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HOUSE BILL 19

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

INTRODUCED BY

Mimi Stewart

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; PROVIDING LEGISLATIVE FINDINGS; REPEALING LAWS 2011, CHAPTER 184, SECTIONS 1 THROUGH 6; DECLARING AN EMERGENCY.

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

SECTION 1. TEMPORARY PROVISION--LEGISLATIVE FINDINGS.--

The legislature finds that:

- A. Laws 2011, Chapter 184, Sections 1 through 6 passed the first session of the fiftieth legislature;
- B. the governor purportedly exercised a partial

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1 veto on legislation that did not appropriate money;

2 C. the issue of whether the legislation is law as
3 passed by the legislature or as partially vetoed by the
4 governor is currently before the New Mexico supreme court;

5 D. Article 4, Section 18 of the constitution of New
6 Mexico requires that each section of the law that is to be
7 "revised, amended or extended shall be set out in full"; and

8 E. it is therefore appropriate to repeal Laws 2011,
9 Chapter 184, Sections 1 through 6, and amend Sections 51-1-4,
10 51-1-5, 51-1-7 and 51-1-48 NMSA 1978 as they existed prior to
11 the enactment of Laws 2011, Chapter 184, Sections 1 through 6
12 to clarify the legislature's intent and provide certainty in
13 the law.

14 SECTION 2. REPEAL.--Laws 2011, Chapter 184, Sections 1
15 through 6 are repealed.

16 SECTION 3. Section 51-1-4 NMSA 1978 (being Laws 2003,
17 Chapter 47, Section 8, as amended) is amended to read:

18 "51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT
19 GENERALLY.--

20 A. All benefits provided herein are payable from
21 the unemployment compensation fund. All benefits shall be paid
22 in accordance with rules prescribed by the secretary through
23 employment offices or other agencies as the secretary approves
24 by general rule.

25 B. Weekly benefits shall be as follows:

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

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

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

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

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1 under the federal Social Security Act, the division shall take
2 into account the individual's contribution and make no
3 reduction in the weekly benefit amount;

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

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

24 C. An individual otherwise eligible for benefits
25 shall be paid for each week of unemployment, in addition to the

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1 amount payable under Subsection B of this section, the sum of
2 twenty-five dollars (\$25.00) for each unemancipated child under
3 the age of eighteen, up to a maximum of [~~four~~] two and subject
4 to the maximum stated in Subsection D of this section, of the
5 individual who is in fact dependent upon and wholly or mainly
6 supported by the individual, including:

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

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

18 D. Dependency benefits shall not exceed fifty
19 percent of the individual's weekly benefit rate. The amount of
20 dependency benefits determined as of the beginning of an
21 individual's benefit year shall not be reduced for the duration
22 of the benefit year, but this provision does not prevent the
23 transfer of dependents' benefits from one spouse to another in
24 accordance with this subsection. If both the husband and wife
25 receive benefits with respect to a week of unemployment, only

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

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

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

22 G. The secretary may prescribe rules to provide for
23 the payment of benefits that are due and payable to the legal
24 representative, dependents, relatives or next of kin of
25 claimants since deceased. These rules need not conform with

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1 the laws governing successions, and the payment shall be deemed
2 a valid payment to the same extent as if made under a formal
3 administration of the succession of the claimant.

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

18 SECTION 4. Section 51-1-5 NMSA 1978 (being Laws 2003,
19 Chapter 47, Section 9, as amended) is amended to read:

20 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

21 A. An unemployed individual shall be eligible to
22 receive benefits with respect to any week only if the
23 individual:

24 (1) has made a claim for benefits with respect
25 to such week in accordance with such rules as the secretary may

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1 prescribe;

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

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

24 (4) has been unemployed for a waiting period
25 of one week. A week shall not be counted as a week of

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1 unemployment for the purposes of this paragraph:

2 (a) unless it occurs within the benefit
3 year that includes the week with respect to which the
4 individual claims payment of benefits;

5 (b) if benefits have been paid with
6 respect thereto; and

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

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

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

23 (7) participates in reemployment services,
24 such as job search assistance services, if the division
25 determines that the individual is likely to exhaust regular

