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SENATE BILL 120

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

DON KIDD

AN ACT

RELATING TO WORKERS' COMPENSATION; NARROWING THE DEFINITION OF
A CONTRACTOR; EXTENDING TEMPORARY TOTAL DISABILITY BENEFITS;
AMENDING AND REPEALING SECTIONS OF THE WORKERS' COMPENSATION
ACT.

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

Section 1. Section 52-1-22 NMSA 1978 (being Laws 1965,
Chapter 295, Section 15, as amended) is amended to read:

"52-1-22. WORK NOT CASUAL EMPLOYMENT. --

A. As used in the Workers' Compensation Act,
except as provided in Subsection B of this section, or unless
the context otherwise requires, where any employer procures
any work to be done wholly or in part for him by a contractor
other than an independent contractor and the work so procured
to be done is a part or process in the trade or business or

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1 undertaking of [~~such~~] the employer, then [~~such~~] the employer
2 shall be liable to pay all compensation under the Workers'
3 Compensation Act to the same extent as if the work were done
4 without the intervention of such contractor. The work so
5 procured to be done shall not be construed to be "casual
6 employment".

7 B. When a contractor has contracted directly with
8 an owner or owner's agent, and the contractor procures a
9 subcontractor to perform any part of that contract whether
10 wholly or in part:

11 (1) the contractor shall be considered an
12 employer of the subcontractor's employees;

13 (2) the contractor shall have the immunity of
14 an employer provided by the Workers' Compensation Act; and

15 (3) unless the subcontractor has provided
16 compensation to his employees, the contractor shall be liable
17 for payment of compensation to the employees of the
18 subcontractor for the work performed.

19 C. The contractor or his insurer may recover the
20 amount of the compensation and the cost of expenses incurred
21 in the recovery from the subcontractor. "

22 Section 2. Section 52-1-25.1 NMSA 1978 (being Laws 1990
23 (2nd S.S.), Chapter 2, Section 10) is amended to read:

24 "52-1-25.1. TEMPORARY TOTAL DISABILITY--RETURN TO WORK.--

25 A. As used in the Workers' Compensation Act,

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1 "temporary total disability" means the inability of [~~the~~] a
2 worker, by reason of accidental injury arising out of and in
3 the course of his employment, to perform his duties [~~prior to~~
4 ~~the date of his maximum medical improvement~~] from the date of
5 injury until thirteen weeks following maximum medical
6 improvement.

7 B. If, [~~prior to the date of maximum medical~~
8 ~~improvement~~] while temporarily totally disabled, an injured
9 worker's health care provider releases the worker to return to
10 work and the employer offers work at the worker's pre-injury
11 wage, the worker is not entitled to temporary total disability
12 benefits.

13 C. If, [~~prior to the date of maximum medical~~
14 ~~improvement~~] while temporarily totally disabled, an injured
15 worker's health care provider releases the worker to return to
16 work and the employer offers work at less than the worker's
17 pre-injury wage, the worker is disabled and shall receive
18 temporary total disability compensation benefits equal to
19 sixty-six and two-thirds percent of the difference between the
20 worker's pre-injury wage and his post-injury wage.

21 D. For injuries occurring on or after January 1,
22 1999, if on or after the initial date of maximum medical
23 improvement, the employer does not offer work to the injured
24 worker at ninety-six percent of his pre-injury wage within his
25 permanent physical restrictions from the work-related injury

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1 as determined by a designated health care provider, the worker
2 shall be eligible to receive bi-weekly temporary total
3 disability benefits for a period not to exceed thirteen weeks
4 for any one work-related injury. The worker shall not be
5 entitled to the additional temporary total disability benefits
6 if he is employed or if he refuses the employer's job offer.

