

AN ACT

RELATING TO ASSET BUILDING FOR WORKING, LOW-INCOME FAMILIES;
AMENDING THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT TO CHANGE THE
NAME OF THE ACT, CHANGE THE ELIGIBILITY REQUIREMENTS,
ESTABLISH CRITERIA FOR PROGRAM ADMINISTRATORS AND INCREASE
ACCOUNTABILITY; CREATING A FUND.

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

Section 1. Section 58-30-1 NMSA 1978 (being Laws 2003,
Chapter 362, Section 1) is amended to read:

"58-30-1. SHORT TITLE.--Chapter 58, Article 30 NMSA
1978 may be cited as the "Family Opportunity Accounts Act"."

Section 2. Section 58-30-2 NMSA 1978 (being Laws 2003,
Chapter 362, Section 2, as amended) is amended to read:

"58-30-2. DEFINITIONS.--As used in the Family
Opportunity Accounts Act:

A. "account owner" means the person in whose name
a family opportunity account is originally established;

B. "allowable use" means a use that complies with
the provisions of the Family Opportunity Accounts Act, or
rules adopted pursuant to that act;

C. "authorized financial institution" means a
financial institution authorized by the office to hold and
manage family opportunity accounts and reserve accounts;

D. "director" means the director of the office;

E. "earned income" means wages from employment, payment in lieu of wages, disability payments, tribal distributions or earnings from self-employment or acquired from the provision of services, goods or property, production of goods, management of property or supervision of services;

F. "eligible individual" means a person who meets the criteria for opening a family opportunity account;

G. "family opportunity account" means an account established and maintained in an authorized financial institution by an eligible individual participating in a family opportunity accounts program pursuant to the provisions of the Family Opportunity Accounts Act;

H. "family opportunity accounts program" means a program approved by the office to establish and administer family opportunity accounts and reserve accounts for eligible individuals and to provide financial training required by the office for account owners;

I. "financial institution" means a bank, bank and trust, savings bank, savings association or credit union authorized to be a trustee of individual retirement accounts as defined by federal law, the deposits of which are insured by the federal deposit insurance corporation or the national credit union administration;

J. "indigent" means an individual who, taking into account the present income and the liquid assets and the

requirement for other basic necessities of life for himself and his dependents, is unable to pay the costs of allowable uses as set forth in the Family Opportunity Accounts Act;

K. "matching funds" means money deposited in a reserve account to match the withdrawals for allowable uses from a family opportunity account according to a proportionate formula that complies with rules adopted by the director;

L. "nonprofit organization" means an instrumentality of the state or a local government or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation pursuant to Section 501(a) of that code;

M. "office" means the office of workforce training and development;

N. "program administrator" means a nonprofit organization or tribe that is selected pursuant to the Family Opportunity Accounts Act to offer a family opportunity accounts program pursuant to a contract with the director;

O. "reserve account" means an account established pursuant to the Family Opportunity Accounts Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner; and

P. "tribe" means an Indian nation, tribe or pueblo

located in whole or in part within New Mexico."

Section 3. Section 58-30-3 NMSA 1978 (being Laws 2003, Chapter 362, Section 3) is amended to read:

"58-30-3. FAMILY OPPORTUNITY ACCOUNTS.--

A. A family opportunity account may be established for an eligible individual as part of a family opportunity accounts program if the written instrument creating the account sets forth the following:

(1) the account owner is an eligible individual according to program requirements at the time the account is established;

(2) the family opportunity account is established and maintained in an authorized financial institution;

(3) deposits to a family opportunity account shall be made in accordance with the rules adopted pursuant to the Family Opportunity Accounts Act;

(4) withdrawals from a family opportunity account shall only be made in accordance with the Family Opportunity Accounts Act and rules adopted pursuant to that act;

(5) the matching amount that will be deposited in the reserve account for each dollar deposited by the account owner in the family opportunity account; and

(6) the financial institution in which a

family opportunity account is held shall not be liable for withdrawals made for uses other than allowable uses.

B. For purposes of 42 USCA 604(h), a family opportunity account shall be deemed to be an individual development account."

Section 4. Section 58-30-4 NMSA 1978 (being Laws 2003, Chapter 362, Section 4) is amended to read:

"58-30-4. ELIGIBLE INDIVIDUALS.--

A. Except as set forth in Subsection B of this section, an eligible individual shall have earned income and shall be:

- (1) eighteen years of age or older;
- (2) a citizen or legal resident of the United States;
- (3) a resident of New Mexico; and
- (4) indigent.

