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AN ACT

RELATING TO INSURANCE; AMENDING THE WORKERS' COMPENSATION ACT
AND THE NEW MEXICO OCCUPATIONAL DISEASE DISABLEMENT LAW TO
CHANGE TEMPORARY DISABILITY BENEFITS; PROVIDING FOR LIFETIME
MAXIMUM PERIOD.

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 the worker's 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.

B. For permanent total disability as set forth in
Section 52-1-25 NMSA 1978, the worker shall receive
compensation benefits for the remainder of the worker's life.
For temporary disability as set forth in Section 52-1-25.1
NMSA 1978, the maximum period of compensation is subject to

1 the maximum duration and limitation on compensation benefits
2 set forth in Section 52-1-47 NMSA 1978.

3 C. For disability resulting from primary mental
4 impairment, the maximum period of compensation is the maximum
5 period allowable for a physical injury, as set forth in
6 Sections 52-1-26 and 52-1-42 NMSA 1978, and subject to the
7 maximum duration and limitations on compensation benefits set
8 forth in Section 52-1-47 NMSA 1978. For disability resulting
9 in secondary mental impairment, the maximum period of
10 compensation is the maximum period allowable for the
11 disability produced by the physical impairment, as set forth
12 in Section 52-1-26 or 52-1-43 NMSA 1978 and Section 52-1-42
13 NMSA 1978, and subject to the maximum duration and
14 limitations on compensation benefits set forth in Section
15 52-1-47 NMSA 1978.

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

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

23 F. For the purpose of the Workers' Compensation
24 Act, the average weekly wage in the state shall be determined
25 by the workforce solutions department on or before June 30 of

1 each year and shall be computed from all wages reported to
2 the workforce solutions department from employing units,
3 including reimbursable employers, in accordance with the
4 rules of the department for the preceding calendar year,
5 divided by the total number of covered employees divided by
6 fifty-two.

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

13 H. Unless the computation provided for in
14 Subsection F 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 SECTION 2. Section 52-1-42 NMSA 1978 (being Laws 1959,
19 Chapter 67, Section 21, as amended) is amended to read:

20 "52-1-42. COMPENSATION BENEFITS--PERMANENT PARTIAL
21 DISABILITY--MAXIMUM DURATION OF BENEFITS.--

22 A. For permanent partial disability, the workers'
23 compensation benefits not specifically provided for in
24 Section 52-1-43 NMSA 1978 shall be a percentage of the weekly
25 benefit payable for total disability as provided in

1 Section 52-1-41 NMSA 1978. The percentage of permanent
2 partial disability shall be determined pursuant to the
3 provisions of Sections 52-1-26 through 52-1-26.4 NMSA 1978.
4 The duration of partial disability benefits shall depend upon
5 the extent and nature of the partial disability, subject to
6 the following:

7 (1) where the worker's percentage of
8 disability is equal to or greater than eighty, the maximum
9 period is seven hundred weeks;

10 (2) where the worker's percentage of
11 disability is less than eighty, the maximum period is five
12 hundred weeks;

13 (3) where the partial disability results
14 from a primary mental impairment, the maximum period is the
15 maximum period allowable for a physical injury, as set forth
16 in Section 52-1-26 NMSA 1978, and subject to the maximum
17 duration and limitations on compensation benefits set forth
18 in Section 52-1-47 NMSA 1978; and

19 (4) where the partial disability results
20 from a secondary mental impairment, the maximum period is the
21 maximum period allowable for the disability produced by the
22 physical impairment, as set forth in Section 52-1-26 or
23 52-1-43 NMSA 1978, and subject to the maximum duration and
24 limitations on compensation benefits set forth in
25 Section 52-1-47 NMSA 1978.

1 B. If an injured worker receives temporary
2 disability benefits prior to an award of permanent partial
3 disability benefits, the maximum period for permanent partial
4 disability benefits shall be reduced by the number of weeks
5 the worker actually receives temporary disability benefits."