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1 benefits and ~~[need]~~ needs reemployment services pursuant to a
2 profiling system established by the division, unless the
3 division determines that:

4 (a) the individual has completed such
5 services; or

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

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

18 C. Benefits based on service in employment defined
19 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
20 51-1-43 NMSA 1978 are to be paid in the same amount, on the
21 same terms and subject to the same conditions as compensation
22 payable on the basis of other services subject to the
23 Unemployment Compensation Law; except that:

24 (1) benefits based on services performed in an
25 instructional, research or principal administrative capacity

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

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

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1 filed a claim and certified for benefits in accordance with the
2 rules of the division and for which benefits were denied solely
3 by reason of this paragraph;

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

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

21 (5) for the purpose of this subsection, to the
22 extent permitted by federal law, "reasonable assurance" means a
23 reasonable expectation of employment in a similar capacity in
24 the second of such academic years or terms based upon a
25 consideration of all relevant factors, including the historical

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1 pattern of reemployment in such capacity, a reasonable
2 anticipation that such employment will be available and a
3 reasonable notice or understanding that the individual will be
4 eligible for and offered employment in a similar capacity.

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

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

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1 condition for certification of the state's Unemployment
2 Compensation Law by the United States secretary of labor.

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

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

18 (2) an individual shall not be denied benefits
19 because of the individual's alien status except upon a
20 preponderance of the evidence.

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

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

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

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

24 (1) except as provided in Paragraphs (2) and
25 (3) of this subsection, a seasonal ski employee employed by a

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1 ski area operator on a regular seasonal basis shall be
2 ineligible for a week of unemployment benefits that commences
3 during a period between two successive ski seasons unless the
4 individual establishes to the satisfaction of the secretary
5 that the individual is available for and is making an active
6 search for permanent full-time work;

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

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

19 [~~F.~~] J. Notwithstanding any other provision of this
20 section, an otherwise eligible individual shall not be denied
21 benefits for any week by reason of the application of Paragraph
22 (3) of Subsection A of this section because the individual is
23 before any court of the United States or any state pursuant to
24 a lawfully issued summons to appear for jury duty."

25 SECTION 5. Section 51-1-7 NMSA 1978 (being Laws 2003,

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1 Chapter 47, Section 10, as amended by Laws 2005, Chapter 3,
2 Section 3 and further amended by Laws 2005, Chapter 255,
3 Section 1) is amended to read:

4 "51-1-7. DISQUALIFICATION FOR BENEFITS.--

5 A. An individual shall be disqualified for and
6 shall not be eligible to receive benefits:

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

14 (a) solely on the basis of pregnancy or
15 the termination of pregnancy;

16 (b) because of domestic abuse evidenced
17 by medical documentation, legal documentation or a sworn
18 statement from the claimant; or

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

24 (2) if it is determined by the division that
25 the individual has been discharged for misconduct connected

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1 with the individual's employment; or

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

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

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

23 (2) if the wages, hours or other conditions of
24 the work offered are substantially less favorable to the
25 individual than those prevailing for similar work in the

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1 locality; or

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

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

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

15 (2) the individual does not belong to a grade
16 or class of workers of which, immediately before the
17 commencement of the labor dispute, there were members employed
18 at the premises at which the labor dispute occurs, any of whom
19 are participating in or directly interested in the dispute;
20 provided that if in any case separate branches of work that are
21 commonly conducted in separate businesses in separate premises
22 are conducted in separate departments of the same premises,
23 each such department shall, for the purposes of this
24 subsection, be deemed to be a separate factory, establishment
25 or other premises.

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

11 E. A disqualification pursuant to Paragraph (1) or
12 (2) of Subsection A of this section shall continue for the
13 duration of the individual's unemployment and until the
14 individual has earned wages in bona fide employment other than
15 self-employment, as provided by rule of the secretary, in an
16 amount equivalent to five times the individual's weekly
17 benefit otherwise payable. A disqualification pursuant to
18 Paragraph (3) of Subsection A of this section shall include
19 the week the failure occurred and shall continue for the
20 duration of the individual's unemployment and until the
21 individual has earned wages in bona fide employment other than
22 self-employment, as provided by rule of the secretary, in an
23 amount equivalent to five times the individual's weekly
24 benefit amount otherwise payable; provided that no more than
25 one such disqualification shall be imposed upon an individual

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1 for failure to apply for or accept the same position, or a
2 similar position, with the same employer, except upon a
3 determination by the division of disqualification pursuant to
4 Subsection C of this section.

