

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 334

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; ESTABLISHING A TEMPORARY
SCHEDULE FOR EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT
COMPENSATION FUND; ESTABLISHING A NEW FORMULA FOR EMPLOYER
CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND; PROVIDING
FOR AN EXCESS CLAIMS PREMIUM; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 51-1-8 NMSA 1978 (being Laws 1936
(S.S.), Chapter 1, Section 6, as amended) is amended to read:

"51-1-8. CLAIMS FOR BENEFITS.--

A. Claims for benefits shall be made in accordance
with such regulations as the secretary may prescribe. Each
employer shall post and maintain printed notices, in places
readily accessible to employees, concerning their rights to

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underscored material = new
[bracketed material] = delete

1 file claims for unemployment benefits upon termination of their
2 employment. Such notices shall be supplied by the division to
3 each employer without cost to the employer.

4 B. A representative designated by the secretary as
5 a claims examiner shall promptly examine the application and
6 each weekly claim and, on the basis of the facts found, shall
7 determine whether the claimant is unemployed, the week with
8 respect to which benefits shall commence, the weekly benefit
9 amount payable, the maximum duration of benefits, whether the
10 claimant is eligible for benefits pursuant to Section 51-1-5
11 NMSA 1978 and whether the claimant shall be disqualified
12 pursuant to Section 51-1-7 NMSA 1978. With the approval of the
13 secretary, the claims examiner may refer, without
14 determination, claims or any specified issues involved therein
15 that raise complex questions of fact or law to a hearing
16 officer for the division for a fair hearing and decision in
17 accordance with the procedure described in Subsection D of this
18 section. The claims examiner shall promptly notify the
19 claimant and any other interested party of the determination
20 and the reasons therefor. Unless the claimant or interested
21 party, within fifteen calendar days after the date of
22 notification or mailing of the determination, files an appeal
23 from the determination, the determination shall be the final
24 decision of the division; provided that the claims examiner may
25 reconsider a nonmonetary determination if additional

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1 information not previously available is provided or obtained or
2 whenever the claims examiner finds an error in the application
3 of law has occurred, but no redetermination shall be made more
4 than twenty days from the date of the initial nonmonetary
5 determination. Notice of a nonmonetary redetermination shall
6 be given to all interested parties and shall be subject to
7 appeal in the same manner as the original nonmonetary
8 determination. If an appeal is pending at the time a
9 redetermination is issued, the appeal, unless withdrawn, shall
10 be treated as an appeal from the redetermination.

11 C. In the case of a claim for waiting period credit
12 or benefits, "interested party", for purposes of determinations
13 and adjudication proceedings and notices thereof, means:

14 (1) in the event of an issue concerning a
15 separation from work for reasons other than lack of work, the
16 claimant's most recent employer or most recent employing unit;

17 (2) in the event of an issue concerning a
18 separation from work for lack of work, the employer or
19 employing unit from whom the claimant separated for reasons
20 other than lack of work if the claimant has not worked and
21 earned wages in insured work or bona fide employment other than
22 self-employment in an amount equal to or exceeding five times
23 the claimant's weekly benefit amount; or

24 (3) in all other cases involving the allowance
25 or disallowance of a claim, the secretary, the claimant and any

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1 employing unit directly involved in the facts at issue.

2 D. Upon appeal by any party, a hearing officer
3 designated by the secretary shall afford the parties reasonable
4 opportunity for a fair hearing to be held de novo, and the
5 hearing officer shall issue findings of fact and a decision
6 [~~which~~] that affirms, modifies or reverses the determination of
7 the claims examiner or tax representative on the facts or the
8 law, based upon the evidence introduced at such hearing,
9 including the documents and statements in the claim or tax
10 records of the division. All hearings shall be held in
11 accordance with regulations of the secretary and decisions
12 issued promptly in accordance with time lapse standards
13 promulgated by the secretary of the United States department of
14 labor. The parties shall be duly notified of the decision,
15 together with the reasons therefor, which shall be deemed to be
16 the final decision of the department, unless within fifteen
17 days after the date of notification or mailing of the decision
18 further appeal is initiated pursuant to Subsection H of this
19 section.

20 E. Except with the consent of the parties, no
21 hearing officer or members of the board of review, established
22 in Subsection F of this section, or secretary shall sit in any
23 administrative or adjudicatory proceeding in which:

24 (1) either of the parties is related to the
25 hearing officer, member of the board of review or secretary by

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1 affinity or consanguinity within the degree of first cousin;

2 (2) the hearing officer, member of the board
3 of review or secretary was counsel for either party in that
4 action; or

5 (3) the hearing officer, member of the board
6 of review or secretary has an interest [~~which~~] that would
7 prejudice the rendering of an impartial decision.

8 The secretary, any member of the board of review or appeal
9 tribunal hearing officer shall withdraw from any proceeding in
10 which the hearing officer, member of the board of review or
11 secretary cannot accord a fair and impartial hearing or when a
12 reasonable person would seriously doubt whether the hearing
13 officer, board member or secretary could be fair and impartial.
14 Any party may request a disqualification of any appeal tribunal
15 hearing officer or board of review member by filing an
16 affidavit with the board of review or appeal tribunal promptly
17 upon discovery of the alleged grounds for disqualification,
18 stating with particularity the grounds upon which it is claimed
19 that the person cannot be fair and impartial. The
20 disqualification shall be mandatory if sufficient factual basis
21 is set forth in the affidavit of disqualification. If a member
22 of the board of review is disqualified or withdraws from any
23 proceeding, the remaining members of the board of review may
24 appoint an appeal tribunal hearing officer to sit on the board
25 of review for the proceeding involved.

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1 F. There is established within the department, for
2 the purpose of providing higher level administrative appeal and
3 review of determinations of a claims examiner or decisions
4 issued by a hearing officer pursuant to Subsection B or D of
5 this section, a "board of review" consisting of three members.
6 Two members shall be appointed by the governor with the consent
7 of the senate. The members so appointed shall hold office at
8 the pleasure of the governor for terms of four years. One
9 member appointed by the governor shall be a person who, on
10 account of previous vocation, employment or affiliation, can be
11 classed as a representative of employers, and the other member
12 appointed by the governor shall be a person who, on account of
13 previous vocation, employment or affiliation, can be classed as
14 a representative of employees. The third member shall be an
15 employee of the department appointed by the secretary who shall
16 serve as [~~chairman~~] chair of the board. Either member of the
17 board of review appointed by the governor who has missed two
18 consecutive meetings of the board may be removed from the board
19 by the governor. Actions of the board shall be taken by
20 majority vote. If a vacancy on the board in a position
21 appointed by the governor occurs between sessions of the
22 legislature, the position shall be filled by the governor until
23 the next regular legislative session. The board shall meet at
24 the call of the secretary. Members of the board appointed by
25 the governor shall be paid per diem and mileage in accordance

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1 with the Per Diem and Mileage Act for necessary travel to
2 attend regularly scheduled meetings of the board of review for
3 the purpose of conducting the board's appellate and review
4 duties.

5 G. The board of review shall hear and review all
6 cases appealed in accordance with Subsection H of this section.
7 The board of review may modify, affirm or reverse the decision
8 of the hearing officer or remand any matter to the claims
9 examiner, tax representative or hearing officer for further
10 proceedings. Each member appointed by the governor shall be
11 compensated at the rate of fifteen dollars (\$15.00) for each
12 case reviewed up to a maximum compensation of twelve thousand
13 dollars (\$12,000) in any one fiscal year.

