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SENATE BILL 646

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

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE
NMSA 1978 TO MAKE TECHNICAL REVISIONS.

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

Section 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986,
Chapter 22, Section 26, as amended) is amended to read:

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

A. "director" means the director of the workers'
compensation administration;

B. "division" means the workers' compensation
administration;

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

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

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

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

6 F. "workmen's compensation administration" or
7 "administration" means the workers' compensation administration
8 [~~administratively attached to the labor department~~]. "

9 Section 2. Section 52-1-2 NMSA 1978 (being Laws 1929,
10 Chapter 113, Section 2, as amended) is amended to read:

11 "52-1-2. EMPLOYERS WHO COME WITHIN ACT. --The state and
12 each county, municipality, school district, drainage,
13 irrigation or conservancy district, public institution and
14 administrative board thereof employing workers, every
15 charitable organization employing workers and every private
16 person, firm or corporation engaged in carrying on for the
17 purpose of business or trade within this state, and which
18 employs [~~four~~] three or more workers, except as provided in
19 Section 52-1-6 NMSA 1978, shall become liable to and shall pay
20 to any such worker injured by accident arising out of and in
21 the course of his employment and, in case of his death being
22 occasioned thereby, to such person as may be authorized by the
23 director or appointed by a court to receive the same for the
24 benefit of his dependents, compensation in the manner and
25 amount at the times [~~herein~~] required in the Workers'

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1 Compensation Act. "

2 Section 3. Section 52-1-7 NMSA 1978 (being Laws 1975,
3 Chapter 284, Section 4, as amended) is amended to read:

4 "52-1-7. APPLICATION OF PROVISIONS OF ACT TO CERTAIN
5 EXECUTIVE EMPLOYEES OR SOLE PROPRIETORS. --

6 A. Notwithstanding any provisions to the contrary
7 in the Workers' Compensation Act, an executive employee of a
8 professional or business corporation or limited liability
9 company, employed by the professional or business corporation
10 or limited liability company as a worker as defined in the
11 Workers' Compensation Act, or a sole proprietor may
12 affirmatively elect not to accept the provisions of the
13 Workers' Compensation Act.

14 B. Each executive employee or sole proprietor
15 desiring to affirmatively elect not to accept the provisions of
16 the Workers' Compensation Act may do so by filing an election
17 in the office of the director.

18 C. Each executive employee or sole proprietor
19 desiring to revoke his affirmative election not to accept the
20 provisions of the Workers' Compensation Act may do so by filing
21 a revocation of the affirmative election with the workers'
22 compensation insurer and in the office of the director. The
23 revocation shall become effective thirty days after filing. An
24 executive employee shall cause a copy of the revocation to be
25 mailed to the board of directors of the professional or

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1 business corporation or limited liability company.

2 D. The filing of an affirmative election not to
3 accept the provisions of the Workers' Compensation Act shall
4 create a conclusive presumption that an executive employee or
5 sole proprietor is not covered by the Workers' Compensation Act
6 until the effective date of a revocation filed pursuant to this
7 section. The filing of an affirmative election not to accept
8 the provisions of the Workers' Compensation Act shall apply to
9 all corporations or limited liability companies in which the
10 executive employee has a financial interest.

11 E. In determining the number of workers of an
12 employer to determine who comes within the Workers'
13 Compensation Act, an executive employee who has filed an
14 affirmative election not to be subject to the Workers'
15 Compensation Act shall be counted for determining the number of
16 workers employed by such employer.

17 F. For purposes of this section:

18 (1) "executive employee" means the chairman of
19 the board, president, vice president, secretary, treasurer or
20 other executive officer, if he owns ten percent or more of the
21 outstanding stock, of a professional or business corporation or
22 a ten percent ownership interest in a limited liability
23 company; and

24 (2) "sole proprietor" means a single
25 individual who owns all the assets of a business, is solely

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1 liable for its debts and employs in the business no person
2 other than himself. "

3 Section 4. Section 52-1-30 NMSA 1978 (being Laws 1987,
4 Chapter 235, Section 14, as amended) is amended to read:

5 "52-1-30. PAYMENT OF COMPENSATION BENEFITS--
6 INSTALLMENTS.--Compensation shall be paid by the employer to
7 the worker in installments. The first installment shall be
8 paid not later than fourteen days after [~~the filing of the~~
9 ~~report required in Section 52-1-58 NMSA 1978~~] the worker has
10 missed seven days of lost time from work, whether or not the
11 days are consecutive. Remaining installments shall be paid
12 twice a month at intervals not more than sixteen days apart in
13 sums as nearly equal as possible, except as provided in Section
14 52-5-12 NMSA 1978. "

