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AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE
WORKERS' COMPENSATION ACT AND A SECTION OF THE NEW MEXICO
OCCUPATIONAL DISEASE AND DISABLEMENT LAW TO RAISE LIMITS FOR
ATTORNEY FEES; PROVIDING FOR A PARTY WHO ACTS IN BAD FAITH IN
A LEGAL ACTION TO PAY ONE HUNDRED PERCENT OF THE ADDITIONAL
FEES FOR THE PREVAILING PARTY.

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

SECTION 1. Section 52-1-54 NMSA 1978 (being Laws 1987,
Chapter 235, Section 24, as amended) is amended to read:

"52-1-54. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY
THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY
COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

A. It is unlawful for any person to receive or
agree to receive any fees or payment directly or indirectly
in connection with any claim for compensation under the
Workers' Compensation Act except as provided in this section.

B. In all cases where the jurisdiction of the
workers' compensation administration is invoked to approve a
settlement of a compensation claim under the Workers'
Compensation Act, the director or workers' compensation
judge, unless the claimant is represented by an attorney, may
in the director's or judge's discretion appoint an attorney
to aid the workers' compensation judge in determining whether

1 the settlement should be approved and, in the event of an
2 appointment, a reasonable fee for the services of the
3 attorney shall be fixed by the workers' compensation judge,
4 subject to the limitation of Subsection I of this section.

5 C. In all cases where the jurisdiction of the
6 workers' compensation administration is invoked to approve a
7 settlement of a compensation claim under the Workers'
8 Compensation Act and the claimant is represented by an
9 attorney, the total amount paid or to be paid by the employer
10 in settlement of the claim shall be stated in the settlement
11 papers. The workers' compensation judge shall determine and
12 fix a reasonable fee for the claimant's attorney, taking into
13 account any sum previously paid, and the fee fixed by the
14 workers' compensation judge shall be the limit of the fee
15 received or to be received by the attorney in connection with
16 the claim, subject to the limitation of Subsection I of this
17 section.

18 D. The cost of discovery shall be borne by the
19 party who requests it. If, however, the claimant requests
20 any discovery, the employer shall advance the cost of paying
21 for discovery up to a limit of three thousand dollars
22 (\$3,000). If the claimant substantially prevails on the
23 claim, as determined by a workers' compensation judge, any
24 discovery cost advanced by the employer shall be paid by that
25 employer. If the claimant does not substantially prevail on

1 the claim, as determined by a workers' compensation judge,
2 the employer shall be reimbursed for discovery costs advanced
3 according to a schedule for reimbursement approved by a
4 workers' compensation judge.

5 E. In all cases where compensation to which any
6 person is entitled under the provisions of the Workers'
7 Compensation Act is refused and the claimant thereafter
8 collects compensation through proceedings before the workers'
9 compensation administration or courts in an amount in excess
10 of the amount offered in writing by an employer five business
11 days or more prior to the informal hearing before the
12 administration, the compensation to be paid the attorney for
13 the claimant shall be fixed by the workers' compensation
14 judge hearing the claim or the courts upon appeal in the
15 amount the workers' compensation judge or courts deem
16 reasonable and proper, subject to the limitation of
17 Subsection I of this section. In determining and fixing a
18 reasonable fee, the workers' compensation judge or courts
19 shall take into consideration:

20 (1) the sum, if any, offered by the
21 employer:

22 (a) before the worker's attorney was
23 employed;

24 (b) after the attorney's employment but
25 before proceedings were commenced; and

1 (c) in writing five business days or
2 more prior to the informal hearing;

3 (2) the present value of the award made in
4 the worker's favor; and

5 (3) any failure of a party to participate in
6 a good-faith manner in informal claim resolution methods
7 adopted by the director.

8 F. After a recommended resolution has been issued
9 and rejected, but more than ten days before a trial begins,
10 the employer or claimant may serve upon the opposing party an
11 offer to allow a compensation order to be taken against the
12 employer or claimant for the money or property or to the
13 effect specified in the offer, with costs then accrued,
14 subject to the following:

15 (1) if, within ten days after the service of
16 the offer, the opposing party serves written notice that the
17 offer is accepted, either party may then file the offer and
18 notice of acceptance together with proof of service thereof,
19 and thereupon that compensation order may be entered as the
20 workers' compensation judge may direct. An offer not
21 accepted shall be deemed withdrawn, and evidence thereof is
22 not admissible except in a proceeding to determine costs. If
23 the compensation order finally obtained by the party is not
24 more favorable than the offer, that party shall pay the costs
25 incurred by the opposing party after the making of the offer.

