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HOUSE BILL 247

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; INCREASING THE WEEKLY
BENEFIT AMOUNT; INCREASING THE DEPENDENT ALLOWANCE BENEFIT;
CHANGING THE CRITERIA FOR CONTRIBUTION RATE SCHEDULES;
PROVIDING A CERTAIN CONTRIBUTION RATE SCHEDULE FOR A LIMITED
PERIOD; REQUIRING CERTAIN EMPLOYERS TO FILE ELECTRONICALLY;
CREATING THE STATE UNEMPLOYMENT TRUST FUND; PROVIDING
DISTRIBUTIONS TO THE FUND; REPEALING CERTAIN CONTINGENT
SECTIONS OF THE UNEMPLOYMENT COMPENSATION LAW; MAKING
APPROPRIATIONS.

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

Section 1. Section 51-1-4 NMSA 1978 (being Laws 2003,
Chapter 47, Section 8, as amended) is amended to read:

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

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1 A. All benefits provided herein are payable from
2 the unemployment compensation fund. All benefits shall be paid
3 in accordance with rules prescribed by the secretary through
4 employment offices or other agencies as the secretary approves
5 by general rule.

6 B. Weekly benefits shall be as follows:

7 (1) an individual's "weekly benefit amount" is
8 an amount equal to [~~fifty-two and one-half~~] fifty-three and
9 one-half percent of the average weekly wage for insured work
10 paid to the individual in that quarter of the individual's base
11 period in which total wages were highest. No benefit as so
12 computed may be less than ten percent or more than [~~fifty-two~~
13 ~~and one-half~~] fifty-three and one-half percent of the state's
14 average weekly wage for all insured work. The state's average
15 weekly wage shall be computed from all wages reported to the
16 department from employing units in accordance with rules of the
17 secretary for the period ending June 30 of each calendar year
18 divided by the total number of covered employees divided by
19 fifty-two, effective for the benefit years commencing on or
20 after the first Sunday of the following calendar year. An
21 individual is not eligible to receive benefits unless the
22 individual has wages in at least two quarters of that
23 individual's base period. For the purposes of this subsection,
24 "total wages" means all remuneration for insured work,
25 including commissions and bonuses and the cash value of all

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1 remuneration in a medium other than cash;

2 (2) an eligible individual who is unemployed
3 in any week during which the individual is in a continued
4 claims status shall be paid, with respect to the week, a
5 benefit in an amount equal to the individual's weekly benefit
6 amount, less that part of the wages, if any, or earnings from
7 self-employment, payable to the individual with respect to such
8 week that is in excess of one-fifth of the individual's weekly
9 benefit amount. For purposes of this subsection only, "wages"
10 includes all remuneration for services actually performed in a
11 week for which benefits are claimed, vacation pay for a period
12 for which the individual has a definite return-to-work date,
13 wages in lieu of notice and back pay for loss of employment but
14 does not include payments through a court for time spent in
15 jury service;

16 (3) notwithstanding any other provision of
17 this section, an eligible individual who, pursuant to a plan
18 financed in whole or in part by a base-period employer of the
19 individual, is receiving a governmental or other pension,
20 retirement pay, annuity or any other similar periodic payment
21 that is based on the previous work of the individual and who is
22 unemployed with respect to any week ending subsequent to April
23 9, 1981 shall be paid with respect to the week, in accordance
24 with rules prescribed by the secretary, compensation equal to
25 the individual's weekly benefit amount reduced, but not below

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1 zero, by the prorated amount of the pension, retirement pay,
2 annuity or other similar periodic payment that exceeds the
3 percentage contributed to the plan by the eligible individual.
4 The maximum benefit amount payable to the eligible individual
5 shall be an amount not more than twenty-six times the
6 individual's reduced weekly benefit amount. If payments
7 referred to in this section are being received by an individual
8 under the federal Social Security Act, the division shall take
9 into account the individual's contribution and make no
10 reduction in the weekly benefit amount;

11 (4) in the case of a lump-sum payment of a
12 pension, retirement or retired pay, annuity or other similar
13 payment by a base-period employer that is based on the previous
14 work of the individual, the payment shall be allocated, in
15 accordance with rules prescribed by the secretary, and shall
16 reduce the amount of unemployment compensation paid, but not
17 below zero, in accordance with Paragraph (3) of this
18 subsection; and

19 (5) the retroactive payment of a pension,
20 retirement or retired pay, annuity or any other similar
21 periodic payment as provided in Paragraphs (3) and (4) of this
22 subsection attributable to weeks during which an individual has
23 claimed or has been paid unemployment compensation shall be
24 allocated to those weeks and shall reduce the amount of
25 unemployment compensation for those weeks, but not below zero,

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1 by an amount equal to the prorated amount of the pension. Any
2 overpayment of unemployment compensation benefits resulting
3 from the application of the provisions of this paragraph shall
4 be recovered from the claimant in accordance with the
5 provisions of Section 51-1-38 NMSA 1978.

