

AN ACT

RELATING TO LABOR AND EMPLOYMENT; AMENDING THE MINIMUM WAGE ACT TO CREATE A PREFERENCE FOR CIVIL ACTIONS AND APPEALS BROUGHT TO COLLECT UNPAID OR UNDERPAID WAGES TO BE HEARD BY THE COURT TO THE SAME EXTENT AS CIVIL ACTIONS TO COLLECT UNEMPLOYMENT CONTRIBUTIONS; AMENDING THE UNEMPLOYMENT COMPENSATION LAW TO PROVIDE THAT CIVIL ACTIONS TO COLLECT UNEMPLOYMENT CONTRIBUTIONS SHALL HAVE A PREFERENCE, TO THE SAME EXTENT AS CIVIL ACTIONS AND APPEALS BROUGHT TO COLLECT UNPAID OR UNDERPAID WAGES, TO BE HEARD BY THE COURT.

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

SECTION 1. Section 50-4-26 NMSA 1978 (being Laws 1955, Chapter 200, Section 5, as amended) is amended to read:

"50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES'
REMEDIES.--

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. The director of the labor relations division of the workforce solutions department shall enforce and prosecute violations of the Minimum Wage Act. The director may institute in the name of the state an action in the district court of the county wherein the employer who has failed to

comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein any violation hereof occurs shall aid and assist the director in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

E. The court in any action brought under Subsection D of this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily

incurred in such proceedings.

F. In addition to any remedy or punishment provided pursuant to the Minimum Wage Act, a court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer.

G. Civil actions and appeals of civil actions brought to collect unpaid or underpaid wages, interest and any other amounts due under this section shall be heard by the court at the earliest possible date and shall be entitled to a preference over all other civil actions, to the same extent as civil actions to collect contributions pursuant to Section 51-1-36 NMSA 1978, on the calendar of the court."

SECTION 2. Section 51-1-36 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 14, as amended) is amended to read:

"51-1-36. COLLECTION OF CONTRIBUTIONS.--

A. Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent per month from and after such date until payment is received by the division. Interest collected pursuant to this subsection shall be paid into the employment security department fund.

B. If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount

due shall be collected by civil action in the name of the division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference on the calendar of the court, to the same extent as civil actions and appeals of civil actions brought to collect unpaid or underpaid wages, interest and any other amounts due under Section 50-4-26 NMSA 1978, over all other civil actions except petitions for judicial review under this act and worker's compensation cases arising under Chapter 52, Article 1 NMSA 1978 or in the discretion of the secretary, if any contribution or any portion thereof or any interest or penalty imposed by the Unemployment Compensation Law is not paid within thirty days after the same becomes due, the secretary shall, after due notice and opportunity to be heard in accordance with regulations, issue a warrant under its official seal, directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the person owning the same, found within that county, of the payment of the amount due and an added amount of ten percent of the contribution in addition to any other penalties imposed and costs of executing the warrant, and to return such warrant to the secretary and pay to the secretary the money

collected by virtue thereof, by the time to be specified, not more than thirty days from the date of the warrant. In the event the division does not know the amount of contribution due, and the employer from whom the same is due refuses or fails to make reports showing what the employer or the division claims for the amount of contributions that the division believes to be due, and the division files the warrant for the estimated amount, mailing notice to the employer stating that the division is estimating the amount of contribution due and giving the estimated amount in the notice, the warrant and estimated amount shown shall have the same effect as any other warrant issued under this subsection. If the employer does not make a showing to the satisfaction of the secretary that the estimated amount is incorrect within thirty days after the warrant is filed with the county clerk, then the estimated amount shown in the warrant shall be and become the amount of the contribution due for the period stated in the warrant. The sheriff to whom any warrant, issued under this section, is directed shall, within five days after receipt of the same, file with the county clerk of the sheriff's county a copy thereof, for which the clerk shall make no charge, and thereupon the county clerk shall record the same upon the clerk's records and the day when such copy is filed. Thereupon the amount of the warrant so filed and entered shall become a lien upon all property, real and

personal, of the person against whom it is issued, including choses in action, except negotiable instruments not past due; provided, however, that such lien shall be inferior to all other valid liens, encumbrances, mortgages, judgments and assessments that are filed or placed of record prior to the filing of such warrant. The sheriff or a representative of the division thereupon shall levy upon any property of the taxpayer, including negotiable instruments, and the property so levied on shall be sold in all respects with the like effect, and in the same manner as is prescribed by law with respect to executions against property upon judgments of a court of record, and the remedies of garnishment shall apply. Whenever any property or right to property upon which levy has been made is not sufficient to satisfy the claim for which levy is made, the sheriff or a representative of the division may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom the claim exists, until the amount due from the person is fully paid. The sheriff shall be entitled to the general fees for services in executing the warrant as now allowed by law for like services, to be collected in the same manner as now provided by law for like services. All costs of executing warrants including mileage of the sheriff serving and executing the same and all other costs in connection with the levy,

including advertising or publication costs upon the sale of any property levied upon, shall be collected by the department from the employer from whom contribution is due.

C. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for remuneration of not more than two hundred fifty dollars (\$250) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Code 11 U.S.C. Sec. 101 et seq., contributions then or thereafter due shall be entitled to such priority as is provided in the Federal Bankruptcy Code U.S.C. Title 11, Sec. 507.

D. If, not later than four years after the date on which any contributions or interest thereon are paid, an employing unit that has paid such contributions or interest makes application for an adjustment in connection with subsequent contribution payments or for a refund because such adjustment cannot be made, and the secretary determines that such contributions or interest or any portion was erroneously

collected, the secretary shall allow the employing unit to make an adjustment, without interest, in connection with subsequent contribution payments by the employing unit, or if such adjustment cannot be made, the secretary shall refund the amount, without interest, from the fund to which the amount was deposited. For like cause and within the same period, adjustment or refund may be so made on the secretary's own initiative.

E. Any person, group of individuals, partnership or employing unit that acquires the organization, trade or business or substantially all the assets thereof from an employer shall notify the division in writing by registered mail not later than five days prior to the acquisition. Unless such notice is given, such acquisition shall be void as against the division, if, at the time of the acquisition, any contributions are due and unpaid by the previous employer, and the secretary shall have the right to proceed against such employer either in personam or in rem and the assets so acquired shall be subject to attachment for such debt."=====