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SENATE BILL 122

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Jacob R. Candelaria

AN ACT

RELATED TO WORKERS' COMPENSATION; REMOVING APPEALS OF DECISIONS OF WORKERS' COMPENSATION JUDGES FROM THE JURISDICTION OF THE COURT OF APPEALS; ESTABLISHING AN ADMINISTRATIVE APPEAL PROCESS IN THE WORKERS' COMPENSATION ADMINISTRATION; PROVIDING FOR APPEALS FROM THE ADMINISTRATIVE APPEAL TO THE SUPREME COURT.

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

SECTION 1. Section 34-5-8 NMSA 1978 (being Laws 1966, Chapter 28, Section 8, as amended) is amended to read:

"34-5-8. COURT OF APPEALS--APPELLATE JURISDICTION.--

A. The appellate jurisdiction of the court of appeals is coextensive with the state, and the court has jurisdiction to review on appeal:

- (1) any civil action not specifically reserved

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1 to the jurisdiction of the supreme court by the constitution or
2 by law;

3 [~~(2)~~] (2) all actions under the Workmen's
4 Compensation Act, the New Mexico Occupational Disease
5 Disablement Law, the Subsequent Injury Act and the Federal
6 Employers' Liability Act;

7 ~~(3)~~] (2) criminal actions, except those in
8 which a judgment of the district court imposes a sentence of
9 death or life imprisonment;

10 [~~(4)~~] (3) post-conviction remedy proceedings,
11 except where the sentence involved is death or life
12 imprisonment;

13 [~~(5)~~] (4) actions for violation of municipal
14 or county ordinances where a fine or imprisonment is imposed;

15 [~~(6)~~] (5) decisions of administrative agencies
16 of the state; and

17 [~~(7)~~] (6) decisions in any other action as may
18 be provided by law.

19 B. The supreme court may provide for the transfer
20 of any action or decision enumerated in this section from the
21 court of appeals to the supreme court in addition to the
22 transfers provided for in Section 34-5-10 and Subsection C of
23 Section 34-5-14 NMSA 1978."

24 SECTION 2. Section 52-5-2 NMSA 1978 (being Laws 1986,
25 Chapter 22, Section 28, as amended) is amended to read:

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1 "52-5-2. DIRECTOR--APPOINTMENT--EMPLOYEES--WORKERS '
2 COMPENSATION JUDGES--WORKERS' COMPENSATION ADMINISTRATIVE
3 APPEAL JUDGES.--

4 A. The workers' compensation administration shall
5 be in the charge of a director, who shall be appointed by the
6 governor for a term of five years with the consent of the
7 senate. The appointed director shall serve and have the
8 authority of that office during the period of time prior to
9 final action by the senate confirming or rejecting the
10 appointment. The appointment shall be made on the basis of
11 administrative ability, education, training and experience
12 relevant to the duties of the director. Upon the expiration of
13 the term, the director shall continue to serve until the
14 successor is appointed and qualified. Before entering upon the
15 duties, the director shall subscribe to an oath to faithfully
16 discharge the duties of the office. The director shall devote
17 full time to the duties of the office.

18 ~~[B. The director shall appoint necessary workers'~~
19 ~~compensation judges. Workers' compensation judges shall not be~~
20 ~~subject to the provisions of the Personnel Act except as~~
21 ~~provided by Subsection C of this section. Workers'~~
22 ~~compensation judges shall be appointed for an initial term of~~
23 ~~one year and shall be compensated at a rate equal to ninety~~
24 ~~percent of that of district court judges. Ninety days prior to~~
25 ~~the expiration of a workers' compensation judge's term, the~~

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1 ~~director shall review his performance. If approved by the~~
2 ~~director, the workers' compensation judge may be reappointed to~~
3 ~~a subsequent five-year term.~~

4 ~~G. Workers' compensation judges shall be lawyers~~
5 ~~licensed to practice law in this state and shall have a minimum~~
6 ~~five years' experience as a practicing lawyer. They shall~~
7 ~~devote their entire time to their duties and shall not engage~~
8 ~~in the private practice of law and shall not hold any other~~
9 ~~position of trust or profit or engage in any occupation or~~
10 ~~business interfering with or inconsistent with the discharge of~~
11 ~~their duties as workers' compensation judges. A workers'~~
12 ~~compensation judge shall be required to conform to all canons~~
13 ~~of the code of judicial conduct as adopted by the supreme~~
14 ~~court, except canon 21-900 of that code. Violation of those~~
15 ~~canons shall be exclusive grounds for dismissal prior to the~~
16 ~~expiration of his term. Any complaints against a workers'~~
17 ~~compensation judge shall be filed with the state personnel~~
18 ~~board, which shall report its findings to the director.~~