6 C. An individual otherwise eligible for benefits
7 shall be paid for each week of unemployment, in addition to the
8 amount payable under Subsection B of this section, the sum of
9 [~~fifteen dollars (\$15.00)~~] twenty-five dollars (\$25.00) for
10 each unemancipated child under the age of eighteen, up to a
11 maximum of four and subject to the maximum stated in Subsection
12 D of this section, of the individual who is in fact dependent
13 upon and wholly or mainly supported by the individual, [~~and is:~~

14 ~~(1) under the age of eighteen;~~

15 ~~(2) under the age of eighteen and]~~ including:

16 (1) a child in the individual's custody
17 pending the adjudication of a petition filed by the individual
18 for the adoption of the child in a court of competent
19 jurisdiction; or

20 [~~(3) under the age of eighteen and]~~ (2) a
21 child for whom the individual, [~~is]~~ under a decree or order
22 from a court of competent jurisdiction, is required to
23 contribute to the child's support and for whom no other person
24 is receiving allowances under the Unemployment Compensation Law
25 if the child is domiciled within the United States or its

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1 territories or possessions, the payment to be withheld and paid
2 pursuant to Section 51-1-37.1 NMSA 1978.

3 D. Dependency benefits shall not exceed fifty
4 percent of the individual's weekly benefit rate. The amount of
5 dependency benefits determined as of the beginning of an
6 individual's benefit year shall not be reduced for the duration
7 of the benefit year, but this provision does not prevent the
8 transfer of dependents' benefits from one spouse to another in
9 accordance with this subsection. If both the husband and wife
10 receive benefits with respect to a week of unemployment, only
11 one of them is entitled to a dependency allowance with respect
12 to a child. The division shall prescribe standards as to who
13 may receive a dependency allowance when both the husband and
14 wife are eligible to receive unemployment compensation
15 benefits. Dependency benefits shall not be paid unless the
16 individual submits documentation satisfactory to the division
17 establishing the existence of the claimed dependent. If the
18 provisions of this subsection are satisfied, an otherwise
19 eligible individual who has been appointed guardian of a
20 dependent child by a court of competent jurisdiction shall be
21 paid dependency benefits.

22 E. An otherwise eligible individual is entitled
23 during any benefit year to a total amount of benefits equal to
24 whichever is the lesser of twenty-six times the individual's
25 weekly benefit amount, plus any dependency benefit amount

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1 pursuant to Subsections C and D of this section, or sixty
2 percent of the individual's wages for insured work paid during
3 the individual's base period.

4 F. A benefit as determined in Subsection B or C of
5 this section, if not a multiple of one dollar (\$1.00), shall be
6 rounded to the next lower multiple of one dollar (\$1.00).

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

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

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1 redetermination is issued, the appeal, unless withdrawn, shall
2 be treated as an appeal from redetermination."

3 Section 2. Section 51-1-11 NMSA 1978 (being Laws 2003,
4 Chapter 47, Section 11, as amended by Laws 2005, Chapter 3,
5 Section 4 and further amended by Laws 2005, Chapter 255,
6 Section 2) is amended to read:

7 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

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

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

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1 individual who:

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

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

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

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

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

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

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

4 (2) is enrolled in approved training or is
5 attending school on a full-time basis; or

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

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

16 F. ~~An employer's rate shall not be varied from the~~
17 ~~standard rate for any calendar year unless, as of the~~
18 ~~computation date for that year, the employer's account has been~~
19 ~~chargeable with benefits throughout the preceding thirty-six~~
20 ~~months, except that:~~

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

23 ~~(2) beginning January 1, 2005, any employing~~
24 ~~unit that becomes an employer subject to the payment of~~
25 ~~contributions under the Unemployment Compensation Law or has~~

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1 ~~been an employer subject to the payment of contributions at a~~
2 ~~standard rate of two percent through December 31, 2004, shall~~
3 ~~be subject to the payment of contributions at the reduced rate~~
4 ~~of two percent until, as of the computation date of a~~
5 ~~particular year, the employer's account has been chargeable~~
6 ~~with benefits throughout the preceding thirty-six months;~~

7 (3) ~~any]~~

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

21 (1) an individual, type of organization or
22 employing unit that acquires all or part of the trade or
23 business of another employing unit, pursuant to Paragraphs (2)
24 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
25 a [reduced] rate of contribution less than two percent shall be

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1 entitled to the transfer of the reduced rate to the extent
2 permitted under Subsection H of this section;

3 ~~[(4)]~~ (2) an employer that, at the time of
4 establishing an account, is in business in another state or
5 states and that is not currently doing business in New Mexico
6 may elect, pursuant to Paragraph ~~[(5)]~~ (3) of this subsection,
7 to receive a beginning contribution rate of two percent or a
8 contribution rate based on the current contribution rate
9 schedule in Paragraph (4) of Subsection I of this section,
10 whichever is lower, if:

11 (a) the employer has been in operation
12 in the other state or states for at least three years
13 immediately preceding the date of becoming a liable employer in
14 New Mexico, throughout which an individual in the employer's
15 employ could have received benefits if eligible; and

16 (b) the employer provides the
17 authenticated account history as defined by rule of the
18 secretary from information accumulated from operations in the
19 other state or all the other states to compute a current New
20 Mexico rate; and

21 ~~[(5)]~~ (3) the election authorized in Paragraph
22 ~~[(4)]~~ (2) of this subsection shall be made in writing within
23 thirty days after receiving notice of New Mexico liability and,
24 if not made timely, a two percent rate will be assigned; if the
25 election is made timely, the employer's account will receive

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1 the lesser of the computed rate determined by the condition of
2 the account for the computation date immediately preceding the
3 New Mexico liable date, or ~~[the reduced rate of]~~ two percent;
4 rates for subsequent years will be determined by the condition
5 of the account for the computation date.