14 H. Any party aggrieved by a final decision of a
15 hearing officer may file, in accordance with regulations
16 prescribed by the secretary, an application for appeal and
17 review of the decision with the secretary. The secretary shall
18 review the application and shall, within fifteen days after
19 receipt of the application, either affirm the decision of the
20 hearing officer, reverse the decision of the hearing officer,
21 modify the decision of the hearing officer, remand the matter
22 to the hearing officer, tax representative or claims examiner
23 for an additional hearing or refer the decision to the board of
24 review for further review and decision on the merits of the
25 appeal. If the secretary affirms, reverses or modifies the

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1 decision of the hearing officer, that decision shall be the
2 final administrative decision of the department and any appeal
3 therefrom shall be taken to the district court in accordance
4 with the provisions of Subsections M and N of this section. If
5 the secretary remands a matter to a hearing officer, tax
6 representative or claims examiner for an additional hearing,
7 judicial review shall be permitted only after issuance of a
8 final administrative decision. If the secretary refers the
9 decision of the hearing officer to the board of review for
10 further review, the board's decision on the merits of the
11 appeal shall be the final administrative decision of the
12 department, which may be appealed to the district court in
13 accordance with the provisions of Subsections M and N of this
14 section. If the secretary takes no action within fifteen days
15 of receipt of the application for appeal and review, the
16 decision shall be promptly scheduled for review by the board of
17 review as though it had been referred by the secretary. The
18 secretary may request the board of review to review a decision
19 of a hearing officer that the secretary believes to be
20 inconsistent with the law or with applicable rules of
21 interpretation or that is not supported by the evidence, and
22 the board of review shall grant the request if it is filed
23 within fifteen days of the issuance of the decision of the
24 hearing officer. The secretary may also direct that any
25 pending determination or adjudicatory proceeding be removed to

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1 the board of review for a final decision. If the board of
2 review holds a hearing on any matter, the hearing shall be
3 conducted by a quorum of the board of review in accordance with
4 regulations prescribed by the secretary for hearing appeals.
5 The board of review shall promptly notify the interested
6 parties of its findings of fact and decision. A decision of
7 the board of review on any disputed matter reviewed and decided
8 by it shall be based upon the law and the lawful rules of
9 interpretation issued by the secretary, and it shall be the
10 final administrative decision of the department, except in
11 cases of remand. If the board of review remands a matter to a
12 hearing officer, claims examiner or tax representative,
13 judicial review shall be permitted only after issuance of a
14 final administrative decision.

15 I. Notwithstanding any other provision of this
16 section granting any party the right to appeal, benefits shall
17 be paid promptly in accordance with a determination or a
18 decision of a claims examiner, hearing officer, secretary,
19 board of review or reviewing court, regardless of the pendency
20 of the period to file an appeal or petition for judicial review
21 that is provided with respect thereto in Subsection D or M of
22 this section or the pendency of any such filing or petition
23 until such determination or decision has been modified or
24 reversed by a subsequent decision. The provisions of this
25 subsection shall apply to all claims for benefits pending on

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1 the date of its enactment.

2 J. If a prior determination or decision allowing
3 benefits is affirmed by a decision of the department, including
4 the board of review or a reviewing court, the benefits shall be
5 paid promptly regardless of any further appeal [~~which~~] that may
6 thereafter be available to the parties, and no injunction,
7 supersedeas, stay or other writ or process suspending the
8 payment of benefits shall be issued by the secretary or board
9 of review or any court, and no action to recover benefits paid
10 to a claimant shall be taken. If a determination or decision
11 allowing benefits is finally modified or reversed, the
12 appropriate contributing [~~employer's account~~] employer will be
13 relieved of benefit charges in accordance with Subsection [B] A
14 of Section 51-1-11 NMSA 1978.

15 K. The manner in which disputed claims shall be
16 presented, the reports thereon required from the claimant and
17 from employers and the conduct of hearings and appeals shall be
18 in accordance with rules prescribed by the secretary for
19 determining the rights of the parties, whether or not the rules
20 conform to common law or statutory rules of evidence and other
21 technical rules of procedure. A hearing officer or the board
22 of review may refer to the secretary for interpretation any
23 question of controlling legal significance, and the secretary
24 shall issue a declaratory interpretation, which shall be
25 binding upon the decision of the hearing officer and the board

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1 of review. A full and complete record shall be kept of all
2 proceedings in connection with a disputed claim. All testimony
3 at any hearing upon a disputed claim shall be recorded but need
4 not be transcribed unless the disputed claim is appealed to the
5 district court.

6 L. Witnesses subpoenaed pursuant to this section
7 shall be allowed fees at a rate fixed by the secretary. Such
8 fees and all administrative expenses of proceedings involving
9 disputed claims shall be deemed a part of the expense of
10 administering the Unemployment Compensation Law.

11 M. Any determination or decision of a claims
12 examiner or hearing officer or by a representative of the tax
13 section of the department in the absence of an appeal therefrom
14 as provided by this section shall become final fifteen days
15 after the date of notification or mailing thereof, and judicial
16 review thereof shall be permitted only after any party claiming
17 to be aggrieved thereby has exhausted the remedies as provided
18 in Subsection H of this section. The division and any employer
19 or claimant who is affected by the decision shall be joined as
20 a party in any judicial action involving the decision. All
21 parties shall be served with an endorsed copy of the petition
22 within thirty days from the date of filing and an endorsed copy
23 of the order granting the petition within fifteen days from
24 entry of the order. Service on the department shall be made on
25 the secretary or ~~his~~ the secretary's designated legal

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1 representative either by mail with accompanying certification
2 of service or by personal service. The division may be
3 represented in a judicial action by an attorney employed by the
4 department or, when requested by the secretary, by the attorney
5 general or any district attorney.

6 N. The final decision of the secretary or board of
7 review upon any disputed matter may be reviewed both upon the
8 law, including the lawful rules of interpretation issued by the
9 secretary, and the facts by the district court of the county
10 wherein the person seeking the review resides upon certiorari,
11 unless it is determined by the district court where the
12 petition is filed that, as a matter of equity and due process,
13 venue should be in a different county. For the purpose of the
14 review, the division shall return on certiorari the reports and
15 all of the evidence heard by it on the reports and all the
16 papers and documents in its files affecting the matters and
17 things involved in such certiorari. The district court shall
18 render its judgment after hearing, and either the department or
19 any other party affected may appeal from the judgment to the
20 court of appeals in accordance with the rules of appellate
21 procedure. Certiorari shall not be granted unless applied for
22 within thirty days from the date of the final decision of the
23 secretary or board of review. Certiorari shall be heard in a
24 summary manner and shall be given precedence over all other
25 civil cases except cases arising under the Workers'

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1 Compensation Act. It is not necessary in any proceedings
2 before the division to enter exceptions to the rulings, and no
3 bond shall be required in obtaining certiorari from the
4 district court, but certiorari shall be granted as a matter of
5 right to the party applying therefor."

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

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

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

17 B. Benefits paid to an individual shall be charged
18 against the accounts of the individual's base-period employers
19 on a pro rata basis according to the proportion of the
20 individual's total base-period wages received from each
21 employer, except that no benefits paid to a claimant as
22 extended benefits under the provisions of Section 51-1-48 NMSA
23 1978 shall be charged to the account of any base-period
24 employer who is not on a reimbursable basis and who is not a
25 governmental entity and, except as the secretary shall by rule

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1 prescribe otherwise, in the case of benefits paid to an
2 individual who:

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

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

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

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

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

23 D. The division shall not charge a contributing
24 base-period employer's account with any portion of benefits
25 paid to an individual for dependent allowance or because the

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1 individual to whom benefits are paid:

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

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

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

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

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1 shall be two percent, except that:

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

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

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

23 (b) the employer provides the
24 authenticated account history as defined by rule of the
25 secretary from information accumulated from operations in the

1 other state or all the other states to compute a current
2 New Mexico rate; and

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

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

22 H. In the case of a transfer of an employing
23 enterprise, notwithstanding any other provision of law, the
24 experience history of the transferred enterprise shall be
25 transferred from the predecessor employer to the successor

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1 under the following conditions and in accordance with the
2 applicable rules of the secretary:

3 (1) as used in this subsection:

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

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

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

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

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

22 (f) "knowingly" means having actual
23 knowledge of or acting with deliberate ignorance of or
24 reckless disregard for the prohibition involved; and

25 (g) "violates or attempts to violate"

1 includes an intent to evade, a misrepresentation or a willful
2 nondisclosure;