7 [D-] E. If the worker returns to work pursuant to
8 the provisions of Subsection B of this section, the employer
9 shall continue to provide reasonable and necessary medical
10 care pursuant to Section 52-1-49 NMSA 1978. "

11 Section 3. Section 52-1-41 NMSA 1978 (being Laws 1959,
12 Chapter 67, Section 20, as amended) is amended to read:

13 "52-1-41. COMPENSATION BENEFITS--TOTAL DISABILITY.--

14 A. For total disability, the worker shall receive,
15 during the period of that disability, sixty-six and two-thirds
16 percent of his average weekly wage, not to exceed a maximum
17 compensation of ninety dollars (\$90.00) a week, effective July
18 1, 1975; and not to exceed a maximum compensation of sixty-six
19 and two-thirds percent of the average weekly wage in the
20 state, a week, effective January 1, 1976; and not to exceed a
21 maximum compensation of seventy-eight percent of the average
22 weekly wage in the state, a week, effective July 1, 1976; and
23 not to exceed a maximum compensation of eighty-nine percent of
24 the average weekly wage in the state, a week, effective July
25 1, 1977; and not to exceed a maximum compensation of one

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1 hundred percent of the average weekly wage in the state, a
2 week, effective July 1, 1978; and not to exceed a maximum
3 compensation of eighty-five percent of the average weekly wage
4 in the state, a week, effective July 1, 1987; and not to
5 exceed a maximum compensation of one hundred percent of the
6 average weekly wage in the state, a week, effective January 1,
7 1999; and to be not less than a minimum compensation of
8 thirty-six dollars (\$36.00) a week. Except as provided in
9 Subsections B and C of this section, the worker shall receive
10 compensation benefits for the remainder of his life.

11 B. For disability resulting from primary mental
12 impairment, the maximum period of compensation is one hundred
13 weeks. For disability resulting in secondary mental
14 impairment, the maximum period of compensation is the maximum
15 period allowable for the disability produced by the physical
16 impairment or one hundred weeks, whichever is greater.

17 C. For the purpose of paying compensation benefits
18 for death, pursuant to Section 52-1-46 NMSA 1978, the worker's
19 maximum disability recovery shall be deemed to be seven
20 hundred weeks.

21 D. Where the worker's average weekly wage is less
22 than thirty-six dollars (\$36.00) a week, the compensation to
23 be paid the worker shall be his full weekly wage.

24 E. For the purpose of the Workers' Compensation
25 Act, the average weekly wage in the state shall be determined

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1 by the employment security division of the labor department on
2 or before June 30 of each year [~~and~~]. The average weekly wage
3 shall be computed from all wages reported to the employment
4 security division from employing units, including reimbursable
5 employers, in accordance with the regulations of the division
6 for the preceding calendar year, divided by the total number
7 of covered employees divided by fifty-two.

8 F. The average weekly wage in the state,
9 determined as provided in Subsection E of this section, shall
10 be applicable for the full period during which compensation is
11 payable when the date of the occurrence of an accidental
12 injury falls within the calendar year commencing January 1
13 following the June 30 determination.

14 G. Unless the computation provided for in
15 Subsection E of this section results in an increase or
16 decrease of two dollars (\$2.00) or more, raised to the next
17 whole dollar, the statewide average weekly wage determination
18 shall not be changed for any calendar year. "

19 Section 4. Section 52-1-46 NMSA 1978 (being Laws 1959,
20 Chapter 67, Section 25, as amended) is amended to read:

21 "52-1-46. COMPENSATION BENEFITS FOR DEATH. -- Subject to
22 the limitation of compensation payable under Subsection G of
23 this section, if an accidental injury sustained by a worker
24 proximately results in his death within the period of two
25 years following his accidental injury, compensation shall be

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1 paid in the amount and to the persons entitled thereto as
2 follows:

