

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 65

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO EXECUTIVE REORGANIZATION; MAKING THE WORKERS' COMPENSATION ADMINISTRATION A DIVISION OF THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING FOR TRANSFERS OF FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS 2003.

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

SECTION 1. Section 7-1-8.8 NMSA 1978 (being Laws 2009, Chapter 243, Section 10) is amended to read:

"7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:

A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act;

.183781.1

underscoring material = new
~~[bracketed material] = delete~~

underscoring material = new
~~[bracketed material] = delete~~

1 B. the attorney general, return information
2 acquired pursuant to the Cigarette Tax Act for purposes of
3 Section 6-4-13 NMSA 1978 and the master settlement agreement
4 defined in Section 6-4-12 NMSA 1978;

5 C. the commissioner of public lands, return
6 information for use in auditing that pertains to rentals,
7 royalties, fees and other payments due the state under land
8 sale, land lease or other land use contracts;

9 D. the secretary of human services or the
10 secretary's delegate, under a written agreement with the
11 department, the last known address with date of all names
12 certified to the department as being absent parents of children
13 receiving public financial assistance, but only for the purpose
14 of enforcing the support liability of the absent parents by the
15 child support enforcement division or any successor
16 organizational unit;

17 E. the department of information technology, by
18 electronic media, a database updated quarterly that contains
19 the names, addresses, county of address and taxpayer
20 identification numbers of New Mexico personal income tax
21 filers, but only for the purpose of producing the random jury
22 list for the selection of petit or grand jurors for the state
23 courts pursuant to Section 38-5-3 NMSA 1978;

24 F. the state courts, the random jury lists produced
25 by the department of information technology under Subsection E

.183781.1

underscoring material = new
[bracketed material] = delete

1 of this section;

2 G. the director of the New Mexico department of
3 agriculture or the director's authorized representative, upon
4 request of the director or representative, the names and
5 addresses of all gasoline or special fuel distributors,
6 wholesalers and retailers;

7 H. the public regulation commission, return
8 information with respect to the Corporate Income and Franchise
9 Tax Act required to enable the commission to carry out its
10 duties;

11 I. the state racing commission, return information
12 with respect to the state, municipal and county gross receipts
13 taxes paid by racetracks;

14 J. the gaming control board, tax returns of license
15 applicants and their affiliates as provided in Subsection E of
16 Section 60-2E-14 NMSA 1978;

17 K. the director of the workers' compensation
18 administration division of the workforce solutions department
19 or to the director's representatives authorized for this
20 purpose, return information to facilitate the identification of
21 taxpayers that are delinquent or noncompliant in payment of
22 fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978; and

23 L. the secretary of workforce solutions or the
24 secretary's delegate, return information for use in enforcement
25 of unemployment insurance collections pursuant to the terms of

.183781.1

underscored material = new
[bracketed material] = delete

1 a written reciprocal agreement entered into by the department
2 with the secretary of workforce solutions for exchange of
3 information."

4 SECTION 2. Section 7-2C-3 NMSA 1978 (being Laws 1985,
5 Chapter 106, Section 3, as amended by Laws 2006, Chapter 52,
6 Section 2 and by Laws 2006, Chapter 53, Section 2) is amended
7 to read:

8 "7-2C-3. DEFINITIONS.--As used in the Tax Refund
9 Intercept Program Act:

10 A. "claimant agency" means the taxation and revenue
11 department or any of its divisions, the human services
12 department, the [~~employment security division of the labor~~
13 ~~department~~] workforce transition services division or the
14 workers' compensation administration division of the workforce
15 solutions department, any corporation authorized to be formed
16 under the Educational Assistance Act, a district, magistrate or
17 municipal court or the Bernalillo county metropolitan court;

18 B. "debt" means a legally enforceable obligation of
19 an employer subject to the Unemployment Compensation Law, the
20 Workers' Compensation Act and the Workers' Compensation
21 Administration Act, or an individual to pay a liquidated amount
22 of money that:

23 (1) is equal to or more than one hundred
24 dollars (\$100);

25 (2) is due and owing a claimant agency, which

.183781.1

1 a claimant agency is obligated by law to collect or which, in
2 the case of an educational loan, a claimant agency has lawfully
3 contracted to collect;

4 (3) has accrued through contract, tort,
5 subrogation or operation of law; and

6 (4) either:

7 (a) has been secured by a warrant of
8 levy and lien for amounts due under the Unemployment
9 Compensation Law or workers' compensation fees due under the
10 Workers' Compensation Administration Act; or

11 (b) has been reduced to judgment for all
12 other cases;

13 C. "debtor" means any employer subject to the
14 Unemployment Compensation Law, the Workers' Compensation Act
15 and the Workers' Compensation Administration Act, or any
16 individual owing a debt;

17 D. "department" or "division" means, unless the
18 context indicates otherwise, the taxation and revenue
19 department, the secretary of taxation and revenue or any
20 employee of the department exercising authority lawfully
21 delegated to that employee by the secretary;

22 E. "educational loan" means any loan for
23 educational purposes owned by a public post-secondary
24 educational institution or owned or guaranteed by any
25 corporation authorized to be formed under the Educational

.183781.1

underscored material = new
[bracketed material] = delete

1 Assistance Act;

2 F. "medical support" means amounts owed to the
3 human services department pursuant to the provisions of
4 Subsection B of Section 40-4C-12 NMSA 1978;

5 G. "public post-secondary educational institution"
6 means a publicly owned or operated institution of higher
7 education or other publicly owned or operated post-secondary
8 educational facility located within New Mexico;

9 H. "spouse" means an individual who is or was a
10 spouse of the debtor and who has joined with the debtor in
11 filing a joint return of income tax pursuant to the provisions
12 of the Income Tax Act, which joint return has given rise to a
13 refund that may be subject to the provisions of the Tax Refund
14 Intercept Program Act; and

15 I. "refund" means a refund, including any amount of
16 tax rebates or credits, under the Income Tax Act or the
17 Corporate Income and Franchise Tax Act that the department has
18 determined to be due to an individual or corporation."

19 **SECTION 3.** Section 7-2C-11 NMSA 1978 (being Laws 1985,
20 Chapter 106, Section 11, as amended by Laws 2006, Chapter 52,
21 Section 4 and by Laws 2006, Chapter 53, Section 4) is amended
22 to read:

23 "7-2C-11. PRIORITY OF CLAIMS.--

24 A. Claims of the department take precedence over
25 the claim of any competing claimant agency, whether the

.183781.1

underscored material = new
[bracketed material] = delete

1 department asserts a claim or sets off an asserted debt under
2 the provisions of the Tax Refund Intercept Program Act or under
3 the provisions of any other law that authorizes the department
4 to apply amounts of tax owed against any refund due an
5 individual pursuant to the Income Tax Act.

6 B. After claims of the department, claims shall
7 take priority in the following order before claims of any
8 competing claimant agency:

9 (1) claims of the human services department
10 resulting from child support enforcement liabilities;

11 (2) claims of the human services department
12 resulting from medical support liabilities;

13 (3) claims resulting from educational loans
14 made under the Educational Assistance Act;

15 (4) claims of the human services department
16 resulting from ~~[AFDC]~~ temporary assistance for needy families
17 liabilities;

18 (5) claims of the human services department
19 resulting from ~~[food stamp]~~ supplemental nutrition assistance
20 program liabilities;

21 (6) claims of the ~~[employment security~~
22 ~~division of the labor]~~ workforce transition services division
23 of the workforce solutions department arising under the
24 Unemployment Compensation Law;

25 (7) claims of a district court for fines, fees

.183781.1

underscored material = new
[bracketed material] = delete

1 or costs owed to that court;

2 (8) claims of a magistrate court for fines,
3 fees or costs owed to that court;

4 (9) claims of the Bernalillo county
5 metropolitan court for fines, fees or costs owed to that court;

6 (10) claims of a municipal court for fines,
7 fees or costs owed to that court; and

8 (11) claims of the workers' compensation
9 administration division of the workforce solutions department
10 arising under the Workers' Compensation Act or the Workers'
11 Compensation Administration Act."

