AN ACT
RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
EXTENDING THE OMISSION OF CERTAIN DATA THROUGH JUNE 30, 2022
FROM THE CALCULATIONS OF EMPLOYER CONTRIBUTIONS TO THE
UNEMPLOYMENT COMPENSATION FUND, EXCESS CLAIMS PREMIUMS AND
EXCESS CLAIMS RATES; EXTENDING THE USE OF THE 2019 COMPUTATION
DATE RESERVE FACTOR THROUGH JUNE 30, 2022.

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

SECTION 1. Section 51-1-11 NMSA 1978 (being Laws 2013,
Chapter 133, Section 3, as amended) is amended to read:

"51-1-11. EMPLOYER CONTRIBUTION RATES--BENEFITS
CHARGEABLE--UNEMPLOYMENT COMPENSATION FUND ADEQUATE RESERVE--
RESERVE FACTOR--EXCESS CLAIMS PREMIUM--DEFINITIONS.--

A. Benefits paid to an individual shall be charged to
the individual's base-period employers on a pro rata basis

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according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48 NMSA 1978 shall be charged to any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) where the transaction involves only a
merger, consolidation or other form of reorganization without a
substantial change in the ownership and controlling interest of
1 the business entity, as determined by the secretary, the
2 limitations on transfers stated in Subparagraphs (a), (b) and
3 (c) of this paragraph shall not apply. A party to a merger,
4 consolidation or other form of reorganization described in this
5 subparagraph shall not be relieved of liability for any
6 contributions, interest or penalties due and owing from the
7 employing enterprise at the time of the merger, consolidation
8 or other form of reorganization;
9
10 (2) the applicable experience history may be
11 transferred to the successor in the case of a partial transfer
12 of an employing enterprise if the successor has acquired one or
13 more of the several employing enterprises of a predecessor but
14 not all of the employing enterprises of the predecessor and
15 each employing enterprise so acquired was operated by the
16 predecessor as a separate store, factory, shop or other
17 separate employing enterprise and the predecessor, throughout
18 the entire period of the contribution with liability applicable
19 to each enterprise transferred, has maintained and preserved
20 payroll records that, together with records of contribution
21 liability and benefit chargeability, can be separated by the
22 parties from the enterprises retained by the predecessor to the
23 satisfaction of the secretary or the secretary's delegate. A
24 partial experience history transfer will be made only if the
25 successor:
26
27 (a) notifies the division of the
acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

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

(c) files with the application a form with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-half-year period preceding the computation date through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and form shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and form shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half-year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll;
(3) if, at the time of a transfer of an employing enterprise in whole or in part, both the predecessor and the successor are under common ownership, then the experience history attributable to the transferred business shall also be transferred to and combined with the experience history attributable to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer;

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

   (a) the cost of acquiring the business;

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

   (c) how long such business enterprise was continued; and
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(d) whether a substantial number of new employees was hired for performance of duties unrelated to those that the business activity conducted prior to acquisition;

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

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

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

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

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

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

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

F. Except as provided in Subsection Q of this section, for each calendar year, if, as of the computation date for that year, an employer has been a contributing employer throughout the preceding twenty-four months, the contribution .220158.1
rate for that employer shall be determined by multiplying the employer's benefit ratio by the reserve factor as determined pursuant to Subsection H of this section and, for each calendar year beginning in calendar year 2017, then multiplying that product by the employer's experience history factor as determined under Subsection I of this section; provided that an employer's contribution rate shall not be less than thirty-three hundredths percent or more than five and four-tenths percent. An employer's benefit ratio is determined by dividing the employer's benefit charges during the immediately preceding fiscal years, up to a maximum of three fiscal years, by the total of the annual payrolls of the same time period, calculated to four decimal places, disregarding any remaining fraction.

G. Except as provided in Subsection Q of this section, for each calendar year, if, as of the computation date of that year, an employer has been a contributing employer for less than twenty-four months, the contribution rate for that employer shall be the average of the contribution rates for all contributing employers in the employer's industry, as determined by administrative rule, but shall not be less than one percent or more than five and four-tenths percent; provided that an individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of .220158.1

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Subsection E of Section 51-1-42 NMSA 1978, that has a rate of contribution less than average of the contribution rates for all contributing employers in the employer's industry, shall be entitled to the transfer of the contribution rate of the other employing unit to the extent permitted under Subsection E of this section.

H. The division shall ensure that the fund sustains an adequate reserve. An adequate reserve shall be determined to mean that the funds in the fund available for benefits equal the total amount of funds needed to pay between eighteen and twenty-four months of benefits at the average of the five highest years of benefits paid in the last twenty-five years. Except as provided in Subsection Q of this section, for the purpose of sustaining an adequate reserve, the division shall determine a reserve factor to be used when calculating an employer's contribution rate pursuant to Subsection F of this section by rule promulgated by the secretary. Except as provided in Subsection Q of this section, the rules shall set forth a formula that will set the reserve factor in proportion to the difference between the amount of funds available for benefits in the fund, as of the computation date, and the adequate reserve, within the following guidelines:

1. 1.0000 if, as of the computation date, there is an adequate reserve;

2. between 0.5000 and 0.9999 if, as of the
computation date, there is greater than an adequate reserve;
and

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

I. Except as provided in Subsection Q of this section, for each calendar year beginning in calendar year 2017, if, as of the computation date for that calendar year, an employer has been a contributing employer throughout the preceding twenty-four months, the employer's experience history factor shall be determined as of the computation date and shall be based on the employer's reserve. The employer's reserve shall be calculated as the difference between all of the employer's previous years' contribution payments and all of the employer's previous years' benefit charges, divided by the average of the employer's annual payrolls for the immediately preceding fiscal years, up to a maximum of three fiscal years.