B. A child in foster care is an eligible individual if the child:

- (1) is sixteen years of age or older;
- (2) is indigent;
- (3) is a citizen or legal resident of the United States; and
- (4) is a resident of New Mexico."

Section 5. Section 58-30-5 NMSA 1978 (being Laws 2003, Chapter 362, Section 5, as amended) is amended to read:

"58-30-5. RESPONSIBILITIES OF THE OFFICE.--

A. The office shall adopt rules implementing the provisions of the Family Opportunity Accounts Act.

B. The director shall make an annual report each November to the governor and to the legislative finance committee.

C. The office shall use no more than five percent of the money appropriated to fund the Family Opportunity Accounts Act to administer that act."

Section 6. Section 58-30-6 NMSA 1978 (being Laws 2003, Chapter 362, Section 6, as amended) is amended to read:

"58-30-6. FAMILY OPPORTUNITY ACCOUNTS COUNCIL.--

A. The "family opportunity accounts council" is created. The council shall:

(1) provide oversight of the administration of the Family Opportunity Accounts Act; and

(2) suggest possible changes that benefit account owners or improve the effectiveness of the family opportunity accounts programs throughout the state.

B. The family opportunity accounts council shall meet at least two times in a calendar year to perform its duties.

C. The family opportunity accounts council shall consist of the lieutenant governor or the lieutenant governor's designee and eight members appointed by the

governor to represent the state geographically. The director or the director's designee shall serve as an ex-officio member of the council.

D. Appointed members of the family opportunity accounts council shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for their participation on the council.

E. The office shall provide adequate staff support and administrative services for the family opportunity accounts council."

Section 7. Section 58-30-7 NMSA 1978 (being Laws 2003, Chapter 362, Section 7, as amended) is amended to read:

"58-30-7. ADMINISTRATION OF FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

A. A family opportunity account may be established for an eligible individual; provided that the money deposited in the account is expended for allowable uses for the account owner or the account owner's spouse or dependents unless otherwise approved by the program administrator.

B. A family opportunity accounts program shall be approved and monitored by the director for compliance with applicable law, the Family Opportunity Accounts Act and rules adopted pursuant to that act.

C. The program administrator shall establish a

reserve account sufficient to meet the matching fund commitments made to all account owners participating in the family opportunity accounts program and shall report at least quarterly to each account owner the amount of money available in the reserve account for use by the program administrator to match withdrawals for allowable uses. Notwithstanding any matching commitment otherwise required, the amount of state funds deposited in a reserve account during a calendar year to match deposits from any single account owner shall not exceed the higher of:

- (1) two thousand dollars (\$2,000); or
- (2) an amount determined by rule of the

office.

D. The program administrator shall provide financial education and other necessary training pertinent to allowable uses by account owners, develop partnerships with financial institutions, develop matching funds and manage the operations of a family opportunity account that is established within the program.

E. An eligible individual may open a family opportunity account upon verification by the program administrator that the individual maintains no other family opportunity account.

F. More than one eligible individual per household may hold a family opportunity account.

G. An account owner shall complete a financial education program prior to the withdrawal of money from the account owner's family opportunity account unless written approval is obtained from the program administrator."

Section 8. Section 58-30-8 NMSA 1978 (being Laws 2003, Chapter 362, Section 8) is amended to read:

"58-30-8. ALLOWABLE USES--WITHDRAWALS FROM FAMILY OPPORTUNITY ACCOUNTS--FORFEITURE OF MATCHING FUNDS FROM RESERVE ACCOUNT--LOSS OF ELIGIBLE INDIVIDUAL STATUS.--

A. Allowable uses of the money withdrawn from a family opportunity account are limited to the following:

(1) expenses to attend an approved post-secondary or vocational educational institution, including payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence as defined in rules adopted pursuant to the Family Opportunity Accounts Act that is the first principal residence acquired or constructed by the account owner;

(3) costs of major home improvements or repairs on the home of the account owner;

(4) capitalization or costs to start or expand a business, including capital, plant, equipment, operational and inventory expenses, attorney and accountant

fees and other costs normally associated with starting or expanding a business;

(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner; and

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in a family opportunity account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named beneficiary of the deceased or if the recipient is eligible to maintain the account, the account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

B. Except as provided in Subsection C of this section, if an account owner withdraws money from a family opportunity account for a use other than an allowable use, the account owner forfeits a proportionate amount of matching funds from the reserve account, as set forth in the agreement between the program administrator and the account owner.

