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HOUSE BILL 176

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Jerry Sandel

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; DECREASING
UNEMPLOYMENT COMPENSATION TAXES; AMENDING SECTIONS OF THE
UNEMPLOYMENT COMPENSATION LAW.

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

Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969,
Chapter 213, Section 1, as amended) is amended to read:

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

A. All benefits provided herein are payable from
the unemployment compensation fund. All benefits shall be
paid in accordance with such regulations as the secretary may
prescribe through employment offices or other agencies as the
secretary may by general rule approve.

B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount"

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

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

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

8 (3) notwithstanding any other provision of
9 this section, each eligible individual who, pursuant to a
10 plan financed in whole or in part by a base-period employer
11 of such individual, is receiving a governmental or other
12 pension, retirement pay, annuity or any other similar
13 periodic payment that is based on the previous work of such
14 individual and who is unemployed with respect to any week
15 ending subsequent to April 9, 1981 shall be paid with respect
16 to such week, in accordance with regulations prescribed by
17 the secretary, compensation equal to his weekly benefit
18 amount reduced, but not below zero, by the prorated amount of
19 such pension, retirement pay, annuity or other similar
20 periodic payment that exceeds the percentage contributed to
21 the plan by the eligible individual. The maximum benefit
22 amount payable to such eligible individual shall be an amount
23 not more than twenty-six times his reduced weekly benefit
24 amount. If payments referred to in this section are being
25 received by any individual under the federal Social Security
Act, the division shall take into account the individual's
contribution and make no reduction in the weekly benefit

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1 amount;

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

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

23 C. Any otherwise eligible individual is entitled
24 during any benefit year to a total amount of benefits equal
25 to whichever is the lesser of twenty-six times his weekly
benefit amount or sixty percent of his wages for insured work
paid during his base period.

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1 D. Any benefit as determined in Subsection B or C
2 of this section, if not a multiple of one dollar (\$1.00),
3 shall be rounded to the next lower multiple of one dollar
4 (\$1.00).

5 E. The secretary may prescribe regulations to
6 provide for the payment of benefits that are due and payable
7 to the legal representative, dependents, relatives or next of
8 kin of claimants since deceased. These regulations need not
9 conform with the laws governing successions, and the payment
10 shall be deemed a valid payment to the same extent as if made
11 under a formal administration of the succession of the
12 claimant.

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

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1 Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969,
2 Chapter 213, Section 2, as amended) is amended to read:

3 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

4 A. An unemployed individual shall be eligible to
5 receive benefits with respect to any week only if he:

6 (1) has made a claim for benefits with
7 respect to such week in accordance with such regulations as
8 the secretary may prescribe;

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

20 (3) is able to work and is available for
21 work and is actively seeking permanent and substantially
22 full-time work in accordance with the terms, conditions and
23 hours common in the occupation or business in which the
24 individual is seeking work, except that the secretary may, by
25 regulation, waive this requirement for individuals who are on
temporary layoff status from their regular employment with an
assurance from their employers that the layoff shall not

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1 exceed four weeks or who have an express offer in writing of
2 substantially full-time work that will begin within a period
3 not exceeding four weeks;

4 (4) has been unemployed for a waiting period
5 of one week. No week shall be counted as a week of
6 unemployment for the purposes of this paragraph:

7 (a) unless it occurs within the benefit
8 year that includes the week with respect to which he claims
9 payment of benefits;

10 (b) if benefits have been paid with
11 respect thereto; and

12 (c) unless the individual was eligible
13 for benefits with respect thereto as provided in this section
14 and Section 51-1-7 NMSA 1978, except for the requirements of
15 this subsection and of Subsection E of Section 51-1-7 NMSA
16 1978;

17 (5) has ~~[during his base period, been paid~~
18 ~~wages for insured work totaling not less than one and~~
19 ~~one-fourth his high-quarter wages]~~ been paid wages in at
20 least two quarters of his base period;

21 (6) has reported to an office of the
22 division in accordance with the regulations of the secretary
23 for the purpose of an examination and review of the
24 individual's availability for and search for work, for
25 employment counseling, referral and placement and for
participation in a job finding or employability training and
development program. No individual shall be denied benefits

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1 under this section for any week that he is participating in a
2 job finding or employability training and development
3 program; and