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

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

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

19 (c) the successor shall notify the
20 division of the acquisition on or before the due date of the
21 successor's first wage and contribution report. If the
22 successor employer fails to notify the division of the
23 acquisition within this time limit, the division, when it
24 receives actual notice, shall effect the transfer of the
25 experience history and applicable rate of contribution

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1 retroactively to the date of the acquisition, and the
2 successor shall pay a penalty of fifty dollars (\$50.00); and

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

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

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1 records of contribution liability and benefit chargeability,
2 can be separated by the parties from the enterprises retained
3 by the predecessor to the satisfaction of the secretary or
4 the secretary's delegate. A partial experience history
5 transfer will be made only if the successor:

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

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

15 (c) files with the application [~~a Form~~
16 ~~ES-903A or its equivalent with~~], in a manner described by the
17 department, a schedule of the name and social security number
18 of and the wages paid to and the contributions paid for each
19 employee for the three and one-half year period preceding the
20 computation date as defined in Subparagraph (d) of Paragraph
21 (3) of Subsection I of this section through the date of
22 transfer or such lesser period as the enterprises transferred
23 may have been in operation. The application and [~~Form ES-~~
24 ~~903A~~] schedule shall be supported by the predecessor's
25 permanent employment records, which shall be available for

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

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

19 (5) whenever a person, who is not currently
20 an employer, acquires the trade or business of an employing
21 enterprise, the experience history of the acquired business
22 shall not be transferred to the successor if the secretary or
23 the secretary's designee finds that the successor acquired
24 the business solely or primarily for the purpose of obtaining
25 a lower rate of contributions. Instead, the successor shall

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

6 (a) the cost of acquiring the
7 business;

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

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

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

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

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

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

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

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

22 (a) if the person is an employer, the
23 person shall be assigned the highest contribution rate
24 established by the provisions of this section for the
25 calendar year in which the violation occurs and the three

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

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

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

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

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

5 (2) for each calendar year after [2013]
6 2014, except as otherwise provided, each employer's rate
7 shall be the corresponding rate in:

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

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

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

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

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

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

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

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

11 (3) as used in this section:

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

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

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

24 (d) "computation date" for each
25 calendar year means the close of business on June 30 of the

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1 preceding calendar year;

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

4 Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
6 10.0% and over	0.03%	0.05%	0.1%	0.6%
7 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
8 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
9 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
10 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
11 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
12 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
13 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
14 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
15 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
16 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
17 (-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
18 (-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
19 (-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
20 Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

21 Employer Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
23 10.0% and over	0.9%	1.2%	2.7%
24 9.0%-9.9%	1.2%	1.5%	2.7%
25 8.0%-8.9%	1.5%	1.8%	2.7%

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

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

17 (6) from January 1, 2013 through December
18 31, ~~[2013]~~ 2014, each employer making contributions pursuant
19 to this subsection shall make a contribution at the rate
20 specified in Contribution Schedule 2.

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

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

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

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

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

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

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

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

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

22 **SECTION 3.** Section 51-1-11 NMSA 1978 (being Laws 2003,
23 Chapter 47, Section 11, as amended by Section 2 of this act)
24 is repealed and a new Section 51-1-11 NMSA 1978 is enacted to
25 read:

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1 "51-1-11. [NEW MATERIAL] EMPLOYER CONTRIBUTION RATES--
2 BENEFITS CHARGEABLE--UNEMPLOYMENT COMPENSATION FUND ADEQUATE
3 RESERVE--RESERVE FACTOR--EXCESS CLAIMS PREMIUM--DEFINITIONS.--

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

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

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

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

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[bracketed material] = delete

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

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

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

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

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

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

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

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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) 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 transaction
8 involving the transfer of an employing enterprise shall be
9 deemed to be a single employer and the experience history of
10 the employing enterprise shall be transferred to the successor
11 employer if the successor employer has acquired by the
12 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 the
18 calendar year of the transaction transferring the employing
19 enterprise or the date of the actual transfer of control and
20 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

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

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1 applicable to each enterprise transferred, has maintained and
2 preserved payroll records that, together with records of
3 contribution liability and benefit chargeability, can be
4 separated by the parties from the enterprises retained by the
5 predecessor to the satisfaction of the secretary or the
6 secretary's delegate. A partial experience history transfer
7 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 after
11 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 with a schedule of the name and social security number of and
19 the wages paid to and the contributions paid for each employee
20 for the three and one-half year period preceding the
21 computation date through the date of transfer or such lesser
22 period as the enterprises transferred may have been in
23 operation. The application and form shall be supported by the
24 predecessor's permanent employment records, which shall be
25 available for audit by the division. The application and form

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1 shall be reviewed by the division and, upon approval, the
2 percentage of the predecessor's experience history
3 attributable to the enterprises transferred shall be
4 transferred to the successor. The percentage shall be
5 obtained by dividing the taxable payrolls of the transferred
6 enterprises for such three and one-half year period preceding
7 the date of computation or such lesser period as the
8 enterprises transferred may have been in operation by the
9 predecessor's entire payroll;

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

18 (4) whenever a person, who is not currently
19 an employer, acquires the trade or business of an employing
20 enterprise, the experience history of the acquired business
21 shall not be transferred to the successor if the secretary or
22 the secretary's designee finds that the successor acquired the
23 business solely or primarily for the purpose of obtaining a
24 lower rate of contributions. Instead, the successor shall be
25 assigned the applicable new employer rate pursuant to this

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1 section. In determining whether the business was acquired
2 solely or primarily for the purpose of obtaining a lower rate
3 of contribution, the secretary or the secretary's designee
4 shall consider:

5 (a) the cost of acquiring the business;

6 (b) whether the person continued the
7 business enterprise of the acquired business;

8 (c) how long such business enterprise
9 was continued; and

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

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

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

24 (a) describe how experience history is
25 to be transferred; and

1 (b) establish procedures to identify
2 the type of transfer or acquisition of an employing
3 enterprise; and

4 (7) a person who knowingly violates or
5 attempts to violate a rule adopted pursuant to Paragraph (6)
6 of this subsection, who transfers or acquires, or attempts to
7 transfer or acquire, an employing enterprise for the sole or
8 primary purpose of obtaining a reduced liability for
9 contributions or who knowingly advises another person to
10 violate a rule adopted pursuant to Paragraph (6) of this
11 subsection or to transfer or acquire an employing enterprise
12 for the sole or primary purpose of obtaining a reduced
13 liability for contributions is guilty of a misdemeanor and
14 shall be punished by a fine of not less than one thousand five
15 hundred dollars (\$1,500) or more than three thousand dollars
16 (\$3,000) or, if an individual, by imprisonment for a definite
17 term not to exceed ninety days or both. In addition, such a
18 person shall be subject to the following civil penalty imposed
19 by the secretary:

20 (a) if the person is an employer, the
21 person shall be assigned the highest contribution rate
22 established by the provisions of this section for the calendar
23 year in which the violation occurs and the three subsequent
24 calendar years; provided that, if the difference between the
25 increased penalty rate and the rate otherwise applicable would

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1 be less than two percent of the employer's payroll, the
2 contribution rate shall be increased by two percent of the
3 employer's payroll for the calendar year in which the
4 violation occurs and the three subsequent calendar years; or

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

8 F. For each calendar year, if, as of the
9 computation date for that year, an employer has been a
10 contributing employer throughout the preceding twenty-four
11 months, the contribution rate for that employer shall be
12 determined by multiplying the employer's benefit ratio by the
13 reserve factor as determined pursuant to Subsection H of this
14 section; provided that an employer's contribution rate shall
15 not be less than thirty-three hundredths percent or more than
16 five and four-tenths percent. An employer's benefit ratio is
17 determined by dividing the employer's benefit charges during
18 the immediately preceding fiscal years, up to a maximum of
19 three fiscal years, by the total of the annual payrolls of the
20 same time period, calculated to four decimal places,
21 disregarding any remaining fraction.