<table>
<thead>
<tr>
<th>If an employer's reserve is:</th>
<th>The employer's experience history factor is:</th>
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<tbody>
<tr>
<td>6.0% and over</td>
<td>0.4000</td>
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<tr>
<td>5.0%-5.9%</td>
<td>0.5000</td>
</tr>
<tr>
<td>4.0%-4.9%</td>
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</tr>
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<td>3.0%-3.9%</td>
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<tr>
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<td>0.8000</td>
</tr>
<tr>
<td>1.0%-1.9%</td>
<td>0.9000</td>
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<tr>
<td>0.0%-0.9%</td>
<td>0.9500</td>
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</tbody>
</table>
Under 0.0% 1.0000.

J. Except as provided in Subsection Q of this section, if an employer's contribution rate pursuant to Subsection F of this section is calculated to be greater than five and four-tenths percent, notwithstanding the limitation pursuant to Subsection F of this section, the employer shall be charged an excess claims premium in addition to the contribution rate applicable to the employer; provided that an employer's excess claims premium shall not exceed one percent of the employer's annual payroll. The excess claims premium shall be determined by multiplying the employer's excess claims rate by the employer's annual payroll. An employer's excess claims rate shall be determined by multiplying the difference of the employer's contribution rate, notwithstanding the limitation pursuant to Subsection F of this section, less five and four-tenths percent by ten percent.

K. Effective calendar year 2017, any other provision of law notwithstanding, an employer's contribution rate plus the employer's excess claims rate, if any, shall increase by no more than two percentage points from one calendar year to the next.

L. Except as provided in Subsection Q of this section, the division shall promptly notify each employer of the employer's rate of contributions and excess claims premium as determined for any calendar year pursuant to this section.
Such notification shall include the amount determined as the employer's annual payroll, the total of all of the employer's contributions paid on the employer's behalf for all past years and total benefits charged to the employer for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for.
redetermination, which shall become final unless, within
fifteen days after the mailing of notice thereof to the
employer's last known address or in the absence of mailing,
within fifteen days after the delivery of such notice, further
appeal is initiated pursuant to Subsection D of Section 51-1-8
NMSA 1978.

M. The division shall provide each contributing
employer, within ninety days of the end of each calendar
quarter, a written determination of benefits chargeable to the
employer. Such determination shall become conclusive and
binding upon the employer for all purposes unless, within
thirty days after the mailing of the determination to the
employer's last known address or in the absence of mailing,
within thirty days after the delivery of such determination,
the employer files an application for review and
redetermination, setting forth the employer's reason therefor.
The employer shall be granted an opportunity for a fair hearing
in accordance with rules prescribed by the secretary, but an
employer shall not have standing in any proceeding involving
the employer's contribution liability to contest the
chargeability to the employer of any benefits paid in
accordance with a determination, redetermination or decision
pursuant to Section 51-1-8 NMSA 1978, except upon the ground
that the services on the basis of which such benefits were
found to be chargeable did not constitute services performed in
employment for the employer and only in the event that the
employer was not a party to such determination, redetermination
or decision, or to any other proceedings under the Unemployment
Compensation Law in which the character of such services was
determined. The employer shall be promptly notified of the
decision on the employer's application for redetermination,
which shall become final unless, within fifteen days after the
mailing of notice thereof to the employer's last known address
or in the absence of mailing, within fifteen days after the
delivery of such notice, further appeal is initiated pursuant
to Subsection D of Section 51-1-8 NMSA 1978.

N. The contributions and excess claims premiums,
together with interest and penalties thereon imposed by the
Unemployment Compensation Law, shall not be assessed nor shall
action to collect the same be commenced more than four years
after a report showing the amount of the contributions was due.
In the case of a false or fraudulent contribution report with
intent to evade contributions or a willful failure to file a
report of all contributions due, the contributions and excess
claims premiums, together with interest and penalties thereon,
may be assessed or an action to collect such contributions may
be begun at any time. Before the expiration of such period of
limitation, the employer and the secretary may agree in writing
to an extension thereof and the period so agreed on may be
extended by subsequent agreements in writing. In any case
where the assessment has been made and action to collect has
been commenced within four years of the due date of any
contribution, excess claims premium, interest or penalty,
including the filing of a warrant of lien by the secretary
pursuant to Section 51-1-36 NMSA 1978, such action shall not be
subject to any period of limitation.

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

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

Q. The secretary shall omit data for March 1, 2020
through June 30, [2021] 2022 from calculations of an employing
enterprise's experience history, excess claims premiums and
excess claims rates. The secretary shall use the 2019
computation date reserve factor from January 1, 2020 through

R. As used in this section:

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

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

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

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

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

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

(7) "experience history" means the benefit
charges and payroll experience of the employing enterprise;
(8) "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved;

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

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

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