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AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; ESTABLISHING A
TEMPORARY SCHEDULE FOR EMPLOYER CONTRIBUTIONS TO THE
UNEMPLOYMENT COMPENSATION FUND; DECLARING AN EMERGENCY.

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

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

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

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

B. Benefits paid to an individual shall be charged
against the accounts of the individual's base-period
employers on a pro rata basis according to the proportion of
the individual's total base-period wages received from each
employer, except that no benefits paid to a claimant as
extended benefits under the provisions of Section 51-1-48
NMSA 1978 shall be charged to the account of any base-period
employer who is not on a reimbursable basis and who is not a

1 governmental entity and, except as the secretary shall by
2 rule prescribe otherwise, in the case of benefits paid to an
3 individual who:

4 (1) left the employ of a base-period
5 employer who is not on a reimbursable basis voluntarily
6 without good cause in connection with the individual's
7 employment;

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

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

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

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

25 D. The division shall not charge a contributing

1 base-period employer's account with any portion of benefits
2 paid to an individual for dependent allowance or because the
3 individual to whom benefits are paid:

4 (1) separated from employment due to
5 domestic abuse, as "domestic abuse" is defined in Section
6 40-13-2 NMSA 1978; or

7 (2) voluntarily left work to relocate
8 because of a spouse, who is in the military service of the
9 United States or the New Mexico national guard, receiving
10 permanent change of station orders, activation orders or unit
11 deployment orders.

12 E. All contributions to the fund shall be pooled
13 and available to pay benefits to any individual entitled
14 thereto, irrespective of the source of the contributions.

15 F. For each calendar year, if, as of the
16 computation date for that year, an employer's account has
17 been chargeable with benefits throughout the preceding
18 thirty-six months, the secretary shall classify the employer
19 in accordance with its actual experience of benefits charged
20 against its accounts. For such an employer, the contribution
21 rate shall be determined pursuant to Subsection I of this
22 section on the basis of the employer's record and the
23 condition of the fund as of the computation date for the
24 calendar year. If, as of the computation date for a calendar
25 year, an employer's account has not been chargeable with

1 benefits throughout the preceding thirty-six months, the
2 contribution rate for that employer for the calendar year
3 shall be two percent, except that:

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

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

19 (a) the employer has been in operation
20 in the other state or states for at least three years
21 immediately preceding the date of becoming a liable employer
22 in New Mexico, throughout which an individual in the
23 employer's employ could have received benefits if eligible;
24 and

25 (b) the employer provides the

1 authenticated account history as defined by rule of the
2 secretary from information accumulated from operations in the
3 other state or all the other states to compute a current
4 New Mexico rate; and

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

15 G. An employer may make voluntary payments in
16 addition to the contributions required under the Unemployment
17 Compensation Law, which shall be credited to the employer's
18 account in accordance with department rule. The voluntary
19 payments shall be included in the employer's account as of
20 the employer's most recent computation date if they are made
21 on or before the following March 1. Voluntary payments when
22 accepted from an employer shall not be refunded in whole or
23 in part.

24 H. In the case of a transfer of an employing
25 enterprise, notwithstanding any other provision of law, the

1 experience history of the transferred enterprise shall be
2 transferred from the predecessor employer to the successor
3 under the following conditions and in accordance with the
4 applicable rules of the secretary:

5 (1) as used in this subsection:

6 (a) "employing enterprise" means a
7 business activity engaged in by a contributing employing unit
8 in which one or more persons have been employed within the
9 current or the three preceding calendar quarters. An
10 "employing enterprise" includes the employer's work force;

11 (b) "predecessor" means the owner and
12 operator of an employing enterprise immediately prior to the
13 transfer of such enterprise;

14 (c) "successor" means any person that
15 acquires an employing enterprise and continues to operate
16 such business entity;

17 (d) "experience history" means the
18 experience rating record and reserve account, including the
19 actual contributions, benefit charges and payroll experience
20 of the employing enterprise;

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

24 (f) "knowingly" means having actual
25 knowledge of or acting with deliberate ignorance of or