4 (7) participates in reemployment services,
5 such as job search assistance services, if the division
6 determines that the individual is likely to exhaust regular
7 benefits and need reemployment services pursuant to a
8 profiling system established by the division, unless the
9 division determines that:

10 (a) the individual has completed such
11 services; or

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

14 B. A benefit year as provided in Section 51-1-4
15 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may
16 be established; provided no individual may receive benefits
17 in a benefit year unless, subsequent to the beginning of the
18 immediately preceding benefit year during which he received
19 benefits, he performed service in "employment", as defined in
20 Subsection F of Section 51-1-42 NMSA 1978, and earned
21 remuneration for such service in an amount equal to [~~the~~
22 ~~lesser of three-thirteenths of the individual's high-quarter~~
23 ~~wages and six]~~ at least five times his weekly benefit amount.

24 C. Benefits based on service in employment defined
25 in Paragraph (8) of Subsection F of Section 51-1-42 and
Section 51-1-43 NMSA 1978 are to be paid in the same amount,
on the same terms and subject to the same conditions as

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1 compensation payable on the basis of other services subject
2 to the Unemployment Compensation Law; except that:

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

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

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1 to perform such services for the educational institution for
2 the second of such academic years or terms, the individual
3 shall be entitled to a retroactive payment of benefits for
4 each week for which the individual filed a claim and
5 certified for benefits in accordance with the regulations of
6 the division and for which benefits were denied solely by
7 reason of this paragraph;

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

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

25 (5) for the purpose of this subsection, to
the extent permitted by federal law, "reasonable assurance"
means a reasonable expectation of employment in a similar

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1 capacity in the second of such academic years or terms based
2 upon a consideration of all relevant factors, including the
3 historical pattern of reemployment in such capacity, a
4 reasonable anticipation that such employment will be
5 available and a reasonable notice or understanding that the
6 individual will be eligible for and offered employment in a
7 similar capacity.

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

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

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1 required to be approved as a condition for certification of
2 the state's Unemployment Compensation Law by the United
3 States secretary of labor.

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

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

19 (2) no individual shall be denied benefits
20 because of his alien status except upon a preponderance of
21 the evidence.

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

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

6 H. Students who are enrolled in a full-time course
7 schedule in an educational or training institution or
8 program, other than those persons in an approved vocational
9 training program in accordance with Subsection E of this
10 section, shall not be eligible for unemployment benefits
11 except as provided by regulations promulgated by the
12 secretary.

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

22 (1) except as provided in Paragraphs (2) and
23 (3) of this subsection, a seasonal ski employee employed by a
24 ski area operator on a regular seasonal basis shall be
25 ineligible for a week of unemployment benefits that commences
during a period between two successive ski seasons unless
such individual establishes to the satisfaction of the

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1 secretary that he is available for and is making an active
2 search for permanent full-time work;

3 (2) a seasonal ski employee who has been
4 employed by a ski area operator during two successive ski
5 seasons shall be presumed to be unavailable for permanent new
6 work during a period after the second successive ski season
7 that he was employed as a seasonal ski employee; and

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

15 J. Notwithstanding any other provision of this
16 section, an otherwise eligible individual shall not be denied
17 benefits for any week by reason of the application of
18 Paragraph (3) of Subsection A of this section because he is
19 before any court of the United States or any state pursuant
20 to a lawfully issued summons to appear for jury duty."

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

23 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

24 A. The division shall maintain a separate account
25 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

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1 Law shall be construed to grant any employer or individuals
2 in his service prior claims or rights to the amounts paid by
3 the employer into the fund.

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

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

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

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

~~(4)]~~ (3) is employed part time by a base-

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1 period employer who is not on a reimbursable basis and who
2 continues to furnish the individual the same part-time work
3 while the individual is separated from full-time work for a
4 nondisqualifying reason; or

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

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

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

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

24 (1) the provisions of this subsection shall
25 not apply to governmental entities;

 (2) subsequent to December 31, 1984, any
employing unit that becomes an employer subject to the

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

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

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

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

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

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

13 (1) Definitions:

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

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

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

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

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

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

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

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

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

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

(a) the successor notifies the division
of the acquisition, in writing, not later than the due date

