

AN ACT

RELATING TO WORKERS' COMPENSATION; INCREASING BENEFITS;
REMOVING FILING FEES; AMENDING AND REPEALING SECTIONS OF THE
WORKERS' COMPENSATION ACT.

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

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

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

A. For total disability, the worker shall receive, during the period of that disability, sixty-six and two-thirds percent of his average weekly wage, and not to exceed a maximum compensation of eighty-five percent of the average weekly wage in the state, a week, effective July 1, 1987 through December 31, 1999, and thereafter not to exceed a maximum compensation of one hundred percent of the average weekly wage in the state, a week; and to be not less than a minimum compensation of thirty-six dollars (\$36.00) a week. Except as provided in Subsections B and C of this section, the worker shall receive compensation benefits for the remainder of his life.

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

C. For the purpose of paying compensation benefits for death, pursuant to Section 52-1-46 NMSA 1978,

the worker's maximum disability recovery shall be deemed to be seven hundred weeks.

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

E. For the purpose of the Workers' Compensation Act, the average weekly wage in the state shall be determined by the employment security division of the labor department on or before June 30 of each year and shall be computed from all wages reported to the employment security division from employing units, including reimbursable employers, in accordance with the regulations of the division for the preceding calendar year, divided by the total number of covered employees divided by fifty-two.

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

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

Section 2. Section 52-1-46 NMSA 1978 (being Laws 1959, Chapter 67, Section 25, as amended) is amended to read:

"52-1-46. COMPENSATION BENEFITS FOR DEATH.--Subject to the limitation of compensation payable under Subsection G of this section, if an accidental injury sustained by a worker

proximately results in his death within the period of two years following his accidental injury, compensation shall be paid in the amount and to the persons entitled thereto as follows:

A. if there are no eligible dependents, except as provided in Subsection C of Section 52-1-10 NMSA 1978 of the Workers' Compensation Act, the compensation shall be limited to the funeral expenses, not to exceed seven thousand five hundred dollars (\$7,500), and the expenses provided for medical and hospital services for the deceased, together with all other sums which the deceased should have been paid for compensation benefits up to the time of his death;

B. if there are eligible dependents at the time of the worker's death, payment shall consist of a sum not to exceed seven thousand five hundred dollars (\$7,500) for funeral expenses and expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased should have been paid for compensation benefits up to the time of his death and compensation benefits to the eligible dependents as hereinafter specified, subject to the limitations on maximum periods of recovery provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978;

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

(1) to the child or children, if there is

no widow or widower entitled to compensation, sixty-six and two-thirds percent of the average weekly wage of the deceased;

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

(3) to the widow or widower, if there is a child or children living with the widow or widower, forty-five percent of the average weekly wage of the deceased, or forty percent if such child is not or all such children are not living with a widow or widower and, in addition thereto, compensation benefits for the child or children which shall make the total benefits for the widow or widower and child or children sixty-six and two-thirds percent of the average weekly wage of the deceased. When there are two or more children, the compensation benefits payable on account of such children shall be divided among such children, share and share alike; and

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

D. if there is neither widow, widower nor children, compensation may be paid to the father and mother or the survivor of them, if dependent to any extent upon the worker for support at the time of the worker's death, twenty-five percent of the average weekly wage of the deceased, and in no event shall the maximum compensation to such dependents exceed the amounts contributed by the

deceased worker for their care; provided that if the father and mother or the survivor of them was totally dependent upon such worker for support at the time of the worker's death, he or they shall be entitled to fifty percent of the average weekly wage of the deceased;

E. if there is neither widow, widower nor children nor dependent parent, then to the brothers and sisters and grandchildren if actually dependent to any extent upon the deceased worker for support at the time of the worker's death, thirty-five percent of the average weekly wage of the deceased worker with fifteen percent additional for brothers and sisters and grandchildren in excess of two, with a maximum of sixty-six and two-thirds percent of the average weekly wage of the deceased, and in no event shall the maximum compensation to partial dependents exceed the respective amounts contributed by the deceased worker for their care;

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

G. no compensation benefits payable by reason of a worker's death shall exceed the maximum weekly compensation benefits as provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978, and no dependent or any class thereof, other than a widow, widower or children, shall in any event be paid total benefits in excess of seven thousand five hundred dollars (\$7,500) exclusive of funeral expenses and the expenses provided for medical and hospital services for the deceased paid for by the employer."

