

1 SENATE BILL 283

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Ted Barela

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10 AN ACT

11 RELATING TO WORKERS' COMPENSATION ACT EXEMPTIONS; EXEMPTING
12 EMPLOYERS THAT PAY LESS THAN EIGHT THOUSAND DOLLARS (\$8,000)
13 PER YEAR IN WAGES; PROVIDING THAT A FAMILY MEMBER OF AN
14 EMPLOYER OR EXECUTIVE EMPLOYEE SHALL NOT BE TREATED AS AN
15 EMPLOYEE FOR PURPOSES OF THE WORKERS' COMPENSATION ACT;
16 PROVIDING THAT AN INDIVIDUAL THAT PERFORMS OCCASIONAL AND
17 RECIPROCAL SERVICES FOR AN EMPLOYER SHALL NOT BE TREATED AS AN
18 EMPLOYEE FOR PURPOSES OF THE WORKERS' COMPENSATION ACT.

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

21 SECTION 1. Section 52-1-6 NMSA 1978 (being Laws 1990 (2nd
22 S.S.), Chapter 2, Section 4) is amended to read:

23 "52-1-6. APPLICATION OF PROVISIONS OF ACT.--

24 A. The provisions of the Workers' Compensation Act
25 shall apply to employers of three or more workers; provided

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1 that act shall apply to all employers engaged in activities
2 required to be licensed under the provisions of the
3 Construction Industries Licensing Act regardless of the number
4 of employees. The provisions of the Workers' Compensation Act
5 shall not apply to:

6 (1) employers of private domestic servants
7 [~~and farm and ranch laborers~~]; or

8 (2) an employer that paid or is obligated to
9 pay cash wages for all services rendered by the employers'
10 workers during the preceding calendar year in an amount less
11 than eight thousand dollars (\$8,000).

12 B. An election to be subject to the Workers'
13 Compensation Act by employers [~~of private domestic servants or~~
14 ~~farm and ranch laborers~~] described in Paragraphs (1) and (2) of
15 Subsection A of this section, by persons for whom the services
16 of qualified real estate salespersons are performed pursuant to
17 Subsection B of Section 52-1-16 NMSA 1978, by employers
18 pursuant to Subsection C of Section 52-1-16 NMSA 1978 or by a
19 partner or self-employed person may be made by filing, in the
20 office of the director, either a sworn statement to the effect
21 that the employer accepts the provisions of the Workers'
22 Compensation Act or an insurance or security undertaking as
23 required by Section 52-1-4 NMSA 1978.

24 C. Every worker shall be conclusively presumed to
25 have accepted the provisions of the Workers' Compensation Act

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1 if [~~his~~] the worker's employer is subject to the provisions of
2 that act and has complied with its requirements, including
3 insurance.

4 D. [~~Such~~] Compliance with the provisions of the
5 Workers' Compensation Act, including the provisions for
6 insurance, shall be [~~and construed to be~~] a surrender by the
7 employer and the worker of their rights to any other method,
8 form or amount of compensation or determination thereof or to
9 any cause of action at law, suit in equity or statutory or
10 common-law right to remedy or proceeding whatever for or on
11 account of personal injuries or death of the worker than as
12 provided in the Workers' Compensation Act and shall be an
13 acceptance of all of the provisions of the Workers'
14 Compensation Act and shall bind the worker [~~himself~~] and, for
15 compensation for [~~his~~] the worker's death, shall bind [~~his~~] the
16 worker's personal representative, [~~his~~] surviving spouse and
17 next of kin, as well as the employer and those conducting [~~his~~]
18 the employer's business during bankruptcy or insolvency.

19 E. The Workers' Compensation Act provides exclusive
20 remedies. No cause of action outside the Workers' Compensation
21 Act shall be brought by an employee or dependent against the
22 employer or [~~his~~] the employer's representative, including the
23 insurer, guarantor or surety of any employer, for any matter
24 relating to the occurrence of or payment for any injury or
25 death covered by the Workers' Compensation Act. Nothing in the

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1 Workers' Compensation Act, however, shall affect [~~or be~~
2 ~~construed to affect~~] in any way the existence of or the mode of
3 trial of any claim or cause of action that the worker has
4 against any person other than [~~his~~] the worker's employer or
5 another employee of [~~his~~] the worker's employer, including a
6 management or supervisory employee, or the insurer, guarantor
7 or surety of [~~his~~] the worker's employer."

8 SECTION 2. Section 52-1-16 NMSA 1978 (being Laws 1965,
9 Chapter 295, Section 9, as amended) is amended to read:

10 "52-1-16. WORKER--~~[REAL ESTATE SALESPERSON EXCEPTED]~~
11 EXCEPTIONS.--

12 A. As used in the Workers' Compensation Act, unless
13 the context otherwise requires, "worker" means any person who
14 has entered into the employment of or works under contract of
15 service or apprenticeship with an employer, except a person
16 whose employment is purely casual and not for the purpose of
17 the employer's trade or business. The term "worker" shall
18 include "employee" and shall include the singular and plural of
19 both sexes. "Worker" includes public employee, as defined in
20 the Workers' Compensation Act, including salaried public
21 officers.

22 B. For the purposes of the Workers' Compensation Act:

23 (1) an individual who performs services as a
24 qualified real estate salesperson shall not be treated as an
25 employee and the person for whom the services are performed

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1 shall not be treated as an employer;

2 (2) a family relation of an employer shall not
3 be treated as an employee;

4 (3) a family relation of an executive employee
5 of a professional or business corporation or limited liability
6 company, employed by the professional or business corporation
7 or limited liability company as a worker, or a sole proprietor
8 shall not be treated as an employee; provided that the
9 executive employee or sole proprietor has affirmatively elected
10 not to accept the provisions of the Workers' Compensation Act
11 pursuant to Section 52-1-6 NMSA 1978; and

12 (4) an individual that performs a service for an
13 employer shall not be treated as an employee; provided that the
14 service performed is occasional and is for an employer who has
15 or will provide a reciprocal or similar service.

16 C. For the purpose of Subsection B of this section

17 [~~a~~]:

18 (1) "family relation" means a spouse or a
19 relation within the third degree by blood or marriage,
20 including parents, grandparents, great-grandparents, children,
21 grandchildren, great-grandchildren, brothers, sisters, uncles,
22 aunts, nephews and nieces and spouses of the same; and

23 (2) "qualified real estate salesperson" means an
24 individual who:

25 [~~(1)~~] (a) is a licensed real estate

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1 salesperson, associate broker or broker under contract with a
2 real estate firm;

3 [~~(2)~~] (b) receives substantially all of
4 [~~his~~] the individual's remuneration, whether or not paid in
5 cash, for the services performed as a real estate salesperson,
6 associate broker or broker under contract with a real estate
7 firm in direct relation to sales or other output, including the
8 performance of services, rather than to the number of hours
9 worked; and

10 [~~(3)~~] (c) performs services pursuant to a
11 written contract between [~~himself~~] the individual and the
12 person for whom the services are performed, and the contract
13 provides that the individual will not be treated as an employee
14 with respect to such services."

15 SECTION 3. REPEAL.--Section 52-1-6.1 NMSA 1978 (being
16 Laws 1984, Chapter 127, Section 988.3) is repealed.