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1 of the successor's first quarterly wage and contribution
2 report after the effective date of the acquisition;

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

8 (c) the successor files with the
9 application a Form ES-903A or its equivalent with a schedule
10 of the name and social security number of and the wages paid
11 to and the contributions paid for each employee for the three
12 and one-half year period preceding the ~~[date of]~~ computation
13 date as defined in Subparagraph (d) of Paragraph (3) of
14 Subsection H of this section through the date of transfer or
15 such lesser period as the enterprises transferred may have
16 been in operation. The application and Form ES-903A shall be
17 supported by the predecessor's permanent employment records,
18 which shall be available for audit by the division. The
19 application and Form ES-903A shall be reviewed by the
20 division and, upon approval, the percentage of the
21 predecessor's experience history attributable to the
22 enterprises transferred shall be transferred to the
23 successor. The percentage shall be obtained by dividing the
24 taxable payrolls of the transferred enterprises for such
25 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

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1 entire payroll.

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

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

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

22 (a) the rate in schedule 1 of the table
23 provided in Paragraph (4) of this subsection on the
24 corresponding line as his reserve if the fund equals at least
25 [~~four~~] three and four-tenths percent of the total payrolls;

(b) the rate in schedule 2 of the table
provided in Paragraph (4) of this subsection on the

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1 corresponding line if the fund has dropped to [~~between four~~
2 ~~percent and~~] less than three and four-tenths percent and not
3 less than two and seven-tenths percent;

4 (c) the rate in schedule 3 of the table
5 provided in Paragraph (4) of this subsection on the
6 corresponding line if the fund has dropped to [~~between three~~]
7 less than two and seven-tenths percent and not less than two
8 percent;

9 (d) the rate in schedule 4 of the table
10 provided in Paragraph (4) of this subsection on the
11 corresponding line if the fund has dropped to [~~between~~] less
12 than two percent and not less than one and one-half percent;

13 (e) the rate in schedule 5 of the table
14 provided in Paragraph (4) of this subsection on the
15 corresponding line if the fund has dropped to [~~between~~] less
16 than one and one-half percent and not less than one percent;
17 or

18 (f) the rate in schedule 6 of the table
19 provided in Paragraph (4) of this subsection on the
20 corresponding line if the fund has dropped [~~below~~] less than
21 one percent.

22 (3) As used in this section:

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

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

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

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

9 (4) Table of employer reserves and
 10 contribution rate schedules:

11 Employer Reserve	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
12 10.0% and over	[0.1%] <u>0.05%</u>	[0.3%] <u>0.1%</u>	0.6%
13 9.0%-9.9%	[0.3%] <u>0.1%</u>	[0.6%] <u>0.2%</u>	0.9%
14 8.0%-8.9%	[0.6%] <u>0.2%</u>	[0.9%] <u>0.4%</u>	1.2%
15 7.0%-7.9%	[0.9%] <u>0.4%</u>	[1.2%] <u>0.6%</u>	1.5%
16 6.0%-6.9%	[1.2%] <u>0.6%</u>	[1.5%] <u>0.8%</u>	1.8%
17 5.0%-5.9%	[1.5%] <u>0.8%</u>	[1.8%] <u>1.1%</u>	2.1%
18 4.0%-4.9%	[1.8%] <u>1.1%</u>	[2.1%] <u>1.4%</u>	2.4%
19 3.0%-3.9%	[2.1%] <u>1.4%</u>	[2.4%] <u>1.7%</u>	2.7%
20 2.0%-2.9%	[2.4%] <u>1.7%</u>	[2.7%] <u>2.0%</u>	3.0%
21 1.0%-1.9%	[2.7%] <u>2.0%</u>	[3.0%] <u>2.4%</u>	3.3%
22 0.9%-0.0%	[3.0%] <u>2.4%</u>	3.3%	3.6%
23 (-0.1%)-(-0.5%)	3.3%	3.6%	3.9%
24 (-0.5%)-(-1.0%)	4.2%	4.2%	4.2%
25 (-1.0%)-(-2.0%)	5.0%	5.0%	5.0%
Under (-2.0%)	5.4%	5.4%	5.4%