3 A. if there are no eligible dependents, except as
4 provided in Subsection C of Section 52-1-10 NMSA 1978 of the
5 Workers' Compensation Act, the compensation shall be limited
6 to the funeral expenses, not to exceed [~~three thousand dollars~~
7 ~~(\$3,000)~~] five thousand dollars (\$5,000), and the expenses
8 provided for medical and hospital services for the deceased,
9 together with all other sums which the deceased should have
10 been paid for compensation benefits up to the time of his
11 death; provided that, commencing January 1, 1999 and
12 continuing each year thereafter, the funeral expense benefit
13 shall be adjusted by an amount equal to the change in the
14 consumer price index during the most recent calendar year.
15 For the purpose of this section, "consumer price index" means
16 the average of the monthly consumer price indexes for a
17 calendar year for the entire United States for all items as
18 published by the United States department of labor;

19 B. if there are eligible dependents at the time of
20 the worker's death, payment shall consist of a sum not to
21 exceed [~~three thousand dollars (\$3,000)~~] five thousand dollars
22 (\$5,000) for funeral expenses and expenses provided for
23 medical and hospital services for the deceased, together with
24 such other sums as the deceased should have been paid for
25 compensation benefits up to the time of his death and

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1 compensation benefits to the eligible dependents as
2 hereinafter specified, subject to the limitations on maximum
3 periods of recovery provided in Sections 52-1-41 through
4 52-1-43 and 52-1-47 NMSA 1978; provided that, commencing
5 January 1, 1999 and continuing each year thereafter the
6 funeral expense benefit shall be adjusted by an amount equal
7 to the change in the consumer price index for the most recent
8 calendar year;

9 C. if there are eligible dependents entitled
10 thereto, compensation shall be paid to the dependents or to
11 the person authorized by the director or appointed by the
12 court to receive the same for the benefit of the dependents in
13 such portions and amounts, to be computed and distributed as
14 follows:

15 (1) to the child or children, if there is no
16 widow or widower entitled to compensation, sixty-six and two-
17 thirds percent of the average weekly wage of the deceased;

18 (2) to the widow or widower, if there are no
19 children, sixty-six and two-thirds percent of the average
20 weekly wage of the deceased, until remarriage; or

21 (3) to the widow or widower, if there is a
22 child or children living with the widow or widower, forty-five
23 percent of the average weekly wage of the deceased, or forty
24 percent if such child is not or all such children are not
25 living with a widow or widower and, in addition thereto,

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1 compensation benefits for the child or children [~~which~~] that
2 shall ~~make~~ the total benefits for the widow or widower and
3 child or children sixty-six and two-thirds percent of the
4 average weekly wage of the deceased. When there are two or
5 more children, the compensation benefits payable on account of
6 such children shall be divided among such children, share and
7 share alike; and

8 (4) two years' compensation benefits in one
9 lump sum shall be payable to a widow or widower upon
10 remarriage; however, the total benefits shall not exceed the
11 maximum compensation benefit as provided in Subsection B of
12 this section;

13 D. if there is neither widow, widower nor
14 children, compensation may be paid to the father and mother or
15 the survivor of them, if dependent to any extent upon the
16 worker for support at the time of the worker's death, twenty-
17 five percent of the average weekly wage of the deceased, and
18 in no event shall the maximum compensation to such dependents
19 exceed the amounts contributed by the deceased worker for
20 their care; provided that if the father and mother or the
21 survivor of them was totally dependent upon such worker for
22 support at the time of the worker's death, he or they shall be
23 entitled to fifty percent of the average weekly wage of the
24 deceased;

25 E. if there is neither widow, widower nor children

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1 nor dependent parent, then to the brothers and sisters and
2 grandchildren if actually dependent to any extent upon the
3 deceased worker for support at the time of the worker's death,
4 thirty-five percent of the average weekly wage of the deceased
5 worker with fifteen percent additional for brothers and
6 sisters and grandchildren in excess of two, with a maximum of
7 sixty-six and two-thirds percent of the average weekly wage of
8 the deceased, and in no event shall the maximum compensation
9 to partial dependents exceed the respective amounts
10 contributed by the deceased worker for their care;

