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HOUSE BILL 328

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

TERRY T. MARQUARDT

AN ACT

**RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING AND ENACTING
SECTIONS OF THE UNEMPLOYMENT COMPENSATION LAW.**

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

**Section 1. Section 51-1-11 NMSA 1978 (being Laws 1961,
Chapter 139, Section 3, as amended) is amended to read:**

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

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

B. Benefits paid to an individual shall be charged

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

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

13 (2) was discharged from the employment of a
14 base-period employer who is not on a reimbursable basis for
15 misconduct connected with his work;

16 (3) received benefits based upon wages earned
17 from a base-period employer who is not on a reimbursable basis
18 for work performed in a work-release program designed to give an
19 inmate of a correctional institution an opportunity to work
20 while serving a term of incarceration if the inmate's separation
21 was caused by his release from prison;

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

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1 nondisqualifying reason; or

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

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

11 D. All contributions to the fund shall be pooled and
12 available to pay benefits to any individual entitled thereto,
13 irrespective of the source of such contributions. The standard
14 rate of contributions payable by each employer shall be five and
15 four-tenths percent.

16 E. No employer's rate shall be varied from the
17 standard rate for any calendar year unless, as of the
18 computation date for that year, his account has been chargeable
19 with benefits throughout the preceding thirty-six months, except
20 that:

21 (1) the provisions of this subsection shall not
22 apply to governmental entities;

23 (2) subsequent to December 31, 1984, any
24 employing unit that becomes an employer subject to the payment
of contributions under the Unemployment Compensation Law or has

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1 been an employer subject to the payment of contributions at a
2 standard rate of two and seven-tenths percent through December
3 31, 1984 shall be subject to the payment of contributions at the
4 reduced rate of two and seven-tenths percent until, as of the
5 computation date of a particular year, the employer's account
6 has been chargeable with benefits throughout the preceding
7 thirty-six months; and

8 (3) any individual, type of organization or
9 employing unit that acquires all or part of the trade or
10 business of another employing unit, pursuant to Paragraphs (2)
11 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a
12 reduced rate of contribution shall be entitled to the transfer
13 of the reduced rate to the extent permitted under Subsection G
14 of this section.

15 F. The secretary shall, for the year 1942 and for
16 each calendar year thereafter, classify employers in accordance
17 with their actual experience in the payment of contributions and
18 with respect to benefits charged against their accounts, with a
19 view of fixing such contribution rates as will reflect such
20 benefit experience. Each employer's rate for any calendar year
21 shall be determined on the basis of his record and the condition
22 of the fund as of the computation date for such calendar year.

23 An employer may make voluntary payments in addition to the
24 contributions required under the Unemployment Compensation Law,
which shall be credited to his account in accordance with

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1 department regulation. The voluntary payments shall be included
2 in the employer's account as of the employer's most recent
3 computation date if they are made on or before the following
4 March 1. Voluntary payments when accepted from an employer
5 [~~will~~] shall not be refunded in whole or in part.

6 G. In the case of a transfer of an employing
7 enterprise, the experience history of the transferred enterprise
8 as provided in Subsection F of this section [~~will~~] shall be
9 transferred from the predecessor employer to the successor under
10 the following conditions and in accordance with the applicable
11 regulations of the secretary:

12 (1) Definitions:

13 (a) "employing enterprise" is a business
14 activity engaged in by a contributing employing unit in which
15 one or more persons have been employed within the current or the
16 three preceding calendar quarters;

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

20 (c) "successor" means any individual or
21 any type of organization that acquires an employing enterprise
22 and continues to operate such business entity; and

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

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1 the employing enterprise.

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

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

12 (b) notice of the transfer has been given
13 in accordance with the regulations of the secretary within four
14 years of the transaction transferring the employing enterprise
15 or the date of the actual transfer of control and operation of
16 the employing enterprise;

17 (c) in the case of the transfer of an
18 employing enterprise, the successor employer must notify the
19 division of the acquisition on or before the due date of the
20 successor employer's first wage and contribution report. If the
21 successor employer fails to notify the division of the
22 acquisition within this time limit, the division, when it
23 receives actual notice, ~~[will]~~ shall effect the transfer of the
24 experience history and applicable rate of contribution
retroactively to the date of the acquisition, and the successor

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1 shall pay a penalty of fifty dollars (\$50.00); and

2 (d) where the transaction involves only a
3 merger, consolidation or other form of reorganization without a
4 substantial change in the ownership and controlling interest of
5 the business entity, as determined by the secretary, the
6 limitations on transfers stated in Subparagraphs (a), (b) and
7 (c) of this paragraph shall not apply. No party to a merger,
8 consolidation or other form of reorganization described in this
9 paragraph shall be relieved of liability for any contributions,
10 interest or penalties due and owing from the employing
11 enterprise at the time of the merger, consolidation or other
12 form of reorganization.

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

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1 of the secretary or his delegate. A partial experience history
2 transfer will be made only if:

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

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

12 (c) the successor files with the
13 application a Form ES-903A or its equivalent with a schedule of
14 the name and social security number of and the wages paid to and
15 the contributions paid for each employee for the three and one-
16 half year period preceding the date of computation as defined in
17 Subparagraph (d) of Paragraph (3) of Subsection H of this
18 section through the date of transfer or such lesser period as
19 the enterprises transferred may have been in operation. The
20 application and Form ES-903A ~~must~~ shall be supported by the
21 predecessor's permanent employment records, which ~~must~~ shall
22 be available for audit by the division. The application and
23 Form ES-903A shall be reviewed by the division and, upon
24 approval, the percentage of the predecessor's experience history
attributable to the enterprises transferred shall be transferred

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1 to the successor. The percentage shall be obtained by dividing
2 the taxable payrolls of the transferred enterprises for such
3 three and one-half year period preceding the date of computation
4 or such lesser period as the enterprises transferred may have
5 been in operation by the predecessor's entire payroll.

6 H. For each calendar year, adjustments of
7 contribution rates below the standard or reduced rate and
8 measures designed to protect the fund are provided as follows:

9 (1) The total assets in the fund and the total
10 of the last annual payrolls of all employers subject to
11 contributions as of the computation date for each year shall be
12 determined. These annual totals are here called "the fund" and
13 "total payrolls". For each year, the "reserve" of each employer
14 qualified under Subsection E of this section shall be fixed by
15 the excess of his total contributions over total benefit charges
16 computed as a percentage of his average payroll reported for
17 contributions. The determination of each employer's annual
18 rate, computed as of the computation date for each calendar
19 year, shall be made by matching his reserve as shown in the
20 reserve column with the corresponding rate shown in the
21 applicable rate schedule of the table provided in Paragraph (4)
22 of this subsection.