6 G. ~~[The secretary shall, for the year 1942 and for~~
7 ~~each calendar year thereafter, classify employers in accordance~~
8 ~~with their actual experience in the payment of contributions~~
9 ~~and with respect to benefits charged against their accounts,~~
10 ~~with a view of fixing such contribution rates as will reflect~~
11 ~~such benefit experience. An employer's rate for any calendar~~
12 ~~year shall be determined on the basis of the employer's record~~
13 ~~and the condition of the fund as of the computation date for~~
14 ~~such calendar year.]~~ An employer may make voluntary payments in
15 addition to the contributions required under the Unemployment
16 Compensation Law, which shall be credited to the employer's
17 account in accordance with department rule. The voluntary
18 payments shall be included in the employer's account as of the
19 employer's most recent computation date if they are made on or
20 before the following March 1. Voluntary payments when accepted
21 from an employer shall not be refunded in whole or in part.

22 H. In the case of a transfer of an employing
23 enterprise, notwithstanding any other provision of law, the
24 experience history of the transferred enterprise ~~[as provided~~
25 ~~in Subsection G of this section]~~ shall be transferred from the

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1 predecessor employer to the successor under the following
2 conditions and in accordance with the applicable rules of the
3 secretary:

4 (1) as used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (a) the cost of acquiring the business;

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

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

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

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

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

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

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

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

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

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

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

7 I. For each calendar year, ~~[adjustments of~~
8 ~~contribution rates below the standard or reduced rate and~~
9 ~~measures designed to protect the fund are provided in~~
10 ~~Paragraphs (1) through (4) of this subsection]~~ if, as of the
11 computation date for that year, an employer's account has been
12 chargeable with benefits throughout the preceding thirty-six
13 months, the contribution rate for that employer shall be
14 determined as follows:

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

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1 matching the employer's reserve as shown in the reserve column
2 with the corresponding rate in the rate column of the
3 applicable rate schedule of the table provided in Paragraph (4)
4 or (5) of this subsection;

5 (2) for each calendar year after 2010, except
6 as otherwise provided, each employer's rate [~~for each calendar~~
7 ~~year commencing January 1, 1979 or thereafter~~] shall be the
8 corresponding rate in:

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

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

18 (c) Schedule 2 of the table provided in
19 Paragraph (4) of this subsection if the fund equals less than
20 [~~three and four-tenths~~] one and seven-tenths percent but not
21 less than [~~two and seven-tenths~~] one and three-tenths percent
22 of the total payrolls;

23 (d) Schedule 3 of the table provided in
24 Paragraph (4) of this subsection if the fund equals less than
25 [~~two and seven-tenths~~] one and three-tenths percent [~~and~~] but

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1 not less than [~~two~~] one percent of the total payrolls;

2 (e) Schedule 4 of the table provided in
3 Paragraph (4) of this subsection if the fund equals less than
4 [~~two~~] one percent [~~and~~] but not less than [~~one and one-half~~]
5 seven-tenths percent of the total payrolls;

6 (f) Schedule 5 of the table provided in
7 Paragraph (4) of this subsection if the fund equals less than
8 [~~one and one-half~~] seven-tenths percent [~~and~~] but not less than
9 [~~one~~] three-tenths percent of the total payrolls; or

10 (g) Schedule 6 of the table provided in
11 Paragraph (4) of this subsection if the fund equals [~~one~~] less
12 than three-tenths percent of the total payrolls;

13 (3) as used in this section:

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

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

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

25 (d) "computation date" for each calendar

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

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

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

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

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

14 (5) from July 1, 2007 through December 31,
15 2010, each employer making contributions pursuant to this
16 subsection shall make a contribution at the rate specified in
17 contribution schedule A and a contribution at the rate
18 specified in contribution schedule B for the employer's
19 reserve for each of the following periods. Contributions made
20 pursuant to contribution schedule A shall be deposited in the
21 unemployment compensation fund and contributions made pursuant
22 to contribution schedule B shall be deposited in the state
23 unemployment trust fund:

24 (a) for the period July 1, 2007 through
25 December 31, 2008:

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1	<u>Employer</u>	<u>Contribution</u>	<u>Contribution</u>
2	<u>Reserve</u>	<u>Schedule A</u>	<u>Schedule B</u>
3	<u>10.0% and over</u>	<u>0.015%</u>	<u>0.015%</u>
4	<u>9.0%-9.9%</u>	<u>0.03%</u>	<u>0.03%</u>
5	<u>8.0%-8.9%</u>	<u>0.045%</u>	<u>0.045%</u>
6	<u>7.0%-7.9%</u>	<u>0.05%</u>	<u>0.05%</u>
7	<u>6.0%-6.9%</u>	<u>0.15%</u>	<u>0.15%</u>
8	<u>5.0%-5.9%</u>	<u>0.25%</u>	<u>0.25%</u>
9	<u>4.0%-4.9%</u>	<u>0.4%</u>	<u>0.4%</u>
10	<u>3.0%-3.9%</u>	<u>0.6%</u>	<u>0.6%</u>
11	<u>2.0%-2.9%</u>	<u>0.75%</u>	<u>0.75%</u>
12	<u>1.0%-1.9%</u>	<u>0.9%</u>	<u>0.9%</u>
13	<u>0.9%-0.0%</u>	<u>1.2%</u>	<u>1.2%</u>
14	<u>(-0.1%)-(-0.5%)</u>	<u>1.65%</u>	<u>1.65%</u>
15	<u>(-0.5%)-(-1.0%)</u>	<u>2.1%</u>	<u>2.1%</u>
16	<u>(-1.0%)-(-2.0%)</u>	<u>2.5%</u>	<u>2.5%</u>
17	<u>Under (-2.0%)</u>	<u>5.4%</u>	<u>0.0%</u>