5 F. As used in this section:

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

8 (2) "employment" means employment by the
9 individual's last employer as defined by rules of the
10 secretary."

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

13 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

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

22 B. Benefits paid to an individual shall be charged
23 against the accounts of the individual's base-period employers
24 on a pro rata basis according to the proportion of the
25 individual's total base-period wages received from each

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1 employer, except that no benefits paid to a claimant as
2 extended benefits under the provisions of Section 51-1-48 NMSA
3 1978 shall be charged to the account of any base-period
4 employer who is not on a reimbursable basis and who is not a
5 governmental entity and, except as the secretary shall by rule
6 prescribe otherwise, in the case of benefits paid to an
7 individual who:

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

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

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

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

25 C. The division shall not charge a contributing or

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1 reimbursing base-period employer's account with any portion of
2 benefit amounts that the division can bill to or recover from
3 the federal government as either regular or extended benefits.

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

8 (1) separated from employment due to
9 domestic abuse, as "domestic abuse" is defined in Section
10 40-13-2 NMSA 1978; or

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

13 ~~(3)] (2) voluntarily left work to relocate
14 because of a spouse, who is in the military service of the
15 United States or the New Mexico national guard, receiving
16 permanent change of station orders, activation orders or unit
17 deployment orders.~~

18 E. All contributions to the fund shall be pooled
19 and available to pay benefits to any individual entitled
20 thereto, irrespective of the source of the contributions.

21 F. For each calendar year, if, as of the
22 computation date for that year, an employer's account has been
23 chargeable with benefits throughout the preceding thirty-six
24 months, the secretary shall classify the employer in
25 accordance with its actual experience of benefits charged

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

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

17 (2) an employer that, at the time of
18 establishing an account, is in business in another state or
19 states and that is not currently doing business in New Mexico
20 may elect, pursuant to Paragraph (3) of this subsection, to
21 receive a beginning contribution rate of two percent or a
22 contribution rate based on the current contribution rate
23 schedule in Paragraph (4) of Subsection I of this section,
24 whichever is lower, if:

25 (a) the employer has been in operation

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

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

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

21 G. An employer may make voluntary payments in
22 addition to the contributions required under the Unemployment
23 Compensation Law, which shall be credited to the employer's
24 account in accordance with department rule. The voluntary
25 payments shall be included in the employer's account as of the

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1 employer's most recent computation date if they are made on or
2 before the following March 1. Voluntary payments when
3 accepted from an employer shall not be refunded in whole or in
4 part.

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

11 (1) as used in this subsection:

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

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

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

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

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1 of the employing enterprise;

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

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

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

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

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

22 (b) notice of the transfer has been
23 given in accordance with the rules of the secretary during the
24 calendar year of the transaction transferring the employing
25 enterprise or the date of the actual transfer of control and

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1 operation of the employing enterprise;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 person shall be subject to the following civil penalty imposed
2 by the secretary:

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

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

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

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

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

10 (2) for each calendar year after [2011]
11 2012, except as otherwise provided, each employer's rate shall
12 be the corresponding rate in:

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

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

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

25 (d) Contribution Schedule 3 of the

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

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

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

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

15 (3) as used in this section:

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

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

25 (c) "base-period employers" means the

1 employers of an individual during the individual's base
 2 period; and

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

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

8 Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10 10.0% and over	0.03%	0.05%	0.1%	0.6%
11 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
12 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
13 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
14 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
15 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
16 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
17 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
18 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
19 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
20 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
21 (-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
22 (-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
23 (-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
24 Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
25 Employer Contribution	Contribution	Contribution	Contribution	

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

17 (5) ~~[from July 1, 2010 through December 31,~~
18 ~~2010, each employer making contributions pursuant to this~~
19 ~~subsection shall make a contribution at the rate specified in~~
20 ~~Contribution Schedule 0; and~~

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

25 (6) from January 1, 2012 through December

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1 31, 2012, each employer making contributions pursuant to this
2 subsection shall make a contribution at the rate specified in
3 Contribution Schedule 3.