23 (2) Each employer's rate for each calendar year
24 commencing January 1, 1979 or thereafter shall be:

(a) the rate in schedule 1 of the table

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1 provided in Paragraph (4) of this subsection on the
2 corresponding line as his reserve if the fund equals at least
3 four percent of the total payrolls;

4 (b) the rate in schedule 2 of the table
5 provided in Paragraph (4) of this subsection on the
6 corresponding line if the fund has dropped to between four
7 percent and three percent;

8 (c) the rate in schedule 3 of the table
9 provided in Paragraph (4) of this subsection on the
10 corresponding line if the fund has dropped to between three
11 percent and two percent;

12 (d) the rate in schedule 4 of the table
13 provided in Paragraph (4) of this subsection on the
14 corresponding line if the fund has dropped to between two
15 percent and one and one-half percent;

16 (e) the rate in schedule 5 of the table
17 provided in Paragraph (4) of this subsection on the
18 corresponding line if the fund has dropped to between one and
19 one-half percent and one percent; or

20 (f) the rate in schedule 6 of the table
21 provided in Paragraph (4) of this subsection on the
22 corresponding line if the fund has dropped below one percent.

23 (3) As used in this section:

24 (a) "annual payroll" means the total
amount of remuneration from an employer for employment during a

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1 twelve-month period ending on a computation date, and "average
2 payroll" means the average of the last three annual payrolls;

3 (b) "base-period wages" means the wages
4 of an individual for insured work during his base period on the
5 basis of which his benefit rights were determined;

6 (c) "base-period employers" means the
7 employers of an individual during his base period; and

8 (d) "computation date" for each calendar
9 year means the close of business on June 30 of the preceding
10 calendar year.

11 (4) Table of employer reserves and contribution
12 rate schedules:

| Employer Reserve | Contribution Schedule 1 | Contribution Schedule 2 | Contribution Schedule 3 |
|---------------------|----------------------------|----------------------------|----------------------------|
| 10.0% and over | 0.1% | 0.3% | 0.6% |
| 9.0%- 9.9% | 0.3% | 0.6% | 0.9% |
| 8.0%- 8.9% | 0.6% | 0.9% | 1.2% |
| 7.0%- 7.9% | 0.9% | 1.2% | 1.5% |
| 6.0%- 6.9% | 1.2% | 1.5% | 1.8% |
| 5.0%- 5.9% | 1.5% | 1.8% | 2.1% |
| 4.0%- 4.9% | 1.8% | 2.1% | 2.4% |
| 3.0%- 3.9% | 2.1% | 2.4% | 2.7% |
| 2.0%- 2.9% | 2.4% | 2.7% | 3.0% |
| 1.0%- 1.9% | 2.7% | 3.0% | 3.3% |
| 0.9%- 0.0% | 3.0% | 3.3% | 3.6% |

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|----|-----------------------|-----------------------|-----------------------|-----------------------|
| 1 | (- 0. 1%) - (- 0. 5%) | 3. 3% | 3. 6% | 3. 9% |
| 2 | (- 0. 5%) - (- 1. 0%) | 4. 2% | 4. 2% | 4. 2% |
| 3 | (- 1. 0%) - (- 2. 0%) | 5. 0% | 5. 0% | 5. 0% |
| 4 | Under (- 2. 0%) | 5. 4% | 5. 4% | 5. 4% |
| 5 | Employer | Contri buti on | Contri buti on | Contri buti on |
| 6 | Reserve | Schedul e 4 | Schedul e 5 | Schedul e 6 |
| 7 | 10. 0% and over | 0. 9% | 1. 2% | 2. 7% |
| 8 | 9. 0%- 9. 9% | 1. 2% | 1. 5% | 2. 7% |
| 9 | 8. 0%- 8. 9% | 1. 5% | 1. 8% | 2. 7% |
| 10 | 7. 0%- 7. 9% | 1. 8% | 2. 1% | 2. 7% |
| 11 | 6. 0%- 6. 9% | 2. 1% | 2. 4% | 2. 7% |
| 12 | 5. 0%- 5. 9% | 2. 4% | 2. 7% | 3. 0% |
| 13 | 4. 0%- 4. 9% | 2. 7% | 3. 0% | 3. 3% |
| 14 | 3. 0%- 3. 9% | 3. 0% | 3. 3% | 3. 6% |
| 15 | 2. 0%- 2. 9% | 3. 3% | 3. 6% | 3. 9% |
| 16 | 1. 0%- 1. 9% | 3. 6% | 3. 9% | 4. 2% |
| 17 | 0. 9%- 0. 0% | 3. 9% | 4. 2% | 4. 5% |
| 18 | (- 0. 1%) - (- 0. 5%) | 4. 2% | 4. 5% | 4. 8% |
| 19 | (- 0. 5%) - (- 1. 0%) | 4. 5% | 4. 8% | 5. 1% |
| 20 | (- 1. 0%) - (- 2. 0%) | 5. 0% | 5. 1% | 5. 3% |
| 21 | Under (- 2. 0%) | 5. 4% | 5. 4% | 5. 4%. |

I. The division shall promptly notify each employer of his rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total

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1 of all his contributions paid on his own behalf and credited to
2 his account for all past years and total benefits charged to his
3 account for all such years. Such determination shall become
4 conclusive and binding upon the employer unless, within thirty
5 days after the mailing of notice thereof to his last known
6 address or in the absence of mailing, within thirty days after
7 the delivery of such notice, the employer files an application
8 for review and redetermination, setting forth his reason
9 therefor. The employer shall be granted an opportunity for a
10 fair hearing in accordance with regulations prescribed by the
11 secretary, but no employer shall have standing, in any
12 proceeding involving his rate of contributions or contribution
13 liability, to contest the chargeability to his account of any
14 benefits paid in accordance with a determination,
15 redetermination or decision pursuant to Section 51-1-8 NMSA
16 1978, except upon the ground that the services on the basis of
17 which such benefits were found to be chargeable did not
18 constitute services performed in employment for him and only in
19 the event that he was not a party to such determination,
20 redetermination or decision, or to any other proceedings under
21 the Unemployment Compensation Law in which the character of such
22 services was determined. The employer shall be promptly
23 notified of the decision on his application for redetermination,
24 which shall become final unless, within fifteen days after the
mailing of notice thereof to his last known address or in the

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1 absence of mailing, within fifteen days after the delivery of
2 such notice, further appeal is initiated pursuant to Subsection
3 D of Section 51-1-8 NMSA 1978.