12 SECTION 4. Section 9-26-4 NMSA 1978 (being Laws 2007,
13 Chapter 200, Section 4) is amended to read:

14 "9-26-4. WORKFORCE SOLUTIONS DEPARTMENT CREATED.--The
15 "workforce solutions department" is created in the executive
16 branch pursuant to the Executive Reorganization Act. The
17 department is a cabinet department that includes:

- 18 A. the office of the secretary;
- 19 B. the administrative services division;
- 20 C. the business services division;
- 21 D. the labor relations division;
- 22 E. the workers' compensation administration
23 division;

24 [~~E.~~] F. the workforce technology division; and

25 [~~F.~~] G. the workforce transition services

underscored material = new
[bracketed material] = delete

1 division."

2 SECTION 5. Section 52-1-1.1 NMSA 1978 (being Laws 1986,
3 Chapter 22, Section 26, as amended by Laws 2003, Chapter 259,
4 Section 1 and by Laws 2003, Chapter 263, Section 1) is amended
5 to read:

6 "52-1-1.1. DEFINITIONS.--As used in Chapter 52, Articles
7 1 through 6 NMSA 1978:

8 A. "controlled insurance plan" means a plan of
9 insurance coverage that is established by an owner or principal
10 contractor that requires participation by contractors or
11 subcontractors who are engaged in the construction project,
12 including coverage plans that are for a fixed term of coverage
13 on a single construction site;

14 B. "director" means the director of the [~~workers'~~
15 ~~compensation administration~~] division;

16 C. "division" means the workers' compensation
17 administration division of the workforce solutions department;

18 D. "rolling wrap-up or consolidated insurance plan"
19 means coverage for an ongoing project or series of projects in
20 which the common insurance program remains in place
21 indefinitely and contracted work is simply added as it occurs
22 under the control of one owner or principal contractor;

23 E. "workers' compensation judge" means an
24 individual appointed by the director to act as a workers'
25 compensation judge in the administration of the Workers'

.183781.1

underscored material = new
[bracketed material] = delete

1 Compensation Act or the New Mexico Occupational Disease
2 Disablement Law;

3 F. "workman" or "workmen" means worker or workers;

4 G. "Workmen's Compensation Act" means the Workers'
5 Compensation Act; and

6 H. "workmen's compensation administration" or
7 "administration" means the [~~workers' compensation~~
8 ~~administration~~] division."

9 SECTION 6. Section 52-1-1.2 NMSA 1978 (being Laws 1990
10 (2nd S.S.), Chapter 2, Section 28, as amended) is amended to
11 read:

12 "52-1-1.2. ADVISORY COUNCIL ON WORKERS' COMPENSATION AND
13 OCCUPATIONAL DISEASE DISABLEMENT--FUNCTIONS AND DUTIES--
14 INDEPENDENT MEDICAL EXAMINATIONS COMMITTEE.--

15 A. [~~There is created in the workers' compensation~~
16 ~~administration an~~] The "advisory council on workers'
17 compensation and occupational disease disablement" is created
18 to advise the division. Members of the council shall be
19 appointed by the governor. There shall be six voting members
20 of the council, with three members representing employers and
21 three members representing workers. No member representing
22 employers or workers shall be an attorney. Three of the
23 original appointees shall serve for terms of two years, and
24 three shall serve for four years. The members shall determine
25 by lot which members shall serve for four years and which shall

.183781.1

underscored material = new
[bracketed material] = delete

1 serve for two; thereafter, each member shall be appointed for a
2 term of four years. The council shall elect a [~~chairman~~] chair
3 from its membership. The director shall be an ex-officio,
4 nonvoting member of the council.

5 B. Members of the council shall not be paid but
6 [~~shall~~] are entitled to receive per diem and mileage pursuant
7 to the Per Diem and Mileage Act.

8 C. The council shall meet at least twice each year.
9 It shall annually review workers' compensation and occupational
10 disease disablement in New Mexico and shall issue a report of
11 its findings and conclusions on or before January 1 of each
12 year. The annual report shall be sent to the governor, the
13 superintendent of insurance, the speaker of the house of
14 representatives, the president pro tempore of the senate, the
15 minority leaders of both houses of the legislature and the
16 [~~chairmen~~] chairs of all appropriate committees of each house
17 that review the status of the workers' compensation and
18 occupational disease disablement system. In performing these
19 responsibilities, the council's role shall be strictly
20 advisory, but it may:

21 (1) make recommendations relating to the
22 adoption of rules and legislation;

23 (2) make recommendations regarding the method
24 and form of statistical data collections; and

25 (3) monitor the performance of the workers'

underscored material = new
[bracketed material] = delete

1 compensation and occupational disease disablement system in the
2 implementation of legislative directives.

3 D. The [~~advisory~~] council [~~on workers' compensation~~
4 ~~and occupational disease disablement~~] shall appoint a committee
5 composed of three members representing workers and three
6 members representing employers to designate an approved list of
7 health care providers who are authorized to conduct independent
8 medical examinations. The committee [~~shall~~], to the greatest
9 extent possible, shall designate only health care providers
10 whose judgments are respected, or not objected to, by
11 recognized representatives of both employer and worker
12 interests and whose judgments are not perceived to favor any
13 particular interest group. Members of the committee shall be
14 immune from personal liability for any official action taken in
15 establishing the approved list of health care providers. The
16 committee shall review and revise the list annually. The terms
17 of the original members shall be two years, and thereafter the
18 terms of the members shall be staggered so that each year the
19 committee appoints one member who represents workers and one
20 member who represents employers. The members shall annually
21 elect a [~~chairman~~] chair. No member representing employers or
22 workers shall be an attorney.

23 E. The [~~workers' compensation administration~~]
24 division shall cooperate with the council and shall provide
25 information and staff support as reasonably necessary and

.183781.1

underscored material = new
[bracketed material] = delete

1 required by the council and by the committee appointed pursuant
2 to provisions of Subsection D of this section."

3 SECTION 7. Section 52-1-4.2 NMSA 1978 (being Laws 2003,
4 Chapter 263, Section 2) is amended to read:

5 "52-1-4.2. CONTROLLED INSURANCE PLAN--PENALTY.--

6 A. An owner or the principal contractor of a
7 construction project may establish and administer a controlled
8 insurance plan, provided the covered project is a construction
9 project, a plant expansion or real property improvements within
10 New Mexico with an aggregate construction value in excess of
11 one hundred fifty million dollars (\$150,000,000) expended
12 within a five-year period. As used in this section, "aggregate
13 construction value" includes design, utilities, site
14 excavation, construction costs of improvements to real property
15 and acquisition of equipment and furnishings but does not
16 include the cost of fees or charges associated with financing
17 the construction project.

18 B. Rolling wrap-ups are prohibited. Controlled
19 insurance plans covering non-contiguous construction sites are
20 prohibited.

21 C. The owner shall include in any request for
22 proposals for bids a notice that participation in a controlled
23 insurance plan is a requirement of the bid and shall provide a
24 copy of the specifications of the controlled insurance plan.
25 The specifications shall include a statement of the bidding

.183781.1

underscored material = new
[bracketed material] = delete

1 contractor's or subcontractor's responsibilities relative to
2 the plan.