1 reckless disregard for the prohibition involved; and

2 (g) "violates or attempts to violate"
3 includes an intent to evade, a misrepresentation or a willful
4 nondisclosure;

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

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

16 (b) notice of the transfer has been
17 given in accordance with the rules of the secretary during
18 the calendar year of the transaction transferring the
19 employing enterprise or the date of the actual transfer of
20 control and operation of the employing enterprise;

21 (c) the successor shall notify the
22 division of the acquisition on or before the due date of the
23 successor's first wage and contribution report. If the
24 successor employer fails to notify the division of the
25 acquisition within this time limit, the division, when it

1 receives actual notice, shall effect the transfer of the
2 experience history and applicable rate of contribution
3 retroactively to the date of the acquisition, and the
4 successor shall pay a penalty of fifty dollars (\$50.00); and

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

17 (3) the applicable experience history may be
18 transferred to the successor in the case of a partial
19 transfer of an employing enterprise if the successor has
20 acquired one or more of the several employing enterprises of
21 a predecessor but not all of the employing enterprises of the
22 predecessor and each employing enterprise so acquired was
23 operated by the predecessor as a separate store, factory,
24 shop or other separate employing enterprise and the
25 predecessor, throughout the entire period of the contribution

1 with liability applicable to each enterprise transferred, has
2 maintained and preserved payroll records that, together with
3 records of contribution liability and benefit chargeability,
4 can be separated by the parties from the enterprises retained
5 by the predecessor to the satisfaction of the secretary or
6 the secretary's delegate. A partial experience history
7 transfer will be made only if the successor:

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

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

17 (c) files with the application a Form
18 ES-903A or its equivalent with a schedule of the name and
19 social security number of and the wages paid to and the
20 contributions paid for each employee for the three and
21 one-half year period preceding the computation date as
22 defined in Subparagraph (d) of Paragraph (3) of Subsection I
23 of this section through the date of transfer or such lesser
24 period as the enterprises transferred may have been in
25 operation. The application and Form ES-903A shall be

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

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

21 (5) whenever a person, who is not currently
22 an employer, acquires the trade or business of an employing
23 enterprise, the experience history of the acquired business
24 shall not be transferred to the successor if the secretary or
25 the secretary's designee finds that the successor acquired

1 the business solely or primarily for the purpose of obtaining
2 a lower rate of contributions. Instead, the successor shall
3 be assigned the applicable new employer rate pursuant to this
4 section. In determining whether the business was acquired
5 solely or primarily for the purpose of obtaining a lower rate
6 of contribution, the secretary or the secretary's designee
7 shall consider:

8 (a) the cost of acquiring the business;

9 (b) whether the person continued the
10 business enterprise of the acquired business;

11 (c) how long such business enterprise
12 was continued; and

13 (d) whether a substantial number of new
14 employees were hired for performance of duties unrelated to
15 those that the business activity conducted prior to
16 acquisition;

17 (6) if, following a transfer of experience
18 history pursuant to this subsection, the department
19 determines that a substantial purpose of the transfer of the
20 employing enterprise was to obtain a reduced liability for
21 contributions, then the experience rating accounts of the
22 employers involved shall be combined into a single account
23 and a single rate assigned to the combined account;

24 (7) the secretary shall adopt such rules as
25 are necessary to interpret and carry out the provisions of

1 this subsection, including rules that:

2 (a) describe how experience history is
3 to be transferred; and

4 (b) establish procedures to identify
5 the type of transfer or acquisition of an employing
6 enterprise; and

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

23 (a) if the person is an employer, the
24 person shall be assigned the highest contribution rate
25 established by the provisions of this section for the

1 calendar year in which the violation occurs and the three
2 subsequent calendar years; provided that, if the difference
3 between the increased penalty rate and the rate otherwise
4 applicable would be less than two percent of the employer's
5 payroll, the contribution rate shall be increased by two
6 percent of the employer's payroll for the calendar year in
7 which the violation occurs and the three subsequent calendar
8 years; or

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

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

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

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

6 (2) for each calendar year after 2013,
7 except as otherwise provided, each employer's rate shall be
8 the corresponding rate in:

