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AN ACT
RELATING TO UNEMPLOYMENT COMPENSATION; ESTABLISHING A
TEMPORARY SCHEDULE FOR EMPLOYER CONTRIBUTIONS TO THE
UNEMPLOYMENT COMPENSATION FUND; ESTABLISHING A NEW FORMULA
FOR EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION
FUND; PROVIDING FOR AN EXCESS CLAIMS PREMIUM; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 51-1-8 NMSA 1978 (being Laws 1936
(S.S.), Chapter 1, Section 6, as amended) is amended to read:

"51-1-8. CLAIMS FOR BENEFITS.--

A. Claims for benefits shall be made in accordance
with such regulations as the secretary may prescribe. Each
employer shall post and maintain printed notices, in places
readily accessible to employees, concerning their rights to
file claims for unemployment benefits upon termination of
their employment. Such notices shall be supplied by the
division to each employer without cost to the employer.

B. A representative designated by the secretary as
a claims examiner shall promptly examine the application and
each weekly claim and, on the basis of the facts found, shall
determine whether the claimant is unemployed, the week with
respect to which benefits shall commence, the weekly benefit
amount payable, the maximum duration of benefits, whether the

1 claimant is eligible for benefits pursuant to Section 51-1-5
2 NMSA 1978 and whether the claimant shall be disqualified
3 pursuant to Section 51-1-7 NMSA 1978. With the approval of
4 the secretary, the claims examiner may refer, without
5 determination, claims or any specified issues involved
6 therein that raise complex questions of fact or law to a
7 hearing officer for the division for a fair hearing and
8 decision in accordance with the procedure described in
9 Subsection D of this section. The claims examiner shall
10 promptly notify the claimant and any other interested party
11 of the determination and the reasons therefor. Unless the
12 claimant or interested party, within fifteen calendar days
13 after the date of notification or mailing of the
14 determination, files an appeal from the determination, the
15 determination shall be the final decision of the division;
16 provided that the claims examiner may reconsider a
17 nonmonetary determination if additional information not
18 previously available is provided or obtained or whenever the
19 claims examiner finds an error in the application of law has
20 occurred, but no redetermination shall be made more than
21 twenty days from the date of the initial nonmonetary
22 determination. Notice of a nonmonetary redetermination shall
23 be given to all interested parties and shall be subject to
24 appeal in the same manner as the original nonmonetary
25 determination. If an appeal is pending at the time a

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

3 C. In the case of a claim for waiting period
4 credit or benefits, "interested party", for purposes of
5 determinations and adjudication proceedings and notices
6 thereof, means:

7 (1) in the event of an issue concerning a
8 separation from work for reasons other than lack of work, the
9 claimant's most recent employer or most recent employing
10 unit;

11 (2) in the event of an issue concerning a
12 separation from work for lack of work, the employer or
13 employing unit from whom the claimant separated for reasons
14 other than lack of work if the claimant has not worked and
15 earned wages in insured work or bona fide employment other
16 than self-employment in an amount equal to or exceeding five
17 times the claimant's weekly benefit amount; or

18 (3) in all other cases involving the
19 allowance or disallowance of a claim, the secretary, the
20 claimant and any employing unit directly involved in the
21 facts at issue.

22 D. Upon appeal by any party, a hearing officer
23 designated by the secretary shall afford the parties
24 reasonable opportunity for a fair hearing to be held de novo,
25 and the hearing officer shall issue findings of fact and a

1 decision that affirms, modifies or reverses the determination
2 of the claims examiner or tax representative on the facts or
3 the law, based upon the evidence introduced at such hearing,
4 including the documents and statements in the claim or tax
5 records of the division. All hearings shall be held in
6 accordance with regulations of the secretary and decisions
7 issued promptly in accordance with time lapse standards
8 promulgated by the secretary of the United States department
9 of labor. The parties shall be duly notified of the
10 decision, together with the reasons therefor, which shall be
11 deemed to be the final decision of the department, unless
12 within fifteen days after the date of notification or mailing
13 of the decision further appeal is initiated pursuant to
14 Subsection H of this section.

15 E. Except with the consent of the parties, no
16 hearing officer or members of the board of review,
17 established in Subsection F of this section, or secretary
18 shall sit in any administrative or adjudicatory proceeding in
19 which:

20 (1) either of the parties is related to the
21 hearing officer, member of the board of review or secretary
22 by affinity or consanguinity within the degree of first
23 cousin;

24 (2) the hearing officer, member of the board
25 of review or secretary was counsel for either party in that

1 action; or

2 (3) the hearing officer, member of the board
3 of review or secretary has an interest that would prejudice
4 the rendering of an impartial decision.

5 The secretary, any member of the board of review or
6 appeal tribunal hearing officer shall withdraw from any
7 proceeding in which the hearing officer, member of the board
8 of review or secretary cannot accord a fair and impartial
9 hearing or when a reasonable person would seriously doubt
10 whether the hearing officer, board member or secretary could
11 be fair and impartial. Any party may request a
12 disqualification of any appeal tribunal hearing officer or
13 board of review member by filing an affidavit with the board
14 of review or appeal tribunal promptly upon discovery of the
15 alleged grounds for disqualification, stating with
16 particularity the grounds upon which it is claimed that the
17 person cannot be fair and impartial. The disqualification
18 shall be mandatory if sufficient factual basis is set forth
19 in the affidavit of disqualification. If a member of the
20 board of review is disqualified or withdraws from any
21 proceeding, the remaining members of the board of review may
22 appoint an appeal tribunal hearing officer to sit on the
23 board of review for the proceeding involved.

24 F. There is established within the department, for
25 the purpose of providing higher level administrative appeal

1 and review of determinations of a claims examiner or
2 decisions issued by a hearing officer pursuant to Subsection
3 B or D of this section, a "board of review" consisting of
4 three members. Two members shall be appointed by the
5 governor with the consent of the senate. The members so
6 appointed shall hold office at the pleasure of the governor
7 for terms of four years. One member appointed by the
8 governor shall be a person who, on account of previous
9 vocation, employment or affiliation, can be classed as a
10 representative of employers, and the other member appointed
11 by the governor shall be a person who, on account of previous
12 vocation, employment or affiliation, can be classed as a
13 representative of employees. The third member shall be an
14 employee of the department appointed by the secretary who
15 shall serve as chair of the board. Either member of the
16 board of review appointed by the governor who has missed two
17 consecutive meetings of the board may be removed from the
18 board by the governor. Actions of the board shall be taken
19 by majority vote. If a vacancy on the board in a position
20 appointed by the governor occurs between sessions of the
21 legislature, the position shall be filled by the governor
22 until the next regular legislative session. The board shall
23 meet at the call of the secretary. Members of the board
24 appointed by the governor shall be paid per diem and mileage
25 in accordance with the Per Diem and Mileage Act for necessary

1 travel to attend regularly scheduled meetings of the board of
2 review for the purpose of conducting the board's appellate
3 and review duties.

4 G. The board of review shall hear and review all
5 cases appealed in accordance with Subsection H of this
6 section. The board of review may modify, affirm or reverse
7 the decision of the hearing officer or remand any matter to
8 the claims examiner, tax representative or hearing officer
9 for further proceedings. Each member appointed by the
10 governor shall be compensated at the rate of fifteen dollars
11 (\$15.00) for each case reviewed up to a maximum compensation
12 of twelve thousand dollars (\$12,000) in any one fiscal year.