18 (b) for the period January 1, 2009
19 through December 31, 2009:

20	<u>Employer</u>	<u>Contribution</u>	<u>Contribution</u>
21	<u>Reserve</u>	<u>Schedule A</u>	<u>Schedule B</u>
22	<u>10.0% and over</u>	<u>0.018%</u>	<u>0.012%</u>
23	<u>9.0%-9.9%</u>	<u>0.036%</u>	<u>0.024%</u>
24	<u>8.0%-8.9%</u>	<u>0.054%</u>	<u>0.036%</u>
25	<u>7.0%-7.9%</u>	<u>0.06%</u>	<u>0.04%</u>

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1	<u>6.0%-6.9%</u>	<u>0.18%</u>	<u>0.12%</u>
2	<u>5.0%-5.9%</u>	<u>0.3%</u>	<u>0.2%</u>
3	<u>4.0%-4.9%</u>	<u>0.48%</u>	<u>0.32%</u>
4	<u>3.0%-3.9%</u>	<u>0.72%</u>	<u>0.48%</u>
5	<u>2.0%-2.9%</u>	<u>0.9%</u>	<u>0.6%</u>
6	<u>1.0%-1.9%</u>	<u>1.08%</u>	<u>0.72%</u>
7	<u>0.9%-0.0%</u>	<u>1.44%</u>	<u>0.96%</u>
8	<u>(-0.1%)-(-0.5%)</u>	<u>1.98%</u>	<u>1.32%</u>
9	<u>(-0.5%)-(-1.0%)</u>	<u>2.52%</u>	<u>1.68%</u>
10	<u>(-1.0%)-(-2.0%)</u>	<u>3.0%</u>	<u>2.0%</u>
11	<u>Under (-2.0%)</u>	<u>5.4%</u>	<u>0.0%</u>

(c) for the period January 1, 2010

through December 31, 2010:

<u>Employer</u>	<u>Contribution</u>	<u>Contribution</u>
<u>Reserve</u>	<u>Schedule A</u>	<u>Schedule B</u>
<u>10.0% and over</u>	<u>0.0195%</u>	<u>0.0105%</u>
<u>9.0%-9.9%</u>	<u>0.039%</u>	<u>0.021%</u>
<u>8.0%-8.9%</u>	<u>0.0585%</u>	<u>0.0315%</u>
<u>7.0%-7.9%</u>	<u>0.065%</u>	<u>0.035%</u>
<u>6.0%-6.9%</u>	<u>0.195%</u>	<u>0.105%</u>
<u>5.0%-5.9%</u>	<u>0.325%</u>	<u>0.175%</u>
<u>4.0%-4.9%</u>	<u>0.52%</u>	<u>0.28%</u>
<u>3.0%-3.9%</u>	<u>0.78%</u>	<u>0.42%</u>
<u>2.0%-2.9%</u>	<u>0.975%</u>	<u>0.525%</u>
<u>1.0%-1.9%</u>	<u>1.17%</u>	<u>0.63%</u>

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1	<u>0.9%-0.0%</u>	<u>1.56%</u>	<u>0.84%</u>
2	<u>(-0.1%)-(-0.5%)</u>	<u>2.145%</u>	<u>1.155%</u>
3	<u>(-0.5%)-(-1.0%)</u>	<u>2.73%</u>	<u>1.47%</u>
4	<u>(-1.0%)-(-2.0%)</u>	<u>3.25%</u>	<u>1.75%</u>
5	<u>Under (-2.0%)</u>	<u>5.4%</u>	<u>0.0%</u>

6 J. The division shall promptly notify each
7 employer of the employer's rate of contributions as determined
8 for any calendar year pursuant to this section. Such
9 notification shall include the amount determined as the
10 employer's average payroll, the total of all of the employer's
11 contributions paid on the employer's behalf and credited to
12 the employer's account for all past years and total benefits
13 charged to the employer's account for all such years. Such
14 determination shall become conclusive and binding upon the
15 employer unless, within thirty days after the mailing of
16 notice thereof to the employer's last known address or in the
17 absence of mailing, within thirty days after the delivery of
18 such notice, the employer files an application for review and
19 redetermination, setting forth the employer's reason therefor.
20 The employer shall be granted an opportunity for a fair
21 hearing in accordance with rules prescribed by the secretary,
22 but an employer shall not have standing, in any proceeding
23 involving the employer's rate of contributions or contribution
24 liability, to contest the chargeability to the employer's
25 account of any benefits paid in accordance with a

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

16 K. The division shall provide each contributing
17 employer, within ninety days of the end of each calendar
18 quarter, a written determination of benefits chargeable to the
19 employer's account. Such determination shall become
20 conclusive and binding upon the employer for all purposes
21 unless, within thirty days after the mailing of the
22 determination to the employer's last known address or in the
23 absence of mailing, within thirty days after the delivery of
24 such determination, the employer files an application for
25 review and redetermination, setting forth the employer's

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

22 L. The contributions, together with interest and
23 penalties thereon imposed by the Unemployment Compensation
24 Law, shall not be assessed nor shall action to collect the
25 same be commenced more than four years after a report showing

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1 the amount of the contributions was due. In the case of a
2 false or fraudulent contribution report with intent to evade
3 contributions or a willful failure to file a report of all
4 contributions due, the contributions, together with interest
5 and penalties thereon, may be assessed or an action to collect
6 such contributions may be begun at any time. Before the
7 expiration of such period of limitation, the employer and the
8 secretary may agree in writing to an extension thereof and the
9 period so agreed on may be extended by subsequent agreements
10 in writing. In any case where the assessment has been made
11 and action to collect has been commenced within four years of
12 the due date of any contribution, interest or penalty,
13 including the filing of a warrant of lien by the secretary
14 pursuant to Section 51-1-36 NMSA 1978, such action shall not
15 be subject to any period of limitation.