11 F. in the event of the death or remarriage of the
12 widow or widower entitled to compensation benefits as provided
13 in this section, the surviving children shall then be entitled
14 to compensation benefits computed and paid as provided in
15 Paragraph (1) of Subsection C of this section for the
16 remainder of the compensable period. In the event
17 compensation benefits payable to children as provided in this
18 section are terminated as provided in Subsection E of Section
19 52-1-17 NMSA 1978, a surviving widow or widower shall then be
20 entitled to compensation benefits computed and paid as
21 provided in Paragraphs (2) and (4) of Subsection C of this
22 section for the remainder of the compensable period; and

23 G. no compensation benefits payable by reason of a
24 worker's death shall exceed the maximum weekly compensation
25 benefits as provided in Sections 52-1-41 through 52-1-43 and

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1 52-1-47 NMSA 1978, and no dependent or any class thereof,
2 other than a widow, widower or children, shall in any event be
3 paid total benefits in excess of seven thousand five hundred
4 dollars (\$7,500) exclusive of funeral expenses and the
5 expenses provided for medical and hospital services for the
6 deceased paid for by the employer. "

7 Section 5. Section 52-3-14 NMSA 1978 (being Laws 1945,
8 Chapter 135, Section 14, as amended) is amended to read:

9 "52-3-14. COMPENSATION--LIMITATIONS. --

10 A. The compensation to which an employee who has
11 suffered disablement, or his dependents, shall be entitled
12 under the New Mexico Occupational Disease Disablement Law is
13 limited to the provisions of that law. No compensation shall
14 be due or payable under the New Mexico Occupational Disease
15 Disablement Law for any disablement which does not result in
16 either the temporary disablement of the employee lasting for
17 more than seven days or in his permanent disablement as herein
18 described or in death; provided, however, that if the period
19 of temporary disablement of the employee lasts for more than
20 four weeks from the date of the disablement, compensation
21 under the New Mexico Occupational Disease Disablement Law
22 shall be payable in addition to the amount hereinafter stated
23 in a like amount for the first seven days after the date of
24 disablement. But for any such disablement for which
25 compensation is payable under the New Mexico Occupational

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1 Disease Disablement Law, the employer shall in all proper
2 cases, as herein provided, pay to the disabled employee or to
3 some person authorized by the director to receive the same,
4 for the use and benefit of the beneficiaries entitled thereto,
5 compensation at regular intervals of no more than sixteen days
6 apart, in accordance with the following, less proper
7 deductions on account of default in failure to give notice of
8 such disablement as required in Section 52-3-19 NMSA 1978.

9 B. For total disablement, the employee shall
10 receive sixty-six and two-thirds percent of his average weekly
11 wage, not to exceed a maximum compensation of:

12 (1) ninety dollars (\$90.00) a week, effective
13 July 1, 1975;

14 (2) sixty-six and two-thirds percent of the
15 average weekly wage in the state, a week, effective January 1,
16 1976;

17 (3) seventy-eight percent of the average
18 weekly wage in the state, a week, effective July 1, 1976;

19 (4) eighty-nine percent of the average weekly
20 wage in the state, a week, effective July 1, 1977;

21 (5) one hundred percent of the average weekly
22 wage in the state, a week, effective July 1, 1978; [and]

23 (6) eighty-five percent of the average weekly
24 wage in the state, a week, effective July 1, 1987; and

25 (7) one hundred percent of the average weekly

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1 wage in the state, a week, effective January 1, 1999;
2 or to be less than a minimum compensation of thirty-six
3 dollars (\$36.00) a week, during the period of such
4 disablement, but in no event to exceed a period of seven
5 hundred weeks; provided, however, that where his wages are
6 less than thirty-six dollars (\$36.00) a week, then the
7 compensation to be paid such employee shall be the full amount
8 of such weekly wages; provided further that the benefits paid
9 or payable during a employee's entire period of disablement
10 shall be based on and limited to the benefits in effect on the
11 date of the occurrence of the disablement.

