

1 AN ACT
2 RELATING TO WORKERS' COMPENSATION; INCREASING THE ASSESSMENT
3 ON EMPLOYERS; DISTRIBUTING A PORTION OF THE EMPLOYER
4 ASSESSMENT TO THE UNINSURED EMPLOYERS' FUND; AMENDING
5 SECTIONS OF THE NMSA 1978.

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

8 Section 1. Section 52-1-9.1 NMSA 1978 (being Laws 2003, Chapter 258,
9 Section 1) is amended to read:

10 "52-1-9.1. UNINSURED EMPLOYERS' FUND--WORKERS'
11 COMPENSATION ADMINISTRATION--ADDITIONAL DUTIES.--

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

16 B. The fund shall consist of thirty cents (\$.30) per employee covered
17 by the Workers' Compensation Act on the last working day of each quarter for the
18 fee assessed against employers pursuant to Section 52-5-19 NMSA 1978 and all
19 income derived from investment of the fund. The fund shall also consist of any
20 other money appropriated, distributed or otherwise allocated to the fund for the
21 purpose of this section.

22 C. Money in the fund is appropriated to the workers' compensation
23 administration to pay workers' compensation benefits to a person entitled to the
24 benefits when that person's employer has failed to maintain workers' compensation
25 coverage because of fraud, misconduct or other failure to insure or otherwise make
compensation payments. For purposes of this subsection, a worker who has
affirmatively elected not to accept the provisions of the Workers' Compensation Act

1 shall not be eligible for payment of workers' compensation from the uninsured
2 employers' fund. The director may pay reasonable costs of administering the
3 uninsured employers' fund from the fund, but money in the fund shall not be used
4 for administrative costs unrelated to the fund or any activity of the workers'
5 compensation administration other than as provided in this section. The
6 superintendent of insurance shall examine and audit the fund pursuant to the
7 provisions of Chapter 59A, Article 4 NMSA 1978.

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

11 E. The uninsured employers' fund, by subrogation, has all the rights,
12 powers and benefits of the employee or the employee's dependents against the
13 employer failing to make the compensation payments.

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

18 G. For the purpose of ensuring the health, safety and welfare of the
19 public, the director or a workers' compensation judge shall:

20 (1) order the uninsured employer to reimburse the uninsured
21 employers' fund for all benefits paid to or on behalf of an injured employee by the
22 uninsured employers' fund along with interest, costs and attorney fees; and

23 (2) impose a penalty against the uninsured employer of not
24 less than fifteen percent nor more than fifty percent of the value of the total award in
25 connection with the claim that shall be paid into the uninsured employers' fund.

H. The liability of the state, the workers' compensation
administration and the state treasurer, with respect to payment of any

1 compensation benefits, expenses, fees or disbursement properly chargeable
2 against the uninsured employers' fund, is limited to the assets in the uninsured
3 employers' fund, and they are not otherwise liable for any payment.

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

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

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

22 L. Nothing in this section shall be construed to supersede Section
23 52-5-10 NMSA 1978."

24 Section 2. Section 52-5-19 NMSA 1978 (being Laws 1987, Chapter 235,
25 Section 52, as amended) is amended to read:

"52-5-19. FEE FOR FUNDING ADMINISTRATION--WORKERS'
COMPENSATION ADMINISTRATION FUND CREATED.--

1 A. Beginning with the calendar quarter ending September 30, 2004
2 and for each calendar quarter thereafter, there is assessed against each employer
3 who is required or elects to be covered by the Workers' Compensation Act a fee
4 equal to two dollars thirty cents (\$2.30) multiplied by the number of employees
5 covered by the Workers' Compensation Act that the employer has on the last
6 working day of each quarter. At the same time, there is assessed against each
7 employee covered by the Workers' Compensation Act on the last working day of
8 each quarter a fee of two dollars (\$2.00), which shall be deducted from the wages
9 of the employee by the employer and remitted along with the fee assessed on the
10 employer. The fees shall be remitted by the last day of the month following the end
11 of the quarter for which they are due.

12 B. The taxation and revenue department may deduct from the gross
13 fees collected an amount not to exceed five percent of the gross fees collected to
14 reimburse the department for costs of administration.

15 C. The taxation and revenue department shall pay over the net fees
16 collected to the state treasurer to be deposited by him in a fund hereby created and
17 to be known as the "workers' compensation administration fund". Expenditures
18 shall be made from this fund on vouchers signed by the director for the necessary
19 expenses of the workers' compensation administration; provided that an amount
20 equal to thirty cents (\$.30) per employee of the fee assessed against an employer
21 shall be distributed from the workers' compensation administration fund to the
22 uninsured employers' fund.

23 D. The workers' compensation fee authorized in this section shall be
24 administered and enforced by the taxation and revenue department under the
25 provisions of the Tax Administration Act."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this
act is July 1, 2004.

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