22 G. For each calendar year, if, as of the
23 computation date of that year, an employer has been a
24 contributing employer for less than twenty-four months, the
25 contribution rate for that employer shall be the average of

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1 the contribution rates for all contributing employers in the
2 employer's industry, as determined by administrative rule, but
3 shall not be less than one percent or more than five and four-
4 tenths percent; provided that an individual, type of
5 organization or employing unit that acquires all or part of
6 the trade or business of another employing unit, pursuant to
7 Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA
8 1978, that has a rate of contribution less than average of the
9 contribution rates for all contributing employers in the
10 employer's industry, shall be entitled to the transfer of the
11 contribution rate of the other employing unit to the extent
12 permitted under Subsection E of this section.

13 H. The division shall ensure that the fund
14 sustains an adequate reserve. An adequate reserve shall be
15 determined to mean that the funds in the fund available for
16 benefits equal the total amount of funds needed to pay between
17 eighteen and twenty-four months of benefits at the average of
18 the five highest years of benefits paid in the last twenty-
19 five years. For the purpose of sustaining an adequate
20 reserve, the division shall determine a reserve factor to be
21 used when calculating an employer's contribution rate pursuant
22 to Subsection F of this section by rule promulgated by the
23 secretary. The rules shall set forth a formula that will set
24 the reserve factor in proportion to the difference between the
25 amount of funds available for benefits in the fund, as of the

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1 computation date, and the adequate reserve, within the
2 following guidelines:

3 (1) 1.0000 if, as of the computation date,
4 there is an adequate reserve;

5 (2) between 0.5000 and 0.9999 if, as of the
6 computation date, there is greater than an adequate reserve;
7 and

8 (3) between 1.0001 and 4.0000 if, as of the
9 computation date, there is less than an adequate reserve.

10 I. If an employer's contribution rate pursuant to
11 Subsection F of this section is calculated to be greater than
12 five and four-tenths percent, notwithstanding the limitation
13 pursuant to Subsection F of this section, the employer shall
14 be charged an excess claims premium in addition to the
15 contribution rate applicable to the employer; provided that an
16 employer's excess claims premium shall not exceed one percent
17 of the employer's annual payroll. The excess claims premium
18 shall be determined by multiplying the employer's excess
19 claims rate by the employer's annual payroll. An employer's
20 excess claims rate shall be determined by multiplying the
21 difference of the employer's contribution rate,
22 notwithstanding the limitation pursuant to Subsection F of
23 this section, less five and four-tenths percent by ten
24 percent.

25 J. The division shall promptly notify each

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

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

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

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

16 L. The contributions and excess claims premiums,
17 together with interest and penalties thereon imposed by the
18 Unemployment Compensation Law, shall not be assessed nor shall
19 action to collect the same be commenced more than four years
20 after a report showing the amount of the contributions was
21 due. In the case of a false or fraudulent contribution report
22 with intent to evade contributions or a willful failure to
23 file a report of all contributions due, the contributions and
24 excess claims premiums, together with interest and penalties
25 thereon, may be assessed or an action to collect such

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

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

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

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1 fund.

2 0. As used in this section:

3 (1) "annual payroll" means the total taxable
4 amount of remuneration from an employer for employment during
5 a twelve-month period ending on a computation date;

6 (2) "base-period employers" means the
7 employers of an individual during the individual's base
8 period;

9 (3) "base-period wages" means the wages of
10 an individual for insured work during the individual's base
11 period on the basis of which the individual's benefit rights
12 were determined;

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

16 (5) "computation date" for each calendar
17 year means the close of business on June 30 of the preceding
18 calendar year;

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

24 (7) "experience history" means the benefit
25 charges and payroll experience of the employing enterprise;

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1 (8) "knowingly" means having actual
2 knowledge of or acting with deliberate ignorance of or
3 reckless disregard for the prohibition involved;

4 (9) "predecessor" means the owner and
5 operator of an employing enterprise immediately prior to the
6 transfer of such enterprise;

7 (10) "successor" means any person that
8 acquires an employing enterprise and continues to operate such
9 business entity; and

10 (11) "violates or attempts to violate"
11 includes an intent to evade, a misrepresentation or a willful
12 nondisclosure."

13 SECTION 4. Section 51-1-13 NMSA 1978 (being Laws 1971,
14 Chapter 209, Section 4, as amended) is amended to read:

15 "51-1-13. FINANCING BENEFITS PAID TO EMPLOYEES OF
16 NONPROFIT ORGANIZATIONS.--Benefits paid to employees of
17 nonprofit organizations shall be financed in accordance with
18 the provisions of this section. For the purpose of this
19 section, a "nonprofit organization" is an organization or
20 group of organizations described in Paragraph (8) of
21 Subsection F of Section 51-1-42 NMSA 1978.

22 A. Any nonprofit organization [~~which~~] that,
23 pursuant to Paragraph (8) of Subsection F of Section 51-1-42
24 NMSA 1978, is subject to the Unemployment Compensation Law
25 shall pay contributions [~~under~~] in accordance with the

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1 provisions of Section 51-1-9 NMSA 1978, unless it elects, in
2 accordance with this subsection, to pay to the division for
3 the fund an amount equal to the amount of regular benefits and
4 of one-half of the extended benefits paid, that is
5 attributable to service in the employ of such nonprofit
6 organization, to individuals for weeks of unemployment that
7 begin during the effective period of such election.

8 (1) Any nonprofit organization that becomes
9 subject to the Unemployment Compensation Law after January 1,
10 1972 may elect to become liable for payments in lieu of
11 contributions for a period of not less than two taxable years
12 by filing a written notice of its election with the division
13 not later than thirty days immediately following the date
14 subjectivity is determined.

15 (2) Any nonprofit organization [~~which~~] that
16 makes an election in accordance with Paragraph (1) of this
17 subsection will continue to be liable for payments in lieu of
18 contributions until it files with the division a written
19 notice terminating its election not later than thirty days
20 prior to the beginning of the taxable year for which such
21 termination shall first be effective.

22 (3) Any nonprofit organization that has been
23 paying contributions under the Unemployment Compensation Law
24 may change to a reimbursable basis by filing with the division
25 written notice of its election not later than thirty days

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1 prior to the beginning of the taxable year for which its
2 election shall first be effective. Such election shall not be
3 terminated by the organization for the following two taxable
4 years.

5 (4) The division, in accordance with such
6 regulations as the secretary may prescribe, shall notify each
7 nonprofit organization of any determination [~~which~~] that it
8 may make of the organization's status as an employer and of
9 the effective date of any election [~~which~~] that the
10 organization makes and of any termination of such election.
11 Such determination shall be subject to reconsideration, appeal
12 and review in accordance with regulations of the secretary
13 governing appeals by employers of their liability under
14 Section 51-1-9 NMSA 1978.

15 B. Payments in lieu of contributions shall be made
16 in accordance with the provisions of this subsection.

17 (1) At the end of each calendar quarter or
18 at the end of any other period as determined by the secretary,
19 the division shall bill each nonprofit organization or group
20 of such organizations [~~which~~] that has elected to make
21 payments in lieu of contributions for an amount equal to the
22 full amount of regular benefits plus one-half of the amount of
23 extended benefits paid during such quarter or other prescribed
24 period that is attributable to service in the employ of such
25 organization.

1 (2) Effective with the calendar quarter
 2 beginning January 1, 1987 and each succeeding calendar
 3 quarter, each employer that is liable for payments in lieu of
 4 contributions, including governmental entities, shall pay to
 5 the division an amount equal to twenty-five percent of the
 6 total benefit charges made to each such employer during the
 7 four calendar quarters ending the preceding June 30. Such
 8 payments shall be made on or before the tenth day of the first
 9 month of each calendar quarter.

10 (3) In the event that any employer liable
 11 for making payments in lieu of contributions incurred no
 12 benefit charges during the four calendar quarters ending the
 13 preceding June 30, the employer shall pay to the division,
 14 each calendar quarter, an amount equal to one-eighth of one
 15 percent of the employer's annual taxable wages paid for such
 16 period for employment as defined in Subsection F of Section
 17 51-1-42 NMSA 1978 and [~~in~~] Section 51-1-44 NMSA 1978 as
 18 estimated by the secretary. Such payments shall be paid on or
 19 before the tenth day of the first month of the calendar
 20 quarter.