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

25 N. Any interest required to be paid on advances to

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

7 Section 3. Section 51-1-19 NMSA 1978 (being Laws 1936
8 (S.S.), Chapter 1, Section 9, as amended) is amended to read:

9 "51-1-19. UNEMPLOYMENT COMPENSATION FUND.--

10 A. There is hereby established as a special fund,
11 separate and apart from all public money, or funds of this
12 state, an "unemployment compensation fund", which shall be
13 administered by the department exclusively for the purposes of
14 this section. The fund shall consist of:

15 (1) except for contributions deposited into
16 the state unemployment trust fund pursuant to contribution
17 schedule B in Paragraph (5) of Subsection I of Section 51-1-11
18 NMSA 1978 and Section 51-1-19.1 NMSA 1978, all contributions
19 collected and payments in lieu of contributions collected or
20 due pursuant to the Unemployment Compensation Law;

21 (2) interest earned upon any money in the
22 fund;

23 (3) any property or securities acquired
24 through the use of money belonging to the fund;

25 (4) all earnings of such property or

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1 securities;

2 (5) all money received from the federal
3 unemployment account in the unemployment trust fund in
4 accordance with Title 12 of the Social Security Act, as
5 amended;

6 (6) all money credited to this state's
7 account in the unemployment trust fund pursuant to Section 903
8 of the Social Security Act, as amended;

9 (7) all money received or due from the
10 federal government as reimbursements pursuant to Section 204
11 of the Federal-State Extended Unemployment Compensation Act of
12 1970; and

13 (8) all money received for the fund from any
14 other source. All money in the fund shall be mingled and
15 undivided.

16 B. The state treasurer shall be the treasurer and
17 custodian of the fund and shall administer such fund in
18 accordance with the directions of the department and shall
19 issue [~~his~~] checks upon it in accordance with such regulations
20 as the secretary may prescribe. [~~He~~] The state treasurer
21 shall maintain, within the fund, three separate accounts:

- 22 (1) a clearing account;
23 (2) an unemployment trust fund account; and
24 (3) a benefit account.

25 C. All money payable to the fund upon receipt

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1 thereof by the department shall be forwarded to the treasurer,
2 who shall immediately deposit it in the clearing account.

3 Refunds payable pursuant to Sections 51-1-36 and 51-1-42 NMSA
4 1978 shall be paid from the clearing account or the benefit
5 account upon checks issued by the treasurer under the
6 direction of the department. After clearance thereof, all
7 money in the clearing account, except as herein otherwise
8 provided, shall be immediately deposited with the secretary of
9 the treasury of the United States to the credit of the account
10 of this state in the unemployment trust fund, established and
11 maintained pursuant to Section 904 of the act of congress
12 known as the Social Security Act, as amended (42 U.S.C.
13 Section 1104), any provisions of law in this state relating to
14 the deposits, administration, release or disbursements of
15 money in the possession or custody of this state to the
16 contrary notwithstanding. The benefit account shall consist
17 of all money requisitioned from this state's account in the
18 unemployment trust fund. Except as herein otherwise provided,
19 money in the clearing and benefit accounts may be deposited by
20 the treasurer, under the direction of the secretary, in any
21 bank or public depository in which general funds of the state
22 may be deposited, but no public deposit insurance charge or
23 premium shall be paid out of the fund. Money in the clearing
24 and benefit accounts shall not be commingled with other state
25 funds but shall be maintained in separate accounts on the

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1 books of the depository.

2 D. All of the money not deposited in the treasury
3 of the United States shall be subject to the general laws
4 applicable to the deposit of public money in the state; and
5 collateral pledged for this purpose shall be kept separate and
6 distinct from any collateral pledged to secure other funds of
7 this state.

8 E. The state treasurer shall be liable on [~~his~~]
9 the state treasurer's official bond for the faithful
10 performance of [~~his~~] duties in connection with the
11 unemployment compensation fund provided for under this
12 section. The liability on the official bond of the state
13 treasurer shall be effective immediately upon the enactment of
14 this provision, and such liability shall exist in addition to
15 the liability of any separate bond existent on the effective
16 date of this provision or that may be given in the future.
17 All sums recovered for losses sustained by the fund shall be
18 deposited therein.

19 F. All money in the clearing account established
20 under this section is hereby appropriated for the purpose of
21 making refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA
22 1978, and all money in the clearing account not needed for the
23 purpose of making the refunds shall be immediately paid to the
24 secretary of the treasury of the United States to the credit
25 of the account of this state in the unemployment trust fund,

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1 and the money in the unemployment trust fund is hereby
2 appropriated for the purposes of this section.