4 J. The division ~~[will]~~ shall provide each
5 contributing employer, within ninety days of the end of each
6 calendar quarter, a written determination of benefits chargeable
7 to his account. Such determination shall become conclusive and
8 binding upon the employer for all purposes unless, within thirty
9 days after the mailing of the determination to his last known
10 address or in the absence of mailing, within thirty days after
11 the delivery of such determination, the employer files an
12 application for review and redetermination, setting forth his
13 reason therefor. The employer shall be granted an opportunity
14 for a fair hearing in accordance with regulations prescribed by
15 the secretary, but no employer shall have standing in any
16 proceeding involving his contribution liability to contest the
17 chargeability to his account of any benefits paid in accordance
18 with a determination, redetermination or decision pursuant to
19 Section 51-1-8 NMSA 1978, except upon the ground that the
20 services on the basis of which such benefits were found to be
21 chargeable did not constitute services performed in employment
22 for him and only in the event that he was not a party to such
23 determination, redetermination or decision, or to any other
24 proceedings under the Unemployment Compensation Law in which the
character of such services was determined. The employer shall

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

7 K. The contributions, together with interest and
8 penalties thereon imposed by the Unemployment Compensation Law,
9 shall not be assessed nor shall action to collect the same be
10 commenced more than four years after a report showing the amount
11 of the contributions was due. In the case of a false or
12 fraudulent contribution report with intent to evade
13 contributions or a willful failure to file a report of all
14 contributions due, the contributions, together with interest and
15 penalties thereon, may be assessed or an action to collect such
16 contributions may be begun at any time. Before the expiration
17 of such period of limitation, the employer and the secretary may
18 agree in writing to an extension thereof and the period so
19 agreed on may be extended by subsequent agreements in writing.
20 In any case where the assessment has been made and action to
21 collect has been commenced within four years of the due date of
22 any contribution, interest or penalty, including the filing of a
23 warrant of lien by the secretary pursuant to Section 51-1-36
24 NMSA 1978, such action shall not be subject to any period of
limitation.

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1 L. The secretary shall correct any error in the
2 determination of an employer's rate of contribution during the
3 calendar year to which the erroneous rate applies,
4 notwithstanding that notification of the employer's rate of
5 contribution may have been issued and contributions paid
6 pursuant to the notification. Upon issuance by the division of
7 a corrected rate of contribution, the employer shall have the
8 same rights to review and redetermination as provided in
9 Subsection I of this section.

10 M Any interest required to be paid on advances to
11 this state's unemployment compensation fund under Title ~~XII~~ 12
12 of the Social Security Act shall be paid in a timely manner as
13 required under Section 1202 of Title ~~XII~~ 12 of the Social
14 Security Act and shall not be paid, directly or indirectly, by
15 the state from amounts in the state's unemployment compensation
16 fund.

17 N. Notwithstanding the provisions of this section,
18 the rate in schedule 1 of the table provided in Paragraph (4) of
19 Subsection H of this section shall be applied for one calendar
20 year beginning January 1, 1998 "

21 Section 2. Section 51-1-18 NMSA 1978 (being Laws 1936
22 (S.S.), Chapter 1, Section 8, as amended) is amended to read:

23 "51-1-18. PERIOD, ELECTION AND TERMINATION OF EMPLOYER'S
24 COVERAGE. --

A. Except as otherwise provided in Subsection C of

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1 this section, any employing unit [~~which~~] that is or becomes an
2 employer subject to the Unemployment Compensation Law within any
3 calendar year shall be subject to the Unemployment Compensation
4 Law during the whole of such calendar year.

5 B. Except as otherwise provided in Subsection C of
6 this section, an employing unit shall cease to be an employer
7 subject to the Unemployment Compensation Law only as of ~~the~~
8 January 1 of any calendar year if it files with the department,
9 between January 1 and March 15 of the year in which the
10 employing unit desires termination of coverage, a written
11 application for termination of coverage and the secretary finds:

12 (1) that there was no calendar quarter within
13 the preceding calendar year within which such employing unit
14 paid wages for employment amounting to four hundred fifty
15 dollars (\$450) or more or as otherwise provided in Paragraphs
16 (6) and (7) of Subsection F of Section 51-1-42 NMSA 1978; and

17 (2) that there were no twenty different weeks
18 within the preceding calendar year, whether or not such weeks
19 were consecutive, within which such employing unit employed an
20 individual in employment subject to the Unemployment
21 Compensation Law. For the purpose of this subsection, the two
22 or more employing units mentioned in Paragraphs (2) and (3) of
23 Subsection E of Section 51-1-42 NMSA 1978 shall be treated as a
24 single employing unit. For like cause or when the total
experience history of a predecessor employing unit is

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1 transferred pursuant to Section 51-1-11 NMSA 1978 or when, in
2 the opinion of the secretary, it is unlikely that an employing
3 unit will have individuals in employment at any time in the
4 future, termination of coverage may be granted on the
5 secretary's own initiative; provided that due notice is given to
6 the employing unit at its last address of record with the
7 department. The provisions of this subsection shall not apply
8 to any governmental unit.

8 C. An employing unit, not otherwise subject to the
9 Unemployment Compensation Law, ~~[which]~~ that files with the
10 department its written election to become an employer subject
11 hereto for not less than two calendar years shall, with the
12 written approval of such election by the secretary, become an
13 employer subject hereto to the same extent as all other
14 employers, as of the date stated in such approval, and shall
15 cease to be subject hereto as of January 1 of any calendar year
16 subsequent to such two calendar years only if, between the dates
17 of January 1 and March 15 of the year in which the employing
18 unit desires termination of coverage, it has filed with the
19 department a written notice to that effect or the secretary, on
20 his own initiative, has given notice of termination of such
21 coverage.

21 D. Any employing unit for which services that do not
22 constitute employment, as defined in the Unemployment
23 Compensation Law, are performed may file with the department a

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1 written election that all such services performed by individuals
2 in its employ in one or more distinct establishments or places
3 of business shall be deemed to constitute employment for all the
4 purposes of the Unemployment Compensation Law for not less than
5 two calendar years. Upon the written approval of such election
6 by the secretary, such services shall be deemed to constitute
7 employment subject to the Unemployment Compensation Law after
8 the date stated in such approval. Such services shall cease to
9 be deemed employment subject hereto as of January 1 of any
10 calendar year subsequent to such two calendar years only if,
11 between January 1 and March 15 of the year in which the
12 employing unit desires termination of coverage, it has filed
13 with the department a written notice to that effect, or the
14 secretary, on his own initiative, has given notice of
15 termination of such coverage.