13 H. Any party aggrieved by a final decision of a
14 hearing officer may file, in accordance with regulations
15 prescribed by the secretary, an application for appeal and
16 review of the decision with the secretary. The secretary
17 shall review the application and shall, within fifteen days
18 after receipt of the application, either affirm the decision
19 of the hearing officer, reverse the decision of the hearing
20 officer, modify the decision of the hearing officer, remand
21 the matter to the hearing officer, tax representative or
22 claims examiner for an additional hearing or refer the
23 decision to the board of review for further review and
24 decision on the merits of the appeal. If the secretary
25 affirms, reverses or modifies the decision of the hearing

1 officer, that decision shall be the final administrative
2 decision of the department and any appeal therefrom shall be
3 taken to the district court in accordance with the provisions
4 of Subsections M and N of this section. If the secretary
5 remands a matter to a hearing officer, tax representative or
6 claims examiner for an additional hearing, judicial review
7 shall be permitted only after issuance of a final
8 administrative decision. If the secretary refers the
9 decision of the hearing officer to the board of review for
10 further review, the board's decision on the merits of the
11 appeal shall be the final administrative decision of the
12 department, which may be appealed to the district court in
13 accordance with the provisions of Subsections M and N of this
14 section. If the secretary takes no action within fifteen
15 days of receipt of the application for appeal and review, the
16 decision shall be promptly scheduled for review by the board
17 of review as though it had been referred by the secretary.
18 The secretary may request the board of review to review a
19 decision of a hearing officer that the secretary believes to
20 be inconsistent with the law or with applicable rules of
21 interpretation or that is not supported by the evidence, and
22 the board of review shall grant the request if it is filed
23 within fifteen days of the issuance of the decision of the
24 hearing officer. The secretary may also direct that any
25 pending determination or adjudicatory proceeding be removed

1 to the board of review for a final decision. If the board of
2 review holds a hearing on any matter, the hearing shall be
3 conducted by a quorum of the board of review in accordance
4 with regulations prescribed by the secretary for hearing
5 appeals. The board of review shall promptly notify the
6 interested parties of its findings of fact and decision. A
7 decision of the board of review on any disputed matter
8 reviewed and decided by it shall be based upon the law and
9 the lawful rules of interpretation issued by the secretary,
10 and it shall be the final administrative decision of the
11 department, except in cases of remand. If the board of
12 review remands a matter to a hearing officer, claims examiner
13 or tax representative, judicial review shall be permitted
14 only after issuance of a final administrative decision.

15 I. Notwithstanding any other provision of this
16 section granting any party the right to appeal, benefits
17 shall be paid promptly in accordance with a determination or
18 a decision of a claims examiner, hearing officer, secretary,
19 board of review or reviewing court, regardless of the
20 pendency of the period to file an appeal or petition for
21 judicial review that is provided with respect thereto in
22 Subsection D or M of this section or the pendency of any such
23 filing or petition until such determination or decision has
24 been modified or reversed by a subsequent decision. The
25 provisions of this subsection shall apply to all claims for

1 benefits pending on the date of its enactment.

2 J. If a prior determination or decision allowing
3 benefits is affirmed by a decision of the department,
4 including the board of review or a reviewing court, the
5 benefits shall be paid promptly regardless of any further
6 appeal that may thereafter be available to the parties, and
7 no injunction, supersedeas, stay or other writ or process
8 suspending the payment of benefits shall be issued by the
9 secretary or board of review or any court, and no action to
10 recover benefits paid to a claimant shall be taken. If a
11 determination or decision allowing benefits is finally
12 modified or reversed, the appropriate contributing employer
13 will be relieved of benefit charges in accordance with
14 Subsection A of Section 51-1-11 NMSA 1978.

15 K. The manner in which disputed claims shall be
16 presented, the reports thereon required from the claimant and
17 from employers and the conduct of hearings and appeals shall
18 be in accordance with rules prescribed by the secretary for
19 determining the rights of the parties, whether or not the
20 rules conform to common law or statutory rules of evidence
21 and other technical rules of procedure. A hearing officer or
22 the board of review may refer to the secretary for
23 interpretation any question of controlling legal
24 significance, and the secretary shall issue a declaratory
25 interpretation, which shall be binding upon the decision of

1 the hearing officer and the board of review. A full and
2 complete record shall be kept of all proceedings in
3 connection with a disputed claim. All testimony at any
4 hearing upon a disputed claim shall be recorded but need not
5 be transcribed unless the disputed claim is appealed to the
6 district court.

7 L. Witnesses subpoenaed pursuant to this section
8 shall be allowed fees at a rate fixed by the secretary. Such
9 fees and all administrative expenses of proceedings involving
10 disputed claims shall be deemed a part of the expense of
11 administering the Unemployment Compensation Law.

12 M. Any determination or decision of a claims
13 examiner or hearing officer or by a representative of the tax
14 section of the department in the absence of an appeal
15 therefrom as provided by this section shall become final
16 fifteen days after the date of notification or mailing
17 thereof, and judicial review thereof shall be permitted only
18 after any party claiming to be aggrieved thereby has
19 exhausted the remedies as provided in Subsection H of this
20 section. The division and any employer or claimant who is
21 affected by the decision shall be joined as a party in any
22 judicial action involving the decision. All parties shall be
23 served with an endorsed copy of the petition within thirty
24 days from the date of filing and an endorsed copy of the
25 order granting the petition within fifteen days from entry of

1 the order. Service on the department shall be made on the
2 secretary or the secretary's designated legal representative
3 either by mail with accompanying certification of service or
4 by personal service. The division may be represented in a
5 judicial action by an attorney employed by the department or,
6 when requested by the secretary, by the attorney general or
7 any district attorney.

8 N. The final decision of the secretary or board of
9 review upon any disputed matter may be reviewed both upon the
10 law, including the lawful rules of interpretation issued by
11 the secretary, and the facts by the district court of the
12 county wherein the person seeking the review resides upon
13 certiorari, unless it is determined by the district court
14 where the petition is filed that, as a matter of equity and
15 due process, venue should be in a different county. For the
16 purpose of the review, the division shall return on
17 certiorari the reports and all of the evidence heard by it on
18 the reports and all the papers and documents in its files
19 affecting the matters and things involved in such certiorari.
20 The district court shall render its judgment after hearing,
21 and either the department or any other party affected may
22 appeal from the judgment to the court of appeals in
23 accordance with the rules of appellate procedure. Certiorari
24 shall not be granted unless applied for within thirty days
25 from the date of the final decision of the secretary or board

1 of review. Certiorari shall be heard in a summary manner and
2 shall be given precedence over all other civil cases except
3 cases arising under the Workers' Compensation Act. It is not
4 necessary in any proceedings before the division to enter
5 exceptions to the rulings, and no bond shall be required in
6 obtaining certiorari from the district court, but certiorari
7 shall be granted as a matter of right to the party applying
8 therefor."

9 SECTION 2. Section 51-1-11 NMSA 1978 (being Laws 2003,
10 Chapter 47, Section 11, as amended) is amended to read:

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

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

20 B. Benefits paid to an individual shall be charged
21 against the accounts of the individual's base-period
22 employers on a pro rata basis according to the proportion of
23 the individual's total base-period wages received from each
24 employer, except that no benefits paid to a claimant as
25 extended benefits under the provisions of Section 51-1-48

1 NMSA 1978 shall be charged to the account of any base-period
2 employer who is not on a reimbursable basis and who is not a
3 governmental entity and, except as the secretary shall by
4 rule prescribe otherwise, in the case of benefits paid to an
5 individual who:

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

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

13 (3) is employed part time by a base-period
14 employer who is not on a reimbursable basis and who continues
15 to furnish the individual the same part-time work while the
16 individual is separated from full-time work for a
17 nondisqualifying reason; or

18 (4) received benefits based upon wages
19 earned from a base-period employer who is not on a
20 reimbursable basis while attending approved training under
21 the provisions of Subsection E of Section 51-1-5 NMSA 1978.

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

1 benefits.

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

6 (1) separated from employment due to
7 domestic abuse, as "domestic abuse" is defined in Section
8 40-13-2 NMSA 1978; or

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

14 E. All contributions to the fund shall be pooled
15 and available to pay benefits to any individual entitled
16 thereto, irrespective of the source of the contributions.

