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HOUSE BILL 642

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

INTRODUCED BY

William W. Fuller

AN ACT

RELATING TO INSURANCE; CHANGING PROVISIONS OF THE WORKERS'
COMPENSATION ACT TO PERMIT CERTAIN BUSINESSES TO WITHDRAW FROM
COVERAGE UNDER CERTAIN CIRCUMSTANCES.

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

Section 1. Section 52-1-6 NMSA 1978 (being Laws 1990
(2nd S.S.), Chapter 2, Section 4) is amended to read:

"52-1-6. APPLICATION OF PROVISIONS OF ACT. --

A. The provisions of the Workers' Compensation Act
shall apply to employers of three or more workers [~~provided~~
~~that~~]. Except that the act:

(1) shall apply to all employers regardless
of the number of employees if the employer is engaged in
activities required to be licensed under the provisions of the
Construction Industries Licensing Act [~~regardless of the~~

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1 ~~number of employees. The provisions of the Workers'~~
2 ~~Compensation Act], unless the employer is an entity in which~~
3 ~~all employees are executive employees who have affirmatively~~
4 ~~elected not to accept the provisions of that act pursuant to~~
5 ~~Section 52-1-7 NMSA 1978 or an entity that is a sole~~
6 ~~proprietorship or partnership having no employees and it has~~
7 ~~affirmatively elected not to accept the provisions of the~~
8 ~~Workers' Compensation Act pursuant to Section 52-1-7 NMSA~~
9 ~~1978; and~~

10 (2) shall not apply to employers of private
11 domestic servants and farm and ranch laborers.

12 B. An election to be subject to the Workers'
13 Compensation Act by employers of private domestic servants or
14 farm and ranch laborers, by persons for whom the services of
15 qualified real estate salespersons are performed or by a
16 partner or self-employed person may be made by filing, in the
17 office of the director, either a sworn statement to the effect
18 that the employer accepts the provisions of the Workers'
19 Compensation Act or an insurance or security undertaking as
20 required by Section 52-1-4 NMSA 1978.

21 C. Every worker shall be conclusively presumed to
22 have accepted the provisions of the Workers' Compensation Act
23 if his employer is subject to the provisions of that act and
24 has complied with its requirements, including insurance.

25 D. [Such] Compliance with the provisions of the

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1 Workers' Compensation Act, including the provisions for
2 insurance, shall be [~~and construed to be~~] a surrender by the
3 employer and the worker of their rights to any other method,
4 form or amount of compensation or determination thereof or to
5 any cause of action at law, suit in equity or statutory or
6 common-law right to remedy or proceeding whatever for or on
7 account of personal injuries or death of the worker than as
8 provided in the Workers' Compensation Act and shall be an
9 acceptance of all of the provisions of the Workers'
10 Compensation Act and shall bind the worker himself and, for
11 compensation for his death, shall bind his personal
12 representative, his surviving spouse and next of kin, as well
13 as the employer and those conducting his business during
14 bankruptcy or insolvency.

15 E. The Workers' Compensation Act provides exclusive
16 remedies. No cause of action outside the Workers'
17 Compensation Act shall be brought by an employee or dependent
18 against the employer or his representative, including the
19 insurer, guarantor or surety of any employer, for any matter
20 relating to the occurrence of or payment for any injury or
21 death covered by the Workers' Compensation Act. Nothing in
22 the Workers' Compensation Act, however, shall affect [~~or be~~
23 ~~construed to affect~~] in any way the existence of or the mode
24 of trial of any claim or cause of action that the worker has
25 against any person other than his employer or another employee

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1 of his employer, including a management or supervisory
2 employee, or the insurer, guarantor or surety of his
3 employer. "

4 Section 2. Section 52-1-7 NMSA 1978 (being Laws 1975,
5 Chapter 284, Section 4, as amended) is amended to read:

6 "52-1-7. APPLICATION OF PROVISIONS OF ACT TO CERTAIN
7 EXECUTIVE EMPLOYEES [~~OR~~], SOLE PROPRIETORS AND PARTNERS. --

8 A. Notwithstanding any provisions to the contrary in
9 the Workers' Compensation Act, an executive employee of a
10 professional or business corporation, employed by the
11 professional or business corporation as a worker as defined in
12 the Workers' Compensation Act, [~~OR~~] a sole proprietor or a
13 general partner who is the only employee of a partnership may
14 affirmatively elect not to accept the provisions of the
15 Workers' Compensation Act.

16 B. Each executive employee [~~OR~~], sole proprietor or
17 general partner desiring to affirmatively elect not to accept
18 the provisions of the Workers' Compensation Act may do so by
19 filing an election in the office of the director.

20 C. Each executive employee [~~OR~~], sole proprietor or
21 general partner desiring to revoke his affirmative election
22 not to accept the provisions of the Workers' Compensation Act
23 may do so by filing a revocation of the affirmative election
24 with the workers' compensation insurer and in the office of
25 the director. The revocation shall become effective thirty

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1 days after filing. An executive employee shall cause a copy
2 of the revocation to be mailed to the board of directors of
3 the professional or business corporation.

4 D. The filing of an affirmative election not to
5 accept the provisions of the Workers' Compensation Act shall
6 create a conclusive presumption that an executive employee
7 [~~or~~], sole proprietor or general partner is not covered by the
8 Workers' Compensation Act until the effective date of a
9 revocation filed pursuant to this section. The filing of an
10 affirmative election not to accept the provisions of the
11 Workers' Compensation Act shall apply to all corporations in
12 which the executive employee has a financial interest.

13 E. In determining the number of workers of an
14 employer to determine who comes within the Workers'
15 Compensation Act, an executive employee who has filed an
16 affirmative election not to be subject to the Workers'
17 Compensation Act shall be counted for determining the number
18 of workers employed by such employer.

19 F. For purposes of this section:

20 (1) "executive employee" means the chairman of
21 the board, president, vice president, secretary, treasurer or
22 other executive officer, if he owns ten percent or more of the
23 outstanding stock, of a professional or business corporation;
24 and

25 (2) "sole proprietor" means a single individual

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1 who owns all the assets of a business, is solely liable for
2 its debts and employs in the business no person other than
3 himself. "

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