3 D. A dispute regarding which workers' compensation
4 coverage or insurer is responsible shall be resolved by the
5 ~~[administration]~~ division. An administrative or judicial
6 finding shall include appropriate reimbursement of benefit
7 payments and expenses. For disputed cases as described herein,
8 initial benefits shall be provided by the controlled insurance
9 plan until such time as the coverage dispute is resolved.

10 E. An owner or principal contractor who enters into
11 a contract for a controlled insurance plan shall file a copy of
12 the contract and evidence of compliance with the requirements
13 of this section with the superintendent of insurance and the
14 ~~[workers' compensation administration]~~ division at least thirty
15 days before the date on which the owner is to begin receiving
16 bids or requests for proposals on the project.

17 F. An owner or principal contractor using a
18 controlled insurance plan shall distribute any project
19 performance-based refunded premium or dividend to each
20 participating contractor and subcontractor on a proportional
21 basis if provided in the construction contract.

22 G. An owner or principal contractor shall provide
23 for a safety plan for an employee engaged in the construction
24 project when the employee is present at the construction
25 project site. The owner or principal contractor of the

.183781.1

underscored material = new
[bracketed material] = delete

1 construction project shall develop and carry out a health and
2 safety program approved by the [~~workers' compensation~~
3 ~~administration~~] division. The plan shall include a protocol
4 that encourages return to work guidelines pursuant to the
5 Workers' Compensation Act.

6 H. The owner or principal contractor of a
7 construction project that uses a controlled insurance plan
8 shall:

9 (1) establish a method for timely reporting of
10 job-related injuries to the employer, the insured and the
11 [~~administration~~] division;

12 (2) provide modifier experienced units
13 statistical rating information and any other statistical
14 information required by the superintendent of insurance for all
15 contractors and subcontractors, including losses and payroll,
16 to the appropriate rating service within six months following
17 the end of the annual policy period;

18 (3) provide contractors or subcontractors or
19 their representatives with actual and specific payroll audit
20 data generated under the controlled insurance plan, as would be
21 customarily provided to the employer from a non-controlled
22 insurance plan; and

23 (4) provide the same access to information on
24 injured employees as would customarily be available to the
25 employer from a non-controlled insurance plan.

.183781.1

underscored material = new
[bracketed material] = delete

1 I. In addition to any other penalties provided
2 under the law, a person found to have violated any requirement
3 of this section shall be subject to a penalty pursuant to
4 Section 52-1-61 NMSA 1978."

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

7 "52-1-9.1. UNINSURED EMPLOYERS' FUND--WORKERS'
8 COMPENSATION ADMINISTRATION--ADDITIONAL DUTIES.--

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

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

22 C. Money in the fund is appropriated to the
23 [~~workers' compensation administration~~] division to pay workers'
24 compensation benefits to a person entitled to the benefits when
25 that person's employer has failed to maintain workers'

.183781.1

underscored material = new
[bracketed material] = delete

1 compensation coverage because of fraud, misconduct or other
2 failure to insure or otherwise make compensation payments. For
3 purposes of this subsection, a worker who has affirmatively
4 elected not to accept the provisions of the Workers'
5 Compensation Act shall not be eligible for payment of workers'
6 compensation from the uninsured employers' fund. The director
7 may pay reasonable costs of administering the uninsured
8 employers' fund from the fund, but money in the fund shall not
9 be used for administrative costs unrelated to the fund or any
10 activity of the [~~workers' compensation administration~~] division
11 other than as provided in this section. The superintendent of
12 insurance shall examine and audit the fund pursuant to the
13 provisions of Chapter 59A, Article 4 NMSA 1978.

14 D. 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 E. 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 F. The uninsured employers' fund, subject to
23 approval of the director, shall discharge its obligations by
24 contracting with an independent adjusting company that is
25 licensed and principally located in New Mexico as prescribed by

.183781.1

underscored material = new
[bracketed material] = delete

1 Section 59A-13-11 NMSA 1978 or Chapter 59A, Article 12A NMSA
2 1978.

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

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

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

14 H. The liability of the state, the [~~workers'~~
15 ~~compensation administration~~] division and the state treasurer,
16 with respect to payment of any compensation benefits, expenses,
17 fees or disbursement properly chargeable against the uninsured
18 employers' fund, is limited to the assets in the uninsured
19 employers' fund, and they are not otherwise liable for any
20 payment.

21 I. The uninsured employers' fund shall be
22 considered a payor of last resort within the workers'
23 compensation system. No other payor liable for payments under
24 the Workers' Compensation Act shall have its liabilities
25 affected or discharged by payments from the uninsured

.183781.1

underscored material = new
[bracketed material] = delete

1 employers' fund. Any payments to workers paid by the uninsured
2 employers' fund shall be subject to subrogation and
3 apportionment to the same extent as payments to an injured
4 worker from a third party tortfeasor.

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

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

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

22 SECTION 9. Section 52-1-54 NMSA 1978 (being Laws 1987,
23 Chapter 235, Section 24, as amended) is amended to read:

24 "52-1-54. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY
25 THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY COSTS--

.183781.1

underscored material = new
[bracketed material] = delete

1 OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

2 A. It is unlawful for any person to receive or
3 agree to receive any fees or payment directly or indirectly in
4 connection with any claim for compensation under the Workers'
5 Compensation Act except as provided in this section.

6 B. In all cases where the jurisdiction of the
7 [~~workers' compensation administration~~] division is invoked to
8 approve a settlement of a compensation claim under the Workers'
9 Compensation Act, the director or workers' compensation judge,
10 unless the claimant is represented by an attorney, may in [~~his~~]
11 the director's or judge's discretion appoint an attorney to aid
12 the workers' compensation judge in determining whether the
13 settlement should be approved and, in the event of an
14 appointment, a reasonable fee for the services of the attorney
15 shall be fixed by the workers' compensation judge, subject to
16 the limitation of Subsection I of this section.

17 C. In all cases where the jurisdiction of the
18 [~~workers' compensation administration~~] division is invoked to
19 approve a settlement of a compensation claim under the Workers'
20 Compensation Act and the claimant is represented by an
21 attorney, the total amount paid or to be paid by the employer
22 in settlement of the claim shall be stated in the settlement
23 papers. The workers' compensation judge shall determine and
24 fix a reasonable fee for the claimant's attorney, taking into
25 account any sum previously paid, and the fee fixed by the

.183781.1

underscored material = new
[bracketed material] = delete

1 workers' compensation judge shall be the limit of the fee
2 received or to be received by the attorney in connection with
3 the claim, subject to the limitation of Subsection I of this
4 section.

5 D. The cost of discovery shall be borne by the
6 party who requests it. If, however, the claimant requests any
7 discovery, the employer shall advance the cost of paying for
8 discovery up to a limit of three thousand dollars (\$3,000). If
9 the claimant substantially prevails on the claim, as determined
10 by a workers' compensation judge, any discovery cost advanced
11 by the employer shall be paid by that employer. If the
12 claimant does not substantially prevail on the claim, as
13 determined by a workers' compensation judge, the employer shall
14 be reimbursed for discovery costs advanced according to a
15 schedule for reimbursement approved by a workers' compensation
16 judge.

