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HOUSE BILL 875

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Terry T. Marquardt

AN ACT

RELATING TO JURY SERVICE; CREATING THE LENGTHY TRIAL FUND;  
PROVIDING FOR EXEMPTION, POSTPONEMENT AND EXCUSE FROM JURY  
SERVICE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
MAKING AN APPROPRIATION.

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

Section 1. A new section of Chapter 34, Article 9 NMSA  
1978 is enacted to read:

"~~[NEW MATERIAL]~~ LENGTHY TRIAL FUND CREATED--  
ADMINISTRATION--DISTRIBUTION.--

A. The "lengthy trial fund" is created in the state  
treasury and shall be administered by the administrative office  
of the courts.

B. All balances in the lengthy trial fund may be  
expended only upon appropriation by the legislature to the

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1 administrative office of the courts for the purpose of making  
2 payments to jurors as provided in this section.

3 C. Each trial court in the state shall collect from  
4 each attorney who files a civil case, unless otherwise exempted  
5 under the provisions of this section, a fee per case,  
6 established by the supreme court, to be paid into the lengthy  
7 trial fund. An attorney will be deemed to have "filed a case"  
8 at the time the first pleading or other filing on which an  
9 individual attorney's name appears is submitted to the court  
10 for filing.

11 D. For jurors whose service on a petit jury  
12 commenced on or after January 1, 2006, the administrative  
13 office of the courts:

14 (1) shall use the fees deposited in the  
15 lengthy trial fund to pay wage replacement or supplementation  
16 to a juror otherwise eligible to be excused from service due to  
17 financial hardship as determined pursuant to Section 6 of this  
18 2005 act beginning on the fourth day of service. The amount  
19 paid from the fund shall be no more than is needed to relieve  
20 such financial hardship and shall not exceed one hundred  
21 dollars (\$100) per day per juror;

22 (2) shall use the fees deposited in the  
23 lengthy trial fund to pay wage replacement or supplementation,  
24 not to exceed five hundred dollars (\$500) per day, to any petit  
25 juror beginning on the tenth day of service; and

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1 (3) may limit the amount of payments to a  
2 juror from the lengthy trial fund based on the availability of  
3 money in the fund.

4 E. A juror who is serving or has served on a jury  
5 who qualifies for payment from the lengthy trial fund, provided  
6 the service commenced on or after the effective date of this  
7 act, may submit a request for payment from the lengthy trial  
8 fund on a form that the administrative office of the courts  
9 provides. The form shall disclose the juror's regular wages,  
10 the amount the employer will pay during the term of jury  
11 service, the amount of replacement or supplemental wages  
12 requested and any other information the administrative office  
13 of the courts deems necessary for proper payment. The juror  
14 also shall be required to submit to the administrative office  
15 of the courts the juror's most recent earnings statement or  
16 similar document prior to initiation of payment from the  
17 lengthy trial fund. If a juror is self-employed or receives  
18 compensation other than wages, the juror shall provide a sworn  
19 affidavit attesting to the juror's approximate gross weekly  
20 income, together with such other information as the  
21 administrative office of the courts may require, in order to  
22 verify weekly income. Payment shall be limited to the  
23 difference between the state-paid jury fee and the actual  
24 amount of wages a juror earns, up to the maximum level payable,  
25 minus any amount the juror actually receives from an employer

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1 during the same period.

2 F. The following are exempt from payment of the  
3 lengthy trial fund fee:

- 4 (1) government attorneys appearing in the  
5 course of their official duties;  
6 (2) pro se litigants;  
7 (3) cases in small claims court; or  
8 (4) claims seeking social security disability  
9 determinations; individual veteran's compensation or disability  
10 determinations; recoupment actions for government-backed  
11 educational loans or mortgages; child custody and support  
12 cases; actions brought in forma pauperis; and any other filings  
13 designated by rule that involve minimal use of court resources  
14 and that customarily are not afforded the opportunity for a  
15 trial by jury.

16 G. All lengthy trial fees that the courts collect  
17 and interest earned on money in the lengthy trial fund shall be  
18 credited to the fund. Payments shall be made upon  
19 certification by judicial agencies of eligible amounts. No  
20 part of the fund shall revert at the end of a fiscal year.

21 H. Payments from the lengthy trial fund shall be  
22 made upon vouchers issued and signed by the director of the  
23 administrative office of the courts or the director's designee  
24 upon warrants drawn by the secretary of finance and  
25 administration."