1 The fact that an offer has been made but not accepted does
2 not preclude a subsequent offer;

3 (2) when the liability of one party to
4 another has been determined by a compensation order, but the
5 amount or extent of the liability remains to be determined by
6 further proceedings, the party adjudged liable may make an
7 offer, which shall have the same effect as an offer made
8 before trial if it is served within a reasonable time not
9 less than ten days prior to the commencement of hearings to
10 determine the amount or extent of liability;

11 (3) if the employer's offer was greater than
12 the amount awarded by the compensation order, the employer
13 shall not be liable for the employer's fifty percent share of
14 the attorney fees to be paid the worker's attorney and the
15 worker shall pay one hundred percent of the attorney fees due
16 to the worker's attorney; and

17 (4) if the worker's offer was less than the
18 amount awarded by the compensation order, the employer shall
19 pay one hundred percent of the attorney fees to be paid the
20 worker's attorney, and the worker shall be relieved from any
21 responsibility for paying any portion of the worker's
22 attorney fees.

23 G. In all actions arising under the provisions of
24 Section 52-1-56 NMSA 1978 where the jurisdiction of the
25 workers' compensation administration is invoked to determine

1 the question whether the claimant's disability has increased
2 or diminished and the claimant is represented by an attorney,
3 the workers' compensation judge or courts upon appeal shall
4 determine and fix a reasonable fee for the services of the
5 claimant's attorney only if the claimant is successful in
6 establishing that the claimant's disability has increased or
7 if the employer is unsuccessful in establishing that the
8 claimant's disability has diminished. The fee when fixed by
9 the workers' compensation judge or courts upon appeal shall
10 be the limit of the fee received or to be received by the
11 attorney for services in the action, subject to the
12 limitation of Subsection I of this section.

13 H. In determining reasonable attorney fees for a
14 claimant, the workers' compensation judge shall consider only
15 those benefits to the worker that the attorney is responsible
16 for securing. The value of future medical benefits shall not
17 be considered in determining attorney fees.

18 I. Attorney fees, including, but not limited to,
19 the costs of paralegal services, legal clerk services and any
20 other related legal services costs on behalf of a claimant or
21 an employer for a single accidental injury claim, including
22 representation before the workers' compensation
23 administration and the courts on appeal, shall not exceed
24 twenty-two thousand five hundred dollars (\$22,500). This
25 limitation applies whether the claimant or employer has one

1 or more attorneys representing the claimant or employer and
2 applies as a cumulative limitation on compensation for all
3 legal services rendered in all proceedings and other matters
4 directly related to a single accidental injury to a claimant.
5 The workers' compensation judge may exceed the maximum amount
6 stated in this subsection in awarding a reasonable attorney
7 fee if the judge finds that a claimant, an insurer or an
8 employer acted in bad faith with regard to handling the
9 injured worker's claim and the injured worker or employer has
10 suffered economic loss as a result. However, in no case
11 shall this additional amount exceed five thousand dollars
12 (\$5,000). As used in this subsection, "bad faith" means
13 conduct by the claimant, insurer or employer in the handling
14 of a claim that amounts to fraud, malice, oppression or
15 willful, wanton or reckless disregard of the rights of the
16 worker or employer. Any determination of bad faith shall be
17 made by the workers' compensation judge through a separate
18 fact-finding proceeding. Notwithstanding the provisions of
19 Subsection J of this section, the party found to have acted
20 in bad faith shall pay one hundred percent of the additional
21 fees awarded for representation of the prevailing party in a
22 bad faith action.

23 J. Except as provided in Paragraphs (3) and (4) of
24 Subsection F of this section, the payment of a claimant's
25 attorney fees determined under this section shall be shared

1 equally by the worker and the employer.

2 K. It is unlawful for any person except a licensed
3 attorney to receive or agree to receive any fee or payment
4 for legal services in connection with any claim for
5 compensation under the Workers' Compensation Act.

6 L. Nothing in this section applies to agents,
7 excluding attorneys, representing employers, insurance
8 carriers or the subsequent injury fund in any matter arising
9 from a claim under the Workers' Compensation Act.

10 M. No attorney fees shall be paid until the claim
11 has been settled or adjudged.

12 N. Every person violating the provisions of this
13 section is guilty of a misdemeanor and upon conviction shall
14 be fined not less than fifty dollars (\$50.00) or more than
15 five hundred dollars (\$500), to which may be added
16 imprisonment in the county jail for a term not exceeding
17 ninety days.