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

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

A. The compensation to which an employee who has suffered disablement, or his dependents, shall be entitled under the New Mexico Occupational Disease Disablement Law is limited to the provisions of that law. No compensation shall be due or payable under the New Mexico Occupational Disease Disablement Law for any disablement which does not result in either the temporary disablement of the employee lasting for more than seven days or in his permanent disablement as herein described or in death; provided, however, that if the period of temporary disablement of the employee lasts for more than four weeks from the date of the disablement, compensation under the New Mexico Occupational Disease Disablement Law shall be payable in addition to the amount hereinafter stated in a like amount for the first seven days after the date of disablement. But for any such disablement for which compensation is payable under the New Mexico Occupational Disease Disablement Law, the employer shall in all proper cases, as herein provided, pay to the

disabled employee or to some person authorized by the director to receive the same, for the use and benefit of the beneficiaries entitled thereto, compensation at regular intervals of no more than sixteen days apart, in accordance with the following, less proper deductions on account of default in failure to give notice of such disablement as required in Section 52-3-19 NMSA 1978.

B. For total disablement, the employee shall receive sixty-six and two-thirds percent of his average weekly wage, not to exceed a maximum compensation of eighty-five percent of the average weekly wage in the state, a week, effective July 1, 1987, continuing through December 31, 1999, and thereafter a maximum of one hundred percent of the average weekly wage in the state, a week, but not to be less than a minimum compensation of thirty-six dollars (\$36.00) a week, during the period of such disablement, but in no event to exceed a period of seven hundred weeks; provided, however, that where his wages are less than thirty-six dollars (\$36.00) a week, then the compensation to be paid such employee shall be the full amount of such weekly wages; provided further that the benefits paid or payable during a employee's entire period of disablement shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement.

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

D. For the purpose of the New Mexico Occupational Disease Disablement Law, the average weekly wage in the state shall be determined by the employment security division of the labor department on or before June 30 of each year and shall be computed from all wages reported to the employment security division from employing units, including reimbursable employers, in accordance with the regulations of the employment security division for the preceding calendar year, divided by the total number of covered employees divided by fifty-two. The first such determination by the employment security division of the average weekly wage in the state shall be made on or before June 30, 1975 from reported wages and covered employees for the calendar year ending December 31, 1974.

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

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

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

(1) if there are no dependents, the

compensation shall be limited to the funeral expenses not to exceed seven thousand five hundred dollars (\$7,500) and the expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased may have been paid for disablement; or

(2) if there are dependents at the time of death, the payment shall consist of a sum not to exceed seven thousand five hundred dollars (\$7,500) for funeral expenses and expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased may have been paid for disability, and a percentage specified in this paragraph for average weekly wages subject to the limitations of the New Mexico Occupational Disease Disablement Law to continue for the period of seven hundred weeks from the date of death of such employee; provided that the total death compensation, unless otherwise specified, payable in any of the cases mentioned in this section shall not be less than the minimum weekly compensation provided in Subsection B of this section or more than the maximum weekly compensation provided in Subsection B of this section and shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement. If there are dependents entitled thereto, compensation shall be paid to the dependents or to the person authorized by the director or the court to receive the same for the benefit of the dependents in such portions and amounts as the director or the court, bearing in mind the necessities of the case and the best interests of the dependents and of the public, may determine, to be computed on the following basis and

distributed to the following persons:

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

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

(c) to the widow or widower, if there is a child or children living with the widow or widower, forty-five percent of the average weekly wage of the deceased, or forty percent, if such child is not or all such children are not living with a widow or widower, and in addition thereto, compensation benefits for the child or children which shall make the total benefits for the widow or widower and child or children sixty-six and two-thirds percent of the average weekly wage of the deceased. When there are two or more children, the compensation benefits payable on account of such children shall be divided among such children, share and share alike;

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

(e) if there is neither widow, widower nor children, then to the father and mother or the survivor of them if dependent to any extent upon the employee for support at the time of his death, twenty-five percent of the average weekly wage of the deceased; provided that if such

father and mother or the survivor of them was totally dependent upon such employee for support at the time of his death, he or they shall be entitled to fifty percent of the average weekly wage of the deceased, subject to the maximum weekly compensation provided for in Subsection B of this section;

(f) no disablement benefits payable by reason of an employee's death shall exceed the maximum weekly compensation provided for in Subsection B of this section, and no dependent or any class thereof other than a widow or widower or children shall in any event be paid total benefits in excess of seven thousand five hundred dollars (\$7,500) exclusive of funeral expenses and the expenses provided for medical and hospital services for the deceased paid for by the employer.

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

(g) in the event of the death or remarriage of the widow or widower entitled to compensation under this subsection, the surviving children shall then be

entitled to compensation computed and paid as in Subparagraph (a) of this paragraph for the remainder of the compensable period, and in the event compensation benefits payable to children as provided in this section are terminated as provided in Paragraph (5) of Subsection A of Section 52-3-13 NMSA 1978, a surviving widow or widower shall then be entitled to compensation benefits computed and paid as provided in Subparagraphs (b) and (d) of this paragraph for the remainder of the compensable period."

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