12 C. For partial disablement, the benefits shall be
13 a percentage of the benefits payable for total disablement
14 calculated under Subsection B of this section as that
15 percentage is determined pursuant to the provisions of Section
16 52-3-4 NMSA 1978. In no event shall the duration of benefits
17 extend longer than five hundred weeks.

18 D. For the purpose of the New Mexico Occupational
19 Disease Disablement Law, the average weekly wage in the state
20 shall be determined by the employment security division of the
21 labor department on or before June 30 of each year and shall
22 be computed from all wages reported to the employment security
23 division from employing units, including reimbursable
24 employers, in accordance with the regulations of the
25 employment security division for the preceding calendar year,

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1 divided by the total number of covered employees divided by
2 fifty-two. The first such determination by the employment
3 security division of the average weekly wage in the state
4 shall be made on or before June 30, 1975 from reported wages
5 and covered employees for the calendar year ending December
6 31, 1974.

7 E. The average weekly wage in the state,
8 determined as provided in Subsection D of this section, shall
9 be applicable for the full period during which compensation is
10 payable when the date of the occurrence of the disablement
11 falls within the calendar year commencing January 1 following
12 the June 30 determination.

13 F. Unless the computation provided for in
14 Subsection D of this section results in an increase or
15 decrease of two dollars (\$2.00) or more, raised to the next
16 whole dollar, the statewide average weekly wage determination
17 shall not be changed for any calendar year.

18 G. In case death proximately results from the
19 disablement within the period of two years, compensation
20 benefits to be paid such employee shall be in the amounts and
21 to the persons as follows:

22 (1) if there are no dependents, the
23 compensation shall be limited to the funeral expenses not to
24 exceed [~~three thousand dollars (\$3,000)~~] five thousand dollars
25 (\$5,000) and the expenses provided for medical and hospital

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1 services for the deceased, together with such other sums as
2 the deceased may have been paid for disablement; provided
3 that, commencing January 1, 1999 and continuing each year
4 thereafter, the funeral expense benefit shall be adjusted by
5 an amount equal to the change in the consumer price index
6 during the calendar year most recently completed. For the
7 purpose of this section, "consumer price index" means the
8 average of the monthly consumer price indexes for a calendar
9 year for the entire United States for all items as published
10 by the United States department of labor; or

11 (2) if there are dependents at the time of
12 death, the payment shall consist of a sum not to exceed [~~three~~
13 ~~thousand dollars (\$3,000)~~] five thousand dollars (\$5,000) for
14 funeral expenses and expenses provided for medical and
15 hospital services for the deceased, together with such other
16 sums as the deceased may have been paid for disability, and a
17 percentage [~~hereinafter~~] specified in this paragraph for
18 average weekly wages subject to the limitations of the New
19 Mexico Occupational Disease Disablement Law to continue for
20 the period of seven hundred weeks from the date of death of
21 such employee; provided that the total death compensation,
22 unless otherwise specified, payable in any of the cases
23 [~~hereinafter~~] mentioned in this section shall not be less than
24 the minimum weekly compensation provided in Subsection B of
25 this section or more than the maximum weekly compensation

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1 provided in Subsection B of this section and shall be based on
2 and limited to the benefits in effect on the date of the
3 occurrence of the disablement. If there are dependents
4 entitled thereto, compensation shall be paid to the dependents
5 or to the person authorized by the director or the court to
6 receive the same for the benefit of the dependents in such
7 portions and amounts as the director or the court, bearing in
8 mind the necessities of the case and the best interests of the
9 dependents and of the public, may determine, to be computed on
10 the following basis and distributed to the following persons;
11 provided that, commencing January 1, 1999 and continuing each
12 year thereafter the funeral expense benefit shall be adjusted
13 by an amount equal to the change in the consumer price index :

14 (a) to the child or children, if there
15 is no widow or widower entitled to compensation, sixty-six and
16 two-thirds percent of the average weekly wage of the deceased;

17 (b) to the widow or widower, if there
18 are no children, sixty-six and two-thirds percent of the
19 average weekly wage of the deceased, until remarriage;