15 E. The secretary may terminate the election of an
16 employer or employing unit made pursuant to Subsection C or D of
17 this section at any time the secretary determines that the
18 employer or employing unit is not abiding by all the
19 requirements of the Unemployment Compensation Law and the
20 regulations issued pursuant thereto, or if the employer or
21 employing unit that has made an election for coverage becomes
22 delinquent in the payment of its contributions or payment in
23 lieu of contributions, interest or penalties.

23 [~~E.-~~] F. The secretary, on his own initiative or upon

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1 written notification from an employer, may suspend such
2 employer's obligation for filing a quarterly wage and
3 contribution report as provided in the Unemployment Compensation
4 Law or any regulation issued pursuant thereto in any case where
5 the employer has ceased to and does not in the immediate future
6 expect to have individuals in employment; provided that this
7 subsection shall not apply [~~nor shall it~~] or be a bar to the
8 collection of contributions, interest and penalties if, in fact,
9 it is determined that the employer had an individual in
10 employment subject to the Unemployment Compensation Law during
the period covered by the suspension. "

11 Section 3. Section 51-1-37.1 NMSA 1978 (being Laws 1982,
12 Chapter 41, Section 4, as amended) is amended to read:

13 "51-1-37.1. CHILD SUPPORT OBLIGATIONS. --

14 A. [~~An individual filing a claim to establish a~~
15 ~~benefit year for unemployment compensation shall, at the time of~~
16 ~~filing the claim, disclose whether or not the individual owes~~
17 ~~child support obligations. If the individual is eligible for~~
18 ~~unemployment compensation benefits and owes child support~~
19 ~~obligations, the employment security department shall notify the~~
20 ~~human services department of the name of the applicant and the~~
21 ~~amount of benefits for which the claimant is eligible.] The
22 division shall notify the human services department of the name
23 of any individual who files a new claim for unemployment
compensation and who is determined to be eligible for benefits.~~

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1 B. The [~~employment security department~~] division shall
2 deduct and withhold from any unemployment compensation otherwise
3 payable to an individual who owes child support obligations:

4 (1) the amount specified by the individual to be
5 deducted and withheld, if an amount is not specified under
6 Paragraph (2) or (3) of this subsection;

7 (2) the amount specified in an agreement between
8 the individual and the child support enforcement bureau of the
9 human services department, pursuant to Section 454(20)(B)(i) of
10 the Social Security Act, a copy of which has been provided to
11 the [~~employment security department~~] division by the child
12 support enforcement bureau; or

13 (3) any amount otherwise required to be so
14 deducted and withheld from such unemployment compensation
15 pursuant to a writ of garnishment or other legal process for
16 enforcement of judgments issued by any court of competent
17 jurisdiction in any state, territory or possession of the United
18 States or any foreign country with which the United States has
19 an agreement to honor such process directed to the department
20 for the purpose of enforcing an individual's obligation to
21 provide child support.

22 C. Any amount withheld from the benefits due a
23 claimant shall be considered as payment of unemployment
24 compensation benefits to the claimant and paid by the individual
in satisfaction of his child support obligations.

Under scored material = new
[bracketed material] = delete

1 D. The amount of child support obligations withheld
2 by the [~~employment security department~~] division pursuant to
3 this section shall be paid to the human services department.

4 E. "Unemployment compensation benefits" means
5 compensation payable under the Unemployment Compensation Law and
6 any compensation payable by or through the [~~employment security~~
7 ~~department~~] division pursuant to an agreement under any federal
8 law providing for compensation, assistance or allowance with
9 respect to unemployment.

10 F. "Child support obligations" includes only
11 obligations [~~which~~] that are being enforced pursuant to a plan
12 described in Section 454 of the Social Security Act [~~which~~] that
13 has been approved by the United States secretary of health and
14 human services under Part D of Title [FV] 4 of the Social
15 Security Act.

16 G. The human services department shall reimburse the
17 [~~employment security department~~] division for the administrative
18 costs incurred by [~~the employment security department which~~] it
19 that are attributable to the child support obligations being
20 enforced by the human services department. If the human
21 services department and the [~~employment security department~~]
22 division fail to agree on the amount of such administrative
23 costs, the state budget division of the department of finance
24 and administration shall prescribe the amount of administrative
costs to be reimbursed. "

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Under scored material = new
[bracketed material] = delete

1 Section 4. Section 51-1-42 NMSA 1978 (being Laws 1936
2 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

3 "51-1-42. DEFINITIONS. --As used in the Unemployment
4 Compensation Law:

5 A. "base period" means the first four of the last five
6 completed calendar quarters immediately preceding the first day
7 of an individual's benefit year;

8 B. "benefits" means the cash unemployment compensation
9 payments payable to an eligible individual pursuant to Section
10 51-1-4 NMSA 1978 with respect to his weeks of unemployment;

11 C. "contributions" means the money payments required
12 by Section 51-1-9 NMSA 1978 to be made into the ~~unemployment~~
13 ~~compensation~~ fund by an employer on account of having
14 individuals performing services for him;

15 D. "employing unit" means any individual or type of
16 organization, including any partnership, association,
17 cooperative, trust, estate, joint-stock company, agricultural
18 enterprise, insurance company or corporation, whether domestic
19 or foreign, or the receiver, trustee in bankruptcy, trustee or
20 successor thereof, household, fraternity or club, the legal
21 representative of a deceased person or any state or local
22 government entity to the extent required by law to be covered as
23 an employer, ~~which~~ that has in its employ one or more
24 individuals performing services for it within this state. All
individuals performing services for any employing unit ~~which~~

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Under scored material = new
[bracketed material] = delete

1 that maintains two or more separate establishments within this
2 state shall be deemed to be employed by a single employing unit
3 for all the purposes of the Unemployment Compensation Law.
4 Individuals performing services for contractors, subcontractors
5 or agents [~~whi-eh~~] that are performing work or services for an
6 employing unit, as described in this subsection, [~~whi-eh~~] that
7 are within the scope of the employing unit's usual trade,
8 occupation, profession or business shall be deemed to be in the
9 employ of the employing unit for all purposes of the
10 Unemployment Compensation Law unless such contractor,
11 subcontractor or agent is itself an employer within the
12 provision of Subsection E of this section;

E. "employer" includes:

(1) any employing unit [~~whi-eh~~] that:

(a) unless otherwise provided in this
14 section, paid for service in employment as defined in Subsection
15 F of this section wages of four hundred fifty dollars (\$450) or
16 more in any calendar quarter in either the current or preceding
17 calendar year or had in employment, as defined in Subsection F
18 of this section, for some portion of a day in each of twenty
19 different calendar weeks during either the current or the
20 preceding calendar year, and irrespective of whether the same
21 individual was in employment in each such day, at least one
22 individual;