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1           Section 2. Section 38-5-2 NMSA 1978 (being Laws 1973,  
2 Chapter 150, Section 1, as amended) is amended to read:

3           "38-5-2. ~~[EXEMPTION]~~ EXEMPTIONS FROM JURY SERVICE.--

4           Persons who have served as members of a petit jury panel or a  
5 grand jury in either state or federal courts within the  
6 preceding thirty-six months shall be exempt from sitting or  
7 serving as jurors in any of the courts of this state when they,  
8 at their option, request to be ~~[excused]~~ exempt from service by  
9 reason of the exemption granted by this section. ~~[Any other~~  
10 ~~person may be excused from jury service at the discretion of~~  
11 ~~the judge upon satisfactory evidence presented to the judge~~  
12 ~~with or without the person's personal attendance upon the~~  
13 ~~court. The judge, in his discretion, upon granting any excuse,~~  
14 ~~may disallow the fees and mileage of the person excused.]~~ The  
15 service upon any jury of any person disqualified shall, of  
16 itself, not vitiate any indictment found or any verdict  
17 rendered by that jury, unless actual injury to the person  
18 complaining of the injury is shown."

19           Section 3. Section 38-5-11 NMSA 1978 (being Laws 1969,  
20 Chapter 222, Section 11, as amended) is amended to read:

21           "38-5-11. QUALIFYING JURY PANELS.--

22           A. The court shall empanel jurors in a random  
23 manner. The district judge or ~~[his]~~ the judge's designee or  
24 the magistrate or ~~[his]~~ the magistrate's designee shall preside  
25 over the empaneling of a petit jury panel. The district judge

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1 or [~~his~~] the judge's designee shall preside over the empaneling  
2 of the grand jury panel. Jurors who appear for service shall  
3 be questioned under oath as to their eligibility for jury  
4 service by the district judge or [~~his~~] the judge's designee or  
5 the magistrate or [~~his~~] the magistrate's designee. Claims of  
6 exemption, requests for excuse from service or postponement of  
7 [~~services~~] service shall be ruled upon by the district judge or  
8 [~~his~~] the judge's designee or the magistrate or [~~his~~] the  
9 magistrate's designee.

10 ~~[B. A district judge or his designee or magistrate~~  
11 ~~or his designee may excuse, exclude or postpone the services of~~  
12 ~~any person called as a juror on the basis of:~~

13 ~~(1) physical or mental illness of the person~~  
14 ~~or within his immediate family;~~

15 ~~(2) a written request from the person's~~  
16 ~~employer for excuse on the ground that his services are~~  
17 ~~essential; or~~

18 ~~(3) the person's prior business, professional~~  
19 ~~or educational commitments which conflict with jury service,~~  
20 ~~proven to the satisfaction of the district judge or his~~  
21 ~~designee or magistrate or his designee.~~

22 G.] B. The district judge or [~~his~~] the judge's  
23 designee or the magistrate or [~~his~~] the magistrate's designee  
24 shall submit questionnaires to prospective jurors to obtain any  
25 information that will aid the court in ruling on requests for

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1 exemption or excuse from service or postponement of service or  
2 that will aid the court or parties in voir dire examination of  
3 jurors or in determining a juror's qualifications to serve on a  
4 particular petit jury panel, trial jury or grand jury. The  
5 district judge or [~~his~~] the judge's designee or the magistrate  
6 or [~~his~~] the magistrate's designee shall certify a numbered  
7 list of the jury panel members' names when qualified. The  
8 certified list of jurors and the questionnaires obtained from  
9 jurors shall be made available for inspection and copying by  
10 any party to any pending proceeding or [~~their~~] any party's  
11 attorney or to any person having good cause for access to the  
12 list and the questionnaires."

13 Section 4. Section 38-5-12 NMSA 1978 (being Laws 1969,  
14 Chapter 222, Section 12, as amended) is amended to read:

15 "38-5-12. PETIT JURY PANELS--NUMBER TO BE QUALIFIED--  
16 PERIOD OF SERVICE--[EXEMPTION] TIME FOR SUMMONING.--The  
17 district judge shall determine the number of jurors to be  
18 summoned for service, the date and time for the appearance of  
19 jurors for qualification, the number of jurors to be qualified  
20 to provide panels of jurors for trial service, the size of  
21 trial jury panels and the length of time jurors are retained  
22 for service. Procedures such as the use of alternate jury  
23 panels should be established where appropriate to lessen the  
24 burden of jury service on persons retained on petit jury  
25 panels. [~~No~~] A person [~~may~~] shall not be required to remain as

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1 a member of a petit jury panel for longer than [~~six~~] three  
2 months following qualification as a juror in any year [~~and~~].  
3 In any judicial district having a population of more than three  
4 hundred thousand persons in the last federal decennial census,  
5 [~~no person may be required to remain as a member of an actual~~  
6 ~~jury panel for longer than six weeks in any calendar year~~  
7 ~~unless the panel is engaged in a trial, nor shall he be~~  
8 ~~required to remain as a member of a petit jury panel for longer~~  
9 ~~than three months following qualification as a juror in any~~  
10 ~~year. Persons who have served as members of a petit jury panel~~  
11 ~~or a grand jury in either state or federal courts within the~~  
12 ~~preceding thirty-six months shall be exempt from sitting or~~  
13 ~~serving as jurors in any of the courts of this state when they,~~  
14 ~~at their option, request to be excused from service.] service  
15 of a prospective juror shall be for no more than one court day  
16 in actual attendance, unless a prospective juror is selected to  
17 serve in a trial or is under consideration to serve at a trial  
18 and that consideration covers a period of two or more days.  
19 Once selected, a juror shall serve on the jury for the duration  
20 of the trial unless excused by the court. Jurors may be drawn,  
21 summoned and qualified by the district judge at any time to  
22 supplement jury panels requiring replacement or augmentation.  
23 Petit jury panels may be qualified and may serve as the trial  
24 needs of the district court require without regard to court  
25 terms."~~

