UNANNOTATED

CHAPTER 52
Workers' Compensation

ARTICLE 1
Workers' Compensation

52-1-1. Short title.

Chapter 52, Article 1 NMSA 1978 shall be known and may be cited as the "Workers' Compensation Act".

History: Laws 1929, ch. 113, § 1; C.S. 1929, § 156-101; 1941 Comp., § 57-901; 1953 Comp., § 59-10-1; Laws 1959, ch. 67, § 1; 1986, ch. 22, § 1; 1987, ch. 235, § 1.

52-1-1.1. Definitions.

As used in Chapter 52, Articles 1 through 6 NMSA 1978:

A. "controlled insurance plan" means a plan of insurance coverage that is established by an owner or principal contractor that requires participation by contractors or subcontractors who are engaged in the construction project, including coverage plans that are for a fixed term of coverage on a single construction site;

B. "director" means the director of the workers' compensation administration;

C. "division" means the workers' compensation administration;

D. "extra-hazardous employer" means an employer whose injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry;

E. "rolling wrap-up or consolidated insurance plan" means coverage for an ongoing project or series of projects in which the common insurance program remains in place indefinitely and contracted work is simply added as it occurs under the control of one owner or principal contractor;

F. "workers' compensation judge" means an individual appointed by the director to act as a workers' compensation judge in the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law;

G. "workman" or "workmen" means worker or workers;

H. "Workmen's Compensation Act" means the Workers' Compensation Act; and

I. "workmen's compensation administration" or "administration" means the workers' compensation administration.

History: Laws 1986, ch. 22, § 26; 1987, ch. 235, § 2; 1989, ch. 263, § 2; 1990 (2nd S.S.), ch. 2, § 1; 2003, ch. 259, § 1; 2003, ch. 263, § 1; 2013, ch. 134, § 1.

52-1-1.2. Advisory council on workers' compensation and occupational disease disablement; functions and duties; independent medical examinations committee.

A. There is created in the workers' compensation administration an advisory council on workers' compensation and occupational disease disablement. Members of the council shall be appointed by the governor. There shall be six voting members of the council with three members representing employers and three members representing workers. No member representing employers or workers shall be an attorney. Three of the original appointees shall serve for terms of two years, and three shall serve for four years. The members shall determine by lot which members shall serve for four years and which shall serve for two. Thereafter, each member shall be appointed for a term of four years. The council shall elect a chairman from its membership. The director shall be an ex-officio, nonvoting member of the council.

B. Members of the council shall not be paid but shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

C. The council shall meet at least twice each year. It shall annually review workers' compensation and occupational disease disablement in New Mexico and shall issue a report of its findings and conclusions on or before January 1 of each year. The annual report shall be sent to the governor, the superintendent of insurance, the speaker of the house of representatives, the president pro tempore of the senate, the minority leaders of both houses and the chairmen of all appropriate committees of each house that review the status of the workers' compensation and occupational disease disablement system. In performing these responsibilities, the council's role shall be strictly advisory, but it may:

(1) make recommendations relating to the adoption of rules and legislation;

(2) make recommendations regarding the method and form of statistical data collections; and

(3) monitor the performance of the workers' compensation and occupational disease disablement system in the implementation of legislative directives.

D. The advisory council on workers' compensation and occupational disease disablement shall appoint a committee composed of three members representing

workers and three members representing employers to designate an approved list of health care providers who are authorized to conduct independent medical examinations. The committee shall, to the greatest extent possible, designate only health care providers whose judgments are respected, or not objected to, by recognized representatives of both employer and worker interests and whose judgments are not perceived to favor any particular interest group. Members of the committee shall be immune from personal liability for any official action taken in establishing the approved list of health care providers. The committee shall review and revise the list annually. The terms of the original members shall be two years, and thereafter the terms of the members shall be staggered so that each year the committee appoints one member who represents workers and one member who represents employers. The members shall annually elect a chairman. No member representing employers or workers shall be an attorney.

