AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE WORKERS' COMPENSATION ACT TO REESTABLISH RETURN TO WORK AND CLARIFY BENEFIT ENTITLEMENT.

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

SECTION 1. Section 52-1-25.1 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 10, as amended) is amended to read:

"52-1-25.1. TEMPORARY TOTAL DISABILITY--RETURN TO WORK.--

A. As used in the Workers' Compensation Act, "temporary total disability" means the inability of a worker, by reason of accidental injury arising out of and in the course of the worker's employment, to perform the duties of that employment prior to the date of the worker's maximum medical improvement."
B. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work [the worker is not entitled to temporary total disability benefits if:

1. the employer offers work at the worker's pre-injury wage; or
2. the worker accepts employment with another employer at the worker's pre-injury wage and the employer does not make a reasonable work offer at the worker's pre-injury wage, the worker is disabled and shall receive temporary total disability compensation benefits equal to two-thirds of the worker's pre-injury wage.

C. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work and the employer offers work at less than the worker's pre-injury wage, the worker is disabled and shall receive temporary total disability compensation benefits equal to two-thirds of the difference between the worker's pre-injury wage and the worker's post-injury wage.

D. [If the worker returns to work pursuant to the provisions of Subsection B of this section] A worker is not entitled to temporary total disability benefits as set forth in Subsection B or C of this section if:

1. the employer makes a reasonable work offer
at or above the worker's pre-injury wage, within medical
restrictions, if any, as stated by the health care provider
pursuant to Section 52-1-49 NMSA 1978, and the worker rejects
the offered employment;

(2) the worker accepts employment with another
employer at or above the worker's pre-injury wage; or

(3) the worker is terminated for misconduct
connected with the employment that is unrelated to the
workplace injury; if the court finds that an employer
terminated the worker for pretextual reasons as a way of
attempts to avoid payment of benefits to the worker or as
retaliation against the worker for seeking benefits, the worker
shall be entitled to temporary total disability benefits and
the employer shall be subject to penalties as set forth in

E. Upon a finding that an employer has terminated a
worker for pretextual reasons, the court at its discretion may
also impose an additional fine, not to exceed ten thousand
dollars ($10,000), on the employer.

F. Notwithstanding the provisions of this section,
the employer shall continue to provide reasonable and necessary
medical care pursuant to Section 52-1-49 NMSA 1978.

G. If there is a dispute between the parties
regarding the reasonableness of the employer's work offer or
the worker's refusal to return to work, the court shall decide
if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances."

SECTION 2. Section 52-1-26 NMSA 1978 (being Laws 1987, Chapter 235, Section 12, as amended) is amended to read:

"52-1-26. PERMANENT PARTIAL DISABILITY.--

A. As a guide to the interpretation and application of this section, the policy and intent of this legislature is declared to be that every person who suffers a compensable injury with resulting permanent partial disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.

B. As used in the Workers' Compensation Act, "partial disability" means a condition whereby a worker, by reason of injury arising out of and in the course of employment, suffers a permanent impairment.

C. Permanent partial disability shall be determined by calculating the worker's impairment as modified by [his] the worker's age, education and physical capacity, pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent.

D. [If] On or after the date of maximum medical
improvement, [an injured worker returns to work at a wage equal to or greater than the worker's pre-injury wage] the worker's permanent partial disability rating shall be equal to [his] the worker's impairment and shall not be subject to the modifications calculated pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978 if:

(1) the worker returns to work at a wage at or above the worker's pre-injury wage;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage;

(3) the employer makes a reasonable work offer, at or above the worker's pre-injury wage, within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment; or

(4) the worker is terminated for misconduct connected with the employment that is unrelated to the workplace accident; if the court finds that an employer terminates the worker for pretextual reasons to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to modifier benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Upon a finding that an employer has terminated a worker for pretextual reasons, the court at its discretion may
also impose an additional fine, not to exceed ten thousand
dollars ($10,000), on the employer.

[E] F. In considering a claim for permanent partial disability, a workers' compensation judge shall not receive or consider the testimony of a vocational rehabilitation provider offered for the purpose of determining the existence or extent of disability.

G. If there is a dispute between the parties regarding the reasonableness of the employer's work offer or the worker's refusal to return to work, the court shall decide if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances."