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SENATE BILL 788

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO EMPLOYMENT; ENACTING PROVISIONS APPLYING TO INDIAN TRIBES AND THEIR EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAW.

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

Section 1. Section 51-1-2 NMSA 1978 (being Laws 1979, Chapter 280, Section 11, as amended) is amended to read:

"51-1-2. DEFINITIONS. -- As used in the Unemployment Compensation Law:

A. "department" means the labor department;

B. "division" means the employment security division of the labor department, the director of the division or an employee of the division exercising authority lawfully delegated to the employee by the director; and

C. "secretary" means the secretary of labor or an

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1 employee of the department exercising authority lawfully
2 delegated to the employee by the secretary. "

3 Section 2. Section 51-1-42 NMSA 1978 (being Laws 1936
4 (S. S.), Chapter 1, Section 19, as amended by Laws 2000,
5 Chapter 3, Section 4 and also by Laws 2000, Chapter 7, Section
6 4) is amended to read:

7 "51-1-42. DEFINITIONS. --As used in the Unemployment
8 Compensation Law:

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

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

16 C. "contributions" means the money payments
17 required by Section 51-1-9 NMSA 1978 to be made into the fund
18 by an employer on account of having individuals performing
19 services for him;

20 D. "employing unit" means any individual or type
21 of organization, including any partnership, association,
22 cooperative, trust, estate, joint-stock company, agricultural
23 enterprise, insurance company or corporation, whether domestic
24 or foreign, or the receiver, trustee in bankruptcy, trustee or
25 successor thereof, household, fraternity or club, the legal

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1 representative of a deceased person or any state or local
2 government entity to the extent required by law to be covered
3 as an employer, which has in its employ one or more
4 individuals performing services for it within this state. All
5 individuals performing services for any employing unit that
6 maintains two or more separate establishments within this
7 state shall be deemed to be employed by a single employing
8 unit for all the purposes of the Unemployment Compensation
9 Law. Individuals performing services for contractors,
10 subcontractors or agents that are performing work or services
11 for an employing unit, as described in this subsection, which
12 is within the scope of the employing unit's usual trade,
13 occupation, profession or business, shall be deemed to be in
14 the employ of the employing unit for all purposes of the
15 Unemployment Compensation Law unless such contractor,
16 subcontractor or agent is itself an employer within the
17 provisions of Subsection E of this section;

18 E. "employer" includes:

19 (1) any employing unit which:

20 (a) unless otherwise provided in this
21 section, paid for service in employment as defined in
22 Subsection F of this section wages of four hundred fifty
23 dollars (\$450) or more in any calendar quarter in either the
24 current or preceding calendar year or had in employment, as
25 defined in Subsection F of this section, for some portion of a

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1 day in each of twenty different calendar weeks during either
2 the current or the preceding calendar year, and irrespective
3 of whether the same individual was in employment in each such
4 day, at least one individual;

5 (b) for the purposes of Subparagraph
6 (a) of this paragraph, if any week includes both December 31
7 and January 1, the days of that week up to January 1 shall be
8 deemed one calendar week and the days beginning January 1,
9 another such week; and

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

21 (2) any individual or type of organization
22 that acquired the trade or business or substantially all of
23 the assets thereof, of an employing unit that at the time of
24 the acquisition was an employer subject to the Unemployment
25 Compensation Law; provided that where such an acquisition

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1 takes place, the secretary may postpone activating the
2 separate account pursuant to Subsection A of Section 51-1-11
3 NMSA 1978 until such time as the successor employer has
4 employment as defined in Subsection F of this section;

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

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

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

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

23 (5) any employing unit that, having become an
24 employer under Paragraph (1), (2), (3) or (4) of this
25 subsection, has not, under Section 51-1-18 NMSA 1978, ceased

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1 to be an employer subject to the Unemployment Compensation
2 Law;

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

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

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

14 F. "employment" ~~[means]~~:

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

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

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

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

25 1) the base of operations or, if there is no base of

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

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

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

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

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

25 (b) such service is either outside the

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1 usual course of business for which such service is performed
2 or that such service is performed outside of all the places of
3 business of the enterprise for which such service is
4 performed; and

5 (c) such individual is customarily
6 engaged in an independently established trade, occupation,
7 profession or business of the same nature as that involved in
8 the contract of service;

9 (6) means service performed after December
10 31, 1977 by an individual in agricultural labor as defined in
11 Subsection Q of this section if:

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

22 (b) such service is not performed
23 before January 1, 1980 by an individual who is an alien
24 admitted to the United States to perform service in
25 agricultural labor pursuant to Sections 214(c) and 101(15)(H)

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1 of the Immigration and Nationality Act; and

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

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

21 (8) means service performed after December
22 31, 1971 by an individual in the employ of a religious,
23 charitable, educational or other organization but only if the
24 following conditions are met:

25 (a) the service is excluded from

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1 "employment" as defined in the Federal Unemployment Tax Act
2 solely by reason of Section 3306(c)(8) of that act; and