17 E. In all cases where compensation to which any
18 person is entitled under the provisions of the Workers'
19 Compensation Act is refused and the claimant thereafter
20 collects compensation through proceedings before the [~~workers'~~
21 ~~compensation administration~~] division or courts in an amount in
22 excess of the amount offered in writing by an employer five
23 business days or more prior to the informal hearing before the
24 [~~administration~~] division, the compensation to be paid the
25 attorney for the claimant shall be fixed by the workers'

.183781.1

underscored material = new
[bracketed material] = delete

1 compensation judge hearing the claim or the courts upon appeal
2 in the amount the workers' compensation judge or courts deem
3 reasonable and proper, subject to the limitation of Subsection
4 I of this section. In determining and fixing a reasonable fee,
5 the workers' compensation judge or courts shall take into
6 consideration:

7 (1) the sum, if any, offered by the employer:

8 (a) before the worker's attorney was
9 employed;

10 (b) after the attorney's employment but
11 before proceedings were commenced; and

12 (c) in writing five business days or
13 more prior to the informal hearing;

14 (2) the present value of the award made in the
15 worker's favor; and

16 (3) any failure of a party to participate in a
17 good-faith manner in informal claim resolution methods adopted
18 by the director.

19 F. After a recommended resolution has been issued
20 and rejected, but more than ten days before a trial begins, the
21 employer or claimant may serve upon the opposing party an offer
22 to allow a compensation order to be taken against ~~[him]~~ the
23 employer or claimant for the money or property or to the effect
24 specified in ~~[his]~~ the offer, with costs then accrued, subject
25 to the following:

.183781.1

underscored material = new
[bracketed material] = delete

1 (1) if, within ten days after the service of
2 the offer, the opposing party serves written notice that the
3 offer is accepted, either party may then file the offer and
4 notice of acceptance together with proof of service thereof,
5 and thereupon that compensation order may be entered as the
6 workers' compensation judge may direct. An offer not accepted
7 shall be deemed withdrawn, and evidence thereof is not
8 admissible except in a proceeding to determine costs. If the
9 compensation order finally obtained by the party is not more
10 favorable than the offer, that party shall pay the costs
11 incurred by the opposing party after the making of the offer.
12 The fact that an offer has been made but not accepted does not
13 preclude a subsequent offer;

14 (2) when the liability of one party to another
15 has been determined by a compensation order, but the amount or
16 extent of the liability remains to be determined by further
17 proceedings, the party adjudged liable may make an offer, which
18 shall have the same effect as an offer made before trial if it
19 is served within a reasonable time not less than ten days prior
20 to the commencement of hearings to determine the amount or
21 extent of liability;

22 (3) if the employer's offer was greater than
23 the amount awarded by the compensation order, the employer
24 shall not be liable for ~~[his]~~ the employer's fifty percent
25 share of the attorney fees to be paid the worker's attorney and

.183781.1

underscored material = new
[bracketed material] = delete

1 the worker shall pay one hundred percent of the attorney fees
2 due to the worker's attorney; and

3 (4) if the worker's offer was less than the
4 amount awarded by the compensation order, the employer shall
5 pay one hundred percent of the attorney fees to be paid the
6 worker's attorney and the worker shall be relieved from any
7 responsibility for paying any portion of the worker's attorney
8 fees.

9 G. In all actions arising under the provisions of
10 Section 52-1-56 NMSA 1978 where the jurisdiction of the
11 [~~workers' compensation administration~~] division is invoked to
12 determine the question whether the claimant's disability has
13 increased or diminished and the claimant is represented by an
14 attorney, the workers' compensation judge or courts upon appeal
15 shall determine and fix a reasonable fee for the services of
16 the claimant's attorney only if the claimant is successful in
17 establishing that [~~his~~] the claimant's disability has increased
18 or if the employer is unsuccessful in establishing that the
19 claimant's disability has diminished. The fee when fixed by
20 the workers' compensation judge or courts upon appeal shall be
21 the limit of the fee received or to be received by the attorney
22 for services in the action, subject to the limitation of
23 Subsection I of this section.

24 H. In determining reasonable attorney fees for a
25 claimant, the workers' compensation judge shall consider only

.183781.1

underscored material = new
[bracketed material] = delete

1 those benefits to the worker that the attorney is responsible
2 for securing. The value of future medical benefits shall not
3 be considered in determining attorney fees.

4 I. Attorney fees, including, but not limited to,
5 the costs of paralegal services, legal clerk services and any
6 other related legal services costs on behalf of a claimant or
7 an employer for a single accidental injury claim, including
8 representation before the ~~[workers' compensation~~
9 ~~administration]~~ division and the courts on appeal, shall not
10 exceed sixteen thousand five hundred dollars (\$16,500). This
11 limitation applies whether the claimant or employer has one or
12 more attorneys representing ~~[him]~~ the claimant or employer and
13 applies as a cumulative limitation on compensation for all
14 legal services rendered in all proceedings and other matters
15 directly related to a single accidental injury to a claimant.
16 The workers' compensation judge may exceed the maximum amount
17 stated in this subsection in awarding a reasonable attorney fee
18 if ~~[he]~~ the judge finds that a claimant, an insurer or an
19 employer acted in bad faith with regard to handling the injured
20 worker's claim and the injured worker or employer has suffered
21 economic loss as a result. However, in no case shall this
22 additional amount exceed two thousand five hundred dollars
23 (\$2,500). As used in this subsection, "bad faith" means
24 conduct by the claimant, insurer or employer in the handling of
25 a claim that amounts to fraud, malice, oppression or willful,

.183781.1

underscored material = new
[bracketed material] = delete

1 wanton or reckless disregard of the rights of the worker or
2 employer. Any determination of bad faith shall be made by the
3 workers' compensation judge through a separate fact-finding
4 proceeding.

5 J. Except as provided [~~for~~] in Paragraphs (3) and
6 (4) of Subsection F of this section, the payment of a
7 claimant's attorney fees determined under this section shall be
8 shared equally by the worker and the employer.

9 K. It is unlawful for any person except a licensed
10 attorney to receive or agree to receive any fee or payment for
11 legal services in connection with any claim for compensation
12 under the Workers' Compensation Act.

13 L. Nothing in this section applies to agents,
14 excluding attorneys, representing employers, insurance carriers
15 or the subsequent injury fund in any matter arising from a
16 claim under the Workers' Compensation Act.

17 M. No attorney fees shall be paid until the claim
18 has been settled or adjudged.

19 N. Every person violating the provisions of this
20 section is guilty of a misdemeanor and upon conviction shall be
21 fined not less than fifty dollars (\$50.00) or more than five
22 hundred dollars (\$500), to which may be added imprisonment in
23 the county jail for a term not exceeding ninety days.

24 O. Nothing in this section shall restrict a
25 claimant from being represented before the [~~workers'~~

.183781.1

underscored material = new
[bracketed material] = delete

1 ~~compensation administration~~ division by a nonattorney as long
2 as that nonattorney receives no compensation for that
3 representation from the claimant."

4 SECTION 10. Section 52-1-60 NMSA 1978 (being Laws 1937,
5 Chapter 92, Section 16, as amended) is amended to read:

6 "52-1-60. NOTICE TO DIRECTOR OF DATE OF PAYMENT.--

7 A. Every employer's workers' compensation insurance
8 carrier shall notify the director of the date on which the
9 initial payment of any claim for benefits has been made within
10 ten days of such payment.

11 B. The director shall provide on a quarterly basis
12 to the child support enforcement division of the human services
13 department the name, social security number, home address and
14 employer of all injured workers reported.

15 C. A court order filed by the child support
16 enforcement division of the human services department in the
17 claim of the ~~[workers' compensation administration]~~ division
18 stating that the claimant owes past-due or ongoing support
19 shall constitute a notice that lump-sum and partial lump-sum
20 payment of benefits to a claimant are barred contingent on
21 satisfaction of the child support arrearage. No order
22 approving a lump-sum or partial lump-sum payment to a claimant
23 pursuant to Section 52-5-12 NMSA 1978 shall be executed or
24 entered until:

25 (1) the arrearage has been satisfied;

.183781.1

underscored material = new
[bracketed material] = delete

1 (2) provision has been made in the order for
2 lump-sum or partial lump-sum settlement for direct payment of
3 sufficient funds to the child support enforcement division to
4 satisfy the arrearage; or

5 (3) the workers' compensation judge makes a
6 specific written finding of extreme hardship to the worker
7 excusing the satisfaction of the arrearages from those funds."