17 F. For each calendar year, if, as of the
18 computation date for that year, an employer's account has
19 been chargeable with benefits throughout the preceding
20 thirty-six months, the secretary shall classify the employer
21 in accordance with its actual experience of benefits charged
22 against its accounts. For such an employer, the contribution
23 rate shall be determined pursuant to Subsection I of this
24 section on the basis of the employer's record and the
25 condition of the fund as of the computation date for the

1 calendar year. If, as of the computation date for a calendar
2 year, an employer's account has not been chargeable with
3 benefits throughout the preceding thirty-six months, the
4 contribution rate for that employer for the calendar year
5 shall be two percent, except that:

6 (1) an individual, type of organization or
7 employing unit that acquires all or part of the trade or
8 business of another employing unit, pursuant to Paragraphs
9 (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978,
10 that has a rate of contribution less than two percent shall
11 be entitled to the transfer of the reduced rate to the extent
12 permitted under Subsection H of this section;

13 (2) an employer that, at the time of
14 establishing an account, is in business in another state or
15 states and that is not currently doing business in New Mexico
16 may elect, pursuant to Paragraph (3) of this subsection, to
17 receive a beginning contribution rate of two percent or a
18 contribution rate based on the current contribution rate
19 schedule in Paragraph (4) of Subsection I of this section,
20 whichever is lower, if:

21 (a) the employer has been in operation
22 in the other state or states for at least three years
23 immediately preceding the date of becoming a liable employer
24 in New Mexico, throughout which an individual in the
25 employer's employ could have received benefits if eligible;

1 and

2 (b) the employer provides the
3 authenticated account history as defined by rule of the
4 secretary from information accumulated from operations in the
5 other state or all the other states to compute a current
6 New Mexico rate; and

7 (3) the election authorized in Paragraph (2)
8 of this subsection shall be made in writing within thirty
9 days after receiving notice of New Mexico liability and, if
10 not made timely, a two percent rate will be assigned; if the
11 election is made timely, the employer's account will receive
12 the lesser of the computed rate determined by the condition
13 of the account for the computation date immediately preceding
14 the New Mexico liable date, or two percent; rates for
15 subsequent years will be determined by the condition of the
16 account for the computation date.

17 G. An employer may make voluntary payments in
18 addition to the contributions required under the Unemployment
19 Compensation Law, which shall be credited to the employer's
20 account in accordance with department rule. The voluntary
21 payments shall be included in the employer's account as of
22 the employer's most recent computation date if they are made
23 on or before the following March 1. Voluntary payments when
24 accepted from an employer shall not be refunded in whole or
25 in part.

1 H. In the case of a transfer of an employing
2 enterprise, notwithstanding any other provision of law, the
3 experience history of the transferred enterprise shall be
4 transferred from the predecessor employer to the successor
5 under the following conditions and in accordance with the
6 applicable rules of the secretary:

7 (1) as used in this subsection:

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

13 (b) "predecessor" means the owner and
14 operator of an employing enterprise immediately prior to the
15 transfer of such enterprise;

16 (c) "successor" means any person that
17 acquires an employing enterprise and continues to operate
18 such business entity;

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

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

1 (f) "knowingly" means having actual
2 knowledge of or acting with deliberate ignorance of or
3 reckless disregard for the prohibition involved; and

4 (g) "violates or attempts to violate"
5 includes an intent to evade, a misrepresentation or a willful
6 nondisclosure;

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

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

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

23 (c) the successor shall notify the
24 division of the acquisition on or before the due date of the
25 successor's first wage and contribution report. If the

1 successor employer fails to notify the division of the
2 acquisition within this time limit, the division, when it
3 receives actual notice, shall effect the transfer of the
4 experience history and applicable rate of contribution
5 retroactively to the date of the acquisition, and the
6 successor shall pay a penalty of fifty dollars (\$50.00); and

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

19 (3) the applicable experience history may be
20 transferred to the successor in the case of a partial
21 transfer of an employing enterprise if the successor has
22 acquired one or more of the several employing enterprises of
23 a predecessor but not all of the employing enterprises of the
24 predecessor and each employing enterprise so acquired was
25 operated by the predecessor as a separate store, factory,

1 shop or other separate employing enterprise and the
2 predecessor, throughout the entire period of the contribution
3 with liability applicable to each enterprise transferred, has
4 maintained and preserved payroll records that, together with
5 records of contribution liability and benefit chargeability,
6 can be separated by the parties from the enterprises retained
7 by the predecessor to the satisfaction of the secretary or
8 the secretary's delegate. A partial experience history
9 transfer will be made only if the successor:

10 (a) notifies the division of the
11 acquisition, in writing, not later than the due date of the
12 successor's first quarterly wage and contribution report
13 after the effective date of the acquisition;

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

19 (c) files with the application, in a
20 manner described by the department, a schedule of the name
21 and social security number of and the wages paid to and the
22 contributions paid for each employee for the three and
23 one-half year period preceding the computation date as
24 defined in Subparagraph (d) of Paragraph (3) of Subsection I
25 of this section through the date of transfer or such lesser

1 period as the enterprises transferred may have been in
2 operation. The application and schedule shall be supported
3 by the predecessor's permanent employment records, which
4 shall be available for audit by the division. The
5 application and schedule shall be reviewed by the division
6 and, upon approval, the percentage of the predecessor's
7 experience history attributable to the enterprises
8 transferred shall be transferred to the successor. The
9 percentage shall be obtained by dividing the taxable payrolls
10 of the transferred enterprises for such three and one-half
11 year period preceding the date of computation or such lesser
12 period as the enterprises transferred may have been in
13 operation by the predecessor's entire payroll;

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

22 (5) whenever a person, who is not currently
23 an employer, acquires the trade or business of an employing
24 enterprise, the experience history of the acquired business
25 shall not be transferred to the successor if the secretary or

1 the secretary's designee finds that the successor acquired
2 the business solely or primarily for the purpose of obtaining
3 a lower rate of contributions. Instead, the successor shall
4 be assigned the applicable new employer rate pursuant to this
5 section. In determining whether the business was acquired
6 solely or primarily for the purpose of obtaining a lower rate
7 of contribution, the secretary or the secretary's designee
8 shall consider:

9 (a) the cost of acquiring the business;

10 (b) whether the person continued the
11 business enterprise of the acquired business;

12 (c) how long such business enterprise
13 was continued; and

14 (d) whether a substantial number of new
15 employees were hired for performance of duties unrelated to
16 those that the business activity conducted prior to
17 acquisition;

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

25 (7) the secretary shall adopt such rules as

1 are necessary to interpret and carry out the provisions of
2 this subsection, including rules that:

3 (a) describe how experience history is
4 to be transferred; and

5 (b) establish procedures to identify
6 the type of transfer or acquisition of an employing
7 enterprise; and

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

24 (a) if the person is an employer, the
25 person shall be assigned the highest contribution rate

1 established by the provisions of this section for the
2 calendar year in which the violation occurs and the three
3 subsequent calendar years; provided that, if the difference
4 between the increased penalty rate and the rate otherwise
5 applicable would be less than two percent of the employer's
6 payroll, the contribution rate shall be increased by two
7 percent of the employer's payroll for the calendar year in
8 which the violation occurs and the three subsequent calendar
9 years; or

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

13 I. For each calendar year, if, as of the
14 computation date for that year, an employer's account has
15 been chargeable with benefits throughout the preceding
16 thirty-six months, the contribution rate for that employer
17 shall be determined as follows:

18 (1) the total assets in the fund and the
19 total of the last annual payrolls of all employers subject to
20 contributions as of the computation date for each year shall
21 be determined. These annual totals are here called "the
22 fund" and "total payrolls". For each year, the "reserve" of
23 each employer shall be fixed by the excess of the employer's
24 total contributions over total benefit charges computed as a
25 percentage of the employer's average payroll reported for

1 contributions. The determination of each employer's annual
2 rate, computed as of the computation date for each calendar
3 year, shall be made by matching the employer's reserve as
4 shown in the reserve column with the corresponding rate in
5 the rate column of the applicable rate schedule of the table
6 provided in Paragraph (4) of this subsection;

7 (2) for each calendar year after 2014,
8 except as otherwise provided, each employer's rate shall be
9 the corresponding rate in:

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

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

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

22 (d) Contribution Schedule 3 of the
23 table provided in Paragraph (4) of this subsection if the
24 fund equals less than one and three-tenths percent but not
25 less than one percent of the total payrolls;

1 (e) Contribution Schedule 4 of the
2 table provided in Paragraph (4) of this subsection if the
3 fund equals less than one percent but not less than
4 seven-tenths percent of the total payrolls;

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

9 (g) Contribution Schedule 6 of the
10 table provided in Paragraph (4) of this subsection if the
11 fund equals less than three-tenths percent of the total
12 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
16 a twelve-month period ending on a computation date, and
17 "average payroll" means the average of the last three annual
18 payrolls;

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

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

1 (d) "computation date" for each
 2 calendar year means the close of business on June 30 of the
 3 preceding calendar year;

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

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

23 Employer Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
24 10.0% and over	0.9%	1.2%	2.7%

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

15 (5) from January 1, 2011 through December
16 31, 2012, each employer making contributions pursuant to this
17 subsection shall make a contribution at the rate specified in
18 Contribution Schedule 1; and

19 (6) from January 1, 2013 through December
20 31, 2014, each employer making contributions pursuant to this
21 subsection shall make a contribution at the rate specified in
22 Contribution Schedule 2.

