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HOUSE BILL 4

42ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION
1996

INTRODUCED BY
RAYMOND G. SANCHEZ

AN ACT

AMENDING AND REPEALING SECTIONS OF THE SUBSEQUENT INJURY ACT;
DECLARING AN EMERGENCY.

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

Section 1. Section 52-2-4 NMSA 1978 (being Laws 1961,
Chapter 134, Section 4, as amended) is amended to read:

"52-2-4. SUBSEQUENT INJURY FUND. -- A special fund to be
known as the "subsequent injury fund" is established for the
purpose of carrying out the provisions of the Subsequent Injury
Act. ~~[The fund shall be derived from the following sources:~~

~~A. the employer or his insurance carrier shall pay
to the superintendent of insurance the sum of one thousand
dollars (\$1,000) as indemnity benefits for the death of an
employee when a final determination is made that there is no~~

Underscored material = new
[bracketed material] = delete

1 ~~beneficiary entitled to death benefits under the Workers'~~
2 ~~Compensation Act;~~

3 ~~B. each employer or his insurance carrier shall~~
4 ~~quarterly, under regulations prescribed by the superintendent of~~
5 ~~insurance, pay to the superintendent of insurance a percentage~~
6 ~~not to exceed three percent of the money paid out during such~~
7 ~~quarter as compensation benefits and medical benefits, exclusive~~
8 ~~of attorneys' fees and related benefits. The above percentage~~
9 ~~shall be determined once before the end of each fiscal year by~~
10 ~~the superintendent of insurance so as to provide a sufficient~~
11 ~~income to meet payments from the fund for the next fiscal year;~~
12 ~~provided that for the first fiscal year, the percentage shall be~~
13 ~~one-half of one percent; and~~

14 ~~C. the superintendent of insurance shall deposit all~~
15 ~~such money collected by him with the state treasurer who shall~~
16 ~~credit such deposits and accrued interest thereon to the~~
17 ~~subsequent injury fund. The deposits made shall be a separate~~
18 ~~fund for payments authorized under the provisions of the~~
19 ~~Subsequent Injury Act.]"~~

20 Section 2. Section 52-2-5 NMSA 1978 (being Laws 1986,
21 Chapter 22, Section 47, as amended) is amended to read:

22 "52-2-5. PAYMENTS FROM FUND--CLAIMS AGAINST FUND. --

23 A. The superintendent of insurance may authorize
24 payments from the subsequent injury fund for the following
25 purposes, whether or not a compensation order has been entered:

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1 (1) the reimbursement to the employer or its
2 insurance carrier of the fund's portion of benefits payable to
3 an injured worker under the Workers' Compensation Act as
4 apportioned under the Subsequent Injury Act;

5 ~~[(2) the payment to the worker of the fund's~~
6 ~~portion of benefits payable to the injured worker if a worker~~
7 ~~brings an action under Subsection D of this section;~~

8 ~~(3)]~~ (2) the payment of fees to attorneys who
9 represent the superintendent of insurance and the subsequent
10 injury fund and of fees to other professional advisers to the
11 superintendent of insurance in connection with the
12 superintendent's administration of the subsequent injury fund;
13 and

14 ~~[(4)]~~ (3) the payment of any other expenses
15 ancillary to the superintendent's administration of the
16 subsequent injury fund.

17 ~~[B. Subject to the requirements of Section 52-2-14~~
18 ~~NMSA 1978, an employer or its insurance carrier may assert a~~
19 ~~claim against the subsequent injury fund under the following~~
20 ~~circumstances only:~~

21 ~~(1) if a worker asserts a claim against the~~
22 ~~employer under the Workers' Compensation Act, the employer or~~
23 ~~its insurance carrier may join the subsequent injury fund as an~~
24 ~~additional party and assert a right to reimbursement from the~~
25 ~~subsequent injury fund; and~~

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[bracketed material] = delete

1 ~~(2) if the worker is receiving compensation~~
2 ~~benefits from the employer, the employer or its insurance~~
3 ~~carrier may continue to make the payments and file a claim~~
4 ~~pursuant to the Subsequent Injury Act against the subsequent~~
5 ~~injury fund for apportionment of compensation benefits between~~
6 ~~the employer or its insurance carrier and the subsequent injury~~
7 ~~fund.~~

8 ~~C.]~~ B. The superintendent of insurance shall be a
9 party to all proceedings wherein a compensation order is sought
10 against the superintendent of insurance and the fund.

11 ~~[D. A worker may assert a claim against the fund~~
12 ~~only when the worker's employer is no longer doing business in~~
13 ~~New Mexico or is bankrupt and the employer or its insurance~~
14 ~~carrier cannot for reason of the cessation of business or~~
15 ~~bankruptcy assert a claim against the fund. The worker's claim~~
16 ~~is limited to apportionment of benefits under the Subsequent~~
17 ~~Injury Act to recover amounts that the fund would have paid the~~
18 ~~employer or its insurance carrier as reimbursement. The fund~~
19 ~~shall not be liable to the worker for any amounts for which the~~
20 ~~employer or its insurance carrier would be liable to the worker~~
21 ~~under the Workers' Compensation Act. The worker takes the place~~
22 ~~of and assumes the status of the worker's employer on the claim~~
23 ~~against the fund. The fund shall be liable only to the worker,~~
24 ~~and not the employer or its insurance carrier, for any portion~~
25 ~~of benefits which the fund would have paid to the employer or~~

Underscored material = new
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1 ~~its insurance carrier.~~

2 ~~E. A worker shall not assert a claim against the~~
3 ~~fund except as provided in Subsection D of this section.]"~~

4 Section 3. TEMPORARY PROVISION--SUBSEQUENT INJURY FUND--
5 TRANSFER OF FUNDS.--On the effective date of Section 5 of this
6 act, any unexpended or unencumbered balance remaining in the
7 subsequent injury fund shall be transferred to the general fund.

8 Section 4. REPEAL.--Sections 52-2-2, 52-2-3, 52-2-6
9 through 52-2-9, 52-2-11, 52-2-12 and 52-2-14 NMSA 1978 (being
10 Laws 1961, Chapter 134, Section 2, Laws 1986, Chapter 22,
11 Section 46, Laws 1975, Chapter 298, Section 2, Laws 1961,
12 Chapter 134, Sections 6, 7 and 9, Laws 1986, Chapter 22, Section
13 50, Laws 1961, Chapter 134, Section 12 and Laws 1988, Chapter
14 109, Section 7, as amended) are repealed.

15 Section 5. DELAYED REPEAL.--Sections 52-2-1, 52-2-4 and
16 52-2-5 NMSA 1978 (being Laws 1961, Chapter 134, Sections 1 and 4
17 and Laws 1986, Chapter 22, Section 47, as amended) are repealed
18 effective July 1, 1999.

19 Section 6. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect immediately.

State of New Mexico
House of Representatives

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FORTY- SECOND LEGISLATURE
FIRST SPECIAL SESSION, 1996

March 20, 1996

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 4

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 14 For 0 Against

Yes: 14

Excused: Abeyta, Light, Salazar, Varela

Absent: None

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Underscored material = new
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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE
FIRST SPECIAL SESSION, 1996

March 21, 1996

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 4

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Ben D. Altamirano, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Underscored material = new
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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Date _____

The roll call vote was 10 For 0 Against

Yes: 10

No: 0

Excused: Jennings, T. , Maci as, Sanchez

Absent: None

H0004FC1

Underscored material = new
[bracketed material] = delete