3 (b) the organization meets the
4 requirements of "employer" as provided in Subparagraph (a) of
5 Paragraph (1) of Subsection E of this section;

6 (9) means service of an individual who is a
7 citizen of the United States, performed outside the United
8 States, except in Canada, after December 31, 1971 in the
9 employ of an American employer (other than service that is
10 deemed "employment" under the provisions of Paragraph (2) of
11 this subsection or the parallel provisions of another state's
12 law), if:

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

15 (b) the employer has no place of
16 business in the United States, but: 1) the employer is an
17 individual who is a resident of this state; 2) the employer is
18 a corporation organized under the laws of this state; or 3)
19 the employer is a partnership or a trust and the number of the
20 partners or trustees who are residents of this state is
21 greater than the number who are residents of any one other
22 state; or

23 (c) none of the criteria of
24 Subparagraphs (a) and (b) of this paragraph are met, but the
25 employer has elected coverage in this state or, the employer

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1 having failed to elect coverage in any state, the individual
2 has filed a claim for benefits, based on such service, under
3 the law of this state.

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

13 (10) means, notwithstanding any other
14 provisions of this subsection, service with respect to which a
15 tax is required to be paid under any federal law imposing a
16 tax against which credit may be taken for contributions
17 required to be paid into a state unemployment fund or which as
18 a condition for full tax credit against the tax imposed by the
19 Federal Unemployment Tax Act is required to be covered under
20 the Unemployment Compensation Law; and

21 (11) means service performed in the employ of
22 an Indian tribe if:

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

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

[~~(11)~~—"employment"]

(12) does not include:

(a) service performed in the employ of:

1) a church or convention or association of churches; or 2) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches;

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

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

(d) service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the Unemployment Compensation Law except that to the extent that the congress of the United States shall permit states to require any

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

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

24 (f) service with respect to which
25 unemployment compensation is payable under an unemployment

1 compensation system established by an act of congress;

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

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

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

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

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

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

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

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

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

24 (p) service performed by an individual
25 for a fixed or contract fee officiating at a sporting event

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1 that is conducted by or under the auspices of a nonprofit or
2 governmental entity if that person is not otherwise an
3 employee of the entity conducting the sporting event;

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

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

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

22 [~~(12)~~] (13) for the purposes of this
23 subsection, if the services performed during one-half or more
24 of any pay period by an individual for the person employing
25 him constitute employment, all the services of such individual

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

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

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

24 I. "unemployment" means, with respect to an
25 individual, any week during which he performs no services and

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

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

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

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

21 (1) holds a valid certificate of registration
22 as a crew leader or farm labor contractor under the Migrant
23 and Seasonal Agricultural Worker Protection Act;

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

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

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

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

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

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

19 P. "benefit year" with respect to any individual
20 means the one-year period beginning with the first day of the
21 first week of unemployment with respect to which the
22 individual first files a claim for benefits in accordance with
23 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
24 one-year period beginning with the first day of the first week
25 of unemployment with respect to which the individual next

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1 files such a claim for benefits after the termination of his
2 last preceding benefit year; provided that at the time of
3 filing such a claim the individual has been paid the wages
4 required under Paragraph (5) of Subsection A of Section 51-1-5
5 NMSA 1978;

6 Q. "agricultural labor" includes all services
7 performed:

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

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

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

25 (4) in handling, planting, drying, packing,

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

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

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

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

19 T. "wages" means all remuneration for services,
20 including commissions and bonuses and the cash value of all
21 remuneration in any medium other than cash. The reasonable
22 cash value of remuneration in any medium other than cash shall
23 be established and determined in accordance with regulations
24 prescribed by the secretary; provided that the term "wages"
25 shall not include:

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

22 (2) the amount of any payment with respect to
23 services performed after June 30, 1941 to or on behalf of an
24 individual in its employ under a plan or system established by
25 an employing unit that makes provision for individuals in its

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1 employ generally or for a class or classes of such
2 individuals, including any amount paid by an employing unit
3 for insurance or annuities, or into a fund, to provide for any
4 such payment, on account of:

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

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

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

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

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

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

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

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

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

23 (7) any payment made to, or on behalf of, an
24 employee or his beneficiary under an arrangement to which
25 Section 408(p) of the federal Internal Revenue Code of 1986

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1 applies, other than any elective contributions under Paragraph
2 (2)(A)(i) of that section;

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

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

13 Section 3. A new section of the Unemployment
14 Compensation Law is enacted to read:

15 "[NEW MATERIAL] COVERAGE OF INDIAN TRIBES--
16 CONTRIBUTIONS--TERMS OF COVERAGE. --

17 A. Benefits based on service in employment of an
18 Indian tribe shall be payable in the same amount, on the same
19 terms and subject to the same conditions as benefits payable
20 on the basis of other service in employment for other
21 employers pursuant to the Unemployment Compensation Law.