C. The program administrator may approve a withdrawal by an account owner from a family opportunity account to be used for a purpose other than an allowable use only for serious emergencies as specified in the rules adopted

by the office. For such an approved withdrawal, the proportionate matching funds in the reserve account shall remain in the reserve account for twelve months following the withdrawal and, if an amount equal to the withdrawn money is redeposited in the family opportunity account within the twelve months, the matching funds shall again be available to match withdrawals for allowable uses.

D. At the request of the account owner and with the written approval of the program administrator, amounts may be withdrawn from the account owner's family opportunity account and deposited in another family opportunity account established for an eligible individual who is the account owner's spouse or dependent."

Section 9. Section 58-30-9 NMSA 1978 (being Laws 2003, Chapter 362, Section 9, as amended) is amended to read:

"58-30-9. APPROVAL OF FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

A. The office shall issue a request for proposals from nonprofit organizations or tribes interested in establishing a family opportunity accounts program. A proposal submitted in response to the request shall:

(1) describe the geographic area to be served and the potential individuals who will be assisted by the program;

(2) state the amount, if any, of requested

distributions of state money from the family opportunity fund;

(3) describe the source and the amount of private or other public funds, if any, that will be used to supplement the requested distributions from the family opportunity fund;

(4) state the amount, not to be less than one dollar (\$1.00), that will be deposited in the reserve account for each dollar deposited in a family opportunity account;

(5) describe the expertise, experience and other qualifications of the proposer and its employees; and

(6) contain such other information as required in the request for proposals and rules of the director.

B. The director shall determine if an interested nonprofit organization or tribe is eligible to be a program administrator, determine the legal sufficiency of submitted proposals, evaluate the proposals and, after consulting with the family opportunity accounts council, select the program administrators.

C. In selecting program administrators, the director shall:

(1) ensure that geographically diverse populations throughout New Mexico will be served by family opportunity accounts programs; and

(2) ensure that a substantial number of family opportunity accounts will serve families in which one or more children are living with their biological or adoptive mother or father, or with their legal guardian.

D. The director shall enter into contracts with the selected program administrators.

E. The director shall approve a family opportunity accounts program submitted by a program administrator before the program establishes family opportunity accounts or reserve accounts or provides services required by the Family Opportunity Accounts Act to eligible individuals.

F. A family opportunity account and a reserve account may be established only in an authorized financial institution.

G. The director shall monitor all family opportunity accounts programs to ensure that family opportunity accounts and reserve accounts are being operated according to the contract provisions, federal law, the provisions of the Family Opportunity Accounts Act and rules adopted pursuant to that act."

Section 10. Section 58-30-10 NMSA 1978 (being Laws 2003, Chapter 362, Section 10, as amended) is amended to read:

"58-30-10. TERMINATION OF FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

A. A family opportunity accounts program shall be

terminated if the:

(1) office determines that the program is not being operated pursuant to the provisions of the contract between the program administrator and the director, the Family Opportunity Accounts Act or rules adopted pursuant to that act;

(2) provider of the program no longer retains its status as a program administrator; or

(3) program administrator chooses to cease providing a family opportunity accounts program.

B. Upon termination of a family opportunity accounts program, the director shall administer the program until a qualified program administrator is selected to administer the program. If, after a reasonable period, the director is unable to identify and certify a program administrator to assume the authority to continue to operate a terminated family opportunity accounts program, money in a reserve account shall be deposited into the family opportunity accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program."

Section 11. Section 58-30-11 NMSA 1978 (being Laws 2003, Chapter 362, Section 11, as amended) is amended to read:

"58-30-11. REPORTING.--A program administrator operating a family opportunity accounts program pursuant to

the Family Opportunity Accounts Act shall report at least annually to the director, as set forth in the rules of the office. Individual account owners shall not be identified in the report. The report shall include:

- A. the number of eligible individuals making contributions to family opportunity accounts;
- B. the total money contributed to each family opportunity account and deposited into each reserve account;
- C. the total money in the aggregate deposited in family opportunity accounts and reserve accounts administered by the family opportunity accounts program;
- D. the amounts withdrawn from family opportunity accounts for either allowable uses or for uses other than allowable uses and the amounts withdrawn from reserve accounts;
- E. the balances remaining in family opportunity accounts and reserve accounts; and
- F. other information requested by the director to monitor the costs and outcomes of the family opportunity accounts program."