21 (4) For each calendar quarter, the secretary
 22 shall determine the amount paid by each employer subject to
 23 payment in lieu of contributions and the amount of benefits
 24 charged to such [~~employer's account~~] employer. Each employer
 25 who has made payments in an amount less than the amount of

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1 benefits charged to the [~~employer's account~~] employer shall
2 pay the balance of the amount charged within twenty-five days
3 of the notification by the division. If the quarterly payment
4 made by an employer pursuant to Paragraph (2) of this
5 subsection exceeds the amount of benefits charged to such
6 [~~employer's account~~] employer, the excess payment shall be
7 refunded on a quarterly basis.

8 (5) Payments made by any nonprofit
9 organization under the provisions of this subsection shall not
10 be deducted or deductible, in whole or in part, from the
11 remuneration of individuals in the employ of the organization.

12 C. Collection of past due payments of amounts in
13 lieu of contributions shall be as provided in this subsection.

14 (1) Past due payments of amounts in lieu of
15 contributions are subject to the same penalties that are
16 applied to past due contributions [~~under~~] pursuant to Section
17 51-1-12 NMSA 1978.

18 (2) The provisions of Section 51-1-36 NMSA
19 1978 shall apply to all contributions or payments of amounts
20 in lieu of contributions for which a nonprofit organization
21 becomes liable pursuant to an election made [~~under~~] pursuant
22 to Subsection A of this section.

23 (3) Any nonprofit organization that elects
24 to become liable for payments in lieu of contributions shall
25 be required, within thirty days after the effective date of

1 its election, to execute and file with the secretary a surety
2 bond or such other surety undertaking or security, which may
3 consist of a cash security deposit, in a form approved by the
4 secretary. With the consent of the secretary, a cash security
5 deposit may be made in three annual installments. This
6 paragraph shall not apply to:

7 (a) group accounts established pursuant
8 to Subsection E of this section or any member of such a group
9 account; [~~and~~] or

10 (b) governmental entities as defined in
11 Subsection B of Section 51-1-44 NMSA 1978; except that all
12 instrumentalities of governmental entities shall be included
13 as part of the controlling governmental entity or entities for
14 purposes of determining liability for the payment of
15 unemployment compensation contributions.

16 (4) The amount of the surety bond or other
17 surety undertaking or security required by Paragraph [~~(4)~~] (3)
18 of this subsection shall be equal to 2.7 percent of
19 contribution times the organization's taxable wages paid for
20 employment, as defined in Subsection F of Section 51-1-42 NMSA
21 1978 and Section 51-1-44 NMSA 1978, for the four calendar
22 quarters immediately preceding the effective date of the
23 election. If the nonprofit organization did not pay wages in
24 each of the preceding four calendar quarters, the amount of
25 surety bond required shall be determined by the secretary

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1 based upon an estimate of taxable wages to be paid during the
2 succeeding four calendar quarters. Thereafter, the amount of
3 the surety bond shall be adjusted on the basis of the
4 organization's actual taxable payroll.

5 (5) If any nonprofit organization that is
6 not required to execute and file a surety bond or other
7 security is delinquent in making payments in lieu of
8 contributions as required [~~under~~] pursuant to Subsection B of
9 this section or if any nonprofit organization that is required
10 to execute and maintain a surety bond or other security fails
11 to do so or is delinquent in making payments as required
12 [~~under~~] pursuant to Subsection B of this section, the
13 secretary may terminate the organization's election to make
14 payments in lieu of contributions effective as of the
15 beginning of the next taxable year and the termination shall
16 be effective until the organization executes and files with
17 the department a surety bond or other security as required.

18 (6) Any bond or other surety undertaking or
19 security required under this subsection shall be in force for
20 a period of not less than two taxable years and shall be
21 renewed with the approval of the secretary at such times as
22 the secretary may prescribe.

23 D. Each employer who is liable for payments in
24 lieu of contributions shall pay to the division for the fund
25 the amount of regular benefits plus the amount of one-half of

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1 extended benefits paid that are attributable to service in the
2 employ of that employer in accordance with the provisions of
3 Subsection [B] A of Section 51-1-11 NMSA 1978, except that any
4 employer that is liable for payments in lieu of contributions
5 shall not be relieved of charges for benefits paid to an
6 individual who was separated from the employ of that employer
7 for any reason.

8 E. Two or more employers who have become liable
9 for payments in lieu of contributions, in accordance with the
10 provisions of Subsection A of this section, Subsection B of
11 Section 51-1-14 NMSA 1978 and Section 51-1-16 NMSA 1978, may
12 file a joint application for the establishment of a group
13 account for the purpose of sharing the cost of benefits paid
14 that are attributable to service in the employ of such
15 employers. Each application shall identify and authorize a
16 group representative to act as the group's agent for the
17 purpose of this subsection. Upon its approval of the
18 application, the division shall establish a group account for
19 the employers effective as of the beginning of the calendar
20 quarter in which it receives the application and shall notify
21 the group's representative of the effective date of the
22 account. The account shall remain in effect for not less than
23 two years and thereafter until terminated at the discretion of
24 the secretary or upon application by the group. Each group
25 account shall be liable for the prepayment of payments in lieu

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1 of contributions as provided in Paragraphs (2), (3) and (4) of
2 Subsection B of this section. Each member of the group
3 account shall be liable to the division for payments in lieu
4 of contributions with respect to each calendar quarter in the
5 amount that bears the same ratio to the total benefits paid in
6 the quarter that are attributable to service performed in the
7 employ of all members of the group, as the total wages paid
8 for service in employment for such member during the quarter
9 bear to the total wages paid during the quarter for service
10 performed in the employ of all members of the group. The
11 secretary shall prescribe regulations as [~~he~~] the secretary
12 deems necessary with respect to applications for
13 establishment, maintenance and termination of group accounts
14 that are authorized by this subsection, for addition of new
15 members to and withdrawal of active members from the accounts
16 and for the determination of the amounts that are payable
17 under this subsection by members of the group and the time and
18 manner of payments.

19 F. Each group account may apportion liability for
20 amounts due to the group representative as the group shall
21 determine."

22 SECTION 5. Section 51-1-42 NMSA 1978 (being Laws 2003,
23 Chapter 47, Section 12, as amended) is amended to read:

24 "51-1-42. DEFINITIONS.--As used in the Unemployment
25 Compensation Law:

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1 A. "base period" means the first four of the last
2 five completed calendar quarters immediately preceding the
3 first day of an individual's benefit year, except that "base
4 period" means for benefit years beginning on or after January
5 1, 2005 for an individual who does not have sufficient wages
6 in the base period as defined to qualify for benefits pursuant
7 to Section 51-1-5 NMSA 1978, the individual's base period
8 shall be the last four completed calendar quarters immediately
9 preceding the first day of the individual's benefit year if
10 that period qualifies the individual for benefits pursuant to
11 Section 51-1-5 NMSA 1978; provided that:

12 (1) wages that fall within the base period
13 of claims established pursuant to this subsection are not
14 available for reuse in qualifying for a subsequent benefit
15 year; and

16 (2) in the case of a combined-wage claim
17 pursuant to the arrangement approved by the federal secretary
18 of labor, the base period is that base period applicable under
19 the unemployment compensation law of the paying state;

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

24 C. "contributions" means the money payments
25 required by Section 51-1-9 NMSA 1978 to be made into the fund

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1 by an employer on account of having individuals performing
2 services for the employer;

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

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1 E. "employer" includes:

2 (1) an employing unit that:

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

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

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

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1 shall be an employer under Subparagraph (a) of this paragraph
2 so long as the employing unit is paying wages or remuneration
3 for services other than agricultural services;

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

14 (3) an employing unit that acquired all or
15 part of the organization, trade, business or assets of another
16 employing unit and that, if treated as a single unit with the
17 other employing unit or part thereof, would be an employer
18 under Paragraph (1) of this subsection;