8 SECTION 11. Section 52-3-42 NMSA 1978 (being Laws 1965,
9 Chapter 299, Section 18, as amended) is amended to read:

10 "52-3-42. LIMITATION ON FILING OF CLAIMS--RIGHTS BARRED
11 UNLESS TIMELY FILED.--The right to benefits under the New
12 Mexico Occupational Disease Disablement Law for disablement or
13 death from an occupational disease shall be forever barred
14 unless written claim is filed with the [~~workers' compensation~~
15 ~~administration~~] division within the time provided:

16 A. if the claim is made by an employee and based
17 upon silicosis, asbestosis, poisoning by benzol or its
18 poisonous derivatives or any other disease except as provided
19 in this section, it must be filed within one year from the date
20 of the beginning of disablement of the employee; but

21 B. in cases involving radiation injury or
22 disability, the one-year period for filing claims shall not
23 begin to run until the employee:

24 (1) sustains such injury or disability; and

25 (2) knows or by the exercise of reasonable

.183781.1

underscoring material = new
[bracketed material] = delete

1 diligence should know of the existence of the injury or
2 disability and its possible relationship to ~~[his]~~ the
3 employee's employment;

4 C. if the claim is made by a dependent of an
5 employee and based upon death resulting from an occupational
6 disease, it must be filed within one year after the date of
7 death of the employee; and

8 D. in the event that after disablement or death the
9 employer or ~~[his]~~ the employer's surety has commenced the
10 payment of benefits hereunder, without a claim being filed
11 therefor, the times provided in Subsections A, B and C of this
12 section shall not begin to run until thirty-one days after the
13 employer or surety discontinues the payment of compensation."

14 SECTION 12. Section 52-3-47 NMSA 1978 (being Laws 1987,
15 Chapter 235, Section 41, as amended) is amended to read:

16 "52-3-47. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY
17 THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY COSTS--
18 OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

19 A. It is unlawful for any person to receive or
20 agree to receive any fees or payment directly or indirectly in
21 connection with any claim for compensation under the New Mexico
22 Occupational Disease Disablement Law except as provided in this
23 section.

24 B. In all cases where the jurisdiction of the
25 [~~workers' compensation administration~~] division is invoked to

underscoring material = new
~~[bracketed material] = delete~~

1 approve a settlement of a compensation claim under the New
2 Mexico Occupational Disease Disablement Law, the director or
3 workers' compensation judge, unless the claimant is represented
4 by an attorney, may in ~~[his]~~ the director's or judge's
5 discretion appoint an attorney to aid the workers' compensation
6 judge in determining whether the settlement should be approved.
7 In the event of such an appointment, a reasonable fee for the
8 services of the attorney shall be fixed by the workers'
9 compensation judge, subject to the limitation of Subsection I
10 of this section.

11 C. In all cases where the jurisdiction of the
12 ~~[workers' compensation administration]~~ division is invoked to
13 approve a settlement of a compensation claim under the New
14 Mexico Occupational Disease Disablement Law and the claimant is
15 represented by an attorney, the total amount paid or to be paid
16 by the employer in settlement of the claim shall be stated in
17 the settlement papers, and the workers' compensation judge
18 shall determine and fix a reasonable fee for the claimant's
19 attorney, taking into account any sum previously paid. The fee
20 fixed by the workers' compensation judge shall be the limit of
21 the fee received or to be received by the attorney in
22 connection with the claim, subject to the limitation of
23 Subsection I of this section.

24 D. The cost of discovery shall be borne by the
25 party who requests it. If, however, the claimant requests any

.183781.1

underscored material = new
[bracketed material] = delete

1 discovery, the employer shall advance the cost of paying for
2 discovery up to a limit of one thousand dollars (\$1,000). If
3 the claimant substantially prevails on the claim, as determined
4 by a workers' compensation judge, any discovery cost advanced
5 by the employer shall be paid by that employer. If the
6 claimant does not substantially prevail on the claim, as
7 determined by a workers' compensation judge, the employer shall
8 be reimbursed for discovery costs advanced according to a
9 schedule for reimbursement approved by a workers' compensation
10 judge.

11 E. In all cases where compensation to which any
12 person is entitled under the provisions of the New Mexico
13 Occupational Disease Disablement Law is refused and the
14 claimant thereafter collects compensation through proceedings
15 before the [~~workers' compensation administration~~] division or
16 courts in an amount in excess of the amount offered in writing
17 by an employer five business days or more prior to the informal
18 hearing before the [~~administration, then~~] division, the
19 compensation to be paid the attorney for the claimant shall be
20 fixed by the workers' compensation judge hearing the claim or
21 the courts upon appeal in the amount the workers' compensation
22 judge or courts deem reasonable and proper, subject to the
23 limitation of Subsection I of this section. In determining and
24 fixing a reasonable fee, the workers' compensation judge or
25 courts shall take into consideration:

.183781.1

underscored material = new
[bracketed material] = delete

1 (1) the sum, if any, offered by the employer:

2 (a) before the employee's attorney was
3 employed;

4 (b) after the attorney's employment but
5 before proceedings were commenced; and

6 (c) in writing five business days or
7 more prior to the informal hearing;

8 (2) the present value of the award made in the
9 employee's favor; and

10 (3) the failure of a party to participate in a
11 good-faith manner in informal claim resolution methods adopted
12 by the director.

13 F. After a recommended resolution has been issued
14 and rejected, but more than ten days before a trial begins, the
15 employer or claimant may serve upon the opposing party an offer
16 to allow a compensation order to be taken against ~~[him]~~ the
17 employer or claimant for the money or property or to the effect
18 specified in ~~[his]~~ the offer, with costs then accrued, subject
19 to the following:

20 (1) if, within ten days after the service of
21 the offer, the opposing party serves written notice that the
22 offer is accepted, either party may then file the offer and
23 notice of acceptance together with proof of service thereof,
24 and thereupon that compensation order may be entered as the
25 workers' compensation judge may direct. An offer not accepted

.183781.1

underscored material = new
[bracketed material] = delete

1 shall be deemed withdrawn, and evidence thereof is not
2 admissible except in a proceeding to determine costs. If the
3 compensation order finally obtained by the party is not more
4 favorable than the offer, that party ~~must~~ shall pay the costs
5 incurred by the opposing party after the making of the offer.
6 The fact that an offer has been made but not accepted does not
7 preclude a subsequent offer;

8 (2) when the liability of one party to another
9 has been determined by a compensation order but the amount or
10 extent of the liability remains to be determined by further
11 proceedings, the party adjudged liable may make an offer, which
12 shall have the same effect as an offer made before trial if it
13 is served within a reasonable time not less than ten days prior
14 to the commencement of hearings to determine the amount or
15 extent of liability;

16 (3) if the employer's offer was greater than
17 the amount awarded by the compensation order, the employer
18 shall not be liable for ~~his~~ the employer's fifty-percent
19 share of the ~~attorneys'~~ attorney fees to be paid the worker's
20 attorney and the worker shall pay one hundred percent of the
21 ~~attorneys'~~ attorney fees due to the worker's attorney; and

22 (4) if the worker's offer was less than the
23 amount awarded by the compensation order, the employer shall
24 pay one hundred percent of the ~~attorneys'~~ attorney fees to be
25 paid the worker's attorney and the worker shall be relieved

.183781.1

underscored material = new
[bracketed material] = delete

1 from any responsibility for paying any portion of the worker's
2 attorney fees.