E. The workers' compensation administration shall cooperate with the council and shall provide information and staff support as reasonably necessary and required by the council and by the committee appointed pursuant to Subsection D of this section.

History: Laws 1990 (2nd S.S.), ch. 2, § 28; 1993, ch. 193, § 1.

52-1-2. Employers who come within act.

The state and each county, municipality, school district, drainage, irrigation or conservancy district, public institution and administrative board thereof employing workers, every charitable organization employing workers and every private person, firm or corporation engaged in carrying on for the purpose of business or trade within this state, and which employs three or more workers, except as provided in Section 52-1-6 NMSA 1978, shall become liable to and shall pay to any such worker injured by accident arising out of and in the course of his employment and, in case of his death being occasioned thereby, to such person as may be authorized by the director or appointed by a court to receive the same for the benefit of his dependents, compensation in the manner and amount at the times required in the Workers' Compensation Act.

History: Laws 1929, ch. 113, § 2; C.S. 1929, § 156-102; Laws 1933, ch. 178, § 1; 1937, ch. 92, § 1; 1941 Comp., § 57-902; 1953 Comp., § 59-10-2; Laws 1971, ch. 261, § 1; 1973, ch. 240, § 1; 1975, ch. 284, § 1; 1987, ch. 235, § 3; 2003, ch. 259, § 2.

52-1-3. Workers' compensation coverage; coverage by state agencies.

A. The risk management division of the general services department shall provide workers' compensation coverage for all public employees, as defined in the Workers' Compensation Act, of all state agencies regardless of the hazards of their employment.

B. The director of the risk management division shall ascertain the most economical means of providing such coverage and may secure a policy or policies of insurance to provide the coverage required. The director of the risk management division shall collect or transfer funds from each agency to cover the agency's respective share of the cost of the coverage.

C. The director of the risk management division shall determine the possibilities for including school districts under uniform coverage and the methods of administration therefor.

D. For purposes of this section, "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

History: 1953 Comp., § 59-10-2.1, enacted by Laws 1977, ch. 385, § 15; 1978, ch. 166, § 15; 1979, ch. 199, § 1; 1987, ch. 235, § 4.

52-1-3.1. Public employee.

A. As used in the Workers' Compensation Act, unless otherwise provided, "public employee" means any person receiving a salary from, and acting in the service of, the state or any county, municipality, school district, drainage, irrigation or conservancy district, public institution or administrative board, including elected or appointed public officers.

B. "Public employee" includes an unpaid health professional deployed by the department of health within New Mexico in response to a declared public emergency or public health emergency or deployed by the department of health outside New Mexico in response to a request for emergency health personnel made pursuant to the Emergency Management Assistance Compact [12-10-14, 12-10-15 NMSA 1978]; provided that, for purposes of the Workers' Compensation Act:

(1) the department of health shall be considered to be the employer of the person;

(2) the person's average weekly wage, for the purpose of calculating compensation, shall be considered to be the average weekly wage for similar services performed by paid workers in like employment; and

(3) the person shall not be considered an employee in the calculation of any fee pursuant to Section 52-5-19 NMSA 1978.

C. "Public employee" does not include an independent contractor.

History: 1978 Comp., § 52-1-3.1, enacted by Laws 1979, ch. 199, § 2; 1989, ch. 263, § 3; 2007, ch. 328, § 1.

52-1-4. Filing certificate of insurance coverage or other evidence of coverage with workers' compensation administration; exemptions from requirement.

A. Every employer subject to the Workers' Compensation Act shall direct his insurance carrier to file, and the insurance carrier shall file, in the office of the director evidence of workers' compensation insurance coverage in the form of a certificate containing that information required by regulation of the director. The required certificate must be provided by an authorized insurer as defined in Section 59A-1-8 NMSA 1978. In case any employer is able to show to the satisfaction of the director that he is financially solvent and that providing insurance coverage is unnecessary, the director shall issue him a certificate to that effect, which shall be filed in lieu of the certificate of insurance. The director shall provide by regulations the procedures for reviewing, renewing and revoking any certificate excusing an employer from filing a certificate of insurance, including provisions permitting the director to condition the issuance of the certificate upon the employer's proving adequate security.