(b) for the purposes of Subparagraph (a) of

24 . 113264. 1ms

Under scored material = new
[bracketed material] = delete

1 this paragraph, if any week includes both December 31 and
2 January 1, the days of that week up to January 1 shall be deemed
3 one calendar week and the days beginning January 1, another such
4 week; and

5 (c) for purposes of defining an "employer"
6 under Subparagraph (a) of this paragraph, the wages or
7 remuneration paid to individuals performing services in
8 employment in agricultural labor or domestic services as
9 provided in Paragraphs (6) and (7) of Subsection F of this
10 section shall not be taken into account; except that any
11 employing unit determined to be an employer of agricultural
12 labor under Paragraph (6) of Subsection F of this section shall
13 be an employer under Subparagraph (a) of this paragraph so long
14 as the employing unit is paying wages or remuneration for
15 services other than agricultural services;

16 (2) any individual or type of organization that
17 acquired the trade or business or substantially all of the
18 assets thereof, of an employing unit ~~[which]~~ that at the time of
19 such acquisition was an employer subject to the Unemployment
20 Compensation Law; provided that where such an acquisition takes
21 place, the secretary may postpone activating the separate
22 account pursuant to Subsection A of Section 51-1-11 NMSA 1978
23 until such time as the successor employer has employment as
24 defined in Subsection F of this section;

(3) any employing unit ~~[which]~~ that acquired all
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Under scored material = new
[bracketed material] = delete

1 or part of the organization, trade, business or assets of
2 another employing unit and ~~which~~ that, if treated as a single
3 unit with such other employing unit or part thereof, would be an
4 employer under Paragraph (1) of this subsection;

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

7 (a) for which, within either the current or
8 preceding calendar year, service is or was performed with
9 respect to which such employing unit is liable for any federal
10 tax against which credit may be taken for contributions required
11 to be paid into a state unemployment fund, or

12 (b) ~~which~~ that, as a condition for approval
13 of the Unemployment Compensation Law for full tax credit against
14 the tax imposed by the Federal Unemployment Tax Act, is
15 required, pursuant to such act, to be an "employer" under the
16 Unemployment Compensation Law;

17 (5) any employing unit ~~which~~ that, having
18 become an employer under Paragraph (1), (2), (3) or (4) of this
19 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to
20 be an employer subject to the Unemployment Compensation Law;

21 (6) for the effective period of its election
22 pursuant to Section 51-1-18 NMSA 1978, any other employing unit
23 ~~which~~ that has elected to become fully subject to the
24 Unemployment Compensation Law; and

(7) any employing unit for which any services

Under scored material = new
[bracketed material] = delete

1 performed in its employ are deemed to be performed in this state
2 pursuant to an election under an arrangement entered into in
3 accordance with Subsection A of Section 51-1-50 NMSA 1978;

4 F. "employment" means:

5 (1) any service, including service in interstate
6 commerce, performed for wages or under any contract of hire,
7 written or oral, express or implied;

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

10 (a) the service is primarily localized in
11 this state with services performed outside the state being only
12 incidental thereto; or

13 (b) the service is not localized in any state
14 but some of the service is performed in this state and: 1) the
15 base of operations or, if there is no base of operations, ~~then~~
16 the place from which such service is directed or controlled, is
17 in this state; or 2) the base of operations or place from which
18 such service is directed or controlled is not in any state in
19 which some part of the service is performed but the individual's
20 residence is in this state;

21 (3) services performed within this state but not
22 covered under Paragraph (2) of this subsection if contributions
23 or payments in lieu of contributions are not required and paid
24 with respect to such services under an unemployment compensation
law of any other state, the federal government or Canada;

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Under scored material = new
[bracketed material] = delete

1 (4) services covered by an election pursuant to
2 Section 51-1-18 NMSA 1978 and services covered by an election
3 duly approved by the secretary in accordance with an arrangement
4 pursuant to Paragraph (1) of Subsection A of Section 51-1-50
5 NMSA 1978 shall be deemed to be employment during the effective
6 period of such election;

7 (5) services performed by an individual for an
8 employer for wages or other remuneration unless and until it is
9 established by a preponderance of evidence that:

10 (a) such individual has been and will
11 continue to be free from control or direction over the
12 performance of such services both under his contract of service
13 and in fact;

14 (b) such service is either outside the usual
15 course of business for which such service is performed or that
16 such service is performed outside of all the places of business
17 of the enterprise for which such service is performed; and

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

22 (6) service performed after December 31, 1977 by
23 an individual in agricultural labor as defined in Subsection Q
24 of this section if:

(a) such service is performed for an

Under scored material = new
[bracketed material] = delete

1 employing unit [~~which~~] that: 1) paid remuneration in cash of
2 twenty thousand dollars (\$20,000) or more to individuals in such
3 employment during any calendar quarter in either the current or
4 the preceding calendar year; or 2) employed in agricultural
5 labor ten or more individuals for some portion of a day in each
6 of twenty different calendar weeks in either the current or
7 preceding calendar year, whether or not such weeks were
8 consecutive, and regardless of whether such individuals were
9 employed at the same time;

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

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

Under scored material = new
[bracketed material] = delete

1 employment for the farm operator or other person;

2 (7) service performed after December 31, 1977 by
3 an individual in domestic service in a private home, local
4 college club or local chapter of a college fraternity or
5 sorority for a person or organization that paid cash
6 remuneration of one thousand dollars (\$1,000) in any calendar
7 quarter in the current or preceding calendar year to individuals
8 performing such services;

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

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

16 (b) the organization meets the requirements
17 of "employer" as provided in Subparagraph (a) of Paragraph (1)
18 of Subsection E of this section;

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

(a) the employer's principal place of

Under scored material = new
[bracketed material] = delete

1 business in the United States is located in this state;

2 (b) the employer has no place of business in
3 the United States, but: 1) the employer is an individual who is
4 a resident of this state; 2) the employer is a corporation
5 [~~which~~] that is organized under the laws of this state; or 3)
6 the employer is a partnership or a trust and the number of the
7 partners or trustees who are residents of this state is greater
8 than the number who are residents of any one other state; or

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

14 "American employer" for purposes of this paragraph [~~(9) of~~
15 ~~this subsection~~] means a person who is: 1) an individual who is
16 a resident of the United States; 2) a partnership if two-thirds
17 or more of the partners are residents of the United States; 3) a
18 trust if all of the trustees are residents of the United States;
19 or 4) a corporation organized under the laws of the United
20 States or of any state. For the purposes of this paragraph [~~(9)~~
21 ~~of this subsection~~], "United States" includes the United States,
22 the District of Columbia, the commonwealth of Puerto Rico and
23 the Virgin Islands;