15 Section 5. Section 52-1-43 NMSA 1978 (being Laws 1987,
16 Chapter 235, Section 18, as amended) is amended to read:

17 "52-1-43. COMPENSATION BENEFITS--INJURY TO SPECIFIC BODY
18 MEMBERS.--

19 A. For disability resulting from an accidental
20 injury to specific body members, including the loss or loss of
21 use thereof, the worker shall receive the weekly maximum and
22 minimum compensation for disability as provided in Section
23 52-1-41 NMSA 1978, for the following periods:

24 Injury	Compensation Benefits Number of Weeks
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1	(1) one arm at or near shoulder, dextrous member	200 weeks
2	(2) one arm at elbow, dextrous member	160 weeks
3	(3) one arm between wrist at elbow, dextrous member . .	150 weeks
4	(4) one arm at or near shoulder, nondextrous member . .	175 weeks
5	(5) one arm at elbow, nondextrous member	155 weeks
6	(6) one arm between wrist and elbow, nondextrous member	140 weeks
7	(7) one hand, dextrous member	125 weeks
8	(8) one hand, nondextrous member	110 weeks
9	(9) one thumb and the metacarpal bone thereof	55 weeks
10	(10) one thumb at the proximal joint	34 weeks
11	(11) one thumb at the second distal joint	22 weeks
12	(12) one first finger and the metacarpal bone thereof . .	28 weeks
13	(13) one first finger at the proximal joint	22 weeks
14	(14) one first finger at the second joint	17 weeks
15	(15) one first finger at the distal joint	12 weeks
16	(16) one second finger and the metacarpal bone thereof . .	22 weeks
17	(17) one second finger at the proximal joint	17 weeks
18	(18) one second finger at the second joint	12 weeks
19	(19) one second finger at the distal joint	10 weeks
20	(20) one third finger and the metacarpal bone thereof . .	17 weeks
21	(21) one third finger at the proximal joint	12 weeks
22	(22) one third finger at the second joint	10 weeks
23	(23) one third finger at the distal joint	10 weeks
24	(24) one fourth finger and the metacarpal bone thereof . .	14 weeks
25	(25) one fourth finger at the proximal joint	14 weeks

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- 1 (26) one fourth finger at the second joint 10 weeks
- 2 (27) one fourth finger at the distal joint 7 weeks
- 3 (28) loss of all fingers on one hand where thumb and
- 4 palm remain 70 weeks
- 5 (29) one leg at or near hip joint, so as to preclude
- 6 the use of an artificial limb 200 weeks
- 7 (30) one leg at or above the knee, where stump remains
- 8 sufficient to permit the use of an artificial limb 150 weeks
- 9 (31) one leg between knee and ankle 130 weeks
- 10 (32) one foot at the ankle 115 weeks
- 11 (33) one great toe with the metatarsal bone thereof . . . 35 weeks
- 12 (34) one great toe at the proximal joint 17 weeks
- 13 (35) one great toe at the second joint 12 weeks
- 14 (36) one toe other than the great toe with the metatarsal
- 15 bone thereof 14 weeks
- 16 (37) one toe other than the great toe at the proximal
- 17 joint 10 weeks
- 18 (38) one toe other than the great toe at second or
- 19 distal joint 8 weeks
- 20 (39) loss of all toes on one foot at proximal joint . . . 40 weeks
- 21 (40) eye by enucleation 130 weeks
- 22 (41) total blindness of one eye 120 weeks
- 23 (42) total deafness in one ear 40 weeks
- 24 (43) total deafness in both ears 150 weeks.

B. For a partial loss of use of one of the body members

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1 or physical functions listed in Subsection A of this section, the
2 worker shall receive compensation computed on the basis of the degree
3 of such partial loss of use, payable for the number of weeks
4 applicable to total loss or loss of use of that body member or
5 physical function.

6 C. In cases of actual amputation of the arm or leg, the
7 workers' compensation judge in his discretion may award compensation
8 benefits in excess [~~of the period hereinafter stated~~] of those
9 provided in Subsection A of this section if there is substantial
10 evidence to support a finding that, because of the worker's advanced
11 age, lack of education or lack of training, he has in fact a partial
12 disability which will disable him longer than the time specified in
13 the [~~foregoing~~] schedule in Subsection A of this section. The
14 additional compensation period may not in any event exceed twice the
15 time specified in the [~~foregoing~~] schedule in Subsection A of this
16 section for such injury.