6 SECTION 3. Section 52-1-47 NMSA 1978 (being Laws 1959,
7 Chapter 67, Section 26, as amended) is amended to read:

8 "52-1-47. LIMITATIONS ON COMPENSATION BENEFITS.--
9 Subject to the limitation of compensation payable under
10 Subsection G of Section 52-1-46 NMSA 1978 and except for
11 provision of lifetime benefits for permanent total disability
12 awarded pursuant to Section 52-1-41 NMSA 1978:

13 A. compensation benefits for any combination of
14 disabilities, whether temporary or permanent, or any
15 combination of disabilities and death shall not be payable
16 for a period in excess of seven hundred weeks;

17 B. compensation benefits for any combination of
18 disabilities or any combination of disabilities and death
19 shall not exceed an amount equal to seven hundred multiplied
20 by the maximum weekly compensation payable at the time of the
21 accidental injury resulting in the disability or death under
22 Section 52-1-41 NMSA 1978, exclusive of increased
23 compensation that may be awarded under Sections 52-1-10,
24 52-1-28.1 and 52-1-46 NMSA 1978 and exclusive of any attorney
25 fees awarded under Section 52-1-54 NMSA 1978;

1 C. in no case shall compensation benefits for
2 disability continue after the disability ends or after the
3 death of the injured worker; and

4 D. the compensation benefits payable by reason of
5 disability caused by accidental injury shall be reduced by
6 the compensation benefits paid or payable on account of any
7 prior injury suffered by the worker if compensation benefits
8 in both instances are for injury to the same member or
9 function or different parts of the same member or function or
10 for disfigurement and if the compensation benefits payable on
11 account of the subsequent injury would, in whole or in part,
12 duplicate the benefits paid or payable on account of the
13 prior injury."

14 SECTION 4. Section 52-3-14 NMSA 1978 (being Laws 1945,
15 Chapter 135, Section 14, as amended) is amended to read:

16 "52-3-14. COMPENSATION--LIMITATIONS.--

17 A. The compensation to which a worker who has
18 suffered disablement, or the worker's dependents, shall be
19 entitled under the New Mexico Occupational Disease
20 Disablement Law is limited to the provisions of that law. No
21 compensation shall be due or payable under the New Mexico
22 Occupational Disease Disablement Law for any disablement that
23 does not result in either the temporary disablement of the
24 worker lasting for more than seven days or in the worker's
25 permanent disablement as herein described or in death;

1 provided, however, that if the period of temporary
2 disablement of the worker lasts for more than four weeks from
3 the date of the disablement, compensation under the
4 New Mexico Occupational Disease Disablement Law shall be
5 payable in addition to the amount hereinafter stated in a
6 like amount for the first seven days after the date of
7 disablement. But for any such disablement for which
8 compensation is payable under the New Mexico Occupational
9 Disease Disablement Law, the employer shall in all proper
10 cases, as herein provided, pay to the disabled worker or to
11 some person authorized by the director to receive the same,
12 for the use and benefit of the beneficiaries entitled
13 thereto, compensation at regular intervals of no more than
14 sixteen days apart, in accordance with this section, less
15 proper deductions on account of default in failure to give
16 notice of such disablement as required in Section 52-3-19
17 NMSA 1978.

18 B. For total disablement, the worker shall receive
19 sixty-six and two-thirds percent of the worker's average
20 weekly wage, not to exceed a maximum compensation of
21 eighty-five percent of the average weekly wage in the state,
22 a week, effective July 1, 1987, continuing through December
23 31, 1999, and thereafter not to exceed a maximum of one
24 hundred percent of the average weekly wage in the state, a
25 week, but not to be less than a minimum compensation of

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

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

16 D. In no event shall the duration of any
17 combination of disablements, whether temporary or partial
18 disablements, and death be payable for a period in excess of
19 seven hundred weeks.

20 E. For the purpose of the New Mexico Occupational
21 Disease Disablement Law, the average weekly wage in the state
22 shall be determined by the workforce solutions department on
23 or before June 30 of each year and shall be computed from all
24 wages reported to the department from employing units,
25 including reimbursable employers, in accordance with the

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

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
11 is payable when the date of the occurrence of the disablement
12 falls within the calendar year commencing January 1 following
13 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 H. In case death proximately results from the
20 disablement within the period of two years, compensation
21 benefits to be paid such worker shall be in the amounts and
22 to the persons as follows:

23 (1) if there are no dependents, the
24 compensation shall be limited to the funeral expenses not to
25 exceed seven thousand five hundred dollars (\$7,500) and the