23 J. The division shall promptly notify each
24 employer of the employer's rate of contributions as determined
25 for any calendar year pursuant to this section. Such

1 notification shall include the amount determined as the
2 employer's average payroll, the total of all of the employer's
3 contributions paid on the employer's behalf and credited to
4 the employer's account for all past years and total benefits
5 charged to the employer's account for all such years. Such
6 determination shall become conclusive and binding upon the
7 employer unless, within thirty days after the mailing of
8 notice thereof to the employer's last known address or in the
9 absence of mailing, within thirty days after the delivery of
10 such notice, the employer files an application for review and
11 redetermination, setting forth the employer's reason therefor.
12 The employer shall be granted an opportunity for a fair
13 hearing in accordance with rules prescribed by the secretary,
14 but an employer shall not have standing, in any proceeding
15 involving the employer's rate of contributions or contribution
16 liability, to contest the chargeability to the employer's
17 account of any benefits paid in accordance with a
18 determination, redetermination or decision pursuant to Section
19 51-1-8 NMSA 1978, except upon the ground that the services on
20 the basis of which such benefits were found to be chargeable
21 did not constitute services performed in employment for the
22 employer and only in the event that the employer was not a
23 party to such determination, redetermination or decision, or
24 to any other proceedings under the Unemployment Compensation
25 Law in which the character of such services was determined.

1 The employer shall be promptly notified of the decision on the
2 employer's application for redetermination, which shall become
3 final unless, within fifteen days after the mailing of notice
4 thereof to the employer's last known address or in the absence
5 of mailing, within fifteen days after the delivery of such
6 notice, further appeal is initiated pursuant to Subsection D
7 of Section 51-1-8 NMSA 1978.

8 K. The division shall provide each contributing
9 employer, within ninety days of the end of each calendar
10 quarter, a written determination of benefits chargeable to the
11 employer's account. Such determination shall become
12 conclusive and binding upon the employer for all purposes
13 unless, within thirty days after the mailing of the
14 determination to the employer's last known address or in the
15 absence of mailing, within thirty days after the delivery of
16 such determination, the employer files an application for
17 review and redetermination, setting forth the employer's
18 reason therefor. The employer shall be granted an opportunity
19 for a fair hearing in accordance with rules prescribed by the
20 secretary, but an employer shall not have standing in any
21 proceeding involving the employer's contribution liability to
22 contest the chargeability to the employer's account of any
23 benefits paid in accordance with a determination,
24 redetermination or decision pursuant to Section 51-1-8 NMSA
25 1978, except upon the ground that the services on the basis of

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

14 L. The contributions, together with interest and
15 penalties thereon imposed by the Unemployment Compensation
16 Law, shall not be assessed nor shall action to collect the
17 same be commenced more than four years after a report showing
18 the amount of the contributions was due. In the case of a
19 false or fraudulent contribution report with intent to evade
20 contributions or a willful failure to file a report of all
21 contributions due, the contributions, together with interest
22 and penalties thereon, may be assessed or an action to collect
23 such contributions may be begun at any time. Before the
24 expiration of such period of limitation, the employer and the
25 secretary may agree in writing to an extension thereof and the

1 period so agreed on may be extended by subsequent agreements
2 in writing. In any case where the assessment has been made
3 and action to collect has been commenced within four years of
4 the due date of any contribution, interest or penalty,
5 including the filing of a warrant of lien by the secretary
6 pursuant to Section 51-1-36 NMSA 1978, such action shall not
7 be subject to any period of limitation.

8 M. The secretary shall correct any error in the
9 determination of an employer's rate of contribution during the
10 calendar year to which the erroneous rate applies,
11 notwithstanding that notification of the employer's rate of
12 contribution may have been issued and contributions paid
13 pursuant to the notification. Upon issuance by the division
14 of a corrected rate of contribution, the employer shall have
15 the same rights to review and redetermination as provided in
16 Subsection J of this section.

17 N. Any interest required to be paid on advances to
18 this state's unemployment compensation fund under Title 12 of
19 the Social Security Act shall be paid in a timely manner as
20 required under Section 1202 of Title 12 of the Social Security
21 Act and shall not be paid, directly or indirectly, by the
22 state from amounts in the state's unemployment compensation
23 fund."

24 SECTION 3. Section 51-1-11 NMSA 1978 (being Laws 2003,
25 Chapter 47, Section 11, as amended by Section 2 of this act)

1 is repealed and a new Section 51-1-11 NMSA 1978 is enacted to
2 read:

3 "51-1-11. EMPLOYER CONTRIBUTION RATES--BENEFITS
4 CHARGEABLE--UNEMPLOYMENT COMPENSATION FUND ADEQUATE RESERVE--
5 RESERVE FACTOR--EXCESS CLAIMS PREMIUM--DEFINITIONS.--

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

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

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

23 (3) is employed part time by a base-period
24 employer who is not on a reimbursable basis and who continues
25 to furnish the individual the same part-time work while the

1 individual is separated from full-time work for a
2 nondisqualifying reason; or

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

7 B. The division shall not charge a contributing or
8 reimbursing base-period employer with any portion of benefit
9 amounts that the division can bill to or recover from the
10 federal government as either regular or extended benefits.

11 C. The division shall not charge a contributing
12 base-period employer with any portion of benefits paid to an
13 individual for dependent allowance or because the individual
14 to whom benefits are paid:

15 (1) separated from employment due to
16 domestic abuse, as "domestic abuse" is defined in Section
17 40-13-2 NMSA 1978; or

18 (2) voluntarily left work to relocate
19 because of a spouse, who is in the military service of the
20 United States or the New Mexico national guard, receiving
21 permanent change of station orders, activation orders or unit
22 deployment orders.

23 D. All contributions to the fund shall be pooled
24 and available to pay benefits to any individual entitled
25 thereto, irrespective of the source of the contributions.

1 E. In the case of a transfer of an employing
2 enterprise, notwithstanding any other provision of law, the
3 experience history of the transferred enterprise shall be
4 transferred from the predecessor employer to the successor
5 under the following conditions and in accordance with the
6 applicable rules of the secretary:

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

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

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

23 (c) the successor shall notify the
24 division of the acquisition on or before the due date of the
25 successor's first wage and contribution report. If the

1 successor employer fails to notify the division of the
2 acquisition within this time limit, the division, when it
3 receives actual notice, shall effect the transfer of the
4 experience history and applicable rate of contribution
5 retroactively to the date of the acquisition, and the
6 successor shall pay a penalty of fifty dollars (\$50.00); and

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

19 (2) the applicable experience history may be
20 transferred to the successor in the case of a partial transfer
21 of an employing enterprise if the successor has acquired one
22 or more of the several employing enterprises of a predecessor
23 but not all of the employing enterprises of the predecessor
24 and each employing enterprise so acquired was operated by the
25 predecessor as a separate store, factory, shop or other

1 separate employing enterprise and the predecessor, throughout
2 the entire period of the contribution with liability
3 applicable to each enterprise transferred, has maintained and
4 preserved payroll records that, together with records of
5 contribution liability and benefit chargeability, can be
6 separated by the parties from the enterprises retained by the
7 predecessor to the satisfaction of the secretary or the
8 secretary's delegate. A partial experience history transfer
9 will be made only if the successor:

10 (a) notifies the division of the
11 acquisition, in writing, not later than the due date of the
12 successor's first quarterly wage and contribution report after
13 the effective date of the acquisition;