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

21 (a) for which, within either the
22 current or preceding calendar year, service is or was
23 performed with respect to which such employing unit is liable
24 for any federal tax against which credit may be taken for
25 contributions required to be paid into a state unemployment

1 fund; or

2 (b) that, as a condition for approval
3 of the Unemployment Compensation Law for full tax credit
4 against the tax imposed by the Federal Unemployment Tax Act,
5 is required, pursuant to that act, to be an "employer" under
6 the Unemployment Compensation Law;

7 (5) an employing unit that, having become an
8 employer under Paragraph (1), (2), (3) or (4) of this
9 subsection, has not, under Section 51-1-18 NMSA 1978, ceased
10 to be an employer subject to the Unemployment Compensation
11 Law;

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

16 (7) an employing unit for which any services
17 performed in its employ are deemed to be performed in this
18 state pursuant to an election under an arrangement entered
19 into in accordance with Subsection A of Section 51-1-50 NMSA
20 1978; and

21 (8) an Indian tribe as defined in 26 USCA
22 Section 3306(u) for which service in employment is performed;

23 F. "employment":

24 (1) means any service, including service in
25 interstate commerce, performed for wages or under any contract

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1 of hire, written or oral, express or implied;

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

4 (a) the service is primarily localized
5 in this state with services performed outside the state being
6 only incidental thereto; or

7 (b) the service is not localized in any
8 state but some of the service is performed in this state and:

9 1) the base of operations or, if there is no base of
10 operations, the place from which such service is directed or
11 controlled, is in this state; or 2) the base of operations or
12 place from which such service is directed or controlled is not
13 in any state in which some part of the service is performed
14 but the individual's residence is in this state;

15 (3) means services performed within this
16 state but not covered under Paragraph (2) of this subsection
17 if contributions or payments in lieu of contributions are not
18 required and paid with respect to such services under an
19 unemployment compensation law of any other state, the federal
20 government or Canada;

21 (4) means services covered by an election
22 pursuant to Section 51-1-18 NMSA 1978 and services covered by
23 an election duly approved by the secretary in accordance with
24 an arrangement pursuant to Paragraph (1) of Subsection A of
25 Section 51-1-50 NMSA 1978 shall be deemed to be employment

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1 during the effective period of the election;

2 (5) means services performed by an
3 individual for an employer for wages or other remuneration
4 unless and until it is established by a preponderance of
5 evidence that:

6 (a) the individual has been and will
7 continue to be free from control or direction over the
8 performance of the services both under the individual's
9 contract of service and in fact;

10 (b) the service is either outside the
11 usual course of business for which the service is performed or
12 that such service is performed outside of all the places of
13 business of the enterprise for which such service is
14 performed; and

15 (c) the individual is customarily
16 engaged in an independently established trade, occupation,
17 profession or business of the same nature as that involved in
18 the contract of service;

19 (6) means service performed after December
20 31, 1977 by an individual in agricultural labor as defined in
21 Subsection Q of this section if:

22 (a) the service is performed for an
23 employing unit that: 1) paid remuneration in cash of twenty
24 thousand dollars (\$20,000) or more to individuals in that
25 employment during any calendar quarter in either the current

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1 or the preceding calendar year; or 2) employed in agricultural
2 labor ten or more individuals for some portion of a day in
3 each of twenty different calendar weeks in either the current
4 or preceding calendar year, whether or not the weeks were
5 consecutive, and regardless of whether the individuals were
6 employed at the same time;

7 (b) the service is not performed before
8 January 1, 1980 by an individual who is an alien admitted to
9 the United States to perform service in agricultural labor
10 pursuant to Sections 214(c) and 101(15)(H) of the federal
11 Immigration and Nationality Act; and

12 (c) for purposes of this paragraph, an
13 individual who is a member of a crew furnished by a crew
14 leader to perform service in agricultural labor for a farm
15 operator or other person shall be treated as an employee of
16 the crew leader: 1) if the crew leader meets the requirements
17 of a crew leader as defined in Subsection L of this section;
18 or 2) substantially all the members of the crew operate or
19 maintain mechanized agricultural equipment that is provided by
20 the crew leader; and 3) the individuals performing the
21 services are not, by written agreement or in fact, within the
22 meaning of Paragraph (5) of this subsection, performing
23 services in employment for the farm operator or other person;

24 (7) means service performed after December
25 31, 1977 by an individual in domestic service in a private

1 home, local college club or local chapter of a college
2 fraternity or sorority for a person or organization that paid
3 cash remuneration of one thousand dollars (\$1,000) in any
4 calendar quarter in the current or preceding calendar year to
5 individuals performing such services;

6 (8) means service performed after December
7 31, 1971 by an individual in the employ of a religious,
8 charitable, educational or other organization but only if the
9 following conditions are met:

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

13 (b) the organization meets the
14 requirements of "employer" as provided in Subparagraph (a) of
15 Paragraph (1) of Subsection E of this section;

16 (9) means service of an individual who is a
17 citizen of the United States, performed outside the United
18 States, except in Canada, after December 31, 1971 in the
19 employ of an American employer, other than service that is
20 deemed "employment" under the provisions of Paragraph (2) of
21 this subsection or the parallel provisions of another state's
22 law, if:

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

25 (b) the employer has no place of

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1 business in the United States, but: 1) the employer is an
2 individual who is a resident of this state; 2) the employer is
3 a corporation organized under the laws of this state; or 3)
4 the employer is a partnership or a trust and the number of the
5 partners or trustees who are residents of this state is
6 greater than the number who are residents of any one other
7 state; or

8 (c) none of the criteria of
9 Subparagraphs (a) and (b) of this paragraph are met, but the
10 employer has elected coverage in this state or, the employer
11 having failed to elect coverage in any state, the individual
12 has filed a claim for benefits, based on such service, under
13 the law of this state.

14 "American employer" for the purposes of this paragraph
15 means a person who is: 1) an individual who is a resident of
16 the United States; 2) a partnership if two-thirds or more of
17 the partners are residents of the United States; 3) a trust if
18 all of the trustees are residents of the United States; or 4)
19 a corporation organized under the laws of the United States or
20 of any state. For the purposes of this paragraph, "United
21 States" includes the United States, the District of Columbia,
22 the commonwealth of Puerto Rico and the Virgin Islands;

23 (10) means, notwithstanding any other
24 provisions of this subsection, service with respect to which a
25 tax is required to be paid under any federal law imposing a

1 tax against which credit may be taken for contributions
2 required to be paid into a state unemployment fund or which as
3 a condition for full tax credit against the tax imposed by the
4 Federal Unemployment Tax Act is required to be covered under
5 the Unemployment Compensation Law;

6 (11) means service performed in the employ
7 of an Indian tribe if:

8 (a) the service is excluded from
9 "employment" as defined in 26 USCA Section 3306(c) solely by
10 reason of 26 USCA Section 3306(c)(7); and

11 (b) the service is not otherwise
12 excluded from employment pursuant to the Unemployment
13 Compensation Law;

14 (12) does not include:

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

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

25 (c) service performed by an individual

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1 in the employ of the individual's son, daughter or spouse, and
2 service performed by a child under the age of majority in the
3 employ of the child's father or mother;

4 (d) service performed in the employ of
5 the United States government or an instrumentality of the
6 United States immune under the constitution of the United
7 States from the contributions imposed by the Unemployment
8 Compensation Law except that to the extent that the congress
9 of the United States shall permit states to require any
10 instrumentalities of the United States to make payments into
11 an unemployment fund under a state unemployment compensation
12 act, all of the provisions of the Unemployment Compensation
13 Law shall be applicable to such instrumentalities, and to
14 service performed for such instrumentalities in the same
15 manner, to the same extent and on the same terms as to all
16 other employers, employing units, individuals and services;
17 provided that if this state shall not be certified for any
18 year by the secretary of labor of the United States under
19 Section 3304 of the federal Internal Revenue Code of 1986,
20 26 U.S.C. Section 3304, the payments required of such
21 instrumentalities with respect to such year shall be refunded
22 by the department from the fund in the same manner and within
23 the same period as is provided in Subsection D of Section
24 51-1-36 NMSA 1978 with respect to contributions erroneously
25 collected;