24 (10) notwithstanding any other provisions of this
subsection, service with respect to which a tax is required to

Under scored material = new
[bracketed material] = delete

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

(11) "employment" shall not include:

7 (a) service performed in the employ of: 1) a
8 church or convention or association of churches; or 2) an
9 organization ~~which~~ that is operated primarily for religious
10 purposes and ~~which~~ that is operated, supervised, controlled or
11 principally supported by a church or convention or association
12 of churches;

13 (b) service performed by a duly ordained,
14 commissioned or licensed minister of a church in the exercise of
15 his ministry or by a member of a religious order in the exercise
16 of duties required by such order;

17 (c) service performed by an individual in the
18 employ of his son, daughter or spouse, and service performed by
19 a child under the age of majority in the employ of his father or
20 mother;

21 (d) service performed in the employ of the
22 United States government or an instrumentality of the United
23 States immune under the constitution of the United States from
the contributions imposed by the Unemployment Compensation Law

24 . 113264. 1ms

Under scored material = new
[bracketed material] = delete

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

17 (e) service performed in a facility conducted
18 for the purpose of carrying out a program of rehabilitation for
19 individuals whose earning capacity is impaired by age or
20 physical or mental deficiency or injury or providing
21 remunerative work for individuals who because of their impaired
22 physical or mental capacity cannot be readily absorbed in the
23 competitive labor market, by an individual receiving such
24 rehabilitation or remunerative work;

 (f) service with respect to which

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Under scored material = new
[bracketed material] = delete

1 unemployment compensation is payable under an unemployment
2 compensation system established by an act of congress;

3 (g) service performed in the employ of a
4 foreign government, including service as a consular or other
5 officer or employee or a nondiplomatic representative;

6 (h) service performed by an individual for a
7 person as an insurance agent or as an insurance solicitor, if
8 all such service performed by such individual for such person is
9 performed for remuneration solely by way of commission;

10 (i) service performed by an individual under
11 the age of eighteen in the delivery or distribution of
12 newspapers or shopping news, not including delivery or
13 distribution to any point for subsequent delivery or
14 distribution;

15 (j) service covered by an election duly
16 approved by the agency charged with the administration of any
17 other state or federal unemployment compensation law, in
18 accordance with an arrangement pursuant to Paragraph (1) of
19 Subsection A of Section 51-1-50 NMSA 1978 during the effective
20 period of such election;

21 (k) service performed, as part of an
22 unemployment work-relief or work-training program assisted or
23 financed in whole or part by any federal agency or an agency of
24 a state or political subdivision thereof, by an individual
receiving such work relief or work training;

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Under scored material = new
[bracketed material] = delete

1 (1) service performed by an individual who is
2 enrolled at a nonprofit or public educational institution
3 [~~which~~] that normally maintains a regular faculty and curriculum
4 and normally has a regularly organized body of students in
5 attendance at the place where its educational activities are
6 carried on as a student in a full-time program, taken for credit
7 at such institution, [~~which~~] that combines academic instruction
8 with work experience, if the service is an integral part of such
9 program, and the institution has so certified to the employer,
10 except that this subparagraph shall not apply to service
11 performed in a program established for or on behalf of an
12 employer or group of employers;

13 (m) service performed in the employ of a
14 hospital, if the service is performed by a patient of the
15 hospital, or services performed by an inmate of a custodial or
16 penal institution for a governmental entity or nonprofit
17 organization;

18 (n) service performed by real estate salesmen
19 for others when the services are performed for remuneration
20 solely by way of commission;

21 (o) service performed in the employ of a
22 school, college or university if such service is performed by a
23 student who is enrolled and is regularly attending classes at
24 such school, college or university;

(p) service performed by an individual for a

Underscored material = new
[bracketed material] = delete

1 fixed or contract fee officiating at a sporting event ~~[which]~~
2 that is conducted by or under the auspices of a nonprofit or
3 governmental entity if that person is not otherwise an employee
4 of the entity conducting the sporting event; ~~[or]~~

5 (q) service performed for a private for-
6 profit person or entity by an individual as a landman if
7 substantially all remuneration paid in cash or otherwise for the
8 performance of the services is directly related to the
9 completion by the individual of the specific tasks contracted
10 for rather than to the number of hours worked by the individual.
11 For the purposes of this subparagraph, "landman" means a land
12 professional who has been engaged primarily in: 1) negotiating
13 for the acquisition or divestiture of mineral rights; 2)
14 negotiating business agreements that provide for the exploration
15 for or development of minerals; 3) determining ownership of
16 minerals through the research of public and private records; and
17 4) reviewing the status of title, curing title defects and
18 otherwise reducing title risk associated with ownership of
19 minerals; ~~managing~~ rights or obligations derived from ownership
20 of interests and minerals; or utilizing or pooling of interest
21 in minerals; ~~[and]~~

22 (r) service performed after December 31, 1997
23 by an officer of a corporation if such officer is a majority
24 stockholder and the officer shall not be considered an employee
of the corporation unless such services are subject to a tax to

Under scored material = new
[bracketed material] = delete

1 be paid under any federal law imposing a tax against which
2 credit may be taken for contributions required to be paid into a
3 state unemployment fund or such services are required to be
4 covered under the Unemployment Compensation Law as a condition
5 to receipt of full tax credit against the tax imposed by the
6 federal Unemployment Tax Act;

7 (s) service performed by a nonresident alien
8 individual for the period he is temporarily present in the
9 United States as a nonimmigrant under Subparagraph (F), (J) or
10 (M) of Section 101(a)(15) of the Immigration and Nationality Act
11 and that is performed to carry out the purpose specified in
12 those subparagraphs, as the case may be;

13 (t) service performed as a student nurse in
14 the employ of a hospital or a nurses' training school by an
15 individual who is enrolled and is regularly attending classes in
16 a nurses' training school chartered or approved pursuant to
17 state law; and service performed as an intern in the employ of a
18 hospital by an individual who has completed a four-year course
19 in a medical school chartered or approved pursuant to state law;
20 or

21 (u) service performed by an individual in the
22 sale of newspapers to ultimate consumers if such individuals are
23 "direct sellers" as defined by Section 3508 of the Internal
24 Revenue Code; and

(12) for the purposes of this subsection, if the

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Under scored material = new
[bracketed material] = delete