22 B. An Indian tribe, tribal unit or a subdivision,
23 subsidiary or business enterprise wholly owned by the tribe
24 shall pay contributions in the same manner and under the same
25 conditions as other employers unless it elects to pay into a

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1 state unemployment fund as reimbursement amounts equal to the
2 amounts of benefits attributable to service in the employ of
3 the tribe, unit, subdivision, subsidiary or enterprise, in
4 which case:

5 (1) the tribe shall determine if
6 reimbursement for benefits paid will be elected by the tribe
7 as a whole, by individual tribal units, subdivisions,
8 subsidiaries or enterprises or by a combination of the
9 specified tribal entities;

10 (2) the electing entity shall make the
11 election in the same manner and under the same conditions as
12 provided for a nonprofit organization pursuant to Section
13 51-1-13 NMSA 1978 except that, if an election is made prior to
14 July 1, 2001, the electing entity shall be deemed to have
15 elected to make payments in lieu of contributions for the
16 entire current taxable year in which the election is made;

17 (3) the electing entity shall be billed for
18 the full amount of benefits attributable to service in the
19 employ of the electing entity on the same schedule as other
20 employing units that have elected to make payments in lieu of
21 contributions except that, in calculating the initial payments
22 due pursuant to Subsection B of Section 51-1-13 NMSA 1978 for
23 an electing entity that has made an election prior to July 1,
24 2001, the secretary shall bill the electing entity for the
25 first two calendar quarters of 2001; and

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1 (4) the electing entity shall not be subject
2 to the bonding requirements of Paragraphs (3), (4), (5) and
3 (6) of Subsection C of Section 51-1-13 NMSA 1978.

4 C. If a tribe or a tribal entity making payments
5 on a contributing basis pursuant to Subsection B of this
6 section fails to file a required report or make a required
7 payment pursuant to the Unemployment Compensation Law, the
8 division shall mail a notice of failure to report or payment
9 delinquency to the noncomplying tribe or tribal entity at its
10 last known address as shown in division records. If
11 compliance by filing the report or making the payment is not
12 made within ninety days of the date the notice is mailed, the
13 account of the noncomplying tribe or tribal entity shall be
14 terminated. Notice of the termination shall be mailed to the
15 tribe or tribal entity at its last known address shown in
16 division records. The notice shall be accompanied by a
17 written description of protest rights pursuant to Section
18 51-1-8 NMSA 1978. Termination of an account pursuant to this
19 subsection terminates the tribe or tribal entity's
20 participation as a contributing employer.

21 D. The secretary may reinstate the account of a
22 tribe or tribal entity that loses coverage pursuant to
23 Subsection C of this section if the tribe or the tribal entity
24 files all delinquent reports and pays all contributions,
25 payments in lieu of contributions, interest, penalties,

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1 surcharges and fees that are due and owing.

2 E. The secretary shall notify the federal internal
3 revenue service and the federal department of labor of a
4 termination or reinstatement made pursuant to this section.

5 F. Failure of a tribe or tribal entity to make
6 payments in lieu of contributions, interest, penalties,
7 surcharges and fees within ninety days of the due date for
8 payment will cause the tribe or tribal entity to lose the
9 option to make payments in lieu of contributions for the
10 following tax year unless payment in full is received before
11 January 1 of that year. Having lost that option, a tribe or
12 tribal entity may have it reinstated if, after a period of one
13 year from the termination of the option, the tribe or tribal
14 entity has made all contribution payments and no
15 contributions, payments in lieu of contributions for benefits
16 paid, interest, penalties, surcharges or fees remain
17 outstanding.

18 G. Notices of payment and reporting delinquency to
19 a tribe or a tribal entity shall include an explanation that
20 failure to make full payment within the prescribed time will
21 cause the tribe or the tribal entity to:

22 (1) be liable for taxes pursuant to the
23 Federal Unemployment Tax Act;

24 (2) lose the option to make payments in lieu
25 of contributions; and

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1 (3) lose its status as an employer under the
2 Unemployment Compensation Law and the loss of services in the
3 employ of a tribe or a tribal entity as employment under that
4 law.

5 H. Extended benefits paid that are attributable to
6 service in the employ of an Indian tribe and not reimbursed by
7 the federal government shall be financed in their entirety by
8 the Indian tribe. "

9 Section 4. TEMPORARY PROVISION--TRANSITION. --

10 A. An electing entity that makes an election prior
11 to July 1, 2001 pursuant to Paragraph (2) of Subsection B of
12 Section 3 of this act and makes payments billed pursuant to
13 Paragraph (3) of that subsection shall be deemed to be covered
14 by the provisions of the Unemployment Compensation Law from
15 December 21, 2000.

16 B. No Indian tribe, tribal unit or a subdivision,
17 subsidiary or business enterprise wholly owned by the tribe
18 shall be liable for contributions due prior to December 21,
19 2000 if, before December 31, 2001, the tribe, tribal unit or
20 subdivision, subsidiary or business enterprise pays to the
21 unemployment compensation fund an amount equal to the total
22 benefits actually paid from the fund between January 1, 1997
23 and December 21, 2000 to the employees of that tribe, tribal
24 unit or subdivision, subsidiary or business enterprise.