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

19 (c) files with the application a form
20 with a schedule of the name and social security number of and
21 the wages paid to and the contributions paid for each employee
22 for the three and one-half year period preceding the
23 computation date through the date of transfer or such lesser
24 period as the enterprises transferred may have been in
25 operation. The application and form shall be supported by the

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

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

20 (4) whenever a person, who is not currently
21 an employer, acquires the trade or business of an employing
22 enterprise, the experience history of the acquired business
23 shall not be transferred to the successor if the secretary or
24 the secretary's designee finds that the successor acquired the
25 business solely or primarily for the purpose of obtaining a

1 lower rate of contributions. Instead, the successor shall be
2 assigned the applicable new employer rate pursuant to this
3 section. In determining whether the business was acquired
4 solely or primarily for the purpose of obtaining a lower rate
5 of contribution, the secretary or the secretary's designee
6 shall consider:

7 (a) the cost of acquiring the business;

8 (b) whether the person continued the
9 business enterprise of the acquired business;

10 (c) how long such business enterprise
11 was continued; and

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

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

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

1 (a) describe how experience history is
2 to be transferred; and

3 (b) establish procedures to identify
4 the type of transfer or acquisition of an employing
5 enterprise; and

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

22 (a) if the person is an employer, the
23 person shall be assigned the highest contribution rate
24 established by the provisions of this section for the calendar
25 year in which the violation occurs and the three subsequent

1 calendar years; provided that, if the difference between the
2 increased penalty rate and the rate otherwise applicable would
3 be less than two percent of the employer's payroll, the
4 contribution rate shall be increased by two percent of the
5 employer's payroll for the calendar year in which the
6 violation occurs and the three subsequent calendar years; or

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

10 F. For each calendar year, if, as of the
11 computation date for that year, an employer has been a
12 contributing employer throughout the preceding twenty-four
13 months, the contribution rate for that employer shall be
14 determined by multiplying the employer's benefit ratio by the
15 reserve factor as determined pursuant to Subsection H of this
16 section; provided that an employer's contribution rate shall
17 not be less than thirty-three hundredths percent or more than
18 five and four-tenths percent. An employer's benefit ratio is
19 determined by dividing the employer's benefit charges during
20 the immediately preceding fiscal years, up to a maximum of
21 three fiscal years, by the total of the annual payrolls of the
22 same time period, calculated to four decimal places,
23 disregarding any remaining fraction.

24 G. For each calendar year, if, as of the
25 computation date of that year, an employer has been a

1 contributing employer for less than twenty-four months, the
2 contribution rate for that employer shall be the average of
3 the contribution rates for all contributing employers in the
4 employer's industry, as determined by administrative rule, but
5 shall not be less than one percent or more than five and
6 four-tenths percent; provided that an individual, type of
7 organization or employing unit that acquires all or part of
8 the trade or business of another employing unit, pursuant to
9 Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA
10 1978, that has a rate of contribution less than average of the
11 contribution rates for all contributing employers in the
12 employer's industry, shall be entitled to the transfer of the
13 contribution rate of the other employing unit to the extent
14 permitted under Subsection E of this section.

15 H. The division shall ensure that the fund
16 sustains an adequate reserve. An adequate reserve shall be
17 determined to mean that the funds in the fund available for
18 benefits equal the total amount of funds needed to pay between
19 eighteen and twenty-four months of benefits at the average of
20 the five highest years of benefits paid in the last
21 twenty-five years. For the purpose of sustaining an adequate
22 reserve, the division shall determine a reserve factor to be
23 used when calculating an employer's contribution rate pursuant
24 to Subsection F of this section by rule promulgated by the
25 secretary. The rules shall set forth a formula that will set

1 the reserve factor in proportion to the difference between the
2 amount of funds available for benefits in the fund, as of the
3 computation date, and the adequate reserve, within the
4 following guidelines:

5 (1) 1.0000 if, as of the computation date,
6 there is an adequate reserve;

7 (2) between 0.5000 and 0.9999 if, as of the
8 computation date, there is greater than an adequate reserve;
9 and

10 (3) between 1.0001 and 4.0000 if, as of the
11 computation date, there is less than an adequate reserve.

12 I. If an employer's contribution rate pursuant to
13 Subsection F of this section is calculated to be greater than
14 five and four-tenths percent, notwithstanding the limitation
15 pursuant to Subsection F of this section, the employer shall
16 be charged an excess claims premium in addition to the
17 contribution rate applicable to the employer; provided that an
18 employer's excess claims premium shall not exceed one percent
19 of the employer's annual payroll. The excess claims premium
20 shall be determined by multiplying the employer's excess
21 claims rate by the employer's annual payroll. An employer's
22 excess claims rate shall be determined by multiplying the
23 difference of the employer's contribution rate,
24 notwithstanding the limitation pursuant to Subsection F of
25 this section, less five and four-tenths percent by ten

1 percent.

2 J. The division shall promptly notify each
3 employer of the employer's rate of contributions and excess
4 claims premium as determined for any calendar year pursuant to
5 this section. Such notification shall include the amount
6 determined as the employer's annual payroll, the total of all
7 of the employer's contributions paid on the employer's behalf
8 for all past years and total benefits charged to the employer
9 for all such years. Such determination shall become
10 conclusive and binding upon the employer unless, within thirty
11 days after the mailing of notice thereof to the employer's
12 last known address or in the absence of mailing, within thirty
13 days after the delivery of such notice, the employer files an
14 application for review and redetermination, setting forth the
15 employer's reason therefor. The employer shall be granted an
16 opportunity for a fair hearing in accordance with rules
17 prescribed by the secretary, but an employer shall not have
18 standing, in any proceeding involving the employer's rate of
19 contributions or contribution liability, to contest the
20 chargeability to the employer of any benefits paid in
21 accordance with a determination, redetermination or decision
22 pursuant to Section 51-1-8 NMSA 1978, except upon the ground
23 that the services on the basis of which such benefits were
24 found to be chargeable did not constitute services performed
25 in employment for the employer and only in the event that the

1 employer was not a party to such determination,
2 redetermination or decision, or to any other proceedings under
3 the Unemployment Compensation Law in which the character of
4 such services was determined. The employer shall be promptly
5 notified of the decision on the employer's application for
6 redetermination, which shall become final unless, within
7 fifteen days after the mailing of notice thereof to the
8 employer's last known address or in the absence of mailing,
9 within fifteen days after the delivery of such notice, further
10 appeal is initiated pursuant to Subsection D of Section 51-1-8
11 NMSA 1978.

12 K. The division shall provide each contributing
13 employer, within ninety days of the end of each calendar
14 quarter, a written determination of benefits chargeable to the
15 employer. Such determination shall become conclusive and
16 binding upon the employer for all purposes unless, within
17 thirty days after the mailing of the determination to the
18 employer's last known address or in the absence of mailing,
19 within thirty days after the delivery of such determination,
20 the employer files an application for review and
21 redetermination, setting forth the employer's reason therefor.
22 The employer shall be granted an opportunity for a fair
23 hearing in accordance with rules prescribed by the secretary,
24 but an employer shall not have standing in any proceeding
25 involving the employer's contribution liability to contest the

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

18 L. The contributions and excess claims premiums,
19 together with interest and penalties thereon imposed by the
20 Unemployment Compensation Law, shall not be assessed nor shall
21 action to collect the same be commenced more than four years
22 after a report showing the amount of the contributions was
23 due. In the case of a false or fraudulent contribution report
24 with intent to evade contributions or a willful failure to
25 file a report of all contributions due, the contributions and

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

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

22 N. Any interest required to be paid on advances to
23 this state's unemployment compensation fund under Title 12 of
24 the Social Security Act shall be paid in a timely manner as
25 required under Section 1202 of Title 12 of the Social Security

1 Act and shall not be paid, directly or indirectly, by the
2 state from amounts in the state's unemployment compensation
3 fund.