3 G. In all actions arising under the provisions of
4 Section 52-3-35 NMSA 1978, where the jurisdiction of the
5 [~~workers' compensation administration~~] division is invoked to
6 determine the question of whether the claimant's disablement
7 has terminated and the claimant is represented by an attorney,
8 the workers' compensation judge or courts upon appeal shall
9 determine and fix a reasonable fee for the services of the
10 claimant's attorney only if the employer is unsuccessful in
11 establishing that the claimant's disablement has terminated.
12 The fee when fixed by the workers' compensation judge or courts
13 upon appeal shall be taxed as part of the costs against the
14 employer and shall be the limit of the fee received or to be
15 received by the attorney for services in the action, subject to
16 the limitation of Subsection I of this section.

17 H. In determining reasonable [~~attorneys'~~] attorney
18 fees for a claimant, the workers' compensation judge shall
19 consider only those benefits to the employee that the attorney
20 is responsible for securing. The value of future medical
21 benefits shall not be considered in determining [~~attorneys'~~]
22 attorney fees.

23 I. [~~Attorneys'~~] Attorney fees, including, but not
24 limited to, the costs of paralegal services, legal clerk
25 services and any other related legal services costs on behalf

.183781.1

underscoring material = new
[bracketed material] = delete

1 of a claimant or an employer for a single disablement claim,
2 including representation before the [~~workers' compensation~~
3 ~~administration~~] division and the courts on appeal, shall not
4 exceed twelve thousand five hundred dollars (\$12,500). This
5 limitation applies whether the claimant or employer has one or
6 more attorneys representing [~~him~~] the claimant or employer and
7 applies as a cumulative limitation on compensation for all
8 legal services rendered in all proceedings and other matters
9 directly related to a single occupational disease of a
10 claimant. The workers' compensation judge may exceed the
11 maximum amount stated in this subsection in awarding a
12 reasonable [~~attorneys'~~] attorney fee if [~~he~~] the judge finds
13 that a claimant, an insurer or an employer acted in bad faith
14 with regard to handling the disabled employee's claims and the
15 employer or disabled employee has suffered economic loss as a
16 result thereof. However, in no case shall this additional
17 amount exceed two thousand five hundred dollars (\$2,500). As
18 used in this subsection, "bad faith" means conduct by the
19 claimant, insurer or employer in the handling of a claim that
20 amounts to fraud, malice, oppression or willful, wanton or
21 reckless disregard of the rights of the employee or employer.
22 Any determination of bad faith shall be made by the workers'
23 compensation judge through a separate fact-finding proceeding.

24 J. Except as provided [~~for~~] in Paragraphs (3) and
25 (4) of Subsection F of this section, the payment of a

.183781.1

underscored material = new
[bracketed material] = delete

1 claimant's [~~attorneys~~] attorney fees determined under this
2 section shall be shared equally by the employee and the
3 employer.

4 K. It is unlawful for any person except a licensed
5 attorney to receive or agree to receive any fee or payment for
6 legal services in connection with any claim for compensation
7 under the New Mexico Occupational Disease Disablement Law.

8 L. Nothing in this section applies to agents,
9 excluding attorneys, representing employers, insurance carriers
10 or the subsequent injury fund in any matter arising from a
11 claim under the New Mexico Occupational Disease Disablement
12 Law.

13 M. No [~~attorneys~~] attorney fees shall be paid
14 until the claim has been settled or adjudged.

15 N. [~~Every~~] A person violating the provisions of
16 this section [~~shall be~~] is guilty of a misdemeanor and upon
17 conviction shall be fined not less than fifty dollars (\$50.00)
18 or more than five hundred dollars (\$500), to which may be added
19 imprisonment in the county jail for a term not exceeding ninety
20 days.

21 O. Nothing in this section shall restrict a
22 claimant from being represented before the [~~workers~~
23 ~~compensation administration~~] division by a nonattorney as long
24 as that nonattorney receives no compensation for representation
25 from the claimant."

.183781.1

underscoring material = new
~~[bracketed material] = delete~~

1 SECTION 13. Section 52-4-3 NMSA 1978 (being Laws 1990
2 (2nd S.S.), Chapter 2, Section 51) is amended to read:

3 "52-4-3. CASE MANAGEMENT.--

4 A. The director shall establish a system of case
5 management for coordinating the health care services provided
6 to workers claiming benefits under the Workers' Compensation
7 Act or the New Mexico Occupational Disease Disablement Law.

8 B. As used in this section, "case management" means
9 the ongoing coordination of health care services provided to an
10 injured or disabled worker, including but not limited to:

11 (1) developing a treatment plan to provide
12 appropriate health care services to an injured or disabled
13 worker;

14 (2) systematically monitoring the treatment
15 rendered and the medical progress of the injured or disabled
16 worker;

17 (3) assessing whether alternate health care
18 services are appropriate and delivered in a cost-effective
19 manner based on acceptable medical standards;

20 (4) ensuring that the injured or disabled
21 worker is following the prescribed health care plan; and

22 (5) formulating a plan for return to work.

23 C. The director shall contract with an independent
24 organization to assist with the administration of the
25 provisions of this section.

.183781.1

underscoring material = new
[bracketed material] = delete

1 D. Nothing in this section shall prevent an
2 employer from establishing [~~his~~] the employer's own program of
3 case management; however, for the purposes of resolving choice
4 of health care provider disputes, an employer or worker shall
5 only use the program as provided by the [~~workers' compensation~~
6 ~~administration~~] division, as set forth in Section 52-1-49 NMSA
7 1978."

8 **SECTION 14.** Section 52-5-1 NMSA 1978 (being Laws 1987,
9 Chapter 342, Section 30, as amended) is amended to read:

10 "52-5-1. PURPOSE.--It is the intent of the legislature in
11 creating the [~~workers' compensation administration~~] division
12 that the laws administered by it to provide a workers' benefit
13 system be interpreted to assure the quick and efficient
14 delivery of indemnity and medical benefits to injured and
15 disabled workers at a reasonable cost to the employers who are
16 subject to the provisions of the Workers' Compensation Act and
17 the New Mexico Occupational Disease Disablement Law. It is the
18 specific intent of the legislature that benefit claims cases be
19 decided on their merits and that the common law rule of
20 "liberal construction" based on the supposed "remedial" basis
21 of workers' benefits legislation shall not apply in these
22 cases. The workers' benefit system in New Mexico is based on a
23 mutual renunciation of common-law rights and defenses by
24 employers and employees alike. Accordingly, the legislature
25 declares that the Workers' Compensation Act and the New Mexico

.183781.1

underscored material = new
[bracketed material] = delete

1 Occupational Disease Disablement Law are not remedial in any
2 sense and are not to be given a broad liberal construction in
3 favor of the claimant or employee on the one hand, nor are the
4 rights and interests of the employer to be favored over those
5 of the employee on the other hand."

6 SECTION 15. Section 52-5-1.2 NMSA 1978 (being Laws 1990
7 (2nd S.S.), Chapter 2, Section 62, as amended) is amended to
8 read:

9 "52-5-1.2. WORKERS' COMPENSATION ADMINISTRATION DIVISION
10 ~~CREATED.-- [There is created as an entity of state government]~~
11 The "workers' compensation administration division" is created
12 in the workforce solutions department."

13 SECTION 16. Section 52-5-1.3 NMSA 1978 (being Laws 1990
14 (2nd S.S.), Chapter 2, Section 63) is amended to read:

15 "52-5-1.3. SAFETY AND FRAUD [~~DIVISION~~] BUREAU.--

16 A. [~~There is created in the workers' compensation~~
17 ~~administration a]~~ The "safety and fraud bureau" of the division
18 is created.