18 O. Nothing in this section shall restrict a
19 claimant from being represented before the workers'
20 compensation administration by a nonattorney as long as that
21 nonattorney receives no compensation for that representation
22 from the claimant."

23 SECTION 2. Section 52-3-47 NMSA 1978 (being Laws 1987,
24 Chapter 235, Section 41, as amended) is amended to read:

25 "52-3-47. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY SB 233
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1 THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY
2 COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

3 A. It is unlawful for any person to receive or
4 agree to receive any fees or payment directly or indirectly
5 in connection with any claim for compensation under the
6 New Mexico Occupational Disease Disablement Law except as
7 provided in this section.

8 B. In all cases where the jurisdiction of the
9 workers' compensation administration is invoked to approve a
10 settlement of a compensation claim under the New Mexico
11 Occupational Disease Disablement Law, the director or
12 workers' compensation judge, unless the claimant is
13 represented by an attorney, may in the director's or judge's
14 discretion appoint an attorney to aid the workers'
15 compensation judge in determining whether the settlement
16 should be approved. In the event of such an appointment, a
17 reasonable fee for the services of the attorney shall be
18 fixed by the workers' compensation judge, subject to the
19 limitation of Subsection I of this section.

20 C. In all cases where the jurisdiction of the
21 workers' compensation administration is invoked to approve a
22 settlement of a compensation claim under the New Mexico
23 Occupational Disease Disablement Law and the claimant is
24 represented by an attorney, the total amount paid or to be
25 paid by the employer in settlement of the claim shall be

1 stated in the settlement papers, and the workers'
2 compensation judge shall determine and fix a reasonable fee
3 for the claimant's attorney, taking into account any sum
4 previously paid. The fee fixed by the workers' compensation
5 judge shall be the limit of the fee received or to be
6 received by the attorney in connection with the claim,
7 subject to the limitation of Subsection I of this section.

8 D. The cost of discovery shall be borne by the
9 party who requests it. If, however, the claimant requests
10 any discovery, the employer shall advance the cost of paying
11 for discovery up to a limit of three thousand dollars
12 (\$3,000). If the claimant substantially prevails on the
13 claim, as determined by a workers' compensation judge, any
14 discovery cost advanced by the employer shall be paid by that
15 employer. If the claimant does not substantially prevail on
16 the claim, as determined by a workers' compensation judge,
17 the employer shall be reimbursed for discovery costs advanced
18 according to a schedule for reimbursement approved by a
19 workers' compensation judge.

20 E. In all cases where compensation to which any
21 person is entitled under the provisions of the New Mexico
22 Occupational Disease Disablement Law is refused and the
23 claimant thereafter collects compensation through proceedings
24 before the workers' compensation administration or courts in
25 an amount in excess of the amount offered in writing by an

1 employer five business days or more prior to the informal
2 hearing before the administration, the compensation to be
3 paid the attorney for the claimant shall be fixed by the
4 workers' compensation judge hearing the claim or the courts
5 upon appeal in the amount the workers' compensation judge or
6 courts deem reasonable and proper, subject to the limitation
7 of Subsection I of this section. In determining and fixing a
8 reasonable fee, the workers' compensation judge or courts
9 shall take into consideration:

10 (1) the sum, if any, offered by the
11 employer:

12 (a) before the employee's attorney was
13 employed;

14 (b) after the attorney's employment but
15 before proceedings were commenced; and

16 (c) in writing five business days or
17 more prior to the informal hearing;

18 (2) the present value of the award made in
19 the employee's favor; and

20 (3) the failure of a party to participate in
21 a good-faith manner in informal claim resolution methods
22 adopted by the director.

23 F. After a recommended resolution has been issued
24 and rejected, but more than ten days before a trial begins,
25 the employer or claimant may serve upon the opposing party an

1 offer to allow a compensation order to be taken against the
2 employer or claimant for the money or property or to the
3 effect specified in the offer, with costs then accrued,
4 subject to the following:

5 (1) if, within ten days after the service of
6 the offer, the opposing party serves written notice that the
7 offer is accepted, either party may then file the offer and
8 notice of acceptance together with proof of service thereof,
9 and thereupon that compensation order may be entered as the
10 workers' compensation judge may direct. An offer not
11 accepted shall be deemed withdrawn, and evidence thereof is
12 not admissible except in a proceeding to determine costs. If
13 the compensation order finally obtained by the party is not
14 more favorable than the offer, that party shall pay the costs
15 incurred by the opposing party after the making of the offer.
16 The fact that an offer has been made but not accepted does
17 not preclude a subsequent offer;