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

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

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

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

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

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

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

23 N. Any interest required to be paid on advances to
24 this state's unemployment compensation fund under Title 12 of
25 the Social Security Act shall be paid in a timely manner as

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

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

7 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

8 A. As used in this section, unless the context
9 clearly requires otherwise, "extended benefit period" means a
10 period that:

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

13 (2) ends with either of the following weeks,
14 whichever occurs later:

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

17 (b) the thirteenth consecutive week of
18 such period; and

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

23 B. There is a state "on indicator" for this state
24 for a week if the rate of insured unemployment not seasonally
25 adjusted under this section for the period consisting of that

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1 week and the immediately preceding twelve weeks:

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

6 (2) equaled or exceeded five percent; or

7 (3) equaled or exceeded six percent,
8 regardless of the rate of insured unemployment in the two
9 previous years; provided that the operation of this paragraph
10 shall not activate the state "on indicator" any time after
11 four weeks prior to the last week for which one hundred
12 percent federal sharing funding is available under Section
13 2005(a) of Public Law No. 111-5, without regard to the
14 extension of federal sharing for certain claims as provided
15 under Section 2005(c) of that law; or

16 (4) with respect to benefits for weeks of
17 unemployment beginning after July 1, 2003 and ending four
18 weeks prior to the last week for which one hundred percent
19 federal sharing funding is available under Section 2005(a) of
20 Public Law No. 111-5, without regard to the extension of
21 federal sharing for certain claims as provided under Section
22 2005(c) of that law:

23 (a) the average rate of total
24 unemployment, seasonally adjusted, as determined by the United
25 States secretary of labor, for the period consisting of the

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1 most recent three months for which data for all states are
2 published before the close of such week equals or exceeds six
3 and one-half percent; and

4 (b) the average rate of total
5 unemployment in this state, seasonally adjusted, as determined
6 by the United States secretary of labor, for the three-month
7 period referred to in Subparagraph (a) of this paragraph,
8 equals or exceeds one hundred ten percent of such average: 1)
9 for either or both of the corresponding three-month periods
10 ending in the two preceding calendar years; or 2) for weeks of
11 unemployment beginning after December 17, 2010 and ending
12 before December 31, 2011, for any or all of the corresponding
13 three-month periods ending in the three preceding calendar
14 years.

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

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

24 (1) fifty percent of the total amount of
25 regular benefits that were payable to the individual pursuant

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1 to this section in the individual's applicable benefit year;

2 (2) thirteen times the individual's average
3 weekly benefit amount that was payable to the individual
4 pursuant to this section for a week of total unemployment in
5 the applicable benefit year; or

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

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1 which the individual received any amounts as readjustment
2 allowances within that benefit year multiplied by the
3 individual weekly benefit amount for extended benefits.

4 E. Effective with respect to weeks beginning in a
5 high-unemployment period, the total extended benefit amount
6 payable to an eligible individual with respect to the
7 applicable benefit year shall be the least of the following
8 amounts:

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

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

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

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

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

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

22 H. As used in this section:

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

25 (a) the average weekly number of

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

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

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

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

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

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

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

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

22 (c) has no right to unemployment
23 benefits or allowances, as the case may be, under the Railroad
24 Unemployment Insurance Act, the Trade Expansion Act of 1962,
25 the Trade Act of 1974, the Automotive Products Trade Act of

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

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

13 **SECTION 8. TEMPORARY PROVISION--APPLICABILITY OF ACT.--**

14 The amendments to the Unemployment Compensation Law made in
15 Sections 3, 4 and 5 of this act and the amendments to
16 Subsections B and D of Section 51-1-11 NMSA 1978 in Section 6
17 of this act shall apply to benefit years beginning on or after
18 January 1, 2012.

19 **SECTION 9. EFFECTIVE DATE.--**The effective date of the
20 provisions of this act is January 1, 2012.

21 **SECTION 10. EMERGENCY.--**It is necessary for the public
22 peace, health and safety that this act take effect
23 immediately.