19 B. The [~~safety and fraud division~~] bureau shall
20 develop a program to identify extra-hazardous employers.
21 "Extra-hazardous employer" means an employer whose injury
22 frequencies substantially exceed those that may reasonably be
23 expected in that employer's business or industry. The [~~safety~~
24 ~~and fraud division~~] bureau shall notify each identified extra-
25 hazardous employer and the insurance carrier for that employer

.183781.1

underscored material = new
[bracketed material] = delete

1 that the employer has been identified as an extra-hazardous
2 employer.

3 C. An employer who receives notification under
4 Subsection B of this section must obtain a safety consultation
5 within thirty days from the [~~safety and fraud division~~] bureau,
6 the employer's insurer or another professional source approved
7 by the director for that purpose. The safety consultant shall
8 file a written report with the director and the employer
9 setting out any hazardous conditions or practices identified by
10 the safety consultation.

11 D. The employer in consultation with the safety
12 consultant shall, within a reasonable time, formulate a
13 specific accident prevention plan that addresses the hazards
14 identified by the consultant. An employer who fails to
15 formulate, implement or otherwise comply with the accident
16 prevention plan shall be subject to a penalty not to exceed
17 five thousand dollars (\$5,000).

18 E. The [~~safety and fraud division~~] bureau shall
19 investigate to determine whether any fraudulent conduct
20 relating to workers' compensation is being practiced. The
21 [~~safety and fraud division~~] bureau shall refer to an
22 appropriate law enforcement agency any finding of fraud. For
23 any claim pending in the [~~administration~~] division, the [~~safety~~
24 ~~and fraud division~~] bureau shall also bring its findings to the
25 attention of the workers' compensation judge assigned to that

.183781.1

underscored material = new
[bracketed material] = delete

1 claim.

2 F. For the purposes of this section, "fraud" includes
3 the intentional misrepresentation of a material fact resulting
4 in workers' compensation or occupational disablement coverage,
5 the payment or withholding of benefits or an attempt to obtain
6 or withhold benefits. The intentional misrepresentation of a
7 material fact may occur through the conduct, practices,
8 omissions or representations of any person. Any person found
9 guilty of committing fraud shall be sentenced pursuant to the
10 provisions of Section 30-16-6 NMSA 1978 and the provisions of
11 the Criminal Sentencing Act."

12 SECTION 17. Section 52-5-2 NMSA 1978 (being Laws 1986,
13 Chapter 22, Section 28, as amended) is amended to read:

14 "52-5-2. DIRECTOR--APPOINTMENT--EMPLOYEES--WORKERS'
15 COMPENSATION JUDGES.--

16 A. A director shall be in charge of the [workers'
17 ~~compensation administration shall be in the charge of a~~
18 ~~director, who shall be appointed by the governor for a term of~~
19 ~~five years with the consent of the senate. The appointed~~
20 ~~director shall serve and have the authority of that office~~
21 ~~during the period of time prior to final action by the senate~~
22 ~~confirming or rejecting the appointment. The appointment shall~~
23 ~~be made on the basis of administrative ability, education,~~
24 ~~training and experience relevant to the duties of the director.~~
25 ~~Upon the expiration of the term, the director shall continue to~~

.183781.1

underscored material = new
[bracketed material] = delete

1 ~~serve until the successor is appointed and qualified. Before~~
2 ~~entering upon the duties, the director shall subscribe to an~~
3 ~~oath to faithfully discharge the duties of the office. The~~
4 ~~director shall devote full time to the duties of the office]~~
5 division.

6 B. The director shall appoint necessary workers'
7 compensation judges. Workers' compensation judges shall not be
8 subject to the provisions of the Personnel Act except as
9 provided by Subsection C of this section. Workers'
10 compensation judges shall be appointed for an initial term of
11 one year and shall be compensated at a rate equal to ninety
12 percent of that of district court judges. Ninety days prior to
13 the expiration of a workers' compensation judge's term, the
14 director shall review ~~[his]~~ the judge's performance. If
15 approved by the director, the workers' compensation judge may
16 be reappointed to a subsequent five-year term.

17 C. Workers' compensation judges shall be lawyers
18 licensed to practice law in this state and shall have a minimum
19 five years' experience as a practicing lawyer. They shall
20 devote their entire time to their duties and shall not engage
21 in the private practice of law and shall not hold any other
22 position of trust or profit or engage in any occupation or
23 business interfering with or inconsistent with the discharge of
24 their duties as workers' compensation judges. A workers'
25 compensation judge shall be required to conform to all canons

.183781.1

underscored material = new
[bracketed material] = delete

1 of the code of judicial conduct as adopted by the supreme
2 court, except canon 21-900 of that code. Violation of those
3 canons shall be exclusive grounds for dismissal prior to the
4 expiration of [~~his~~] the workers' compensation judge's term.
5 Any complaints against a workers' compensation judge shall be
6 filed with the state personnel board, which shall report its
7 findings to the director.

8 D. Workers' compensation judges shall have the same
9 immunity from liability for their adjudicatory actions as
10 district court judges."

11 SECTION 18. Section 52-5-6 NMSA 1978 (being Laws 1986,
12 Chapter 22, Section 32, as amended) is amended to read:

13 "52-5-6. AUTHORITY OF THE DIRECTOR TO CONDUCT HEARINGS.--

14 A. Hearings shall be held in the county in which the
15 injury or disablement occurred for which the claim is being
16 made unless the parties agree otherwise. Upon motion of a
17 party, or upon [~~his~~] the judge's own motion, if [~~he~~] the judge
18 finds that good cause exists, the workers' compensation judge
19 may order the hearing to be held in the [~~workers' compensation~~
20 ~~administration~~] division's regional office located nearest to
21 the county in which the injury or disablement occurred or in
22 the county identified as being in the best interests of the
23 parties, taking into consideration cost-effectiveness, judicial
24 efficiency, the health and mobility of the employee and the
25 convenience of parties and witnesses.

.183781.1

underscored material = new
[bracketed material] = delete

1 B. The workers' compensation judge shall have the
2 power to preserve and enforce order during hearings; administer
3 oaths; issue subpoenas to compel the attendance and testimony
4 of witnesses, the production of books, papers, documents and
5 other evidence or the taking of depositions before a designated
6 individual competent to administer oaths; examine witnesses;
7 enter noncriminal sanctions for misconduct; and do all things
8 conformable to law [~~which~~] that may be necessary to enable
9 [~~him~~] the judge to discharge the duties of [~~his~~] the judge's
10 office effectively.

11 C. In addition to the noncriminal sanctions that may
12 be ordered by the workers' compensation judge, any person
13 committing any of the following acts in a proceeding before a
14 workers' compensation judge may be held accountable for [~~his~~]
15 the person's conduct in accordance with the provisions of
16 Subsection D of this section:

17 (1) disobedience of or resistance to any lawful
18 order or process;

19 (2) misbehavior during a hearing or so near the
20 place of the hearing as to obstruct it;

21 (3) failure to produce any pertinent book, paper
22 or document after having been ordered to do so;

23 (4) refusal to appear after having been
24 subpoenaed;

25 (5) refusal to take the oath or affirmation as a

underscored material = new
[bracketed material] = delete

1 witness; or

2 (6) refusal to be examined according to law.