4 O. As used in this section:

5 (1) "annual payroll" means the total taxable
6 amount of remuneration from an employer for employment during
7 a twelve-month period ending on a computation date;

8 (2) "base-period employers" means the
9 employers of an individual during the individual's base
10 period;

11 (3) "base-period wages" means the wages of
12 an individual for insured work during the individual's base
13 period on the basis of which the individual's benefit rights
14 were determined;

15 (4) "common ownership" means that two or
16 more businesses are substantially owned, managed or controlled
17 by the same person or persons;

18 (5) "computation date" for each calendar
19 year means the close of business on June 30 of the preceding
20 calendar year;

21 (6) "employing enterprise" means a business
22 activity engaged in by a contributing employing unit in which
23 one or more persons have been employed within the current or
24 the three preceding calendar quarters. An "employing
25 enterprise" includes the employer's work force;

1 (7) "experience history" means the benefit
2 charges and payroll experience of the employing enterprise;

3 (8) "knowingly" means having actual
4 knowledge of or acting with deliberate ignorance of or
5 reckless disregard for the prohibition involved;

6 (9) "predecessor" means the owner and
7 operator of an employing enterprise immediately prior to the
8 transfer of such enterprise;

9 (10) "successor" means any person that
10 acquires an employing enterprise and continues to operate such
11 business entity; and

12 (11) "violates or attempts to violate"
13 includes an intent to evade, a misrepresentation or a willful
14 nondisclosure."

15 SECTION 4. Section 51-1-13 NMSA 1978 (being Laws 1971,
16 Chapter 209, Section 4, as amended) is amended to read:

17 "51-1-13. FINANCING BENEFITS PAID TO EMPLOYEES OF
18 NONPROFIT ORGANIZATIONS.--Benefits paid to employees of
19 nonprofit organizations shall be financed in accordance with
20 the provisions of this section. For the purpose of this
21 section, a "nonprofit organization" is an organization or
22 group of organizations described in Paragraph (8) of
23 Subsection F of Section 51-1-42 NMSA 1978.

24 A. Any nonprofit organization that, pursuant to
25 Paragraph (8) of Subsection F of Section 51-1-42 NMSA 1978, is SFC/SB 334
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1 subject to the Unemployment Compensation Law shall pay
2 contributions in accordance with the provisions of Section
3 51-1-9 NMSA 1978, unless it elects, in accordance with this
4 subsection, to pay to the division for the fund an amount
5 equal to the amount of regular benefits and of one-half of the
6 extended benefits paid, that is attributable to service in the
7 employ of such nonprofit organization, to individuals for
8 weeks of unemployment that begin during the effective period
9 of such election.

10 (1) Any nonprofit organization that becomes
11 subject to the Unemployment Compensation Law after
12 January 1, 1972 may elect to become liable for payments in
13 lieu of contributions for a period of not less than two
14 taxable years by filing a written notice of its election with
15 the division not later than thirty days immediately following
16 the date subjectivity is determined.

17 (2) Any nonprofit organization that makes an
18 election in accordance with Paragraph (1) of this subsection
19 will continue to be liable for payments in lieu of
20 contributions until it files with the division a written
21 notice terminating its election not later than thirty days
22 prior to the beginning of the taxable year for which such
23 termination shall first be effective.

24 (3) Any nonprofit organization that has been
25 paying contributions under the Unemployment Compensation Law

1 may change to a reimbursable basis by filing with the division
2 written notice of its election not later than thirty days
3 prior to the beginning of the taxable year for which its
4 election shall first be effective. Such election shall not be
5 terminated by the organization for the following two taxable
6 years.

7 (4) The division, in accordance with such
8 regulations as the secretary may prescribe, shall notify each
9 nonprofit organization of any determination that it may make
10 of the organization's status as an employer and of the
11 effective date of any election that the organization makes and
12 of any termination of such election. Such determination shall
13 be subject to reconsideration, appeal and review in accordance
14 with regulations of the secretary governing appeals by
15 employers of their liability under Section 51-1-9 NMSA 1978.

16 B. Payments in lieu of contributions shall be made
17 in accordance with the provisions of this subsection.

18 (1) At the end of each calendar quarter or
19 at the end of any other period as determined by the secretary,
20 the division shall bill each nonprofit organization or group
21 of such organizations that has elected to make payments in
22 lieu of contributions for an amount equal to the full amount
23 of regular benefits plus one-half of the amount of extended
24 benefits paid during such quarter or other prescribed period
25 that is attributable to service in the employ of such

1 organization.

2 (2) Effective with the calendar quarter
3 beginning January 1, 1987 and each succeeding calendar
4 quarter, each employer that is liable for payments in lieu of
5 contributions, including governmental entities, shall pay to
6 the division an amount equal to twenty-five percent of the
7 total benefit charges made to each such employer during the
8 four calendar quarters ending the preceding June 30. Such
9 payments shall be made on or before the tenth day of the first
10 month of each calendar quarter.

11 (3) In the event that any employer liable
12 for making payments in lieu of contributions incurred no
13 benefit charges during the four calendar quarters ending the
14 preceding June 30, the employer shall pay to the division,
15 each calendar quarter, an amount equal to one-eighth of one
16 percent of the employer's annual taxable wages paid for such
17 period for employment as defined in Subsection F of Section
18 51-1-42 NMSA 1978 and Section 51-1-44 NMSA 1978 as estimated
19 by the secretary. Such payments shall be paid on or before
20 the tenth day of the first month of the calendar quarter.

21 (4) For each calendar quarter, the secretary
22 shall determine the amount paid by each employer subject to
23 payment in lieu of contributions and the amount of benefits
24 charged to such employer. Each employer who has made payments
25 in an amount less than the amount of benefits charged to the

1 employer shall pay the balance of the amount charged within
2 twenty-five days of the notification by the division. If the
3 quarterly payment made by an employer pursuant to Paragraph
4 (2) of this subsection exceeds the amount of benefits charged
5 to such employer, the excess payment shall be refunded on a
6 quarterly basis.

7 (5) Payments made by any nonprofit
8 organization under the provisions of this subsection shall not
9 be deducted or deductible, in whole or in part, from the
10 remuneration of individuals in the employ of the organization.

11 C. Collection of past due payments of amounts in
12 lieu of contributions shall be as provided in this subsection.

13 (1) Past due payments of amounts in lieu of
14 contributions are subject to the same penalties that are
15 applied to past due contributions pursuant to Section 51-1-12
16 NMSA 1978.

17 (2) The provisions of Section 51-1-36 NMSA
18 1978 shall apply to all contributions or payments of amounts
19 in lieu of contributions for which a nonprofit organization
20 becomes liable pursuant to an election made pursuant to
21 Subsection A of this section.

22 (3) Any nonprofit organization that elects
23 to become liable for payments in lieu of contributions shall
24 be required, within thirty days after the effective date of
25 its election, to execute and file with the secretary a surety

1 bond or such other surety undertaking or security, which may
2 consist of a cash security deposit, in a form approved by the
3 secretary. With the consent of the secretary, a cash security
4 deposit may be made in three annual installments. This
5 paragraph shall not apply to:

6 (a) group accounts established pursuant
7 to Subsection E of this section or any member of such a group
8 account; or

9 (b) governmental entities as defined in
10 Subsection B of Section 51-1-44 NMSA 1978; except that all
11 instrumentalities of governmental entities shall be included
12 as part of the controlling governmental entity or entities for
13 purposes of determining liability for the payment of
14 unemployment compensation contributions.

15 (4) The amount of the surety bond or other
16 surety undertaking or security required by Paragraph (3) of
17 this subsection shall be equal to 2.7 percent of contribution
18 times the organization's taxable wages paid for employment, as
19 defined in Subsection F of Section 51-1-42 NMSA 1978 and
20 Section 51-1-44 NMSA 1978, for the four calendar quarters
21 immediately preceding the effective date of the election. If
22 the nonprofit organization did not pay wages in each of the
23 preceding four calendar quarters, the amount of surety bond
24 required shall be determined by the secretary based upon an
25 estimate of taxable wages to be paid during the succeeding

1 four calendar quarters. Thereafter, the amount of the surety
2 bond shall be adjusted on the basis of the organization's
3 actual taxable payroll.