3 G. Money shall be requisitioned from this state's
4 account in the unemployment trust fund solely for the payment
5 of benefits and for the payment of refunds pursuant to
6 Sections 51-1-36 and 51-1-42 NMSA 1978 in accordance with
7 regulations prescribed by the secretary, except that money
8 credited to this state's account pursuant to Section 903 of
9 the Social Security Act, as amended, shall be used exclusively
10 as provided in Subsection H of this section. The secretary
11 shall, from time to time, requisition from the unemployment
12 trust fund such amounts not exceeding the amounts standing to
13 this state's account therein, as ~~[he]~~ the secretary deems
14 necessary for the payment of such benefits and refunds for a
15 reasonable future period. Upon receipt thereof, the treasurer
16 shall deposit such money in the benefit account and shall
17 issue ~~[his]~~ checks for the payment of benefits solely from
18 such benefit account. Expenditures of such money in the
19 benefit account and refunds from the benefit account or the
20 clearing account shall not be subject to any provisions of law
21 requiring specific appropriations or other formal release by
22 state officers of money in their custody. All money shall be
23 withdrawn from the fund only upon a warrant issued by the
24 department or its duly authorized agent upon the treasurer,
25 and the treasurer upon receipt of such warrants shall issue

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1 [his] a check against the fund in accordance with the warrant
2 of the secretary. Any balance of money requisitioned from the
3 unemployment trust fund that remains unclaimed or unpaid in
4 the benefit account after the expiration of the period for
5 which such sums were requisitioned shall either be deducted
6 from estimates for, and may be utilized for, the payment of
7 benefits and refunds during succeeding periods, or in the
8 discretion of the secretary, shall be redeposited with the
9 secretary of the treasury of the United States, to the credit
10 of this state's account in the unemployment trust fund, as
11 provided in Subsection C of this section. All money in the
12 benefit account provided for hereinabove is hereby
13 appropriated for the payment of benefits and refunds as
14 provided herein.

15 H. Money credited to the account of this state in
16 the unemployment trust fund by the secretary of the treasury
17 of the United States pursuant to Section 903 of the Social
18 Security Act may be requisitioned from this state's account or
19 used only for:

- 20 (1) the payment of benefits pursuant to
21 Subsection G of this section; and
22 (2) the payment of expenses incurred for the
23 administration of the Unemployment Compensation Law and the
24 federal Wagner-Peyser Act; provided that any money
25 requisitioned and used for the payment of expenses incurred

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1 for the administration of the Unemployment Compensation Law
2 and the federal Wagner-Peyser Act must be authorized by the
3 enactment of a specific appropriation by the legislature that:

4 (a) specifies the purpose for which
5 such money is appropriated and the amounts appropriated
6 therefor;

7 (b) limits the period within which such
8 money may be obligated to a period ending not more than two
9 years after the date of the enactment of the appropriation
10 law, except for amounts distributed to the state of New Mexico
11 on March 13, 2002 pursuant to Section 209 of the federal
12 Temporary Extended Unemployment Compensation Act of 2002;

13 (c) limits the amount that may be
14 obligated to an amount [~~which~~] that does not exceed the amount
15 by which [~~1~~] the aggregate of the amounts credited to the
16 account of this state pursuant to Section 903 of the Social
17 Security Act exceeds [~~2~~] the aggregate of the amounts used by
18 the state pursuant to this subsection and charged against the
19 amounts transferred to the account of this state; and

20 (d) notwithstanding the provisions of
21 Paragraph (1) of this subsection, money credited with respect
22 to federal fiscal years 1999, 2000 and 2001 shall be used only
23 for the administration of the Unemployment Compensation Law.

24 I. Amounts credited to this state's account in the
25 unemployment trust fund under Section 903 of the Social

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1 Security Act that are obligated for administration shall be
2 charged against transferred amounts at the exact time the
3 obligation is entered into. The appropriation, obligation and
4 expenditure or other disposition of money appropriated under
5 Subsection H of this section shall be accounted for in
6 accordance with standards established by the United States
7 secretary of labor.

8 J. Money appropriated under Subsection H of this
9 section for payment of expenses of administration shall be
10 requisitioned as needed for payment of the obligations
11 incurred under such appropriations and, upon requisition,
12 shall be deposited in the unemployment compensation
13 administration fund but, until expended, shall remain a part
14 of the unemployment compensation fund for use only in
15 accordance with the conditions specified in Subsection H of
16 this section, notwithstanding any provision of Section 51-1-34
17 NMSA 1978. Any money so deposited that will not be expended
18 shall be returned promptly to the account of the state in the
19 unemployment trust fund.

20 K. The provisions of Subsections A through J of
21 this section to the extent that they relate to the
22 unemployment trust fund, shall be operative only so long as
23 such unemployment trust fund continues to exist and so long as
24 the secretary of the treasury of the United States continues
25 to maintain for this state a separate book account of all

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1 funds deposited therein by the state for benefit purposes,
2 together with this state's proportionate share of the earnings
3 of such unemployment trust fund from which no other state is
4 permitted to make withdrawals. If and when such unemployment
5 trust fund ceases to exist, or such separate book account is
6 no longer maintained, all money, properties or securities
7 therein belonging to the unemployment compensation fund of
8 this state shall be transferred to the treasurer of the
9 unemployment compensation fund, who shall hold, invest,
10 transfer, sell, deposit and release such money, properties or
11 securities in a manner approved by the secretary, in
12 accordance with the provisions of this section; provided that
13 such money shall be invested in the following readily
14 marketable classes of securities; bonds or other interest-
15 bearing obligations of the United States and of the state; and
16 provided further that such investment shall at all times be so
17 made that all the assets of the fund shall always be readily
18 convertible into cash when needed for the payment of benefits.
19 The treasurer shall dispose of securities or other properties
20 belonging to the unemployment compensation fund only under the
21 direction of the secretary."

