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SENATE BILL 583

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

INTRODUCED BY

Rod Adair

AN ACT

**RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE
WORKERS' COMPENSATION ADMINISTRATION ACT AND WORKERS'
COMPENSATION ACT TO PROVIDE SUPERIOR EMPLOYER LIABILITY AND
STRENGTHEN EXCLUSIVE REMEDY PROVISIONS.**

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

**Section 1. Section 52-1-10 NMSA 1978 (being Laws 1929,
Chapter 113, Section 7, as amended) is amended to read:**

**"52-1-10. INCREASE OR REDUCTION IN COMPENSATION BASED ON
FAILURE OF EMPLOYER TO PROVIDE OR FAILURE OF EMPLOYEE TO USE
SAFETY DEVICES. --**

**A. In case an injury to, or death of, a worker
results from his failure to observe statutory regulations
appertaining to the safe conduct of his employment or from his
failure to use a safety device provided by his employer, then**

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1 the compensation otherwise payable [~~under~~] pursuant to the
2 Workers' Compensation Act shall be reduced ten percent.

3 B. In case an injury to, or death of, a worker
4 results from the failure of an employer to provide safety
5 devices required by law or, in any industry in which safety
6 devices are not prescribed by statute, if an injury to, or
7 death of, a worker results from the negligence of the employer
8 in failing to supply reasonable safety devices in general use
9 for the use or protection of the worker, then the compensation
10 otherwise payable [~~under~~] pursuant to the Workers'
11 Compensation Act shall be increased ten percent.

12 C. In case the death of a worker results from the
13 failure of an employer to provide safety devices required by
14 law or, in any industry in which safety devices are not
15 prescribed by statute, if the death of a worker results from
16 the negligence of the employer in failing to supply reasonable
17 safety devices in general use for the use or protection of the
18 worker and the deceased worker leaves no eligible dependents
19 [~~under~~] pursuant to the Workers' Compensation Act, in addition
20 to the benefits provided for in Subsection A of Section
21 52-1-46 NMSA 1978, compensation in the amount of five thousand
22 dollars (\$5,000) shall be paid to the surviving father and
23 mother of the deceased or, if either of them [~~be~~] is deceased,
24 to the survivor of them. The surviving father and mother, or
25 either of them, may file a claim for the five thousand dollars

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1 (\$5,000) compensation, provided the father or mother has given
2 notice in the manner and within the time required by Section
3 52-1-29 NMSA 1978 and the claim is filed within one year from
4 the date of the worker's death. If there ~~[be]~~ is no surviving
5 father or mother, then the five thousand dollars (\$5,000)
6 compensation provided for in this subsection shall not be
7 payable.

8 D. In case an injury to, or death of, a worker
9 results from a superior employer's failure to maintain a safe
10 workplace or its failure to supervise or other negligent act,
11 the compensation otherwise payable pursuant to the Workers'
12 Compensation Act shall be increased ten percent. The increase
13 shall be payable by that superior employer. As used in this
14 section, "superior employer" means an employer that holds a
15 contract to perform work and subcontracts all or part of that
16 work to another employer and that may be the person,
17 organization or entity that owns the project or the property
18 where the injury occurs and is responsible for paying for the
19 work performed under contract.

20 ~~[D.]~~ E. Any increased liability resulting from
21 negligence on the part of the employer or superior employer
22 shall be recoverable from the employer or superior employer
23 only and not from the insurer, guarantor or surety of the
24 employer or superior employer under the Workers' Compensation
25 Act, except that this provision shall not be construed to

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1 prohibit an employer or superior employer from insuring
2 against such increased liability, provided a superior
3 employer may not enter into a contract requiring an employer
4 who is performing work for the superior employer to hold the
5 superior employer harmless for the additional compensation
6 provided in Subsection D of this section.

7 [E-] F. No employee shall file a claim for
8 increased compensation under the Workers' Compensation Act on
9 the basis of an injury suffered because of the lack of a
10 safety device nor shall a dependent of a deceased employee or
11 the father or mother as provided in Subsection C of this
12 section file a claim on the basis of the death of a worker
13 suffered because of the lack of a safety device, unless the
14 claim identifies the specific safety device [~~which~~] that it is
15 claimed was not furnished by the employer. The employer is
16 under a like duty to allege the specific safety device [~~which~~]
17 that it is claimed an employee failed to use before the
18 employer may claim a reduction of compensation as [~~herein~~]
19 provided in Subsection A of this section. "