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

16 G. "employment office" means a free public employment
17 office, or branch thereof, operated by this state or maintained
18 as a part of a state-controlled system of public employment
19 offices;

20 H. "fund" means the unemployment compensation fund
21 established by the Unemployment Compensation Law to which all
22 contributions and payments in lieu of contributions required
23 under the Unemployment Compensation Law and from which all
24 benefits provided under the Unemployment Compensation Law shall

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Underscored material = new
[bracketed material] = delete

1 be paid;

2 I. "unemployment" means, with respect to an
3 individual, any week during which he performs no services and
4 with respect to which no wages are payable to him and during
5 which he is not engaged in self-employment or receives an award
6 of back pay for loss of employment. The secretary shall
7 prescribe by regulation what constitutes part-time and
8 intermittent employment, partial employment and the conditions
9 under which individuals engaged in such employment are eligible
10 for partial unemployment benefits;

11 J. "state", when used in reference to any state other
12 than New Mexico, includes, in addition to the states of the
13 United States, the District of Columbia, the commonwealth of
14 Puerto Rico and the Virgin Islands;

15 K. "unemployment compensation administration fund"
16 means the fund established by Subsection A of Section 51-1-34
17 NMSA 1978 from which administrative expenses under the
18 Unemployment Compensation Law shall be paid. "Employment
19 security department fund" means the fund established by
20 Subsection B of Section 51-1-34 NMSA 1978 from which certain
21 administrative expenses under the Unemployment Compensation Law
22 shall be paid;

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

24 (1) holds a valid certificate of registration as
a crew leader or farm labor contractor under the Migrant and

. 113264. 1ms

Under scored material = new
[bracketed material] = delete

1 Seasonal Agricultural Worker Protection Act;

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

4 (3) pays, either on his own behalf or on behalf
5 of such other person, the individuals so furnished by him for
6 service in agricultural labor; and

7 (4) has not entered into a written agreement with
8 the other person for whom he furnishes individuals in
9 agricultural labor that such individuals will be the employees
10 of the other person;

11 M "week" means such period of seven consecutive days,
12 as the secretary may by regulation prescribe. The secretary may
13 by regulation prescribe that a week shall be deemed to be "in",
14 "within" or "during" that benefit year ~~which~~ that includes the
greater part of such week;

15 N. "calendar quarter" means the period of three
16 consecutive calendar months ending on March 31, June 30,
17 September 30 or December 31;

18 O. "insured work" means services performed for
19 employers who are covered under the Unemployment Compensation
20 Law;

21 P. "benefit year" with respect to any individual means
22 the one-year period beginning with the first day of the first
23 week of unemployment with respect to which the individual first
files a claim for benefits in accordance with Subsection A of

24 . 113264. 1ms

Under scored material = new
[bracketed material] = delete

1 Section 51-1-8 NMSA 1978 and thereafter the one-year period
2 beginning with the first day of the first week of unemployment
3 with respect to which the individual next files such a claim for
4 benefits after the termination of his last preceding benefit
5 year; provided that at the time of filing such a claim the
6 individual has been paid the wages for insured work required
7 under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

8 Q. "agricultural labor" includes all services
9 performed:

10 (1) on a farm, in the employ of any person, in
11 connection with cultivating the soil or in connection with
12 raising or harvesting any agricultural or horticultural
13 commodity, including the raising, shearing, feeding, caring for,
14 training and management of livestock, bees, poultry and fur-

15 bearing animals and wildlife;
16 (2) in the employ of the owner or tenant or other
17 operator of a farm, in connection with the operation,
18 management, conservation or maintenance of such farm and its
19 tools and equipment, if the major part of such service is
20 performed on a farm;

21 (3) in connection with the operation or
22 maintenance of ditches, canals, reservoirs or waterways used
23 exclusively for supplying and storing water for farming purposes
24 when such ditches, canals, reservoirs or waterways are owned and
operated by the farmers using the water stored or carried

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Under scored material = new
[bracketed material] = delete

1 therein; and

2 (4) in handling, planting, drying, packing,
3 packaging, processing, freezing, grading, storing or delivery to
4 storage or to market or to a carrier for transportation to
5 market any agricultural or horticultural commodity but only if
6 such service is performed as an incident to ordinary farming
7 operations. The provisions of this paragraph shall not be
8 deemed to be applicable with respect to service performed in
9 connection with commercial canning or commercial freezing or in
10 connection with any agricultural or horticultural commodity
11 after its delivery to a terminal market for distribution for
12 consumption.

13 As used in this subsection, the term "farm" includes stock,
14 dairy, poultry, fruit, fur-bearing animal and truck farms,
15 plantations, ranches, nurseries, greenhouses, ranges and
16 orchards;

17 R. "payments in lieu of contributions" means the money
18 payments made into the fund by an employer pursuant to the
19 provisions of Subsection A of Section 51-1-13 NMSA 1978;

20 S. "department" means the labor department; and

21 T. "wages" means all remuneration for services,
22 including commissions and bonuses and the cash value of all
23 remuneration in any medium other than cash. The reasonable cash
24 value of remuneration in any medium other than cash shall be
established and determined in accordance with regulations

. 113264. 1ms

Under scored material = new
[bracketed material] = delete

1 prescribed by the secretary; provided that the term "wages"
2 shall not include:

3 (1) subsequent to December 31, 1977, that part of
4 the remuneration in excess of the base wage as determined by the
5 secretary for each calendar year. The base wage upon which
6 contribution shall be paid during any calendar year shall be
7 [~~sixty-five~~] sixty percent of the state's average annual
8 earnings computed by the department by dividing total wages
9 reported to the department by contributing employers for the
10 second preceding calendar year before the calendar year the
11 computed base wage becomes effective by the average annual
12 employment reported by contributing employers for the same
13 period rounded to the next higher multiple of one hundred
14 dollars (\$100); provided that the base wage so computed for any
15 calendar year shall not be less than seven thousand dollars
16 (\$7,000). Wages paid by an employer to an individual in his
17 employ during any calendar year in excess of the base wage in
18 effect for that calendar year shall be reported to the
19 department but shall be exempt from the payment of contributions
20 unless such wages paid in excess of the base wage become subject
21 to tax under a federal law imposing a tax against which credit
22 may be taken for contributions required to be paid into a state
23 unemployment fund;

24 (2) the amount of any payment with respect to
services performed after June 30, 1941 to or on behalf of an

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Under scored material = new
[bracketed material] = delete

1 individual in its employ under a plan or system established by
2 an employing unit [~~which~~] that makes provision for individuals
3 in its employ generally or for a class or classes of such
4 individuals, including any amount paid by an employing unit for
5 insurance or annuities, or into a fund, to provide for any such
6 payment, on account of:

