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**SENATE BILL 234**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Don Kidd**

**AN ACT**

**RELATING TO WORKERS' COMPENSATION; CHANGING THE BENEFITS  
COMPUTATION FOR PARTIAL DISABILITY; CHANGING PROVISIONS  
RELATING TO ALCOHOL OR DRUG USE INVOLVEMENT IN AN INJURY;  
MAKING CERTAIN WORKERS' COMPENSATION ADMINISTRATION RECORDS  
OPEN TO THE PUBLIC; AMENDING AND ENACTING SECTIONS OF THE NMSA  
1978.**

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

**Section 1. A new Section 52-1-12.1 NMSA 1978 is enacted  
to read:**

**"52-1-12.1. [NEW MATERIAL] REDUCTION IN COMPENSATION  
WHEN ALCOHOL OR DRUGS CONTRIBUTE TO INJURY OR DEATH. -- The  
compensation otherwise payable a worker pursuant to the  
Workers' Compensation Act shall be reduced ten percent in  
cases in which the injury to or death of a worker is not**

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1 occasioned by the intoxication of the worker as stated in  
2 Section 52-1-11 NMSA 1978 or occasioned solely by drug  
3 influence as described in Section 52-1-12 NMSA 1978, but  
4 voluntary intoxication or being under the influence of a  
5 depressant, stimulant or hallucinogenic drug as defined in the  
6 New Mexico Drug, Device and Cosmetic Act or under the  
7 influence of a narcotic drug as defined in the Controlled  
8 Substances Act, unless the drug was dispensed to the person  
9 upon the prescription of a practitioner licensed by law to  
10 prescribe the drug or administered to the person by any person  
11 authorized by a licensed practitioner to administer the drug,  
12 is a contributing cause to the injury or death. Test results  
13 used as evidence of intoxication or drug influence shall not  
14 be considered in making a determination of intoxication or  
15 drug influence unless the test and testing procedures conform  
16 to the federal department of transportation "procedures for  
17 transportation workplace drug and alcohol testing programs"  
18 and the test is performed by a laboratory certified to do the  
19 testing by the federal department of transportation. "

20 Section 2. Section 52-1-26.2 NMSA 1978 (being Laws 1990  
21 (2nd S.S.), Chapter 2, Section 13) is amended to read:

22 "52-1-26.2. PARTIAL DISABILITY DETERMINATION--AGE  
23 MODIFICATION. --

24 A. The range of the age modification is [~~zero~~] one  
25 to [~~four~~] five. The modification is based upon the worker's

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1 age at the time of the disability rating.

2 B. For a worker who is:

3 (1) forty-four years old or younger, [~~no~~  
4 ~~points~~] one point shall be awarded;

5 (2) forty-five to forty-nine years old, [~~one~~  
6 ~~point~~] two points shall be awarded;

7 (3) fifty to fifty-four years old, [~~two~~  
8 ~~three~~] three points shall be awarded;

9 (4) fifty-five to fifty-nine years old,  
10 [~~three~~] four points shall be awarded; and

11 (5) sixty years old or older, [~~four~~] five  
12 points shall be awarded. "

13 Section 3. Section 52-1-26.3 NMSA 1978 (being Laws 1990  
14 (2nd S.S.), Chapter 2, Section 14) is amended to read:

15 "52-1-26.3. PARTIAL DISABILITY DETERMINATION-- EDUCATION  
16 MODIFICATION. --

17 A. The range of the education modification is  
18 [~~zero~~] one to [~~seven~~] eight. The modification shall be based  
19 upon the worker's formal education, skills and training at the  
20 time of the disability rating.

21 B. A worker shall be awarded points based on the  
22 formal education he has received. A worker who:

23 (1) has completed no higher than the fifth  
24 grade shall be awarded [~~two~~] three points;

25 (2) has completed the sixth grade but has

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1 completed no higher than the eleventh grade shall be awarded  
2 [~~one point~~] two points;

3 (3) has completed the twelfth grade or has  
4 obtained a GED certificate but has not completed a college  
5 degree shall be awarded [~~zero points~~] one point; and

6 (4) has completed a college degree or more  
7 shall receive [~~minus one point~~] zero points.

8 C. A worker shall be awarded points based upon his  
9 skills. Skills shall be measured by reviewing the jobs he has  
10 successfully performed during the ten years preceding the date  
11 of disability determination. For the purposes of this  
12 section, "successfully performed" means having remained on the  
13 job the length of time necessary to meet the specific  
14 vocational preparation (SVP) time requirement for that job as  
15 established in the dictionary of occupational titles published  
16 by the United States department of labor. The appropriate  
17 award of points shall be based upon the highest SVP level  
18 demonstrated by the worker in the performance of the jobs he  
19 has successfully performed in the ten-year period preceding  
20 the date of disability determination, as follows:

21 (1) a worker with an SVP of one to two shall  
22 be awarded four points;

23 (2) a worker with an SVP of three to four  
24 shall be awarded three points;

25 (3) a worker with an SVP of five to six shall

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1 be awarded two points; and

2 (4) a worker with an SVP of seven to nine  
3 shall be awarded one point.

4 D. A worker shall be awarded points based upon the  
5 training he has received. A worker who cannot competently  
6 perform a specific vocational pursuit shall be awarded one  
7 point. A worker who can perform a specific vocational pursuit  
8 shall not receive any points.

9 E. The sum of the points awarded the worker in  
10 Subsections B, C and D of this section shall constitute the  
11 education modification. "

12 Section 4. Section 52-5-21 NMSA 1978 (being Laws 1990  
13 (2nd S.S.), Chapter 2, Section 65) is amended to read:

14 "52-5-21. ADMINISTRATION RECORDS CONFIDENTIALITY--  
15 AUTHORIZED USE. --Except as otherwise provided in this section,  
16 unless introduced as evidence in an administrative or judicial  
17 proceeding or filed with the clerk of the court as part of an  
18 enforcement or compliance proceeding, all records of the  
19 administration shall be confidential [~~provided, however,~~  
20 ~~that~~]. Once an accident or disablement occurs, any person who  
21 is a party to a claim upon that accident or disablement is  
22 entitled to access to all files relating to that accident or  
23 disablement and to all files relating to any prior accident,  
24 injury or disablement of the worker. Upon the filing of a  
25 rejection of a recommended resolution, all records filed with

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1 the clerk of the court as part of the judicial proceeding  
2 shall be open to the public."

3 Section 5. EFFECTIVE DATE. -- The effective date of the  
4 provisions of this act is July 1, 2001.

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