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1           Section 5. A new section of Chapter 38, Article 5 NMSA  
2 1978 is enacted to read:

3           "[NEW MATERIAL] POSTPONEMENT OF JURY SERVICE.--

4           A. A person scheduled to appear for jury service  
5 has the right to postpone the date of initial appearance one  
6 time only. When requested, postponement shall be granted;  
7 provided that:

8                           (1) the person has not previously been granted  
9 a postponement;

10                          (2) the person requests the postponement; and

11                          (3) prior to the court granting the  
12 postponement, the person sets with the court a date certain on  
13 which the person shall appear for jury service that is not more  
14 than six months after the date the person was originally called  
15 to serve.

16           B. The court may approve a second request for  
17 postponement of jury service only in the event of an extreme  
18 emergency, such as a death in the family, sudden grave illness,  
19 a natural disaster or a national emergency in which the person  
20 scheduled for jury service is personally involved, that could  
21 not be anticipated at the time an initial postponement was  
22 granted. Prior to the court granting a second postponement,  
23 the person shall set with the court a date certain on which the  
24 person shall appear for jury service that is not more than six  
25 months after the second postponement.

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1 C. A court shall automatically postpone and  
2 reschedule the service of a person who works for an employer  
3 with five or fewer full-time employees, or their equivalent, if  
4 another employee of that employer is summoned to appear for  
5 jury service during the same period. This automatic  
6 postponement shall not affect a person's right to a  
7 postponement pursuant to Subsection A of this section.

8 D. A person who fails to appear for jury service on  
9 the date scheduled or set by the court without obtaining a  
10 postponement or second postponement, as provided for in this  
11 section, is guilty of a petty misdemeanor and shall be  
12 sentenced in accordance with the provisions of Section 31-19-1  
13 NMSA 1978."

14 Section 6. A new section of Chapter 38, Article 5 NMSA  
15 1978 is enacted to read:

16 "[NEW MATERIAL] EXCUSE FROM JURY SERVICE.--

17 A. A person scheduled to appear for jury service  
18 may apply to the court to be excused from service for a period  
19 of time determined by the court; provided that:

20 (1) the person has a mental or physical  
21 condition that causes the person to be incapable of performing  
22 jury service. The person, or the person's personal  
23 representative, shall provide to the court documentation from a  
24 licensed medical professional verifying that a mental or  
25 physical condition renders the person incapable of performing

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1 jury service for a period of time not less than the period for  
2 which the excuse is requested; or

3 (2) the person, or another person under that  
4 person's care or supervision, would suffer an undue or extreme  
5 physical or financial hardship due to the jury service. The  
6 person shall provide the court with documentation that the  
7 court finds to clearly support the request to be excused and no  
8 excuse may be granted without this documentation. As used in  
9 this paragraph "undue or extreme physical or financial  
10 hardship" means circumstances in which the person requesting  
11 the excuse would:

12 (a) be required to abandon another  
13 person under that person's care or supervision due to the  
14 inability to obtain an appropriate substitute caregiver during  
15 potential jury service;

16 (b) incur costs that would have a  
17 substantial adverse impact on the payment of the person's  
18 necessary daily living expenses or on another person for whom  
19 the person requesting the excuse provides the principal means  
20 of support; or

21 (c) suffer physical hardship that would  
22 result in illness or disease.

23 B. After the period of time determined by the  
24 court, a person excused from jury service shall become eligible  
25 for qualification as a juror, unless the person was excused

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1 permanently.

2 C. Upon request to the court, a person seventy  
3 years of age or older shall be permanently excused from jury  
4 service."

5 Section 7. Section 38-5-18 NMSA 1978 (being Laws 1979,  
6 Chapter 47, Section 1) is amended to read:

7 "38-5-18. EMPLOYER PROHIBITED FROM PENALIZING EMPLOYEE  
8 FOR JURY SERVICE.--

9 A. An employer shall not deprive an employee of  
10 [his] employment or threaten or otherwise coerce [him] the  
11 employee with respect [~~thereto~~] to employment because the  
12 employee receives a summons, responds [~~thereto~~] to the summons,  
13 serves as a juror or attends court for prospective jury  
14 service.

15 B. If an employer provides annual, vacation or sick  
16 leave, the employer shall not require or request an employee to  
17 use that leave for time spent responding to a summons for jury  
18 service, participating in the jury selection process or serving  
19 on a jury."