22 Section 4. A new section of the Unemployment
23 Compensation Law, Section 51-1-19.1 NMSA 1978, is enacted to
24 read:

25 "51-1-19.1. [NEW MATERIAL] STATE UNEMPLOYMENT TRUST

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1 FUND.--

2 A. The "state unemployment trust fund" is created
3 in the state treasury. The fund shall consist of money
4 deposited into the fund pursuant to Subsection B of this
5 section. Money in the fund shall be invested by the state
6 investment officer as land grant permanent funds are invested
7 pursuant to Chapter 6, Article 8 NMSA 1978. Income from
8 investment of the fund shall be credited to the fund. Except
9 as provided in this section, money in the fund shall not
10 revert or be transferred to any other fund and shall not be
11 expended for any purpose.

12 B. Notwithstanding any requirement of the
13 Unemployment Compensation Law to deposit all contributions
14 into the unemployment compensation fund, contributions made
15 pursuant to contribution schedule B of Paragraph (5) of
16 Subsection I of Section 51-1-11 NMSA 1978 shall be deposited
17 in the state unemployment trust fund.

18 C. Earnings from the investment of the fund are
19 subject to appropriation by the legislature to the department
20 solely for the purpose of administering the unemployment
21 insurance and employment security programs.

22 D. Upon a determination by the secretary that the
23 average high cost multiple of the unemployment compensation
24 fund is less than two-tenths percent, the state treasurer
25 shall transfer the amount necessary, as determined by the

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1 secretary, from the state unemployment trust fund to the
2 unemployment compensation fund to maintain the average high
3 cost multiple of the unemployment compensation fund at a value
4 greater than two-tenths percent.

5 E. As used in this section:

6 (1) "average high cost multiple" means the
7 calendar year reserve ratio divided by the average high cost
8 rate;

9 (2) "average high cost rate" means the
10 average of the three highest annual benefit cost rates in the
11 last twenty years or in the last three recessionary periods,
12 whichever is longer;

13 (3) "benefit cost rate" means the benefits
14 paid, including the state's share of extended benefits but
15 excluding reimbursable benefits, as a percent of total
16 payrolls; and

17 (4) "calendar year reserve ratio" means the
18 current balance of the unemployment compensation fund as a
19 percentage of total payrolls."

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

22 "51-1-42. DEFINITIONS.--As used in the Unemployment
23 Compensation Law:

24 A. "base period" means the first four of the last
25 five completed calendar quarters immediately preceding the

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

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

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

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

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

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

24 E. "employer" includes:

25 (1) an employing unit that:

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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 a
7 day in each of twenty different calendar weeks during either
8 the current or the preceding calendar year, and irrespective
9 of whether the same individual was in employment in each such
10 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 wages
18 or remuneration paid to individuals performing services in
19 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

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1 for services other than agricultural services;

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

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

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

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

24 (b) that, as a condition for approval
25 of the Unemployment Compensation Law for full tax credit

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1 against the tax imposed by the Federal Unemployment Tax Act,
2 is required, pursuant to that act, to be an "employer" under
3 the Unemployment Compensation Law;

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

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

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

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

20 F. "employment":

21 (1) means any service, including service in
22 interstate commerce, performed for wages or under any contract
23 of hire, written or oral, express or implied;

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

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1 (a) the service is primarily localized
2 in this state with services performed outside the state being
3 only incidental thereto; or

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

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

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

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

24 (5) means services performed by an
25 individual for an employer for wages or other remuneration

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1 unless and until it is established by a preponderance of
2 evidence that:

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

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

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

16 (6) means service performed after December
17 31, 1977 by an individual in agricultural labor as defined in
18 Subsection Q of this section if:

19 (a) the service is performed for an
20 employing unit that: 1) paid remuneration in cash of twenty
21 thousand dollars (\$20,000) or more to individuals in that
22 employment during any calendar quarter in either the current
23 or the preceding calendar year; or 2) employed in agricultural
24 labor ten or more individuals for some portion of a day in
25 each of twenty different calendar weeks in either the current

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1 or preceding calendar year, whether or not the weeks were
2 consecutive, and regardless of whether the individuals were
3 employed at the same time;

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

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

21 (7) means service performed after December
22 31, 1977 by an individual in domestic service in a private
23 home, local college club or local chapter of a college
24 fraternity or sorority for a person or organization that paid
25 cash remuneration of one thousand dollars (\$1,000) in any

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1 calendar quarter in the current or preceding calendar year to
2 individuals performing such services;

3 (8) means service performed after December
4 31, 1971 by an individual in the employ of a religious,
5 charitable, educational or other organization but only if the
6 following conditions are met:

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

10 (b) the organization meets the
11 requirements of "employer" as provided in Subparagraph (a) of
12 Paragraph (1) of Subsection E of this section;

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

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

22 (b) the employer has no place of
23 business in the United States, but: 1) the employer is an
24 individual who is a resident of this state; 2) the employer is
25 a corporation organized under the laws of this state; or 3)

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1 the employer is a partnership or a trust and the number of the
2 partners or trustees who are residents of this state is
3 greater than the number who are residents of any one other
4 state; or

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

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

20 (10) means, notwithstanding any other
21 provisions of this subsection, service with respect to which a
22 tax is required to be paid under any federal law imposing a
23 tax against which credit may be taken for contributions
24 required to be paid into a state unemployment fund or which as
25 a condition for full tax credit against the tax imposed by the

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1 Federal Unemployment Tax Act is required to be covered under
2 the Unemployment Compensation Law;