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

18 I. The division shall promptly notify each
19 employer of his rate of contributions as determined for any
20 calendar year pursuant to this section. Such notification
21 shall include the amount determined as the employer's average
22 payroll, the total of all his contributions paid on his own
23 behalf and credited to his account for all past years and
24 total benefits charged to his account for all such years.
25 Such determination shall become conclusive and binding upon
the employer unless, within thirty days after the mailing of
notice thereof to his last known address or in the absence of

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

25 J. The division shall provide each contributing
employer, within ninety days of the end of each calendar
quarter, a written determination of benefits chargeable to

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1 his account. Such determination shall become conclusive and
2 binding upon the employer for all purposes unless, within
3 thirty days after the mailing of the determination to his
4 last known address or in the absence of mailing, within
5 thirty days after the delivery of such determination, the
6 employer files an application for review and redetermination,
7 setting forth his reason therefor. The employer shall be
8 granted an opportunity for a fair hearing in accordance with
9 regulations prescribed by the secretary, but no employer
10 shall have standing in any proceeding involving his
11 contribution liability to contest the chargeability to his
12 account of any benefits paid in accordance with a
13 determination, redetermination or decision pursuant to
14 Section 51-1-8 NMSA 1978, except upon the ground that the
15 services on the basis of which such benefits were found to be
16 chargeable did not constitute services performed in
17 employment for him and only in the event that he was not a
18 party to such determination, redetermination or decision, or
19 to any other proceedings under the Unemployment Compensation
20 Law in which the character of such services was determined.
21 The employer shall be promptly notified of the decision on
22 his application for redetermination, which shall become final
23 unless, within fifteen days after the mailing of notice
24 thereof to his last known address or in the absence of
25 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.

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K. The contributions, 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, 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, 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.

L. 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

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1 Subsection I of this section.

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

9 N. Notwithstanding the provisions of this section,
10 the rate in schedule 1 of the table provided in Paragraph (4)
11 of Subsection H of this section shall be applied for [~~two~~]
12 four calendar years beginning January 1, 1999."

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

16 "51-1-42. DEFINITIONS.--As used in the Unemployment
17 Compensation Law:

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

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

25 C. "contributions" means the money payments
required by Section 51-1-9 NMSA 1978 to be made into the fund
by an employer on account of having individuals performing

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1 services for him;

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

E. "employer" includes:

- (1) any employing unit which:

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

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

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

(2) any individual or type of organization

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

9 (3) any employing unit that acquired all or
10 part of the organization, trade, business or assets of
11 another employing unit and that, if treated as a single unit
12 with such other employing unit or part thereof, would be an
13 employer under Paragraph (1) of this subsection;

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

16 (a) for which, within either the
17 current or preceding calendar year, service is or was
18 performed with respect to which such employing unit is liable
19 for any federal tax against which credit may be taken for
20 contributions required to be paid into a state unemployment
21 fund; or

22 (b) which, as a condition for approval
23 of the Unemployment Compensation Law for full tax credit
24 against the tax imposed by the Federal Unemployment Tax Act,
25 is required, pursuant to such act, to be an "employer" under
the Unemployment Compensation Law;

(5) any employing unit that, having become

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1 an employer under Paragraph (1), (2), (3) or (4) of this
2 subsection, has not, under Section 51-1-18 NMSA 1978, ceased
3 to be an employer subject to the Unemployment Compensation
4 Law;

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

9 (7) any employing unit for which any
10 services performed in its employ are deemed to be performed
11 in this state pursuant to an election under an arrangement
12 entered into in accordance with Subsection A of Section 51-1-
13 50 NMSA 1978;

14 F. "employment" means:

15 (1) any service, including service in
16 interstate commerce, performed for wages or under any
17 contract of hire, written or oral, express or implied;

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

20 (a) the service is primarily localized
21 in this state with services performed outside the state being
22 only incidental thereto; or

23 (b) the service is not localized in any
24 state but some of the service is performed in this state and:
25 1) the base of operations or, if there is no base of
operations, the place from which such service is directed or
controlled, is in this state; or 2) the base of operations or

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1 place from which such service is directed or controlled is
2 not in any state in which some part of the service is
3 performed but the individual's residence is in this state;

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

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

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

19 (a) such individual has been and will
20 continue to be free from control or direction over the
21 performance of such services both under his contract of
22 service and in fact;