20 Section 2. Section 52-1-22 NMSA 1978 (being Laws 1965,
21 Chapter 295, Section 15, as amended) is amended to read:

22 "52-1-22. WORK NOT CASUAL EMPLOYMENT.--As used in the
23 Workers' Compensation Act, unless the context otherwise
24 requires, where any employer procures any work to be done
25 wholly or in part for him by a contractor other than an

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1 independent contractor and the work so procured to be done is
2 a part or process in the trade or business or undertaking of
3 ~~[such]~~ the employer, then ~~[such]~~ the employer shall be liable
4 to pay all compensation under the Workers' Compensation Act to
5 the same extent as if the work were done without the
6 intervention of such contractor. The work so procured to be
7 done shall not be construed to be "casual employment", and any
8 employer who procures any work to be done for him and who pays
9 directly or indirectly for workers' compensation benefits
10 pursuant to the Workers' Compensation Act for the work so
11 procured is entitled to the protections provided by that act."

12 Section 3. Section 52-5-1 NMSA 1978 (being Laws 1987,
13 Chapter 342, Section 30, as amended) is amended to read:

14 "52-5-1. PURPOSE.--It is the intent of the legislature
15 in creating the workers' compensation administration that the
16 laws administered by it to provide a workers' benefit system
17 be interpreted to assure the quick and efficient delivery of
18 indemnity and medical benefits to injured and disabled workers
19 at a reasonable cost to the employers ~~[who]~~ that are subject
20 to the provisions of the Workers' Compensation Act and the New
21 Mexico Occupational Disease Disablement Law. It is the
22 specific intent of the legislature that benefit claims cases
23 be decided on their merits and that the common law rule of
24 "liberal construction" based on the supposed "remedial" basis
25 of workers' benefits legislation shall not apply in these

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1 cases. The workers' benefit system in New Mexico is based on
2 a mutual renunciation of common-law rights and defenses by
3 employers and employees alike. Accordingly, the legislature
4 declares that the Workers' Compensation Act and the New Mexico
5 Occupational Disease Disablement Law are not remedial in any
6 sense and are not to be given a broad liberal construction in
7 favor of the claimant or employee on the one hand, nor are the
8 rights and interests of the employer to be favored over those
9 of the employee on the other hand. An employer shall be
10 subjected to only one cause of action for claims of accidental
11 injury arising out of and in the course of employment, and no
12 other sources of recovery from or paid for by the employer
13 shall be allowed if workers' compensation benefits are
14 recoverable."

15 Section 4. Section 52-5-17 NMSA 1978 (being Laws 1986,
16 Chapter 22, Section 43, as amended) is amended to read:

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

18 A. The right of any worker or, in case of his
19 death, of those entitled to receive payment or damages for
20 injuries or disablement occasioned to him by the negligence or
21 wrong of any person other than the employer or any other
22 employee of the employer, including a management or
23 supervisory employee, shall not be affected by the Workers'
24 Compensation Act or the New Mexico Occupational Disease
25 Disablement Law, but the claimant shall not be allowed to

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1 receive payment or recover damages for those injuries or
2 disablement and also claim compensation from the employer
3 except as provided in Subsection C of this section.

4 B. In a circumstance covered by Subsection A of
5 this section, the receipt of compensation from the employer
6 shall operate as an assignment to the employer or his insurer,
7 guarantor or surety of any cause of action, to the extent of
8 payment by the employer to or on behalf of the worker for
9 compensation or any other benefits to which the worker was
10 entitled [~~under~~] pursuant to the Workers' Compensation Act or
11 the New Mexico Occupational Disease Disablement Law and that
12 were occasioned by the injury or disablement, that the worker
13 or his legal representative or others may have against any
14 other party for the injury or disablement.

15 C. The worker or his legal representative may
16 retain any compensation due [~~under~~] pursuant to the uninsured
17 motorist coverage provided in Section 66-5-301 NMSA 1978 if
18 the worker paid the premium for that coverage. If the
19 employer paid the premium [~~the worker or his legal~~
20 ~~representative may not retain any compensation due under~~
21 ~~Section 66-5-301 NMSA 1978, and that amount shall be due to~~
22 ~~the employer~~] and the worker is eligible to recover workers'
23 compensation benefits, any payments pursuant to Section
24 66-5-301 NMSA 1978 are barred to that worker with regard to
25 the coverage paid for by the employer and, for the purpose of

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1 eligibility for recovery from other sources of that same
2 compensation, the employer-paid coverage shall be deemed to
3 have been exhausted. For the purposes of this section, the
4 employer shall not be deemed to pay the premium for uninsured
5 motorist coverage in a lease arrangement in which the employer
6 pays the worker an expense or mileage reimbursement amount
7 that may include as one factor an allowance for insurance
8 coverage. "

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