7 (a) retirement if such payments are made by
8 an employer to or on behalf of any employee under a simplified
9 employee pension plan that provides for payments by an employer
10 in addition to the salary or other remuneration normally payable
11 to such employee or class of such employees and does not include
12 any payments [~~which~~] that represent deferred compensation or
13 other reduction of an employee's normal taxable wages or
14 remuneration or any payments made to a third party on behalf of
15 an employee as part of an agreement of deferred remuneration;

16 (b) sickness or accident disability if such
17 payments are received under a workers' compensation or
18 occupational disease disablement law;

19 (c) medical and hospitalization expenses in
20 connection with sickness or accident disability; or

21 (d) death;
22 provided the individual in its employ has not the option to
23 receive, instead of provision for such death benefit, any part
24 of such payment, or, if such death benefit is insured, any part
of the premiums or contributions to premiums paid by his

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Underscored material = new
[bracketed material] = delete

1 employing unit and has not the right under the provisions of the
2 plan or system or policy of insurance providing for such death
3 benefit to assign such benefit, or to receive a cash
4 consideration in lieu of such benefit either upon his withdrawal
5 from the plan or system providing for such benefit or upon
6 termination of such plan or system or policy of insurance or of
his service with such employing unit;

7 (3) remuneration for agricultural labor paid in
8 any medium other than cash;

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

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

18 (6) any payment made by an employer to a survivor
19 or the estate of a former employee after the calendar year in
20 which such employee died; [~~The provisions of this section shall
21 become effective July 1, 1993.~~]

22 (7) any payment made to, or on behalf of, an
23 employee or his beneficiary under an arrangement to which

24 . 113264. 1ms

Under scored material = new
[bracketed material] = delete

1 Section 408(p) of the federal Internal Revenue Code of 1986
2 applies, other than any elective contributions under Paragraph
3 (2)(A)(i) of that section:

4 (8) any payment made to or for the benefit of an
5 employee if at the time of such payment it is reasonable to
6 believe that the employee will be able to exclude such payment
7 from income under Section 106 of the federal Internal Revenue
8 Code of 1986; or

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

14 Section 5. A new section of the Unemployment Compensation
15 Law is enacted to read:

16 "[NEW MATERIAL] FOOD STAMP OVERISSUANCES. --

17 A. The division shall notify the human services
18 department of the name of any individual who files a new claim
19 for unemployment compensation and who is determined to be
20 eligible for benefits. This information provided by the
21 division shall be used by the human services department to
22 determine whether or not any eligible individual owes an
23 uncollected overissuance, as defined in Section 13(c)(1) of the
24 federal Food Stamp Act of 1977, of food stamp coupons.

B. The division shall deduct and withhold from any

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Under scored material = new
[bracketed material] = delete

1 unemployment compensation payable to an individual who owes an
2 uncollected overissuance:

3 (1) the amount specified by the individual to the
4 division to be deducted and withheld under this subsection;

5 (2) the amount, if any, determined pursuant to an
6 agreement submitted to the human services department under
7 Section 13(c)(3)(A) of the federal Food Stamp Act of 1977; or

8 (3) any amount otherwise required to be deducted
9 and withheld from unemployment compensation pursuant to Section
10 13(c)(3)(B) of the federal Food Stamp Act of 1977.

11 C. Any amount deducted and withheld under this section
12 shall be paid by the division to the human services department.

13 D. Any amount deducted and withheld under Subsection B
14 of this section shall for all purposes be treated as if it were
15 paid to the individual as unemployment compensation and paid by
16 such individual to the human services department as repayment of
17 the individual's uncollected overissuance.

18 E. For purposes of this section, the term
19 "unemployment compensation" means any compensation payable under
20 the Unemployment Compensation Law including amounts payable
21 pursuant to an agreement under any federal law providing for
22 compensation, assistance or allowances with respect to
23 unemployment.

24 F. This section applies only if arrangements have been
made for reimbursement by the human services department for the

Under scored material = new
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1 administrative costs incurred by the division under this section
2 [~~which~~] that are attributable to the repayment of uncollected
3 overissuances to the human services department. "

4 Section 6. EFFECTIVE DATE. -- The effective date of the
5 provisions of this act is July 1, 1997.

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

February 6, 1997

Mr. Speaker:

**Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred**

HOUSE BILL 328

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.**

Respectfully submitted,

Fred Luna, Chairman

. 113264. 1ms

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBI C/ HB 328

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 4 Against

Yes: 7

No: Chavez, Luna, Rodella, J. G. Taylor

Excused: Olguin, Varela

Absent: None

M \H0328

Underscored material = new
[bracketed material] = delete

**State of New Mexico
House of Representatives**

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

February 17, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 328

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to
the APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

1 Adopted _____ Not Adopted _____

2 (Chief Clerk)

3 (Chief Clerk)

4
5 Date _____

6 The roll call vote was 8 For 0 Against

7 Yes: 8

8 Excused: Garcia M P. , Luna, Rios, Sanchez, Stewart

9 Absent: None

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Under scored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

February 27, 1997

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 328

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

. 113264. 1ms

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

1 Adopted _____ Not Adopted _____

2 (Chief Clerk)

3 (Chief Clerk)

4 Date _____

5
6 The roll call vote was 15 For 0 Against

7 Yes: 15

8 Excused: Abeyta, Buffett

9 Absent: None

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11 M \H0328

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16 Under scored material = new
17 [bracketed material] = delete

FORTY-THIRD LEGISLATURE

FIRST SESSION

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March 4, 1997

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HOUSE FLOOR AMENDMENT number 1 to HOUSE BILL 328

7

8

Amendment sponsored by Representative Terry T. Marquardt

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1. On page 36, line 21, strike the brackets and line through "and".

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2. On page 37, strike lines 7 through 24 in their entirety.

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FORTY-THIRD LEGISLATURE
FIRST SESSION

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2 hb 328

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Terry T. Marquardt

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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March 14, 1997

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Mr. President:

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Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

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HOUSE BILL 328, as amended

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has had it under consideration and reports same with recommendation that

14

it DO PASS, and thence referred to the CORPORATIONS &

15

TRANSPORTATION COMMITTEE.

16

Respectfully submitted,

17

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Shannon Robinson, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION

Page 59

1 hb 328

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Date _____

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5 The roll call vote was 4 For 3 Against

6 Yes: 4

7 No: Rodarte, Robinson, Feldman

8 Excused: Smith, Garcia

9 Absent: None

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H0328PA1

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Underscored material = new
[bracketed material] = delete