3 (11) means service performed in the employ
4 of an Indian tribe if:

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

8 (b) the service is not otherwise
9 excluded from employment pursuant to the Unemployment
10 Compensation Law;

11 (12) does not include:

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

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

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

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

23 (e) service performed in a facility
24 conducted for the purpose of carrying out a program of
25 rehabilitation for individuals whose earning capacity is

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1 impaired by age or physical or mental deficiency or injury or
2 providing remunerative work for individuals who because of
3 their impaired physical or mental capacity cannot be readily
4 absorbed in the competitive labor market, by an individual
5 receiving that rehabilitation or remunerative work;

6 (f) service with respect to which
7 unemployment compensation is payable under an unemployment
8 compensation system established by an act of congress;

9 (g) service performed in the employ of
10 a foreign government, including service as a consular or other
11 officer or employee or a nondiplomatic representative;

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

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

22 (j) service covered by an election duly
23 approved by the agency charged with the administration of any
24 other state or federal unemployment compensation law, in
25 accordance with an arrangement pursuant to Paragraph (1) of

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1 Subsection A of Section 51-1-50 NMSA 1978 during the effective
2 period of the election;

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

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

20 (m) service performed in the employ of
21 a hospital, if the service is performed by a patient of the
22 hospital, or services performed by an inmate of a custodial or
23 penal institution for any employer;

24 (n) service performed by real estate
25 [~~salesmen~~] salespersons for others when the services are

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1 performed for remuneration solely by way of commission;

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

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

11 (q) service performed for a private,
12 for-profit person or entity by an individual as a product
13 demonstrator or product merchandiser if the service is
14 performed pursuant to a written contract between that
15 individual and a person or entity whose principal business is
16 obtaining the services of product demonstrators and product
17 merchandisers for third parties, for demonstration and
18 merchandising purposes and the individual: 1) is compensated
19 for each job or the compensation is based on factors related
20 to the work performed; 2) provides the equipment used to
21 perform the service, unless special equipment is required and
22 provided by the manufacturer through an agency; 3) is
23 responsible for completion of a specific job and for any
24 failure to complete the job; 4) pays all expenses, and the
25 opportunity for profit or loss rests solely with the

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1 individual; and 5) is responsible for operating costs, fuel,
2 repairs and motor vehicle insurance. For the purpose of this
3 subparagraph, "product demonstrator" means an individual who,
4 on a temporary, part-time basis, demonstrates or gives away
5 samples of a food or other product as part of an advertising
6 or sales promotion for the product and who is not otherwise
7 employed directly by the manufacturer, distributor or
8 retailer, and "product merchandiser" means an individual who,
9 on a temporary, part-time basis builds or resets a product
10 display and who is not otherwise directly employed by the
11 manufacturer, distributor or retailer; or

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

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1 with ownership of minerals; managing rights or obligations
2 derived from ownership of interests and minerals; or utilizing
3 or pooling of interest in minerals; and

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

22 G. "employment office" means a free public
23 employment office, or branch thereof, operated by this state
24 or maintained as a part of a state-controlled system of public
25 employment offices;

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1 H. "fund" means the unemployment compensation fund
2 established by the Unemployment Compensation Law to which all
3 contributions and payments in lieu of contributions required
4 under the Unemployment Compensation Law and from which all
5 benefits provided under the Unemployment Compensation Law
6 shall be paid; provided that, for the purposes of paying
7 contributions, "fund" may also include the state unemployment
8 trust fund and contributions paid to that fund pursuant to
9 contribution schedule B in Paragraph (5) of Subsection I of
10 Section 51-1-11 NMSA 1978 and Section 51-1-19.1 NMSA 1978;

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

25 J. "state", when used in reference to any state

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1 other than New Mexico, includes, in addition to the states of
2 the United States, the District of Columbia, the commonwealth
3 of Puerto Rico and the Virgin Islands;

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

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

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

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

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

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

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1 the employees of the other person;

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

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

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

13 P. "benefit year" with respect to an individual
14 means the one-year period beginning with the first day of the
15 first week of unemployment with respect to which the
16 individual first files a claim for benefits in accordance with
17 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
18 one-year period beginning with the first day of the first week
19 of unemployment with respect to which the individual next
20 files such a claim for benefits after the termination of the
21 individual's last preceding benefit year; provided that at the
22 time of filing such a claim the individual has been paid the
23 wage required under Paragraph (5) of Subsection A of Section
24 51-1-5 NMSA 1978;

25 Q. "agricultural labor" includes all services

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1 performed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 Section 6. A new section of the Unemployment
10 Compensation Law is enacted to read:

11 "[NEW MATERIAL] ELECTRONIC REPORTING REQUIRED--
12 PENALTIES.--An employer with more than fifty employees at any
13 time during a calendar quarter shall file the quarterly wage
14 and contribution report for that quarter on magnetic or other
15 electronic means pursuant to rules and using a format
16 promulgated by the department. An employer that fails to file
17 a report in the manner required by this section shall pay a
18 penalty of:

19 A. five hundred dollars (\$500) for each violation
20 if the employer had more than fifty but less two hundred fifty
21 employees at any time during the quarter; or

22 B. one thousand dollars (\$1,000) for each
23 violation if the employer had two hundred fifty employees or
24 more at any time during the quarter."

25 Section 7. REPEAL.--Laws 2005, Chapter 3, Sections 6

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1 through 11 and 13 are repealed.

2 Section 8. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2007.

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