23 (b) such service is either outside the
24 usual course of business for which such service is performed
25 or that such service is performed outside of all the places
of business of the enterprise for which such service is
performed; and

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1 (c) such individual is customarily
2 engaged in an independently established trade, occupation,
3 profession or business of the same nature as that involved in
4 the contract of service;

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

8 (a) such service is performed for an
9 employing unit that: 1) paid remuneration in cash of twenty
10 thousand dollars (\$20,000) or more to individuals in such
11 employment during any calendar quarter in either the current
12 or the preceding calendar year; or 2) employed in
13 agricultural labor ten or more individuals for some portion
14 of a day in each of twenty different calendar weeks in either
15 the current or preceding calendar year, whether or not such
16 weeks were consecutive, and regardless of whether such
17 individuals were employed at the same time;

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

23 (c) for purposes of this paragraph, any
24 individual who is a member of a crew furnished by a crew
25 leader to perform service in agricultural labor for a farm
operator or other person shall be treated as an employee of
such crew leader: 1) if such crew leader meets the

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1 requirements of a crew leader as defined in Subsection L of
2 this section; or 2) substantially all the members of such
3 crew operate or maintain mechanized agricultural equipment
4 that is provided by the crew leader; and 3) the individuals
5 performing such services are not, by written agreement or in
6 fact, within the meaning of Paragraph (5) of this subsection,
7 performing services in employment for the farm operator or
8 other person;

9 (7) service performed after December 31,
10 1977 by an individual in domestic service in a private home,
11 local college club or local chapter of a college fraternity
12 or sorority for a person or organization that paid cash
13 remuneration of one thousand dollars (\$1,000) in any calendar
14 quarter in the current or preceding calendar year to
15 individuals performing such services;

16 (8) service performed after December 31,
17 1971 by an individual in the employ of a religious,
18 charitable, educational or other organization but only if the
19 following conditions are met:

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

23 (b) the organization meets the
24 requirements of "employer" as provided in Subparagraph (a) of
25 Paragraph (1) of Subsection E of this section;

(9) service of an individual who is a
citizen of the United States, performed outside the United

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1 States, except in Canada, after December 31, 1971 in the
2 employ of an American employer (other than service that is
3 deemed "employment" under the provisions of Paragraph (2) of
4 this subsection or the parallel provisions of another state's
5 law), if:

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

8 (b) the employer has no place of
9 business in the United States, but: 1) the employer is an
10 individual who is a resident of this state; 2) the employer
11 is a corporation organized under the laws of this state; or
12 3) the employer is a partnership or a trust and the number of
13 the partners or trustees who are residents of this state is
14 greater than the number who are residents of any one other
15 state; or

16 (c) none of the criteria of
17 Subparagraphs (a) and (b) of this paragraph are met, but the
18 employer has elected coverage in this state or, the employer
19 having failed to elect coverage in any state, the individual
20 has filed a claim for benefits, based on such service, under
21 the law of this state.

22 "American employer" for purposes of this paragraph means
23 a person who is: 1) an individual who is a resident of the
24 United States; 2) a partnership if two-thirds or more of the
25 partners are residents of the United States; 3) a trust if
all of the trustees are residents of the United States; or 4)
a corporation organized under the laws of the United States

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1 or of any state. For the purposes of this paragraph, "United
2 States" includes the United States, the District of Columbia,
3 the commonwealth of Puerto Rico and the Virgin Islands;

4 (10) notwithstanding any other provisions of
5 this subsection, service with respect to which a tax is
6 required to be paid under any federal law imposing a tax
7 against which credit may be taken for contributions required
8 to be paid into a state unemployment fund or which as a
9 condition for full tax credit against the tax imposed by the
10 Federal Unemployment Tax Act is required to be covered under
11 the Unemployment Compensation Law;

12 (11) "employment" does not include:

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

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

23 (c) service performed by an individual
24 in the employ of his son, daughter or spouse, and service
25 performed by a child under the age of majority in the employ
of his father or mother;

(d) service performed in the employ of

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

22 (e) service performed in a facility
23 conducted for the purpose of carrying out a program of
24 rehabilitation for individuals whose earning capacity is
25 impaired by age or physical or mental deficiency or injury or
providing remunerative work for individuals who because of
their impaired physical or mental capacity cannot be readily