20 (c) to the widow or widower, if there
21 is a child or children living with the widow or widower,
22 forty-five percent of the average weekly wage of the deceased,
23 or forty percent, if such child is not or all such children
24 are not living with a widow or widower, and in addition
25 thereto, compensation benefits for the child or children which

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1 shall make the total benefits for the widow or widower and
2 child or children sixty-six and two-thirds percent of the
3 average weekly wage of the deceased. When there are two or
4 more children, the compensation benefits payable on account of
5 such children shall be divided among such children, share and
6 share alike;

7 (d) two years' compensation benefits in
8 one lump sum shall be payable to a widow or widower upon
9 remarriage; however, the total benefits shall not exceed the
10 maximum compensation benefits as provided in Paragraph (2) of
11 this subsection;

12 (e) if there is neither widow, widower
13 nor children, then to the father and mother or the survivor of
14 them if dependent to any extent upon the employee for support
15 at the time of his death, twenty-five percent of the average
16 weekly wage of the deceased; provided that if such father and
17 mother or the survivor of them was totally dependent upon such
18 employee for support at the time of his death, he or they
19 shall be entitled to fifty percent of the average weekly wage
20 of the deceased, subject to the maximum weekly compensation
21 provided for in Subsection B of this section;

22 (f) no disablement benefits payable by
23 reason of an employee's death shall exceed the maximum weekly
24 compensation provided for in Subsection B of this section, and
25 no dependent or any class thereof other than a widow or

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1 widower or children shall in any event be paid total benefits
2 in excess of seven thousand five hundred dollars (\$7,500)
3 exclusive of funeral expenses and the expenses provided for
4 medical and hospital services for the deceased paid for by the
5 employer.

6 If there is neither widow, widower nor children nor
7 dependent parent, then to the brothers and sisters, if
8 actually dependent to any extent upon the deceased for support
9 at the time of his death, thirty-five percent of the average
10 weekly wage of the deceased, with fifteen percent additional
11 for brothers or sisters in excess of two, with a maximum of
12 sixty-six and two-thirds percent to be paid to their guardian;
13 provided that the maximum compensation to partial dependents
14 shall not exceed the respective amounts therefor contributed
15 by the deceased employee or the maximum weekly compensation
16 provided for in Subsection B of this section; and

17 (g) in the event of the death or
18 remarriage of the widow or widower entitled to compensation
19 under this subsection, the surviving children shall then be
20 entitled to compensation computed and paid as in Subparagraph
21 (a) of this paragraph for the remainder of the compensable
22 period, and in the event compensation benefits payable to
23 children as provided in this section are terminated as
24 provided in Paragraph (5) of Subsection A of Section 52-3-13
25 NMSA 1978, a surviving widow or widower shall then be entitled

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1 to compensation benefits computed and paid as provided in
2 Subparagraphs (b) and (d) of this paragraph for the remainder
3 of the compensable period. "

4 Section 6. Section 52-5-7 NMSA 1978 (being Laws 1986,
5 Chapter 22, Section 33, as amended) is amended to read:

6 "52-5-7. HEARING PROCEDURE. --

7 A. It is the intent of the legislature that the
8 workers' compensation administration shall have original
9 jurisdiction to hear a claim alleging that the complaining
10 party suffered an injury that occurred while in the course and
11 scope of his employment and the person from whom recovery is
12 sought is the complaining party's employer. For the purpose
13 of determining jurisdiction, the allegation that the injury
14 occurred in the course and scope of employment may be made by
15 either the complaining party or the party from which benefits
16 are sought.

17 [~~A.~~] B. When matters in dispute cannot be resolved
18 by informal conference or other techniques, the director shall
19 transmit a copy of the claim to the other parties with notice
20 to respond by written answer. The other parties shall respond
21 with a written answer within twenty days after receiving a
22 notice or within such extension of that time as the director
23 may allow. If no timely answer is filed by a party after
24 notice, a workers' compensation judge may, if he determines it
25 to be appropriate, grant the relief sought against that party.