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1 (e) service performed in a facility
2 conducted for the purpose of carrying out a program of
3 rehabilitation for individuals whose earning capacity is
4 impaired by age or physical or mental deficiency or injury or
5 providing remunerative work for individuals who because of
6 their impaired physical or mental capacity cannot be readily
7 absorbed in the competitive labor market, by an individual
8 receiving that rehabilitation or remunerative work;

9 (f) service with respect to which
10 unemployment compensation is payable under an unemployment
11 compensation system established by an act of congress;

12 (g) service performed in the employ of
13 a foreign government, including service as a consular or other
14 officer or employee or a nondiplomatic representative;

15 (h) service performed by an individual
16 for a person as an insurance agent or as an insurance
17 solicitor, if all such service performed by the individual for
18 the person is performed for remuneration solely by way of
19 commission;

20 (i) service performed by an individual
21 under the age of eighteen in the delivery or distribution of
22 newspapers or shopping news, not including delivery or
23 distribution to any point for subsequent delivery or
24 distribution;

25 (j) service covered by an election duly

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1 approved by the agency charged with the administration of any
2 other state or federal unemployment compensation law, in
3 accordance with an arrangement pursuant to Paragraph (l) of
4 Subsection A of Section 51-1-50 NMSA 1978 during the effective
5 period of the election;

6 (k) service performed, as part of an
7 unemployment work-relief or work-training program assisted or
8 financed in whole or part by any federal agency or an agency
9 of a state or political subdivision thereof, by an individual
10 receiving the work relief or work training;

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

23 (m) service performed in the employ of
24 a hospital, if the service is performed by a patient of the
25 hospital, or services performed by an inmate of a custodial or

1 penal institution for any employer;

2 (n) service performed by real estate
3 salespersons for others when the services are performed for
4 remuneration solely by way of commission;

5 (o) service performed in the employ of
6 a school, college or university if the service is performed by
7 a student who is enrolled and is regularly attending classes
8 at the school, college or university;

9 (p) service performed by an individual
10 for a fixed or contract fee officiating at a sporting event
11 that is conducted by or under the auspices of a nonprofit or
12 governmental entity if that person is not otherwise an
13 employee of the entity conducting the sporting event;

14 (q) service performed for a private,
15 for-profit person or entity by an individual as a product
16 demonstrator or product merchandiser if the service is
17 performed pursuant to a written contract between that
18 individual and a person or entity whose principal business is
19 obtaining the services of product demonstrators and product
20 merchandisers for third parties, for demonstration and
21 merchandising purposes and the individual: 1) is compensated
22 for each job or the compensation is based on factors related
23 to the work performed; 2) provides the equipment used to
24 perform the service, unless special equipment is required and
25 provided by the manufacturer through an agency; 3) is

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1 responsible for completion of a specific job and for any
2 failure to complete the job; 4) pays all expenses, and the
3 opportunity for profit or loss rests solely with the
4 individual; and 5) is responsible for operating costs, fuel,
5 repairs and motor vehicle insurance. For the purpose of this
6 subparagraph, "product demonstrator" means an individual who,
7 on a temporary, part-time basis, demonstrates or gives away
8 samples of a food or other product as part of an advertising
9 or sales promotion for the product and who is not otherwise
10 employed directly by the manufacturer, distributor or
11 retailer, and "product merchandiser" means an individual who,
12 on a temporary, part-time basis builds or resets a product
13 display and who is not otherwise directly employed by the
14 manufacturer, distributor or retailer; or

15 (r) service performed for a private,
16 for-profit person or entity by an individual as a landman if
17 substantially all remuneration paid in cash or otherwise for
18 the performance of the services is directly related to the
19 completion by the individual of the specific tasks contracted
20 for rather than to the number of hours worked by the
21 individual. For the purposes of this subparagraph, "landman"
22 means a land professional who has been engaged primarily in:
23 1) negotiating for the acquisition or divestiture of mineral
24 rights; 2) negotiating business agreements that provide for
25 the exploration for or development of minerals; 3) determining

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1 ownership of minerals through the research of public and
2 private records; and 4) reviewing the status of title, curing
3 title defects and otherwise reducing title risk associated
4 with ownership of minerals; managing rights or obligations
5 derived from ownership of interests and minerals; or utilizing
6 or pooling of interest in minerals; and

7 (13) for the purposes of this subsection, if
8 the services performed during one-half or more of any pay
9 period by an individual for the person employing the
10 individual constitute employment, all the services of the
11 individual for the period shall be deemed to be employment,
12 but, if the services performed during more than one-half of
13 any such pay period by an individual for the person employing
14 the individual do not constitute employment, then none of the
15 services of the individual for the period shall be deemed to
16 be employment. As used in this paragraph, the term "pay
17 period" means a period, of not more than thirty-one
18 consecutive days, for which a payment of remuneration is
19 ordinarily made to the individual by the person employing the
20 individual. This paragraph shall not be applicable with
21 respect to services performed in a pay period by an individual
22 for the person employing the individual where any of such
23 service is excepted by Subparagraph (f) of Paragraph (12) of
24 this subsection;

25 G. "employment office" means a free public

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1 employment office, or branch thereof, operated by this state
2 or maintained as a part of a state-controlled system of public
3 employment offices;

4 H. "fund" means the unemployment compensation fund
5 established by the Unemployment Compensation Law to which all
6 contributions and payments in lieu of contributions required
7 under the Unemployment Compensation Law and from which all
8 benefits provided under the Unemployment Compensation Law
9 shall be paid;

10 I. "unemployment" means, with respect to an
11 individual, any week during which the individual performs no
12 services and with respect to which no wages are payable to the
13 individual and during which the individual is not engaged in
14 self-employment or receives an award of back pay for loss of
15 employment. The secretary shall prescribe by rule what
16 constitutes part-time and intermittent employment, partial
17 employment and the conditions under which individuals engaged
18 in such employment are eligible for partial unemployment
19 benefits, but no individual who is otherwise eligible shall be
20 deemed ineligible for benefits solely for the reason that the
21 individual seeks, applies for or accepts only part-time work,
22 instead of full-time work, if the part-time work is for at
23 least twenty hours per week;

24 J. "state", when used in reference to any state
25 other than New Mexico, includes, in addition to the states of

1 the United States, the District of Columbia, the commonwealth
2 of Puerto Rico and the Virgin Islands;

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

11 L. "crew leader" means a person who:

12 (1) holds a valid certificate of
13 registration as a crew leader or farm labor contractor under
14 the federal Migrant and Seasonal Agricultural Worker
15 Protection Act;

16 (2) furnishes individuals to perform
17 services in agricultural labor for any other person;

18 (3) pays, either on the crew leader's own
19 behalf or on behalf of such other person, the individuals so
20 furnished by the crew leader for service in agricultural
21 labor; and

22 (4) has not entered into a written agreement
23 with the other person for whom the crew leader furnishes
24 individuals in agricultural labor that the individuals will be
25 the employees of the other person;

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

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

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

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

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

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1 (1) on a farm, in the employ of a person, in
2 connection with cultivating the soil or in connection with
3 raising or harvesting an agricultural or horticultural
4 commodity, including the raising, shearing, feeding, caring
5 for, training and management of livestock, bees, poultry and
6 fur-bearing animals and wildlife;

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

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

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

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1 in connection with any agricultural or horticultural commodity
2 after its delivery to a terminal market for distribution for
3 consumption.