B. Any certificate of the director filed under the provisions of this section shall show the post office address of such employer.

C. Every contract or policy insuring against liability for workers' compensation benefits or certificate filed under the provisions of this section shall provide that the insurance carrier or the employer shall be directly and primarily liable to the worker and, in event of his death, his dependents, to pay the compensation and other workers' compensation benefits for which the employer is liable.

D. In the event of an insurance policy cancellation, the workers' compensation insurance carrier shall file notice to the director within ten days of such cancellation on a form approved by the director.

History: 1978 Comp., § 52-1-4, enacted by Laws 1987, ch. 235, § 5; 1989, ch. 263, § 4; 1990 (2nd S.S.), ch. 2, § 2.

52-1-4.1. Repealed.

52-1-4.2. Controlled insurance plan; penalty.

A. An owner or the principal contractor of a construction project may establish and administer a controlled insurance plan, provided the covered project is a construction project, a plant expansion or real property improvements within New Mexico with an aggregate construction value in excess of one hundred fifty million dollars ($150,000,000) expended within a five-year period. As used in this section, "aggregate construction value" includes design, utilities, site excavation, construction costs of improvements to real property and acquisition of equipment and furnishings but does

not include the cost of fees or charges associated with financing the construction project.

B. Rolling wrap-ups are prohibited. Controlled insurance plans covering non-contiguous construction sites are prohibited.

C. The owner shall include in any request for proposals for bids a notice that participation in a controlled insurance plan is a requirement of the bid and shall provide a copy of the specifications of the controlled insurance plan. The specifications shall include a statement of the bidding contractor's or subcontractor's responsibilities relative to the plan.

D. A dispute regarding which workers' compensation coverage or insurer is responsible shall be resolved by the administration. An administrative or judicial finding shall include appropriate reimbursement of benefit payments and expenses. For disputed cases as described herein, initial benefits shall be provided by the controlled insurance plan until such time as the coverage dispute is resolved.

E. An owner or principal contractor who enters into a contract for a controlled insurance plan shall file a copy of the contract and evidence of compliance with the requirements of this section with the superintendent of insurance and the workers' compensation administration at least thirty days before the date on which the owner is to begin receiving bids or requests for proposals on the project.

F. An owner or principal contractor using a controlled insurance plan shall distribute any project performance-based refunded premium or dividend to each participating contractor and subcontractor on a proportional basis if provided in the construction contract.

G. An owner or principal contractor shall provide for a safety plan for an employee engaged in the construction project when the employee is present at the construction project site. The owner or principal contractor of the construction project shall develop and carry out a health and safety program approved by the workers' compensation administration. The plan shall include a protocol that encourages return to work guidelines pursuant to the Workers' Compensation Act.

H. The owner or principal contractor of a construction project that uses a controlled insurance plan shall:

(1) establish a method for timely reporting of job-related injuries to the employer, the insured and the administration;

(2) provide modifier experienced units statistical rating information and any other statistical information required by the superintendent of insurance for all contractors and subcontractors, including losses and payroll, to the appropriate rating service within six months following the end of the annual policy period;

(3) provide contractors or subcontractors or their representatives with actual and specific payroll audit data generated under the controlled insurance plan, as would be customarily provided to the employer from a non-controlled insurance plan; and

(4) provide the same access to information on injured employees as would customarily be available to the employer from a non-controlled insurance plan.

I. In addition to any other penalties provided under the law, a person found to have violated any requirement of this section shall be subject to a penalty pursuant to Section 52-1-61 NMSA 1978.

History: Laws 2003, ch. 263, § 2.

52-1-5. Destruction of policies, bonds and undertakings.

From and after the expiration of three years following the date of filing of any insurance policy or certificate thereof, bond or undertaking, pursuant to the provisions of Section 52-1-4 NMSA 1978, the director may, in his discretion, authorize the destruction of such insurance policies, certificates, bonds and undertakings.

History: 1953 Comp., § 59-10-3.1, enacted by Laws 1955, ch. 137, § 1; 1965, ch. 255, § 2; 1979, ch. 368, § 3; 1987, ch. 235, § 7.

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 act shall apply to all employers engaged in activities required to be licensed under the provisions of the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] regardless of the number of employees. The provisions of the Workers' Compensation Act shall not apply to employers of private domestic servants and farm and ranch laborers.

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

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

D. Such compliance with the provisions of the Workers' Compensation Act, including the provisions for insurance, shall be, and construed to be, a surrender by the employer and the worker of their rights to any other method, form or amount of

compensation or determination thereof or to any cause of action at law, suit in equity or statutory or common-law right to remedy or proceeding whatever for or on account of personal injuries or death of the worker than as provided in the Workers' Compensation Act and shall be an acceptance of all of the provisions of the Workers' Compensation Act and shall bind the worker himself and, for compensation for his death, shall bind his personal representative, his surviving spouse and next of kin, as well as the employer and those conducting his business during bankruptcy or insolvency.

E. The Workers' Compensation Act provides exclusive remedies. No cause of action outside the Workers' Compensation Act shall be brought by an employee or dependent against the employer or his representative, including the insurer, guarantor or surety of any employer, for any matter relating to the occurrence of or payment for any injury or death covered by the Workers' Compensation Act. Nothing in the Workers' Compensation Act, however, shall affect or be construed to affect, in any way, the existence of or the mode of trial of any claim or cause of action that the worker has against any person other than his employer or another employee of his employer, including a management or supervisory employee, or the insurer, guarantor or surety of his employer.

History: 1978 Comp., § 52-1-6, enacted by Laws 1990 (2nd S.S.), ch. 2, § 4.

52-1-6.1. Worker's compensation; definition.

For the purposes of Section 52-1-6 NMSA 1978 "farm and ranch laborers" shall include those persons providing care for animals in training for the purpose of competition or competitive exhibition. Employees of a veterinarian and laborers at a treating facility or a facility used solely for the boarding of animals, which is not an intrinsic part of a farm or ranch operation, are not covered by this provision.

History: Laws 1984, ch. 127, § 988.3.

52-1-6.2. Safety programs; inspections; penalties; bonuses.

A. Every employer subject to the provisions of the Workers' Compensation Act who has an annual workers' compensation premium liability of fifteen thousand dollars ($15,000) or more or who is a certified self-insurer shall receive an annual safety inspection. The director shall determine the adequacy and structure of the safety inspection, including establishing procedures for appropriate self-inspection. For any employer who is not self-insured, inspections and recommendations for creating a safer workplace shall be provided upon request by every insurer providing workers' compensation insurance in this state to its workers' compensation insurance policyholders. To enforce this provision, the director may assess a penalty not to exceed five thousand dollars ($5,000) against any employer.

B. The administration shall develop safety programs for employers with an annual workers' compensation premium liability of less than fifteen thousand dollars ($15,000).

C. The superintendent of insurance may assess a penalty against an insurer that refuses to provide annual safety inspections and recommendations. The penalty shall not exceed five thousand dollars ($5,000) per insurer per violation.

D. Any employer who is subject to the provisions of the Workers' Compensation Act may implement a safety program, as approved by the superintendent of insurance, that provides for bonuses of up to ten percent of a worker's wage to be paid to a worker who fulfills criteria established by the employer for eligibility for the bonus. The criteria shall incorporate the concept of bonuses based upon a stated number of accident-free work days completed by the worker. Any bonus paid under a program authorized by this section shall not be included in computing a worker's average wage for establishing workers' compensation insurance premiums or benefits.

E. The administration shall develop a program to identify extra-hazardous employers. The administration shall notify each identified extra-hazardous employer and the insurance carrier for that employer that the employer has been identified as an extra-hazardous employer.