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1 However, if in order to enable the workers' compensation judge
2 to enter an order and carry out its effect it is necessary to
3 take an account, determine the amount of benefits due,
4 establish the truth of any claims by evidence or make an
5 investigation of any matter, the workers' compensation judge
6 may conduct such hearings as he deems necessary and proper.

7 [B-] C. A hearing shall be held for determining
8 the questions at issue within sixty days of the filing of the
9 answer. All parties in interest shall be given at least
10 twenty days' notice of the hearing and of the issues to be
11 heard, served personally or by mail. Following the
12 presentation of the evidence, the workers' compensation judge
13 shall determine the questions at issue and file the decision
14 with the director within thirty days, unless the time for
15 filing the decision is extended by the mutual agreement of the
16 parties. At the time of filing, a certified copy of the
17 decision shall be sent by first class mail to all interested
18 parties at the last known address of each. The decision of
19 the workers' compensation judge shall be made in the form of a
20 compensation order, appropriately titled to show its purpose
21 and containing a report of the case, findings of fact and
22 conclusions of law and, if appropriate, an order for the
23 payment of benefits under the Workers' Compensation Act or the
24 New Mexico Occupational Disease Disablement Law.

25 [C-] D. The decision of the workers' compensation

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1 judge shall be final and conclusive as to all matters
2 adjudicated by him upon the expiration of the thirtieth day
3 after a copy of the decision has been mailed to the parties,
4 unless prior to that day a party in interest seeks judicial
5 review of the decision pursuant to Section 52-5-8 NMSA 1978.

6 ~~[D.]~~ E. All hearings before the workers'
7 compensation judge shall be open to the public. The director
8 shall by regulation provide for the preparation of a record of
9 each hearing.

10 ~~[E.]~~ F. The director may authorize a workers'
11 compensation judge or his duly authorized representative to
12 enter at any reasonable time the premises where an injury or
13 death has occurred and to make such examination of any tool,
14 appliance, process, machinery or environmental or other
15 condition as may be relevant to a determination of the cause
16 and circumstances of the injury, disablement or death.

17 ~~[F.]~~ G. The testimony of any witness may be taken
18 by deposition or interrogatories according to the rules of
19 civil procedure for the district courts and may be taken
20 before any workers' compensation judge or any person
21 authorized to take testimony, but discovery procedure shall be
22 conducted only upon the workers' compensation judge's findings
23 that good cause exists. The cost and expense of any discovery
24 procedure allowed by the workers' compensation judge shall be
25 paid as provided in Section 52-1-54 NMSA 1978. No costs shall

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1 be charged, taxed or collected by the workers' compensation
2 judge except fees for witnesses who testify under subpoena.
3 The witnesses shall be allowed the same fee for attendance and
4 mileage as is fixed by the law in civil actions, except that
5 the workers' compensation judge may assess against the
6 employer the fees allowed any expert witness, as provided in
7 Section 38-6-4 NMSA 1978, whose examination of the claimant,
8 report or hearing attendance the workers' compensation judge
9 deems necessary for resolution of matters at issue."

10 Section 7. Section 52-5-17 NMSA 1978 (being Laws 1986,
11 Chapter 22, Section 43, as amended) is amended to read:

12 "52-5-17. SUBROGATION. --

13 A. The right of any worker or, in case of his
14 death, of those entitled to receive payment or damages for
15 injuries or disablement occasioned to him by the negligence or
16 wrong of any person other than the employer or any other
17 employee of the employer, including a management or
18 supervisory employee, shall not be affected by the Workers'
19 Compensation Act or the New Mexico Occupational Disease
20 Disablement Law, but the claimant shall not be allowed to
21 receive payment or recover damages for those injuries or
22 disablement and also claim compensation from the employer
23 except as provided in Subsection [C] D of this section.