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1 absorbed in the competitive labor market, by an individual
2 receiving such rehabilitation or remunerative work;

3 (f) service with respect to which
4 unemployment compensation is payable under an unemployment
5 compensation system established by an act of congress;

6 (g) service performed in the employ of
7 a foreign government, including service as a consular or
8 other officer or employee or a nondiplomatic representative;

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

14 (i) service performed by an individual
15 under the age of eighteen in the delivery or distribution of
16 newspapers or shopping news, not including delivery or
17 distribution to any point for subsequent delivery or
18 distribution;

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

25 (k) service performed, as part of an
unemployment work-relief or work-training program assisted or
financed in whole or part by any federal agency or an agency

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1 of a state or political subdivision thereof, by an individual
2 receiving such work relief or work training;

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

15 (m) service performed in the employ of
16 a hospital, if the service is performed by a patient of the
17 hospital, or services performed by an inmate of a custodial
18 or penal institution for ~~[a governmental entity or nonprofit~~
19 ~~organization]~~ any employer;

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

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

(p) service performed by an individual

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

5 (q) service performed for a private,
6 for-profit person or entity by an individual as a product
7 demonstrator or product merchandiser if the service is
8 performed pursuant to a written contract between that
9 individual and a person or entity whose principal business is
10 obtaining the services of product demonstrators and product
11 merchandisers for third parties, for demonstration and
12 merchandising purposes and the individual: 1) is compensated
13 for each job or the compensation is based on factors related
14 to the work performed; 2) provides the equipment used to
15 perform the service, unless special equipment is required and
16 provided by the manufacturer through an agency; 3) is
17 responsible for completion of a specific job and for any
18 failure to complete the job; 4) pays all expenses, and the
19 opportunity for profit or loss rests solely with the
20 individual; and 5) is responsible for operating costs, fuel,
21 repairs and motor vehicle insurance. For the purpose of this
22 subparagraph, "product demonstrator" means an individual who,
23 on a temporary, part-time basis, demonstrates or gives away
24 samples of a food or other product as part of an advertising
25 or sales promotion for the product and who is not otherwise
employed directly by the manufacturer, distributor or
retailer, and "product merchandiser" means an individual who,

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1 on a temporary, part-time basis builds or resets a product
2 display and who is not otherwise directly employed by the
3 manufacturer, distributor or retailer; or

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

21 (12) for the purposes of this subsection, if
22 the services performed during one-half or more of any pay
23 period by an individual for the person employing him
24 constitute employment, all the services of such individual
25 for such period shall be deemed to be employment but, if the
services performed during more than one-half of any such pay
period by an individual for the person employing him do not

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

11 G. "employment office" means a free public
12 employment office, or branch thereof, operated by this state
13 or maintained as a part of a state-controlled system of
14 public employment offices;

15 H. "fund" means the unemployment compensation fund
16 established by the Unemployment Compensation Law to which all
17 contributions and payments in lieu of contributions required
18 under the Unemployment Compensation Law and from which all
19 benefits provided under the Unemployment Compensation Law
20 shall be paid;

21 I. "unemployment" means, with respect to an
22 individual, any week during which he performs no services and
23 with respect to which no wages are payable to him and during
24 which he is not engaged in self-employment or receives an
25 award of back pay for loss of employment. The secretary
shall prescribe by regulation what constitutes part-time and
intermittent employment, partial employment and the

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1 conditions under which individuals engaged in such employment
2 are eligible for partial unemployment benefits;

3 J. "state", when used in reference to any state
4 other than New Mexico, includes, in addition to the states of
5 the United States, the District of Columbia, the commonwealth
6 of Puerto Rico and the Virgin Islands;

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

15 L. "crew leader" means a person who:
16 (1) holds a valid certificate of
17 registration as a crew leader or farm labor contractor under
18 the Migrant and Seasonal Agricultural Worker Protection Act;
19 (2) furnishes individuals to perform
20 services in agricultural labor for any other person;
21 (3) pays, either on his own behalf or on
22 behalf of such other person, the individuals so furnished by
23 him for service in agricultural labor; and
24 (4) has not entered into a written agreement
25 with the other person for whom he furnishes individuals in
agricultural labor that such individuals will be the
employees of the other person;