17 D. In determining the worker's compensation benefits
18 payable to a worker under this section for a disability resulting
19 from a scheduled injury, the worker is entitled to be compensated as
20 provided in Subsection A of this section up to the date the worker is
21 released from regular treatment by his primary treating health care
22 provider, as defined in Section 52-4-1 NMSA 1978, if he is in fact
23 totally disabled during that time. Any compensation paid up to that
24 date shall be in addition to the compensation allowed under
25 Subsection A of this section, but in no event shall any worker be

1 entitled to compensation for a period in excess of seven hundred
2 weeks. "

3 Section 6. Section 52-1-66 NMSA 1978 (being Laws 1988, Chapter
4 119, Section 1, as amended) is amended to read:

5 "52-1-66. NONRESIDENT EMPLOYERS EMPLOYING WORKERS IN STATE--
6 REQUIREMENT FOR INSURANCE-- ENFORCEMENT. --

7 A. Every employer not domiciled in the state who employs
8 workers engaged in activities required to be licensed under the
9 Construction Industries Licensing Act and every other employer not
10 domiciled in the state who employs three or more workers within the
11 state, whether that employment is permanent, temporary or transitory
12 and whether the workers are residents or nonresidents of the state,
13 shall comply with the provisions of Section 52-1-4 NMSA 1978 and,
14 unless self-insured, shall obtain a [~~worker's~~] workers' compensation
15 insurance policy, or an endorsement to an existing policy, issued in
16 accordance with the provisions of Section 59A-17-10.1 NMSA 1978. An
17 employer who does not comply with the foregoing requirement shall be
18 enjoined from doing business in the state pursuant to Section 52-1-62
19 NMSA 1978 and shall be barred from recovery by legal action for labor
20 or materials furnished during any period of time in which he was not
21 in compliance with the requirements of this section, and, if the
22 noncomplying employment is in an activity for which the employer is
23 licensed under the provisions of the Construction Industries
24 Licensing Act, the employer's license is subject to revocation or
25 suspension for the violation.

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1 B. The construction industries division of the regulation
2 and licensing department shall promulgate rules and regulations to
3 insure compliance with Subsection A of this section. "

4 Section 7. Section 52-3-20 NMSA 1978 (being Laws 1965, Chapter
5 299, Section 7, as amended) is amended to read:

6 "52-3-20. PAYMENT OF BENEFITS IN INSTALLMENTS. --Benefits shall
7 be paid by the employer to the worker in installments. The first
8 installment shall be paid not later than fourteen days after [~~the~~
9 ~~filing of the report required in Section 52-3-51 NMSA 1978]~~ the
10 worker has missed seven days of lost time from work, whether or not
11 the days are consecutive. Remaining installments shall be paid twice
12 a month at intervals not more than sixteen days apart, in sums as
13 nearly equal as possible, except as provided in Section 52-5-12 NMSA
14 1978. "

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

17 "52-5-1.2. WORKERS' COMPENSATION ADMINISTRATION CREATED. --There
18 is created as an entity of state government the "workers'
19 compensation administration" [~~which shall be administratively~~
20 ~~attached to the labor department pursuant to Section 9-1-7 NMSA 1978,~~
21 ~~subject to the following:~~

22 A. ~~the director shall prepare and submit the~~
23 ~~administration's annual budget request;~~

24 B. ~~the director shall have hiring and firing authority~~
25 ~~over administration personnel; and~~

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1 C. ~~expenditures for the operation of the administration~~
2 ~~shall be on vouchers signed by the director]. "~~

3 Section 9. Section 52-5-3 NMSA 1978 (being Laws 1986, Chapter
4 22, Section 29, as amended) is amended to read:

5 "52-5-3. REPORTS--DATA GATHERING. --

6 A. The intent of this section is to allow the director to
7 gather data and conduct studies to evaluate the workers' compensation
8 and occupational disease disablement system in New Mexico. This
9 includes evaluating the benefits structure and the costs incurred
10 under each version of the Workers' Compensation Act and the New
11 Mexico Occupational Disease Disablement Law. To this end, the
12 director shall establish baseline data against which to assess the
13 changes in the law.

14 B. The director shall independently evaluate insurance
15 industry data pertaining to workers' compensation and occupational
16 disease disablement claims and payments, as well as other information
17 the director believes to be necessary and relevant to a thorough
18 evaluation of the system's effectiveness. In addition to data
19 generated by insurance industry representatives and organizations,
20 the director shall collect data from employers, claimants and other
21 relevant parties.

22 C. Unless otherwise provided by law, the director shall
23 have access to insurance industry information that contains workers'
24 compensation and occupational disease disablement claim data as the
25 director determines is necessary to carry out the provisions of this

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1 section.

