined
3 for any calendar year pursuant to this section. Such
4 notification shall include the amount determined as the
5 employer's average payroll, the total of all of the employer's
6 contributions paid on the employer's behalf and credited to
7 the employer's account for all past years and total benefits
8 charged to the employer's account for all such years. Such
9 determination shall become conclusive and binding upon the
10 employer unless, within thirty days after the mailing of
11 notice thereof to the employer's last known address or in the
12 absence of mailing, within thirty days after the delivery of
13 such notice, the employer files an application for review and
14 redetermination, setting forth the employer's reason therefor.
15 The employer shall be granted an opportunity for a fair
16 hearing in accordance with rules prescribed by the secretary,
17 but an employer shall not have standing, in any proceeding
18 involving the employer's rate of contributions or contribution
19 liability, to contest the chargeability to the employer's
20 account of any benefits paid in accordance with a
21 determination, redetermination or decision pursuant to Section
22 51-1-8 NMSA 1978, except upon the ground that the services on
23 the basis of which such benefits were found to be chargeable
24 did not constitute services performed in employment for the
25 employer and only in the event that the employer was not a

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1 party to such determination, redetermination or decision, or
2 to any other proceedings under the Unemployment Compensation
3 Law in which the character of such services was determined.
4 The employer shall be promptly notified of the decision on the
5 employer's application for redetermination, which shall become
6 final unless, within fifteen days after the mailing of notice
7 thereof to the employer's last known address or in the absence
8 of mailing, within fifteen days after the delivery of such
9 notice, further appeal is initiated pursuant to Subsection D
10 of Section 51-1-8 NMSA 1978.

11 K. The division shall provide each contributing
12 employer, within ninety days of the end of each calendar
13 quarter, a written determination of benefits chargeable to the
14 employer's account. Such determination shall become
15 conclusive and binding upon the employer for all purposes
16 unless, within thirty days after the mailing of the
17 determination to the employer's last known address or in the
18 absence of mailing, within thirty days after the delivery of
19 such determination, the employer files an application for
20 review and redetermination, setting forth the employer's
21 reason therefor. The employer shall be granted an opportunity
22 for a fair hearing in accordance with rules prescribed by the
23 secretary, but an employer shall not have standing in any
24 proceeding involving the employer's contribution liability to
25 contest the chargeability to the employer's account of any

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1 benefits paid in accordance with a determination,
2 redetermination or decision pursuant to Section 51-1-8 NMSA
3 1978, except upon the ground that the services on the basis of
4 which such benefits were found to be chargeable did not
5 constitute services performed in employment for the employer
6 and only in the event that the employer was not a party to
7 such determination, redetermination or decision, or to any
8 other proceedings under the Unemployment Compensation Law in
9 which the character of such services was determined. The
10 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 L. The contributions, together with interest and
18 penalties thereon imposed by the Unemployment Compensation
19 Law, shall not be assessed nor shall action to collect the
20 same be commenced more than four years after a report showing
21 the amount of the contributions was due. In the case of a
22 false or fraudulent contribution report with intent to evade
23 contributions or a willful failure to file a report of all
24 contributions due, the contributions, together with interest
25 and penalties thereon, may be assessed or an action to collect

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

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

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

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fund."

SECTION 4. APPLICABILITY OF ACT.--The provisions of this act apply to determinations of eligibility and benefit amounts for unemployment compensation claims initially filed on or after July 1, 2011.