9 (a) Contribution Schedule 0 of the
10 table provided in Paragraph (4) of this subsection if the
11 fund equals at least two and three-tenths percent of the
12 total payrolls;

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

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

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

25 (e) Contribution Schedule 4 of the

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

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

8 (g) Contribution Schedule 6 of the
9 table provided in Paragraph (4) of this subsection if the
10 fund equals less than three-tenths percent of the total
11 payrolls;

12 (3) as used in this section:

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

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

22 (c) "base-period employers" means the
23 employers of an individual during the individual's base
24 period; and

25 (d) "computation date" for each

1 calendar year means the close of business on June 30 of the
 2 preceding calendar year;

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

5 Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
7 10.0% and over	0.03%	0.05%	0.1%	0.6%
8 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
9 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
10 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
11 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
12 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
13 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
14 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
15 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
16 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
17 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
18 (-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
19 (-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
20 (-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
21 Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

22 Employer Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
24 10.0% and over	0.9%	1.2%	2.7%
25 9.0%-9.9%	1.2%	1.5%	2.7%

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

14 (5) from January 1, 2011 through
15 December 31, 2012, each employer making contributions pursuant
16 to this subsection shall make a contribution at the rate
17 specified in Contribution Schedule 1; and

18 (6) from January 1, 2013 through
19 December 31, 2013, each employer making contributions pursuant
20 to this subsection shall make a contribution at the rate
21 specified in Contribution Schedule 2.

22 J. The division shall promptly notify each
23 employer of the employer's rate of contributions as determined
24 for any calendar year pursuant to this section. Such
25 notification shall include the amount determined as the

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

1 employer's application for redetermination, which shall become
2 final unless, within fifteen days after the mailing of notice
3 thereof to the employer's last known address or in the absence
4 of mailing, within fifteen days after the delivery of such
5 notice, further appeal is initiated pursuant to Subsection D
6 of Section 51-1-8 NMSA 1978.

7 K. The division shall provide each contributing
8 employer, within ninety days of the end of each calendar
9 quarter, a written determination of benefits chargeable to the
10 employer's account. Such determination shall become
11 conclusive and binding upon the employer for all purposes
12 unless, within thirty days after the mailing of the
13 determination to the employer's last known address or in the
14 absence of mailing, within thirty days after the delivery of
15 such determination, the employer files an application for
16 review and redetermination, setting forth the employer's
17 reason therefor. The employer shall be granted an opportunity
18 for a fair hearing in accordance with rules prescribed by the
19 secretary, but an employer shall not have standing in any
20 proceeding involving the employer's contribution liability to
21 contest the chargeability to the employer's account of any
22 benefits paid in accordance with a determination,
23 redetermination or decision pursuant to Section 51-1-8 NMSA
24 1978, except upon the ground that the services on the basis of
25 which such benefits were found to be chargeable did not

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

13 L. The contributions, together with interest and
14 penalties thereon imposed by the Unemployment Compensation
15 Law, shall not be assessed nor shall action to collect the
16 same be commenced more than four years after a report showing
17 the amount of the contributions was due. In the case of a
18 false or fraudulent contribution report with intent to evade
19 contributions or a willful failure to file a report of all
20 contributions due, the contributions, together with interest
21 and penalties thereon, may be assessed or an action to collect
22 such contributions may be begun at any time. Before the
23 expiration of such period of limitation, the employer and the
24 secretary may agree in writing to an extension thereof and the
25 period so agreed on may be extended by subsequent agreements

1 in writing. In any case where the assessment has been made
2 and action to collect has been commenced within four years of
3 the due date of any contribution, interest or penalty,
4 including the filing of a warrant of lien by the secretary
5 pursuant to Section 51-1-36 NMSA 1978, such action shall not
6 be subject to any period of limitation.

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

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

23 SECTION 2. APPLICABILITY.--The provisions of this act
24 apply to assessments of contributions for which an employer is
25 subject pursuant to the Unemployment Compensation Law for the

1 calendar year beginning on January 1, 2012.

2 SECTION 3. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect
4 immediately. _____

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