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

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

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

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

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

(1) on a farm, in the employ of any person,
in connection with cultivating the soil or in connection with

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1 raising or harvesting any agricultural or horticultural
2 commodity, including the raising, shearing, feeding, caring
3 for, training and management of livestock, bees, poultry and
4 fur-bearing animals and wildlife;

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

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

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

As used in this subsection, the term "farm" includes

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1 stock, dairy, poultry, fruit, fur-bearing animal and truck
2 farms, plantations, ranches, nurseries, greenhouses, ranges
3 and orchards;

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

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

8 T. "wages" means all remuneration for services,
9 including commissions and bonuses and the cash value of all
10 remuneration in any medium other than cash. The reasonable
11 cash value of remuneration in any medium other than cash
12 shall be established and determined in accordance with
13 regulations prescribed by the secretary; provided that the
14 term "wages" shall not include:

15 (1) subsequent to December 31, 1977, that
16 part of the remuneration in excess of the base wage as
17 determined by the secretary for each calendar year. The base
18 wage upon which contribution shall be paid during any
19 calendar year shall be sixty percent of the state's average
20 annual earnings computed by the division by dividing total
21 wages reported to the division by contributing employers for
22 the second preceding calendar year before the calendar year
23 the computed base wage becomes effective by the average
24 annual employment reported by contributing employers for the
25 same period rounded to the next higher multiple of one
hundred dollars (\$100); provided that the base wage so
computed for any calendar year shall not be less than seven

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1 thousand dollars (\$7,000). Wages paid by an employer to an
2 individual in his employ during any calendar year in excess
3 of the base wage in effect for that calendar year shall be
4 reported to the department but shall be exempt from the
5 payment of contributions unless such wages paid in excess of
6 the base wage become subject to tax under a federal law
7 imposing a tax against which credit may be taken for
8 contributions required to be paid into a state unemployment
9 fund;

10 (2) the amount of any payment with respect
11 to services performed after June 30, 1941 to or on behalf of
12 an individual in its employ under a plan or system
13 established by an employing unit that makes provision for
14 individuals in its employ generally or for a class or classes
15 of such individuals, including any amount paid by an
16 employing unit for insurance or annuities, or into a fund, to
17 provide for any such payment, on account of:

18 (a) retirement if such payments are
19 made by an employer to or on behalf of any employee under a
20 simplified employee pension plan that provides for payments
21 by an employer in addition to the salary or other
22 remuneration normally payable to such employee or class of
23 such employees and does not include any payments that
24 represent deferred compensation or other reduction of an
25 employee's normal taxable wages or remuneration or any
payments made to a third party on behalf of an employee as
part of an agreement of deferred remuneration;

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1 (b) sickness or accident disability if
2 such payments are received under a workers' compensation or
3 occupational disease disablement law;

4 (c) medical and hospitalization
5 expenses in connection with sickness or accident disability;
6 or

7 (d) death; provided the individual in
8 its employ has not the option to receive, instead of
9 provision for such death benefit, any part of such payment,
10 or, if such death benefit is insured, any part of the
11 premiums or contributions to premiums paid by his employing
12 unit and has not the right under the provisions of the plan
13 or system or policy of insurance providing for such death
14 benefit to assign such benefit, or to receive a cash
15 consideration in lieu of such benefit either upon his
16 withdrawal from the plan or system providing for such benefit
17 or upon termination of such plan or system or policy of
18 insurance or of his service with such employing unit;

19 (3) remuneration for agricultural labor paid
20 in any medium other than cash;

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

25 (5) any payment made, or benefit furnished
to or for the benefit of an employee if at the time of such
payment or such furnishing it is reasonable to believe that

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1 the employee will be able to exclude such payment or benefit
2 from income under Section 129 of the federal Internal Revenue
3 Code of 1986;

4 (6) any payment made by an employer to a
5 survivor or the estate of a former employee after the
6 calendar year in which such employee died;

7 (7) any payment made to, or on behalf of, an
8 employee or his beneficiary under an arrangement to which
9 Section 408(p) of the federal Internal Revenue Code of 1986
10 applies, other than any elective contributions under
11 Paragraph (2)(A)(i) of that section;

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

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

22 Section 5. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2000.

24 - 51 -
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