F. An employer that receives notification under Subsection E of this section shall obtain a safety consultation within thirty days from the administration's safety consultants, the employer's insurer or another professional source approved by the director for that purpose. The safety consultant shall file a written report with the director and the employer setting out any hazardous conditions or practices identified by the safety consultation.

G. The employer, in consultation with the safety consultant, shall, within a reasonable time, formulate a specific accident-prevention plan that addresses the hazards identified by the consultant. An employer that fails to formulate, implement or otherwise comply with the accident-prevention plan shall be subject to a penalty not to exceed five thousand dollars ($5,000).

History: Laws 1989, ch. 263, § 92; 1990 (2nd S.S.), ch. 2, § 5; 2013, ch. 134, § 2.

52-1-7. Application of provisions of act to certain executive employees or sole proprietors.

A. Notwithstanding any provisions to the contrary in the Workers' Compensation Act, an executive employee of a professional or business corporation or limited liability company, employed by the professional or business corporation or limited liability company as a worker as defined in the Workers' Compensation Act, or a sole proprietor may affirmatively elect not to accept the provisions of the Workers' Compensation Act.

B. Each executive employee or sole proprietor desiring to affirmatively elect not to accept the provisions of the Workers' Compensation Act may do so by filing an election in the office of the director.

C. Each executive employee or sole proprietor desiring to revoke his affirmative election not to accept the provisions of the Workers' Compensation Act may do so by filing a revocation of the affirmative election with the workers' compensation insurer and in the office of the director. The revocation shall become effective thirty days after filing. An executive employee shall cause a copy of the revocation to be mailed to the board of directors of the professional or business corporation or limited liability company.

D. The filing of an affirmative election not to accept the provisions of the Workers' Compensation Act shall create a conclusive presumption that an executive employee or sole proprietor is not covered by the Workers' Compensation Act until the effective date of a revocation filed pursuant to this section. The filing of an affirmative election not to accept the provisions of the Workers' Compensation Act shall apply to all corporations or limited liability companies in which the executive employee has a financial interest.

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

F. For purposes of this section:

(1) "executive employee" means the chairman of the board, president, vice president, secretary, treasurer or other executive officer, if he owns ten percent or more of the outstanding stock, of the professional or business corporation or a ten percent ownership interest in the limited liability company; and

(2) "sole proprietor" means a single individual who owns all the assets of a business, is solely liable for its debts and employs in the business no person other than himself.

History: 1953 Comp., § 59-10-4.1, enacted by Laws 1975, ch. 284, § 4; 1979, ch. 368, § 5; 1987, ch. 235, § 8; 1993, ch. 193, § 2; 2003, ch. 259, § 3.

52-1-8. Defenses to action by employee.

In an action to recover damages for a personal injury sustained by an employee while engaged in the line of his duty as such or for death resulting from personal injuries so sustained in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent or servant of the employer, it shall not be a defense:

A. that the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence;

B. that the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant; and

C. that the injury of [or] death was caused, in whole or in part by the want of ordinary care of the injured employee where such want of care was not willful.

Any employer who has complied with the provisions of the Workers' Compensation Act relating to insurance or any of the employees of the employer, including management and supervisory employees, shall not be subject to any other liability whatsoever for the death of or personal injury to any employee, except as provided in the Workers' Compensation Act, and all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for and on account of such death of, or personal injury to, any such employee and accruing to any and all persons whomsoever, are hereby abolished except as provided in the Workers' Compensation Act.

History: Laws 1937, ch. 92, § 3; 1941 Comp., § 57-905; 1953 Comp., § 59-10-5; Laws 1971, ch. 253, § 2; 1973, ch. 240, § 3; 1989, ch. 263, § 6.

52-1-9. Right to compensation; exclusive.

