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SENATE BILL 156

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

INTRODUCED BY

Jacob R. Candelaria

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING SUBROGATION RIGHTS TO EMPLOYERS WHERE EMPLOYEE SECURES RECOVERY FROM A THIRD PARTY.

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

SECTION 1. Section 52-5-17 NMSA 1978 (being Laws 1986, Chapter 22, Section 43, as amended) is amended to read:

"52-5-17. SUBROGATION.--

A. The right of any worker or, in case of [~~his~~] the worker's death, of those entitled to receive payment or damages for injuries or disablement occasioned [~~to him~~] by the negligence or wrong of any person other than the employer or any other employee of the employer, including a management or supervisory employee, shall not be affected by the Workers' Compensation Act or the New Mexico Occupational Disease

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1 Disablement Law, but the claimant [~~shall not be allowed to~~] may
2 receive payment or recover damages for those injuries or
3 disablement and also claim compensation from the employer
4 ~~[except as provided in Subsection C of this section].~~

5 B. [~~In a circumstance covered by Subsection A of~~
6 ~~this section, the receipt of compensation from the employer~~
7 ~~shall operate as an assignment to the employer or his insurer,~~
8 ~~guarantor or surety of any cause of action, to the extent of~~
9 ~~payment by the employer to or on behalf of the worker for~~
10 ~~compensation or any other benefits to which the worker was~~
11 ~~entitled under the Workers' Compensation Act or the New Mexico~~
12 ~~Occupational Disease Disablement Law and that were occasioned~~
13 ~~by the injury or disablement, that the worker or his legal~~
14 ~~representative or others may have against any other party for~~
15 ~~the injury or disablement.] If the injured worker or, in case
16 of the worker's death, those entitled to receive payment or
17 damages for injuries or disablement occasioned by the
18 negligence or wrong of any person other than the employer or
19 any other employee of the employer, including a management or
20 supervisory employee, do not pursue a remedy pursuant to this
21 section against a third party by instituting an action within
22 one year after the date of the compensable injury or death, or
23 if, after instituting the action, the injured worker or those
24 entitled to receive payment or damages for the worker's injury
25 or disablement fail to fully prosecute the claim and the action~~

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1 is dismissed, the claim against the third party is deemed
2 assigned to the employer and:

3 (1) the employer may institute an action
4 against the third party;

5 (2) any dismissal that is entered for lack of
6 prosecution of an action instituted by the injured worker or on
7 the injured worker's behalf shall not prejudice the right of
8 the employer to recover the amount of benefits paid;

9 (3) the action shall be filed prior to the
10 one-year statute of limitations running out; and

11 (4) the claim may be prosecuted or compromised
12 by the employer or may be reassigned in its entirety to the
13 injured worker or those entitled to receive payment or damages
14 for the worker's injuries or disablement.

15 C. If a reassignment occurs pursuant to Paragraph
16 (4) of Subsection B of this section, the injured worker or
17 those entitled to receive payment or damages for the worker's
18 injuries or disablement shall have the same rights to pursue
19 the claim as if it had been filed prior to the one-year statute
20 of limitations running out.

21 D. The injured worker or those entitled to receive
22 payment or damages for the worker's injuries or disablement
23 shall provide the employer written notice of the intention to
24 bring an action against a third party and shall provide to the
25 employer timely and periodic notice of all pleadings and

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1 rulings concerning the status of the pending action. In any
2 action instituted pursuant to this section, the employer shall
3 have the right to intervene at any time to protect the
4 employer's interests.

5 E. If the injured worker proceeds against a third
6 party, compensation and medical, surgical and hospital benefits
7 shall be paid as provided in the Workers' Compensation Act or
8 the New Mexico Occupational Disease Disablement Law and the
9 employer shall have a lien on the amount actually collectable
10 from the third party up to the amount of compensation and
11 medical, surgical and hospital benefits paid. The lien shall
12 not be subject to a collection fee. The amount actually
13 collectable shall be the total recovery less the reasonable and
14 necessary expenses, including attorney fees, actually expended
15 in securing the recovery. In any action arising out of an
16 aggravation of a previously compensable injury, the lien shall
17 contribute only to the deficiency between the amount actually
18 collected and the compensation and medical, surgical and
19 hospital benefits provided or estimated by the Workers'
20 Compensation Act or the New Mexico Occupational Disease
21 Disablement Law for the case. Compromise of any claim by the
22 injured worker or those entitled to receive payment or damages
23 for the worker's injuries or disablement at an amount less than
24 the compensation and medical, surgical and hospital benefits
25 provided for shall be made only with written approval of the

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1 employer.

2 [~~G-~~] F. The worker or [~~his~~] the worker's legal
3 representative may retain any compensation due under the
4 uninsured motorist coverage provided in Section 66-5-301 NMSA
5 1978 if the worker paid the premium for that coverage. If the
6 employer paid the premium, the worker or [~~his~~] the worker's
7 legal representative may not retain any compensation due under
8 Section 66-5-301 NMSA 1978, and that amount shall be due to the
9 employer. For the purposes of this section, the employer shall
10 not be deemed to pay the premium for uninsured motorist
11 coverage in a lease arrangement in which the employer pays the
12 worker an expense or mileage reimbursement amount that may
13 include as one factor an allowance for insurance coverage."

14 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
15 provisions of this act is July 1, 2017.

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