1 expenses provided for medical and hospital services for the
2 deceased, together with such other sums as the deceased may
3 have been paid for disablement; or

4 (2) if there are dependents at the time of
5 death, the payment shall consist of a sum not to exceed seven
6 thousand five hundred dollars (\$7,500) for funeral expenses
7 and expenses provided for medical and hospital services for
8 the deceased, together with such other sums as the deceased
9 may have been paid for disability, and a percentage specified
10 in this paragraph for average weekly wages subject to the
11 limitations of the New Mexico Occupational Disease
12 Disablement Law to continue for the period of seven hundred
13 weeks from the date of death of such worker; provided that
14 the total death compensation, unless otherwise specified,
15 payable in any of the cases mentioned in this section shall
16 not be less than the minimum weekly compensation provided in
17 Subsection B of this section or more than the maximum weekly
18 compensation provided in Subsection B of this section and
19 shall be based on and limited to the benefits in effect on
20 the date of the occurrence of the disablement. If there are
21 dependents entitled thereto, compensation shall be paid to
22 the dependents or to the person authorized by the director or
23 the court to receive the same for the benefit of the
24 dependents in such portions and amounts as the director or
25 the court, bearing in mind the necessities of the case and

1 the best interests of the dependents and of the public, may
2 determine, to be computed on the following basis and
3 distributed to the following persons:

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

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

11 (c) to the widow or widower, if there
12 is a child or children living with the widow or widower,
13 forty-five percent of the compensation rate, as provided in
14 Subsection B of this section, of the deceased, or forty
15 percent, if such child is not or all such children are not
16 living with a widow or widower, and in addition thereto,
17 compensation benefits for the child or children, which shall
18 make the total benefits for the widow or widower and child or
19 children sixty-six and two-thirds percent of the average
20 weekly wage of the deceased. When there are two or more
21 children, the compensation benefits payable on account of
22 such children shall be divided among such children, share and
23 share alike;

24 (d) two years' compensation benefits in
25 one lump sum shall be payable to a widow or widower upon

1 remarriage; however, the total benefits shall not exceed the
2 maximum compensation benefits as provided in Paragraph (2) of
3 this subsection;

4 (e) if there is neither widow, widower
5 nor children, then to the father and mother or the survivor
6 of them if dependent to any extent upon the worker for
7 support at the time of the worker's death, twenty-five
8 percent of the average weekly wage of the deceased; provided
9 that if such father and mother, or the survivor of them, was
10 totally dependent upon such worker for support at the time of
11 the worker's death, they shall be entitled to fifty percent
12 of the average weekly wage of the deceased, subject to the
13 maximum weekly compensation provided for in Subsection B of
14 this section;

15 (f) no disablement benefits payable by
16 reason of a worker's death shall exceed the maximum weekly
17 compensation provided for in Subsection B of this section,
18 and no dependent or any class thereof other than a widow or
19 widower or children shall in any event be paid total benefits
20 in excess of seven thousand five hundred dollars (\$7,500)
21 exclusive of funeral expenses and the expenses provided for
22 medical and hospital services for the deceased paid for by
23 the employer. If there is neither widow, widower nor
24 children nor dependent parent, then to the brothers and
25 sisters, if actually dependent to any extent upon the

1 deceased for support at the time of the deceased's death,
2 thirty-five percent of the average weekly wage of the
3 deceased, with fifteen percent additional for brothers or
4 sisters in excess of two, with a maximum of sixty-six and
5 two-thirds percent to be paid to their guardian; provided
6 that the maximum compensation to partial dependents shall not
7 exceed the respective amounts therefor contributed by the
8 deceased employee or the maximum weekly compensation provided
9 for in Subsection B of this section; and

10 (g) in the event of the death or
11 remarriage of the widow or widower entitled to compensation
12 under this subsection, the surviving children shall then be
13 entitled to compensation computed and paid as in Subparagraph
14 (a) of this paragraph for the remainder of the compensable
15 period, and in the event compensation benefits payable to
16 children as provided in this section are terminated as
17 provided in Paragraph (5) of Subsection A of Section 52-3-13
18 NMSA 1978, a surviving widow or widower shall then be entitled
19 to compensation benefits computed and paid as provided in
20 Subparagraphs (b) and (d) of this paragraph for the remainder
21 of the compensable period." _____