4 (5) If any nonprofit organization that is
5 not required to execute and file a surety bond or other
6 security is delinquent in making payments in lieu of
7 contributions as required pursuant to Subsection B of this
8 section or if any nonprofit organization that is required to
9 execute and maintain a surety bond or other security fails to
10 do so or is delinquent in making payments as required pursuant
11 to Subsection B of this section, the secretary may terminate
12 the organization's election to make payments in lieu of
13 contributions effective as of the beginning of the next
14 taxable year and the termination shall be effective until the
15 organization executes and files with the department a surety
16 bond or other security as required.

17 (6) Any bond or other surety undertaking or
18 security required under this subsection shall be in force for
19 a period of not less than two taxable years and shall be
20 renewed with the approval of the secretary at such times as
21 the secretary may prescribe.

22 D. Each employer who is liable for payments in
23 lieu of contributions shall pay to the division for the fund
24 the amount of regular benefits plus the amount of one-half of
25 extended benefits paid that are attributable to service in the

1 employ of that employer in accordance with the provisions of
2 Subsection A of Section 51-1-11 NMSA 1978, except that any
3 employer that is liable for payments in lieu of contributions
4 shall not be relieved of charges for benefits paid to an
5 individual who was separated from the employ of that employer
6 for any reason.

7 E. Two or more employers who have become liable
8 for payments in lieu of contributions, in accordance with the
9 provisions of Subsection A of this section, Subsection B of
10 Section 51-1-14 NMSA 1978 and Section 51-1-16 NMSA 1978, may
11 file a joint application for the establishment of a group
12 account for the purpose of sharing the cost of benefits paid
13 that are attributable to service in the employ of such
14 employers. Each application shall identify and authorize a
15 group representative to act as the group's agent for the
16 purpose of this subsection. Upon its approval of the
17 application, the division shall establish a group account for
18 the employers effective as of the beginning of the calendar
19 quarter in which it receives the application and shall notify
20 the group's representative of the effective date of the
21 account. The account shall remain in effect for not less than
22 two years and thereafter until terminated at the discretion of
23 the secretary or upon application by the group. Each group
24 account shall be liable for the prepayment of payments in lieu
25 of contributions as provided in Paragraphs (2), (3) and (4) of

1 Subsection B of this section. Each member of the group
2 account shall be liable to the division for payments in lieu
3 of contributions with respect to each calendar quarter in the
4 amount that bears the same ratio to the total benefits paid in
5 the quarter that are attributable to service performed in the
6 employ of all members of the group, as the total wages paid
7 for service in employment for such member during the quarter
8 bear to the total wages paid during the quarter for service
9 performed in the employ of all members of the group. The
10 secretary shall prescribe regulations as the secretary deems
11 necessary with respect to applications for establishment,
12 maintenance and termination of group accounts that are
13 authorized by this subsection, for addition of new members to
14 and withdrawal of active members from the accounts and for the
15 determination of the amounts that are payable under this
16 subsection by members of the group and the time and manner of
17 payments.

18 F. Each group account may apportion liability for
19 amounts due to the group representative as the group shall
20 determine."

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

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

25 A. "base period" means the first four of the last

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

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

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

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

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

1 services for the employer;

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

25 E. "employer" includes:

1 (1) an employing unit that:

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

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

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

1 so long as the employing unit is paying wages or remuneration
2 for services other than agricultural services;

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

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

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

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

25 (b) that, as a condition for approval

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

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

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

14 (7) an employing unit for which any services
15 performed in its employ are deemed to be performed in this
16 state pursuant to an election under an arrangement entered
17 into in accordance with Subsection A of Section 51-1-50 NMSA
18 1978; and

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

21 F. "employment":

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

25 (2) means an individual's entire service,

1 performed within or both within and without this state if:

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

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

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

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

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

25 (5) means services performed by an

1 individual for an employer for wages or other remuneration
2 unless and until it is established by a preponderance of
3 evidence that:

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

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

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

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

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

1 each of twenty different calendar weeks in either the current
2 or preceding calendar year, whether or not the weeks were
3 consecutive, and regardless of whether the individuals were
4 employed at the same time;

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

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

22 (7) means service performed after December
23 31, 1977 by an individual in domestic service in a private
24 home, local college club or local chapter of a college
25 fraternity or sorority for a person or organization that paid

1 cash remuneration of one thousand dollars (\$1,000) in any
2 calendar quarter in the current or preceding calendar year to
3 individuals performing such services;

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

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

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

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

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

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

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

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

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

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

1 a condition for full tax credit against the tax imposed by the
2 Federal Unemployment Tax Act is required to be covered under
3 the Unemployment Compensation Law;

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

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

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

12 (12) does not include:

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

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

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

1 employ of the child's father or mother;

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

24 (e) service performed in a facility
25 conducted for the purpose of carrying out a program of

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

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

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

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

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

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

1 accordance with an arrangement pursuant to Paragraph (l) of
2 Subsection A of Section 51-1-50 NMSA 1978 during the effective
3 period of the election;

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

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

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

25 (n) service performed by real estate

1 salespersons for others when the services are performed for
2 remuneration solely by way of commission;

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

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

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

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

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

1 title defects and otherwise reducing title risk associated
2 with ownership of minerals; managing rights or obligations
3 derived from ownership of interests and minerals; or utilizing
4 or pooling of interest in minerals; and

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

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

1 employment offices;

2 H. "fund" means the unemployment compensation fund
3 established by the Unemployment Compensation Law to which all
4 contributions and payments in lieu of contributions required
5 under the Unemployment Compensation Law and from which all
6 benefits provided under the Unemployment Compensation Law
7 shall be paid;

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

22 J. "state", when used in reference to any state
23 other than New Mexico, includes, in addition to the states of
24 the United States, the District of Columbia, the commonwealth
25 of Puerto Rico and the Virgin Islands;

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

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

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

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

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

20 (4) has not entered into a written agreement
21 with the other person for whom the crew leader furnishes
22 individuals in agricultural labor that the individuals will be
23 the employees of the other person;

24 M. "week" means such period of seven consecutive
25 days, as the secretary may by rule prescribe. The secretary

1 may by rule prescribe that a week shall be deemed to be "in",
2 "within" or "during" the benefit year that includes the
3 greater part of such week;

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

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

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

22 Q. "agricultural labor" includes all services
23 performed:

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

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

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

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

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

1 consumption.

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

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

10 S. "department" means the workforce solutions
11 department; and

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

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

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

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

24 (a) retirement if the payments are made
25 by an employer to or on behalf of an employee under a

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

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

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

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

1 the individual's service with the employing unit;

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

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

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

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

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

22 (8) a payment made to or for the benefit of
23 an employee if at the time of the payment it is reasonable to
24 believe that the employee will be able to exclude the payment
25 from income under Section 106 of the federal Internal Revenue

1 Code of 1986; or

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

7 SECTION 6. Section 51-1-48 NMSA 1978 (being Laws 1971,
8 Chapter 209, Section 7, as amended) is amended to read:

9 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

10 A. As used in this section, unless the context
11 clearly requires otherwise, "extended benefit period" means a
12 period that:

13 (1) begins with the third week after a week
14 for which there is a state "on indicator";

15 (2) ends with either of the following weeks,
16 whichever occurs later:

17 (a) the third week after the first week
18 for which there is a state "off indicator"; or

19 (b) the thirteenth consecutive week of
20 such period; and

21 (3) does not begin by reason of a state "on
22 indicator" before the fourteenth week following the end of a
23 prior extended benefit period that was in effect with respect
24 to this state.