3 D. The director may certify to the district court of
4 the district in which the acts were committed the facts
5 constituting any of the acts specified in Paragraphs (1)
6 through (6) of Subsection C of this section. The court shall
7 hold a hearing and, if the evidence so warrants, may punish the
8 offending person in the same manner and to the same extent as
9 for contempt committed before the court, or it may commit the
10 person upon the same conditions as if the doing of the
11 forbidden act had occurred with reference to the process of or
12 in the presence of the court."

13 SECTION 19. Section 52-5-19 NMSA 1978 (being Laws 1987,
14 Chapter 235, Section 52, as amended) is amended to read:

15 "52-5-19. FEE FOR FUNDING [~~ADMINISTRATION~~]
16 DIVISION--WORKERS' COMPENSATION ADMINISTRATION FUND CREATED.--

17 A. Beginning with the calendar quarter ending
18 September 30, 2004 and for each calendar quarter thereafter,
19 there is assessed against each employer who is required or
20 elects to be covered by the Workers' Compensation Act a fee
21 equal to two dollars thirty cents (\$2.30) multiplied by the
22 number of employees covered by the Workers' Compensation Act
23 that the employer has on the last working day of each quarter.
24 At the same time, there is assessed against each employee
25 covered by the Workers' Compensation Act on the last working

.183781.1

underscored material = new
[bracketed material] = delete

1 day of each quarter a fee of two dollars (\$2.00), which shall
2 be deducted from the wages of the employee by the employer and
3 remitted along with the fee assessed on the employer. The fees
4 shall be remitted by the last day of the month following the
5 end of the quarter for which they are due.

6 B. The taxation and revenue department may deduct
7 from the gross fees collected an amount not to exceed five
8 percent of the gross fees collected to reimburse the department
9 for costs of administration.

10 C. The taxation and revenue department shall pay over
11 the net fees collected to the state treasurer to be deposited
12 by ~~[him]~~ the treasurer in a fund hereby created and to be known
13 as the "workers' compensation administration fund".

14 Expenditures shall be made from this fund on vouchers signed by
15 the director for the necessary expenses of the ~~[workers'~~
16 ~~compensation administration]~~ division; provided that an amount
17 equal to thirty cents (\$.30) per employee of the fee assessed
18 against an employer shall be distributed from the workers'
19 compensation administration fund to the uninsured employers'
20 fund.

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

25 SECTION 20. Section 52-8-1 NMSA 1978 (being Laws 1990

.183781.1

underscoring material = new
[bracketed material] = delete

1 (2nd S.S.), Chapter 2, Section 109) is amended to read:

2 "52-8-1. SHORT TITLE.--~~[Sections 109 through 120 of this~~
3 ~~act]~~ Chapter 52, Article 8 NMSA 1978 may be cited as the "Self-
4 Insurers' Guarantee Fund Act"."

5 SECTION 21. Section 52-8-3 NMSA 1978 (being Laws 1990
6 (2nd S.S.), Chapter 2, Section 111) is amended to read:

7 "52-8-3. DEFINITIONS.--As used in the Self-Insurers'
8 Guarantee Fund Act:

9 A. "benefits" means any benefits to which a worker
10 may be entitled under the provisions of the Workers'
11 Compensation Act [~~the Subsequent Injury Act~~] or the New Mexico
12 Occupational Disease Disablement Law;

13 B. "board" means the board of directors of the self-
14 insurers' guarantee fund commission;

15 C. "commission" means the self-insurers' guarantee
16 fund commission;

17 D. "director" means the director of the workers'
18 compensation administration division of the workforce solutions
19 department;

20 E. "fund" means the self-insurers' guarantee fund;

21 F. "insolvent" means that a self-insurer is unable to
22 pay its outstanding lawful obligations as they mature in the
23 regular course of business, as shown both by having an excess
24 of required reserves and other liabilities over assets and by
25 not having sufficient assets to reinsure all outstanding

.183781.1

underscoring material = new
[bracketed material] = delete

1 liabilities after paying all accrued claims owed;

2 G. "private employer" means an employer subject to
3 the Workers' Compensation Act or the New Mexico Occupational
4 Disease Disablement Law who is not a public employer or a
5 public hospital employer;

6 H. "public employer" means the state [~~of New Mexico~~]
7 or any of its branches, agencies, departments, boards,
8 instrumentalities or institutions and all school districts and
9 all political subdivisions of the state or any of their
10 agencies, instrumentalities or institutions. "Public employer"
11 does not include a public hospital employer;

12 I. "public hospital employer" means any local,
13 county, district, city-county or other public hospital or
14 public health-related facility, whether operating in wholly or
15 partially owned or leased premises;

16 J. "self-insurer" means a private employer certified
17 by the director as being qualified to be self-insured for
18 workers' compensation purposes. "Self-insurer" does not
19 include a member of a group covered by the Group Self-Insurance
20 Act; and

21 K. "worker" means an individual who is defined to be
22 a "worker" under Section 52-1-16 NMSA 1978 or "employee" under
23 Section 52-3-3 NMSA 1978."

24 **SECTION 22.** Section 52-8-5 NMSA 1978 (being Laws 1990
25 (2nd S.S.), Chapter 2, Section 113) is amended to read:

.183781.1

underscored material = new
[bracketed material] = delete

1 "52-8-5. SELF-INSURERS' GUARANTEE FUND COMMISSION
2 CREATED--ORGANIZED AS AN INDEPENDENT COMMISSION--BOARD
3 CREATED--ADMINISTRATIVE SUPPORT.--

4 A. The "self-insurers' guarantee fund commission" is
5 created as a nonprofit, independent, public corporation for the
6 purpose of administering the Self-Insurers' Guarantee Fund Act.
7 The commission shall not be considered either a state agency or
8 an insurance company.

9 B. The commission shall have a board of directors
10 [~~which shall consist~~] that consists of five members. Four
11 members shall represent small, medium and large employers,
12 provided that not more than one member shall be from any single
13 employer or industry. The director shall serve, ex officio, as
14 the fifth member. The initial membership of the board shall
15 include four self-insurer representatives appointed by the
16 director. Two of the four self-insurer members originally
17 appointed to the board shall be appointed for an initial term
18 of two years, and two for an initial term of four years.
19 Thereafter, except for the director, members of the board shall
20 serve four-year terms and shall be elected by the general
21 membership of the commission. In the event of a resignation
22 prior to the end of a board member's term, the board shall
23 appoint a replacement to serve the remainder of the term.

24 C. The workers' compensation administration division
25 shall provide office space, staff and supplies as is necessary

.183781.1

underscored material = new
[bracketed material] = delete

1 to support the board's operation.

2 D. Each general member of the commission shall have
3 one vote in determining the board membership."

4 SECTION 23. Section 59A-16C-15 NMSA 1978 (being Laws
5 1998, Chapter 115, Section 15) is amended to read:

6 "59A-16C-15. APPLICATION OF ACT TO OTHER ACTS.--

7 A. No authority granted the superintendent under the
8 Insurance Fraud Act shall be construed to abrogate or interfere
9 with the authority of the safety and fraud ~~[division]~~ bureau of
10 the workers' compensation administration division of the
11 workforce solutions department under the Workers' Compensation
12 Act or of the medicaid fraud control unit of the office of the
13 attorney general under the Medicaid Fraud Act.

14 B. Nothing in the Insurance Fraud Act shall:

15 (1) preempt the authority of or relieve the duty
16 of any other law enforcement agencies to investigate and
17 prosecute alleged violations of law;

18 (2) prevent or prohibit a person from
19 voluntarily disclosing any information concerning insurance
20 fraud to any law enforcement agency;

21 (3) limit any of the powers granted elsewhere by
22 law to the superintendent to investigate alleged violations of
23 law and take appropriate action; or

24 (4) interfere with the duties and authority of
25 the workers' compensation administration division."

.183781.1