4 As used in this subsection, the term "farm" includes
5 stock, dairy, poultry, fruit, fur-bearing animal and truck
6 farms, plantations, ranches, nurseries, greenhouses, ranges
7 and orchards;

8 R. "payments in lieu of contributions" means the
9 money payments made into the fund by an employer pursuant to
10 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or
11 Subsection E of Section 51-1-59 NMSA 1978;

12 S. "department" means the workforce solutions
13 department; and

14 T. "wages" means all remuneration for services,
15 including commissions and bonuses and the cash value of all
16 remuneration in any medium other than cash. The reasonable
17 cash value of remuneration in any medium other than cash shall
18 be established and determined in accordance with rules
19 prescribed by the secretary; provided that the term "wages"
20 shall not include:

21 (1) subsequent to December 31, 1977, that
22 part of the remuneration in excess of the base wage as
23 determined by the secretary for each calendar year. The base
24 wage upon which contribution shall be paid during any calendar
25 year shall be sixty percent of the state's average annual

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1 earnings computed by the division by dividing total wages
2 reported to the division by contributing employers for the
3 second preceding calendar year before the calendar year the
4 computed base wage becomes effective by the average annual
5 employment reported by contributing employers for the same
6 period rounded to the next higher multiple of one hundred
7 dollars (\$100); provided that the base wage so computed for
8 any calendar year shall not be less than seven thousand
9 dollars (\$7,000). Wages paid by an employer to an individual
10 in the employer's employ during any calendar year in excess of
11 the base wage in effect for that calendar year shall be
12 reported to the department but shall be exempt from the
13 payment of contributions unless such wages paid in excess of
14 the base wage become subject to tax under a federal law
15 imposing a tax against which credit may be taken for
16 contributions required to be paid into a state unemployment
17 fund;

18 (2) the amount of any payment with respect
19 to services performed after June 30, 1941 to or on behalf of
20 an individual in the employ of an employing unit under a plan
21 or system established by the employing unit that makes
22 provision for individuals in its employ generally or for a
23 class or classes of individuals, including any amount paid by
24 an employing unit for insurance or annuities, or into a fund,
25 to provide for any payment, on account of:

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1 (a) retirement if the payments are made
2 by an employer to or on behalf of an employee under a
3 simplified employee pension plan that provides for payments by
4 an employer in addition to the salary or other remuneration
5 normally payable to the employee or class of employees and
6 does not include any payments that represent deferred
7 compensation or other reduction of an employee's normal
8 taxable wages or remuneration or any payments made to a third
9 party on behalf of an employee as part of an agreement of
10 deferred remuneration;

11 (b) sickness or accident disability if
12 the payments are received under a workers' compensation or
13 occupational disease disablement law;

14 (c) medical and hospitalization
15 expenses in connection with sickness or accident disability;
16 or

17 (d) death; provided the individual in
18 its employ has not the option to receive, instead of provision
19 for the death benefit, any part of such payment, or, if such
20 death benefit is insured, any part of the premiums or
21 contributions to premiums paid by the individual's employing
22 unit and has not the right under the provisions of the plan or
23 system or policy of insurance providing for the death benefit
24 to assign the benefit, or to receive a cash consideration in
25 lieu of the benefit either upon the individual's withdrawal

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1 from the plan or system providing for the benefit or upon
2 termination of the plan or system or policy of insurance or of
3 the individual's service with the employing unit;

4 (3) remuneration for agricultural labor paid
5 in any medium other than cash;

6 (4) a payment made to, or on behalf of, an
7 employee or an employee's beneficiary under a cafeteria plan
8 within the meaning of Section 125 of the federal Internal
9 Revenue Code of 1986;

10 (5) a payment made, or benefit furnished to
11 or for the benefit of an employee if at the time of the
12 payment or such furnishing it is reasonable to believe that
13 the employee will be able to exclude the payment or benefit
14 from income under Section 129 of the federal Internal Revenue
15 Code of 1986;

16 (6) a payment made by an employer to a
17 survivor or the estate of a former employee after the calendar
18 year in which the employee died;

19 (7) a payment made to, or on behalf of, an
20 employee or the employee's beneficiary under an arrangement to
21 which Section 408(p) of the federal Internal Revenue Code of
22 1986 applies, other than any elective contributions under
23 Paragraph (2)(A)(i) of that section;

24 (8) a payment made to or for the benefit of
25 an employee if at the time of the payment it is reasonable to

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1 believe that the employee will be able to exclude the payment
2 from income under Section 106 of the federal Internal Revenue
3 Code of 1986; or

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

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

11 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

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

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

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

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

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

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

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1 to this state.

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

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

10 (2) equaled or exceeded five percent; or

11 (3) equaled or exceeded six percent,
12 regardless of the rate of insured unemployment in the two
13 previous years; provided that the operation of this paragraph
14 shall not activate the state "on indicator" any time after
15 four weeks prior to the last week for which one hundred
16 percent federal sharing funding is available under Section
17 2005(a) of Public Law No. 111-5, without regard to the
18 extension of federal sharing for certain claims as provided
19 under Section 2005(c) of that law; or

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

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1 2005(c) of that law:

2 (a) the average rate of total
3 unemployment, seasonally adjusted, as determined by the United
4 States secretary of labor, for the period consisting of the
5 most recent three months for which data for all states are
6 published before the close of such week equals or exceeds six
7 and one-half percent; and

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

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

24 D. Except as provided in Subsection E of this
25 section, the total extended benefit amount payable to an

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1 eligible individual with respect to the applicable benefit
2 year shall be the least of the following amounts:

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

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

10 (3) thirty-nine times the individual's
11 average weekly benefit amount that was payable to the
12 individual pursuant to this section for a week of total
13 unemployment in the applicable benefit year, reduced by the
14 total amount of regular benefits that were paid, or deemed
15 paid, to the individual pursuant to this section with respect
16 to the benefit year; provided that the amount determined
17 pursuant to this paragraph shall be reduced by the total
18 amount of additional benefits paid, or deemed paid, to the
19 individual under the provisions of this section for weeks of
20 unemployment in the individual's benefit year that began prior
21 to the effective date of the extended benefit period that is
22 current in the week for which the individual first claims
23 extended benefits; and provided further, if the benefit year
24 of the individual ends within an extended benefit period, the
25 remaining balance of the extended benefits that the individual

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1 would, but for this paragraph, be entitled to receive in that
2 extended benefit period, with respect to weeks of unemployment
3 beginning after the end of the benefit year, shall be reduced,
4 but not below zero, by the product of the number of weeks for
5 which the individual received any amounts as readjustment
6 allowances within that benefit year multiplied by the
7 individual weekly benefit amount for extended benefits.

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

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

16 (2) twenty 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; or

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

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

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

23 G. A benefit paid to an individual pursuant to
24 this section shall be charged pursuant to Subsection ~~[B]~~ A of
25 Section 51-1-11 NMSA 1978.

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1 H. As used in this section:

2 (1) "rate of insured unemployment" means the
3 percentage derived by dividing:

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

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

14 (2) "regular benefits" means benefits
15 payable to an individual under the Unemployment Compensation
16 Law or under any other state law, including benefits payable
17 to federal civilian employees and to ex-servicemen pursuant to
18 5 U.S.C., Chapter 85, other than extended benefits;

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

24 (4) "eligibility period" of an individual
25 means the period consisting of the weeks in the individual's

1 benefit year that begin in an extended benefit period and, if
2 the individual's benefit year ends within such extended
3 benefit period, any weeks thereafter that begin in such
4 period;

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

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

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

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1 (c) has no right to unemployment
2 benefits or allowances, as the case may be, under the Railroad
3 Unemployment Insurance Act, the Trade Expansion Act of 1962,
4 the Trade Act of 1974, the Automotive Products Trade Act of
5 1965 and such other federal laws as are specified in
6 regulations issued by the United States secretary of labor;
7 and has not received and is not seeking unemployment benefits
8 under the unemployment compensation law of Canada, but if the
9 individual is seeking such benefits and the appropriate agency
10 finally determines that the individual is not entitled to
11 benefits under such law, the individual is considered an
12 exhaustee; and

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

17 SECTION 7. EFFECTIVE DATE.--

18 A. The effective date of the provisions of Section
19 2 of this act is January 1, 2014.

20 B. The effective date of the provisions of
21 Sections 1 and 3 through 6 of this act is January 1, 2015.