25 B. There is a state "on indicator" for this state

1 for a week if the rate of insured unemployment not seasonally
2 adjusted under this section for the period consisting of that
3 week and the immediately preceding twelve weeks:

4 (1) equaled or exceeded one hundred twenty
5 percent of the average of the rates for the corresponding
6 thirteen-week period ending in each of the preceding two
7 calendar years; and

8 (2) equaled or exceeded five percent; or

9 (3) equaled or exceeded six percent,
10 regardless of the rate of insured unemployment in the two
11 previous years; provided that the operation of this paragraph
12 shall not activate the state "on indicator" any time after
13 four weeks prior to the last week for which one hundred
14 percent federal sharing funding is available under Section
15 2005(a) of Public Law No. 111-5, without regard to the
16 extension of federal sharing for certain claims as provided
17 under Section 2005(c) of that law; or

18 (4) with respect to benefits for weeks of
19 unemployment beginning after July 1, 2003 and ending four
20 weeks prior to the last week for which one hundred percent
21 federal sharing funding is available under Section 2005(a) of
22 Public Law No. 111-5, without regard to the extension of
23 federal sharing for certain claims as provided under Section
24 2005(c) of that law:

25 (a) the average rate of total

1 unemployment, seasonally adjusted, as determined by the United
2 States secretary of labor, for the period consisting of the
3 most recent three months for which data for all states are
4 published before the close of such week equals or exceeds six
5 and one-half percent; and

6 (b) the average rate of total
7 unemployment in this state, seasonally adjusted, as determined
8 by the United States secretary of labor, for the three-month
9 period referred to in Subparagraph (a) of this paragraph,
10 equals or exceeds one hundred ten percent of such average:

11 1) for either or both of the corresponding three-month periods
12 ending in the two preceding calendar years; or 2) for weeks of
13 unemployment beginning after December 17, 2010 and ending
14 before December 31, 2011, for any or all of the corresponding
15 three-month periods ending in the three preceding calendar
16 years.

17 C. There is a state "off indicator" for this state
18 for a week only if, for the period consisting of that week and
19 the immediately preceding twelve weeks, none of the options
20 specified in Subsection B of this section result in a state
21 "on indicator".

22 D. Except as provided in Subsection E of this
23 section, the total extended benefit amount payable to an
24 eligible individual with respect to the applicable benefit
25 year shall be the least of the following amounts:

1 (1) fifty percent of the total amount of
2 regular benefits that were payable to the individual pursuant
3 to this section in the individual's applicable benefit year;

4 (2) thirteen times the individual's average
5 weekly benefit amount that was payable to the individual
6 pursuant to this section for a week of total unemployment in
7 the applicable benefit year; or

8 (3) thirty-nine times the individual's
9 average weekly benefit amount that was payable to the
10 individual pursuant to this section for a week of total
11 unemployment in the applicable benefit year, reduced by the
12 total amount of regular benefits that were paid, or deemed
13 paid, to the individual pursuant to this section with respect
14 to the benefit year; provided that the amount determined
15 pursuant to this paragraph shall be reduced by the total
16 amount of additional benefits paid, or deemed paid, to the
17 individual under the provisions of this section for weeks of
18 unemployment in the individual's benefit year that began prior
19 to the effective date of the extended benefit period that is
20 current in the week for which the individual first claims
21 extended benefits; and provided further, if the benefit year
22 of the individual ends within an extended benefit period, the
23 remaining balance of the extended benefits that the individual
24 would, but for this paragraph, be entitled to receive in that
25 extended benefit period, with respect to weeks of unemployment

1 beginning after the end of the benefit year, shall be reduced,
2 but not below zero, by the product of the number of weeks for
3 which the individual received any amounts as readjustment
4 allowances within that benefit year multiplied by the
5 individual weekly benefit amount for extended benefits.

6 E. Effective with respect to weeks beginning in a
7 high-unemployment period, the total extended benefit amount
8 payable to an eligible individual with respect to the
9 applicable benefit year shall be the least of the following
10 amounts:

11 (1) eighty percent of the total amount of
12 regular benefits that were payable to the individual pursuant
13 to this section in the individual's applicable benefit year;

14 (2) twenty times the individual's average
15 weekly benefit amount that was payable to the individual
16 pursuant to this section for a week of total unemployment in
17 the applicable benefit year; or

18 (3) forty-six times the individual's average
19 weekly benefit amount that was payable to the individual
20 pursuant to this section for a week of total unemployment in
21 the applicable benefit year reduced by the total amount of
22 regular benefits that were paid, or deemed paid, to the
23 individual pursuant to this section with respect to the
24 benefit year; provided that the amount determined pursuant to
25 this paragraph shall be reduced by the total amount of

1 additional benefits paid, or deemed paid, to the individual
2 under the provisions of this section for weeks of unemployment
3 in the individual's benefit year that began prior to the
4 effective date of the extended benefit period that is current
5 in the week for which the individual first claims extended
6 benefits; and provided further, if the benefit year of an
7 individual ends within an extended benefit period, the
8 remaining balance of the extended benefits that the individual
9 would, but for this paragraph, be entitled to receive in that
10 extended benefit period, with respect to weeks of unemployment
11 beginning after the end of the benefit year, shall be reduced,
12 but not below zero, by the product of the number of weeks for
13 which the individual received any amounts as readjustment
14 allowances within that benefit year multiplied by the
15 individual weekly benefit amount for extended benefits.

16 F. For purposes of Subsection E of this section,
17 "high-unemployment period" means a period during which an
18 extended benefit period would be in effect if Paragraph (4) of
19 Subsection B of this section were applied by substituting
20 "eight percent" for "six and one-half percent".

21 G. A benefit paid to an individual pursuant to
22 this section shall be charged pursuant to Subsection A of
23 Section 51-1-11 NMSA 1978.

24 H. As used in this section:

25 (1) "rate of insured unemployment" means the

1 percentage derived by dividing:

2 (a) the average weekly number of
3 individuals filing claims for regular benefits in this state
4 for weeks of unemployment with respect to the most recent
5 thirteen-consecutive-week period, as determined by the
6 secretary on the basis of the secretary's reports to the
7 United States secretary of labor; by

8 (b) the average monthly employment
9 covered under the Unemployment Compensation Law for the first
10 four of the most recent six completed calendar quarters ending
11 before the end of such thirteen-week period;

12 (2) "regular benefits" means benefits
13 payable to an individual under the Unemployment Compensation
14 Law or under any other state law, including benefits payable
15 to federal civilian employees and to ex-servicemen pursuant to
16 5 U.S.C., Chapter 85, other than extended benefits;

17 (3) "extended benefits" means benefits,
18 including benefits payable to federal civilian employees and
19 to ex-servicemen pursuant to 5 U.S.C., Chapter 85, payable to
20 an individual under the provisions of this section for weeks
21 of unemployment in the individual's eligibility period;

22 (4) "eligibility period" of an individual
23 means the period consisting of the weeks in the individual's
24 benefit year that begin in an extended benefit period and, if
25 the individual's benefit year ends within such extended

1 benefit period, any weeks thereafter that begin in such
2 period;

3 (5) "exhaustee" means an individual who,
4 with respect to any week of unemployment in the individual's
5 eligibility period:

6 (a) has received, prior to such week,
7 all of the regular benefits that were available to the
8 individual under the Unemployment Compensation Law or any
9 other state law, including dependent's allowance and benefits
10 payable to federal civilian employees and ex-servicemen under
11 5 U.S.C., Chapter 85, in the individual's current benefit year
12 that includes such week; provided that, for the purposes of
13 this subparagraph, an individual shall be deemed to have
14 received all of the regular benefits that were available to
15 the individual, although, as a result of a pending appeal with
16 respect to wages that were not considered in the original
17 monetary determination in the individual's benefit year, the
18 individual may subsequently be determined to be entitled to
19 added regular benefits; or

20 (b) if the individual's benefit year
21 has expired prior to such week, has no, or insufficient, wages
22 on the basis of which the individual could establish a new
23 benefit year that would include such week; and

24 (c) has no right to unemployment
25 benefits or allowances, as the case may be, under the Railroad

1 Unemployment Insurance Act, the Trade Expansion Act of 1962,
2 the Trade Act of 1974, the Automotive Products Trade Act of
3 1965 and such other federal laws as are specified in
4 regulations issued by the United States secretary of labor;
5 and has not received and is not seeking unemployment benefits
6 under the unemployment compensation law of Canada, but if the
7 individual is seeking such benefits and the appropriate agency
8 finally determines that the individual is not entitled to
9 benefits under such law, the individual is considered an
10 exhaustee; and

11 (6) "state law" means the unemployment
12 insurance law of any state, approved by the United States
13 secretary of labor under Section 3304 of the Internal Revenue
14 Code of 1986."

15 SECTION 7. EFFECTIVE DATE.--

16 A. The effective date of the provisions of
17 Section 2 of this act is January 1, 2014.

18 B. The effective date of the provisions of
19 Sections 1 and 3 through 6 of this act is January 1, 2015._____