24 B. In a circumstance covered by Subsection A of
25 this section, the receipt of compensation from the employer

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1 shall operate as an assignment to the employer or his insurer,
2 guarantor or surety of any cause of action, to the extent of
3 payment by the employer to or on behalf of the worker for
4 compensation or any other benefits to which the worker was
5 entitled under the Workers' Compensation Act or the New Mexico
6 Occupational Disease Disablement Law and that were occasioned
7 by the injury or disablement, that the worker or his legal
8 representative or others may have against any other party for
9 the injury or disablement.

10 C. An employer, or his insurer, guarantor or
11 surety, who incurs compensation benefit costs in connection
12 with a workers' compensation claim resulting from an injury
13 caused by the negligence of a person other than the employer
14 or another employee, including a supervisory employee, may
15 pursue a civil action in his own name against the third party
16 to recover costs directly related to payment of the claim,
17 including legal fees, discovery and expert witness costs,
18 medical expenses and indemnity benefits. The claim of an
19 employer, or his insurer, guarantor or surety, for subrogation
20 recovery against an employee who has recovered against a third
21 party shall be reduced to the extent of the amount directly
22 recovered by the employer, or his insurer, guarantor or
23 surety, from that third party.

24 [~~C.~~] D. The worker or his legal representative may
25 retain any compensation due under the uninsured motorist

Underscored material = new
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1 coverage provided in Section 66-5-301 NMSA 1978 if the worker
2 paid the premium for that coverage. If the employer paid the
3 premium, the worker or his legal representative may not retain
4 any compensation due under Section 66-5-301 NMSA 1978, and
5 that amount shall be due to the employer. For the purposes of
6 this section, the employer shall not be deemed to pay the
7 premium for uninsured motorist coverage in a lease arrangement
8 in which the employer pays the worker an expense or mileage
9 reimbursement amount that may include as one factor an
10 allowance for insurance coverage."

11 Section 8. REPEAL. -- Sections 52-1-4.1 and 52-3-9.1 NMSA
12 1978 (being Laws 1979, Chapter 368, Section 2 and Laws 1980,
13 Chapter 88, Section 4, as amended) are repealed.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5
6 January 28, 1998

7
8 Mr. President:

9
10 Your COMMITTEES' COMMITTEE, to whom has been referred

11
12 SENATE BILL 120

13
14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 16, and thence referred to
16 the CORPORATIONS & TRANSPORTATION COMMITTEE.

17
18
19 Respectfully submitted,

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24 _____
25 Manny M. Aragon, Chairman

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(Chief Clerk)

(Chief Clerk)

Date _____

S0120CC1

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5 February 3, 1998

6
7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
10 has been referred

11
12 SENATE BILL 120

13
14 has had it under consideration and reports same with recommendation
15 that it DO PASS, and thence referred to the PUBLIC AFFAIRS
16 COMMITTEE.

17
18 Respectfully submitted,

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23 _____
24 Roman M. Maes, III, Chairman
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Adopted _____ Not Adopted _____
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Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: McKibben, Robinson

Absent: None

S0120CT1

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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5
6 February 6, 1998

7
8 Mr. President:

9
10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

11
12 SENATE BILL 120

13
14 has had it under consideration and reports same with recommendation
15 that it DO PASS.

16
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18 Respectfully submitted,

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22 _____
23 Shannon Robinson, Chairman
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Adopted _____ Not Adopted _____
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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Garcia, Rodarte, Vernon

Absent: None

S0120PA1

Underscored material = new
[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 18, 1998
7

8 Mr. Speaker:
9

10 Your LABOR AND HUMAN RESOURCES COMMITTEE, to whom has
11 been referred
12

13 SENATE BILL 120
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 CONSUMER AND PUBLIC AFFAIRS COMMITTEE.

18 Respectfully submitted,
19
20
21

22 _____
23 Sheryl M. Williams, Chairman
24
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 32

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

6
7 Date _____

8
9 The roll call vote was 6 For 1 Against

10 Yes: 6

11 No: Foy

12 Excused: Macko

13 Absent: None

14
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