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AN ACT

RELATING TO WORKERS' COMPENSATION; ENACTING A NEW SECTION OF THE  
WORKERS' COMPENSATION ACT; CREATING A FUND; PROVIDING FOR CLAIMS  
AGAINST UNINSURED EMPLOYERS; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Workers' Compensation Act is enacted to  
read:

"UNINSURED EMPLOYERS' FUND--WORKERS' COMPENSATION  
ADMINISTRATION--ADDITIONAL DUTIES.--

A. The "uninsured employers' fund" is created in the state treasury.  
The fund shall be administered by the workers' compensation administration as a  
separate account. The administration shall adopt rules to administer the fund  
pursuant to the provisions of this section.

B. The fund shall consist of uninsured employers' fees pursuant to this  
section and all income derived from investment of the fund. Each New Mexico  
employer or his insurance carrier shall quarterly pay an uninsured employers' fee to  
the workers' compensation administration amounting to a percentage established by  
the administration, not to exceed one percent, of the money paid out during that  
quarter as compensation benefits and medical benefits, exclusive of attorney fees and  
related benefits. The fund shall also consist of any other money appropriated,  
distributed or otherwise allocated to the fund for the purpose of this section.

C. The workers' compensation administration shall adopt rules for the  
assessment of the uninsured employers' fees. The rate shall be determined once  
before the end of each fiscal year by the workers' compensation administration so as  
to provide a sufficient income to meet payments from the fund for the next fiscal year;  
provided that for the first fiscal year the percentage shall be one-half percent. The  
uninsured employers' fees shall be collected and deposited to the credit of the  
uninsured employers' fund by the taxation and revenue department in the same

1 manner as for the workers' compensation administration fund created pursuant to  
2 Section 52-5-19 NMSA 1978. SB

3 D. Money in the fund is appropriated to the workers' compensation 7  
4 administration to pay workers compensation benefits to a person entitled to the 7  
5 benefits when that person's employer has failed to maintain workers' compensation 1  
6 coverage because of fraud, misconduct or other failure to insure or otherwise make P  
7 compensation payments. For purposes of this subsection, a worker who has a  
8 affirmatively elected not to accept the provisions of the Workers' Compensation Act g  
9 shall not be eligible for payment of workers' compensation from the uninsured e  
10 employers' fund. The director may pay reasonable costs of administering the 2  
11 uninsured employers' fund from the fund, but money in the fund shall not be used for  
12 administrative costs unrelated to the fund or any activity of the workers' compensation  
13 administration other than as provided in this section. The superintendent of insurance

14 E. The director may authorize payments to a person from the  
15 uninsured employers' fund if the injury or cause of incapacity occurs in New Mexico  
16 and would be compensable under the Workers' Compensation Act.

17 F. The uninsured employers' fund, by subrogation, has all the rights,  
18 powers and benefits of the employee or the employee's dependents against the  
19 employer failing to make the compensation payments.

20 G. The uninsured employers' fund, subject to approval of the director,  
21 shall discharge its obligations by contracting with an independent adjusting company  
22 that is licensed and principally located in New Mexico as prescribed by Section  
23 59A-13-11 NMSA 1978 or Chapter 59A, Article 12A NMSA 1978.

24 H. For the purpose of ensuring the health, safety and welfare of the  
25 public, the director or a workers' compensation judge shall:

- (1) order the uninsured employer to reimburse the uninsured employers' fund for all benefits paid to or on behalf of an injured employee by the

1 uninsured employers' fund along with interest, costs and attorneys fees; and  
2 (2) impose a penalty against the uninsured employer of not  
3 less than fifteen percent nor more than fifty percent of the value of the total award in  
4 connection with the claim that shall be paid into the uninsured employers' fund.

5 I. The liability of the state, the workers' compensation administration  
6 and the state treasurer, with respect to payment of any compensation benefits,  
7 expenses, fees or disbursement properly chargeable against the uninsured employers'  
8 fund, is limited to the assets in the uninsured employers' fund, and they are not  
9 otherwise liable for any payment.

10 J. The uninsured employers' fund shall be considered a payor of last  
11 resort within the workers' compensation system. No other payor liable for payments  
12 under the Workers' Compensation Act shall have its liabilities affected or discharged  
13 by payments from the uninsured employers' fund. Any payments to workers paid by  
14 the uninsured employers' fund shall be subject to subrogation and apportionment to  
15 the same extent as payments to an injured worker from a third party tortfeasor.

16 K. In any claim against an employer by the uninsured employers' fund,  
17 or by or on behalf of the employee to whom or to whose dependents compensation  
18 and other benefits are paid or payable from the uninsured employers' fund, the  
19 burden of proof is on the employer or other party in interest objecting to the claim.  
20 The claim is presumed to be valid up to the full amount of workers' compensation  
21 benefits paid to the employee or the employee's dependents. This subsection applies  
22 whether the claim is filed in court or in an adjudicative proceeding under the authority  
23 of the workers' compensation administration.

24 L. Nothing in this section shall be construed to extend exclusive  
25 remedy protection pursuant to Section 52-1-6 or 52-1-9 NMSA 1978 to any employer  
whose injured worker is paid by the uninsured employers' fund.

M. Nothing in this section shall be construed to supersede Section 52-  
5-10 NMSA 1978."

Section 2. APPROPRIATION.--Five hundred thousand dollars (\$500,000) is

1 appropriated from the workers' compensation fund to the uninsured employers' fund in  
2 fiscal year 2004 to carry out the purposes of the uninsured employers' fund. Any  
3 unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall  
4 revert to the  
5 workers' compensation fund.

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