19 ~~D. Workers' compensation judges shall have the same~~
20 ~~immunity from liability for their adjudicatory actions as~~
21 ~~district court judges.]~~

22 B. The director shall appoint workers' compensation
23 judges who shall:

24 (1) be lawyers licensed to practice law in
25 this state;

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1 (2) have a minimum five years' experience as a
2 practicing lawyer;

3 (3) be appointed for an initial term of one
4 year. Ninety days prior to the expiration of a judge's term,
5 the director shall review the judge's performance. If approved
6 by the director, the judge may be reappointed to a subsequent
7 five-year term; and

8 (4) be compensated at a rate equal to ninety
9 percent of that of district court judges.

10 C. The governor shall appoint, with the advice and
11 consent of the senate, workers' compensation administrative
12 appeal judges who:

13 (1) shall be lawyers licensed to practice law
14 in this state;

15 (2) shall have a minimum ten years' experience
16 as a practicing lawyer in the area of workers' compensation;

17 (3) may be removed from office in the same
18 manner as district court judges; and

19 (4) shall be compensated at a rate equal to
20 that of district court judges.

21 D. Workers' compensation judges and workers'
22 compensation administrative appeal judges shall:

23 (1) not be subject to the provisions of the
24 Personnel Act;

25 (2) devote their entire time to their duties

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1 and shall not engage in the private practice of law and shall
2 not hold any other position of trust or profit or engage in any
3 occupation or business interfering with or inconsistent with
4 the discharge of their duties as judges;

5 (3) be required to conform to all canons of
6 the Code of Judicial Conduct as adopted by the supreme court,
7 except Canon 21-900 of that code. Violation of those canons
8 shall be exclusive grounds for dismissal prior to the
9 expiration of the judge's term; and

10 (4) have the same immunity from liability for
11 their adjudicatory actions as district court judges."

12 SECTION 3. Section 52-5-8 NMSA 1978 (being Laws 1986,
13 Chapter 22, Section 34, as amended) is amended to read:

14 "52-5-8. [~~JUDICIAL REVIEW OF~~] APPEAL FROM DECISION [BY]
15 OF WORKERS' COMPENSATION JUDGE.--

16 A. Any party in interest may, within thirty days of
17 mailing of the final order of the workers' compensation judge,
18 file a notice of appeal with the [~~court of appeals~~] workers'
19 compensation administration.

20 B. A decision of a workers' compensation judge is
21 reviewable by [~~the court of appeals in the manner provided for~~
22 ~~other cases and is subject to stay proceedings as provided by~~
23 ~~the rules of civil procedure for the district courts, except~~
24 ~~that the appeal shall be advanced on the calendar and disposed~~
25 ~~of as promptly as possible] a panel of three workers'~~

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1 compensation administrative appeal judges.

2 C. If a workers' compensation administrative appeal
3 judge recuses himself or herself, and another workers'
4 compensation administrative appeal judge is not available, the
5 director shall appoint a workers' compensation judge who was
6 not involved in the appealed decision to serve on the panel.

7 D. The decision of the workers' compensation judge
8 shall be stayed pending resolution of the appeal.

9 E. The decision of the workers' compensation judge
10 shall be set aside only if it is shown that the decision:

11 (1) is arbitrary, capricious or reflects an
12 abuse of discretion;

13 (2) is not supported by substantial evidence;
14 or

15 (3) is otherwise not in accordance with law.

16 F. A workers' compensation administrative appeal
17 decision is reviewable by the supreme court in accordance with
18 appellate rules of procedure promulgated by the supreme court.

19 ~~[G.] G. When an appeal is taken, [to the court of~~
20 ~~appeals by the worker or the person appointed by a court of~~
21 ~~competent jurisdiction to act on behalf of dependents, he] the~~
22 appellant is entitled to the record of the hearing and
23 proceedings in the case, which shall be prepared, transcribed,
24 certified and forwarded by the director to the ~~[clerk of the~~
25 ~~court of appeals]~~ workers' compensation administrative appeal

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1 panel or the supreme court without cost to the appellant. No
2 docket fee or other costs shall be charged the ~~worker~~
3 appellant on appeal."

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