Section 12. Section 58-30-12 NMSA 1978 (being Laws 2003, Chapter 362, Section 12) is amended to read:

"58-30-12. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED PROGRAMS.--

- A. Money deposited into a family opportunity

account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners shall be disregarded for the purposes of determining eligibility for benefits and for determining benefit amounts pursuant to the New Mexico Works Act.

B. When determining eligibility for benefits and determining benefit amounts due under the food stamp program and medicaid, the human services department shall, pursuant to the authority granted by 7 USCA 2014 (d) and (g), disregard money deposited into a family opportunity account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners.

C. Money withdrawn from a family opportunity account for a purpose other than an allowable use shall be counted as a resource for purposes of the New Mexico Works Act or medicaid unless the withdrawal is approved by the program administrator and an amount equal to the amount withdrawn is replaced within the twelve-month allowable time period pursuant to Subsection C of Section 58-30-8 NMSA 1978."

Section 13. A new section of the Family Opportunity Accounts Act is enacted to read:

"FUND CREATED.--The "family opportunity fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to

the fund. Income from the fund shall be credited to the fund, and money in the fund shall not be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the office of workforce training and development for the purposes of carrying out the provisions of the Family Opportunity Accounts Act. Expenditures shall be made on warrant of the secretary of finance and administration on vouchers signed by the director of the office of workforce training and development."

Section 14. Section 27-2B-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended) is amended to read:

"27-2B-7. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of federal and state funds and based upon appropriations by the legislature of the available federal temporary assistance for needy families grant made pursuant to the federal act in the following categories:

- (1) cash assistance;
- (2) child care services;
- (3) other services; and
- (4) administrative costs.

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary

assistance for needy families grant made pursuant to the federal act.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) fifty dollars (\$50.00) of collected child support passed through to the participant by the department's child support enforcement program;
- (11) earned income deposited in a family opportunity account by a member of the benefit group or money

received as matching funds for allowable uses by the owner of the family opportunity account pursuant to the Family Opportunity Accounts Act; and

(12) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

(1) gross countable income that belongs to the benefit group must not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) net countable income that belongs to the benefit group must not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

E. Subject to the availability of state and federal funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:

(1) for the first two years of receiving

cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate;

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over thirty-five hours per week and the other works over twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department;

(3) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;

(4) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and at a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(5) costs of self-employment income; and

(6) business expenses.

F. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group."

Section 15. Section 27-2B-8 NMSA 1978 (being Laws 1998, Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8, as amended by Laws 2003, Chapter 311, Section 4 and Laws 2003, Chapter 432, Section 4) is amended to read:

"27-2B-8. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

- (1) two thousand dollars (\$2,000) in nonliquid resources;
- (2) one thousand five hundred dollars (\$1,500) in liquid resources;
- (3) the value of the principal residence of the participant;
- (4) the value of burial plots and funeral contracts for family members;
- (5) family opportunity accounts; and
- (6) the value of work-related equipment up to one thousand dollars (\$1,000).

C. Vehicles owned by the benefit group shall not be considered in the determination of resources attributed to the benefit group."

Section 16. Section 27-2B-10 NMSA 1978 (being Laws

1998, Chapter 8, Section 10 and Laws 1998, Chapter 9, Section 10, as amended) is amended to read:

"27-2B-10. FAMILY OPPORTUNITY ACCOUNTS.--A participant may establish a family opportunity account pursuant to the Family Opportunity Accounts Act."

Section 17. Section 27-2D-6 NMSA 1978 (being Laws 2003, Chapter 317, Section 6) is amended to read:

"27-2D-6. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

- (1) two thousand dollars (\$2,000) in nonliquid resources;
- (2) one thousand five hundred dollars (\$1,500) in liquid resources;
- (3) the value of the principal residence of the recipient;
- (4) the value of burial plots and funeral contracts for family members;
- (5) family opportunity accounts; and
- (6) the value of work-related equipment up to one thousand dollars (\$1,000).

C. Vehicles owned by the benefit group shall not

be considered in the determination of resources attributed to the benefit group."

Section 18. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006._____