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SENATE BILL 771

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Richard M. Romero

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:

"[NEW MATERIAL] 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'

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

12 C. The workers' compensation administration shall
13 adopt rules for the collection of the uninsured employers'
14 fees. The rate shall be determined once before the end of each
15 fiscal year by the workers' compensation administration so as
16 to provide a sufficient income to meet payments from the fund
17 for the next fiscal year; provided that for the first fiscal
18 year the percentage shall be one-half percent. The uninsured
19 employers' fees shall be collected and deposited to the credit
20 of the uninsured employers' fund by the taxation and revenue
21 department in the same manner as for the workers' compensation
22 administration fund created pursuant to Section 52-5-19 NMSA
23 1978.

24 D. Money in the fund is appropriated to the
25 workers' compensation administration to pay workers

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

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

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

22 G. The uninsured employers' fund, subject to
23 approval of the director, shall discharge its obligations by
24 contracting with an independent adjusting company, risk
25 management company, insurance company or other company that has

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1 expertise and capabilities in adjusting, administering and
2 paying workers' compensation claims and is licensed and
3 principally located in New Mexico as prescribed by Section
4 59A-13-11 NMSA 1978 or Chapter 59A, Article 12A NMSA 1978.

5 H. For the purpose of ensuring the health, safety
6 and welfare of the public, a workers' compensation judge, upon
7 rendering a decision with respect to any claim for workers'
8 compensation benefits in which an uninsured employer was duly
9 joined as a party, shall:

10 (1) order the uninsured employer to reimburse
11 the uninsured employers' fund for all benefits paid to or on
12 behalf of an injured employee by the uninsured employers' fund
13 along with interest, costs and attorneys fees; and

14 (2) impose a penalty against the uninsured
15 employer of not less than fifteen percent nor more than fifty
16 percent of the value of the total award in connection with the
17 claim that shall be paid into the general fund.

18 I. The liability of the state, the workers'
19 compensation administration and the state treasurer, with
20 respect to payment of any compensation benefits, expenses, fees
21 or disbursement properly chargeable against the uninsured
22 employers' fund, is limited to the assets in the uninsured
23 employers' fund, and they are not otherwise liable for any
24 payment.

25 J. The uninsured employers' fund shall be

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1 considered a payor of last resort within the workers'
2 compensation system. No other payor liable for payments under
3 the Workers' Compensation Act shall have its liabilities
4 affected or discharged by payments from the uninsured
5 employers' fund. Any payments to workers paid by the uninsured
6 employers' fund shall be subject to subrogation and
7 apportionment to the same extent as payments to an injured
8 worker from a third party tortfeasor.

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

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

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

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Section 2. APPROPRIATION. -- Five hundred thousand dollars (\$500,000) is appropriated from the workers' compensation fund to the uninsured employers' fund in fiscal year 2004 and subsequent fiscal years to carry out the purposes of the uninsured employers' fund in its initial year of operation. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.