2 D. The director shall have access to files and records
3 of:

4 (1) the labor department that pertain to:

5 (a) the name and number of employees reported
6 by employers;

7 (b) employers' mailing addresses;

8 (c) federal identification numbers; and

9 (d) general wage information;

10 (2) the insurance [~~department~~] division of the
11 public regulation commission that pertain to:

12 (a) historical insurance classification rates
13 and total premiums paid during given periods of time;

14 (b) insurers licensed to underwrite casualty
15 insurance; and

16 (c) records of group self-insurers;

17 (3) the human services department that include
18 names, addresses and other identifying information of recipients of
19 benefits and services pertaining to income support; [~~and~~]

20 (4) the taxation and revenue department that
21 identify employers paying workers' compensation assessments in
22 accordance with Section 52-5-19 NMSA 1978; and

23 (5) the motor vehicle division of the taxation and
24 revenue department that pertain to the identity of licensed drivers
25 and the ownership of motor vehicles.

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1 E. Information that is confidential under state law shall
2 be accessible to the director and shall remain confidential.

3 F. The director shall prepare an annual report. He shall
4 publish in that report and in other reports as he deems appropriate
5 such statistical and informational reports and analyses based on
6 reports and records available as, in his opinion, will be useful in
7 increasing public understanding of the purposes, effectiveness,
8 costs, coverage and administrative procedures of workers'
9 compensation and in providing basic information regarding the
10 occurrence and sources of work injuries or disablements to public and
11 private agencies engaged in industrial injury prevention activities.
12 The reports shall include information concerning the nature and
13 frequency of injuries and occupational diseases sustained and the
14 resulting benefits, costs and other factors that are important to
15 furthering the intent of this section. "

16 Section 10. Section 52-5-12 NMSA 1978 (being Laws 1986, Chapter
17 22, Section 38, as amended) is amended to read:

18 "52-5-12. PAYMENT--PERIODIC OR LUMP SUM --

19 A. It is stated policy for the administration of the
20 Workers' Compensation Act and the New Mexico Occupational Disease
21 Disablement Law that it is in the best interest of the injured worker
22 or disabled employee that he receive benefit payments on a
23 periodic basis. Except as provided in Subsections B, C and D of this
24 section, lump-sum payments in exchange for the release of the
25 employer from liability for future payments of compensation or

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1 medical benefits shall not be allowed.

2 B. With the approval of the workers' compensation judge,
3 a worker may elect to receive compensation benefits to which he is
4 entitled in a lump sum if he has returned to work for at least six
5 months, earning at least eighty percent of the average weekly wage he
6 earned at the time of injury or disablement. If a worker receives
7 his benefit income in a lump sum, he is not entitled to any
8 additional benefit income for the compensable injury or disablement
9 and he shall only receive that portion of the benefit income that is
10 attributable to the impairment rating as determined in Section
11 52-1-24 NMSA 1978. In making lump-sum payments, the payment due the
12 worker shall not be discounted at a rate greater than a sum equal to
13 the present value of all future payments of compensation computed at
14 a five-percent discount compounded annually.

15 C. After maximum medical improvement and with the
16 approval of the workers' compensation judge, a worker may elect to
17 receive a partial lump-sum payment of workers' compensation benefits
18 for the sole purpose of paying debts that may have accumulated during
19 the course of the injured or disabled worker's disability.

20 D. If an insurer pays a lump-sum payment to an injured or
21 disabled worker without the approval of a workers' compensation judge
22 and if at a later date benefits are due for the injured or disabled
23 worker's claim, the insurer alone shall be liable for that claim and
24 shall not in any manner, including rate determinations and the
25 employer's experience modifier, pass on the cost of the benefits due

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1 to the employer.

2 E. If the compensation benefit to which a worker is
3 entitled is less than [~~twenty-five dollars (\$25.00)~~] fifty dollars
4 (\$50.00) per week, any party may petition the workers' compensation
5 judge to consolidate that payment into quarterly installments.

6 F. Periodic compensation payments under the Workers'
7 Compensation Act or the New Mexico Occupational Disease Disablement
8 Law for disability arising from primary mental impairments or
9 secondary mental impairments shall be paid as incurred and shall not
10 be included in any lump-sum payments. "

11 Section 11. Section 52-6-24 NMSA 1978 (being Laws 1986, Chapter
12 22, Section 98) is amended to read:

13 "52-6-24. NOTICE AND HEARING--APPEAL. --Notice and hearing
14 required by the provisions of Sections [~~21 through 23 of the Group~~
15 ~~Self-Insurance Act~~] 52-6-21, 52-6-22 and 52-6-23 NMSA 1978 shall be
16 given and held pursuant to the applicable provisions of Chapter 59A,
17 Article 4 [~~of the Insurance Code~~] NMSA 1978. A party may appeal from
18 an order of the [~~superintendent~~] director made after a hearing,
19 pursuant to [~~Section 59A-4-20 NMSA 1978~~] Section 39-3-1.1 NMSA 1978. "