18 (2) when the liability of one party to
19 another has been determined by a compensation order, but the
20 amount or extent of the liability remains to be determined by
21 further proceedings, the party adjudged liable may make an
22 offer, which shall have the same effect as an offer made
23 before trial if it is served within a reasonable time not
24 less than ten days prior to the commencement of hearings to
25 determine the amount or extent of liability;

1 (3) if the employer's offer was greater than
2 the amount awarded by the compensation order, the employer
3 shall not be liable for the employer's fifty-percent share of
4 the attorney fees to be paid the worker's attorney and the
5 worker shall pay one hundred percent of the attorney fees due
6 to the worker's attorney; and

7 (4) if the worker's offer was less than the
8 amount awarded by the compensation order, the employer shall
9 pay one hundred percent of the attorney fees to be paid the
10 worker's attorney, and the worker shall be relieved from any
11 responsibility for paying any portion of the worker's
12 attorney fees.

13 G. In all actions arising under the provisions of
14 Section 52-3-35 NMSA 1978, where the jurisdiction of the
15 workers' compensation administration is invoked to determine
16 the question of whether the claimant's disablement has
17 terminated and the claimant is represented by an attorney,
18 the workers' compensation judge or courts upon appeal shall
19 determine and fix a reasonable fee for the services of the
20 claimant's attorney only if the employer is unsuccessful in
21 establishing that the claimant's disablement has terminated.
22 The fee when fixed by the workers' compensation judge or
23 courts upon appeal shall be taxed as part of the costs
24 against the employer and shall be the limit of the fee
25 received or to be received by the attorney for services in

1 the action, subject to the limitation of Subsection I of this
2 section.

3 H. In determining reasonable attorney fees for a
4 claimant, the workers' compensation judge shall consider only
5 those benefits to the employee that the attorney is
6 responsible for securing. The value of future medical
7 benefits shall not be considered in determining attorney
8 fees.

9 I. Attorney fees, including, but not limited to,
10 the costs of paralegal services, legal clerk services and any
11 other related legal services costs on behalf of a claimant or
12 an employer for a single disablement claim, including
13 representation before the workers' compensation
14 administration and the courts on appeal, shall not exceed
15 twenty-two thousand five hundred dollars (\$22,500). This
16 limitation applies whether the claimant or employer has one
17 or more attorneys representing the claimant or employer and
18 applies as a cumulative limitation on compensation for all
19 legal services rendered in all proceedings and other matters
20 directly related to a single occupational disease of a
21 claimant. The workers' compensation judge may exceed the
22 maximum amount stated in this subsection in awarding a
23 reasonable attorney fee if the judge finds that a claimant,
24 an insurer or an employer acted in bad faith with regard to
25 handling the disabled employee's claims and the employer or

1 disabled employee has suffered economic loss as a result
2 thereof. However, in no case shall this additional amount
3 exceed five thousand dollars (\$5,000). As used in this
4 subsection, "bad faith" means conduct by the claimant,
5 insurer or employer in the handling of a claim that amounts
6 to fraud, malice, oppression or willful, wanton or reckless
7 disregard of the rights of the employee or employer. Any
8 determination of bad faith shall be made by the workers'
9 compensation judge through a separate fact-finding
10 proceeding. Notwithstanding the provisions of Subsection J
11 of this section, the party found to have acted in bad faith
12 shall pay one hundred percent of the additional fees awarded
13 for representation of the prevailing party in a bad faith
14 action.

15 J. Except as provided in Paragraphs (3) and (4) of
16 Subsection F of this section, the payment of a claimant's
17 attorney fees determined under this section shall be shared
18 equally by the employee and the employer.

19 K. It is unlawful for any person except a licensed
20 attorney to receive or agree to receive any fee or payment
21 for legal services in connection with any claim for
22 compensation under the New Mexico Occupational Disease
23 Disablement Law.

24 L. Nothing in this section applies to agents,
25 excluding attorneys, representing employers, insurance

1 carriers or the subsequent injury fund in any matter arising
2 from a claim under the New Mexico Occupational Disease
3 Disablement Law.

4 M. No attorney fees shall be paid until the claim
5 has been settled or adjudged.

6 N. Every person violating the provisions of this
7 section is guilty of a misdemeanor and upon conviction shall
8 be fined not less than fifty dollars (\$50.00) or more than
9 five hundred dollars (\$500), to which may be added
10 imprisonment in the county jail for a term not exceeding
11 ninety days.

12 O. Nothing in this section shall restrict a
13 claimant from being represented before the workers'
14 compensation administration by a nonattorney as long as that
15 nonattorney receives no compensation for representation from
16 the claimant."

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