The right to the compensation provided for in this act [Chapter 52, Article 1 NMSA 1978], in lieu of any other liability whatsoever, to any and all persons whomsoever, for any personal injury accidentally sustained or death resulting therefrom, shall obtain in all cases where the following conditions occur:

A. at the time of the accident, the employer has complied with the provisions thereof regarding insurance;

B. at the time of the accident, the employee is performing service arising out of and in the course of his employment; and

C. the injury or death is proximately caused by accident arising out of and in the course of his employment and is not intentionally self-inflicted.

History: Laws 1937, ch. 92, § 4; 1941 Comp., § 57-906; 1953 Comp., § 59-10-6; Laws 1973, ch. 240, § 4.

52-1-9.1. Uninsured employers' fund; workers' compensation administration; additional duties.

A. The "uninsured employers' fund" is created in the state treasury. The fund shall be administered by the workers' compensation administration as a separate account. The administration shall adopt rules to administer the fund pursuant to the provisions of this section.

B. The fund shall consist of thirty cents ($.30) per employee covered by the Workers' Compensation Act on the last working day of each quarter for the fee assessed against employers pursuant to Section 52-5-19 NMSA 1978 and all income

derived from investment of the fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of this section.

C. Money in the fund is appropriated to the workers' compensation administration to pay workers' compensation benefits to a person entitled to the benefits when that person's employer has failed to maintain workers' compensation coverage because of fraud, misconduct or other failure to insure or otherwise make compensation payments. For purposes of this subsection, a worker who has affirmatively elected not to accept the provisions of the Workers' Compensation Act shall not be eligible for payment of workers' compensation from the uninsured employers' fund. The director may pay reasonable costs of administering the uninsured employers' fund from the fund, but money in the fund shall not be used for administrative costs unrelated to the fund or any activity of the workers' compensation administration other than as provided in this section. The superintendent of insurance shall examine and audit the fund pursuant to the provisions of Chapter 59A, Article 4 NMSA 1978.

D. The director may authorize payments to a person from the uninsured employers' fund if the injury or cause of incapacity occurs in New Mexico and would be compensable under the Workers' Compensation Act.

E. The uninsured employers' fund, by subrogation, has all the rights, powers and benefits of the employee or the employee's dependents against the employer failing to make the compensation payments.

F. The uninsured employers' fund, subject to approval of the director, shall discharge its obligations by contracting with an independent adjusting company that is licensed and principally located in New Mexico as prescribed by Section 59A-13-11 NMSA 1978 or Chapter 59A, Article 12A NMSA 1978.

G. For the purpose of ensuring the health, safety and welfare of the public, the director or a workers' compensation judge shall:

(1) order the uninsured employer to reimburse the uninsured employers' fund for all benefits paid to or on behalf of an injured employee by the uninsured employers' fund along with interest, costs and attorney fees; and

(2) impose a penalty against the uninsured employer of not less than fifteen percent nor more than fifty percent of the value of the total award in connection with the claim that shall be paid into the uninsured employers' fund.

H. The liability of the state, the workers' compensation administration and the state treasurer, with respect to payment of any compensation benefits, expenses, fees or disbursement properly chargeable against the uninsured employers' fund, is limited to the assets in the uninsured employers' fund, and they are not otherwise liable for any payment.

I. The uninsured employers' fund shall be considered a payor of last resort within the workers' compensation system. No other payor liable for payments under the Workers' Compensation Act shall have its liabilities affected or discharged by payments from the uninsured employers' fund. Any payments to workers paid by the uninsured employers' fund shall be subject to subrogation and apportionment to the same extent as payments to an injured worker from a third party tortfeasor.

J. In any claim against an employer by the uninsured employers' fund, or by or on behalf of the employee to whom or to whose dependents compensation and other benefits are paid or payable from the uninsured employers' fund, the burden of proof is on the employer or other party in interest objecting to the claim. The claim is presumed to be valid up to the full amount of workers' compensation benefits paid to the employee or the employee's dependents. This subsection applies whether the claim is filed in court or in an adjudicative proceeding under the authority of the workers' compensation administration.

K. Nothing in this section shall be construed to extend exclusive remedy protection pursuant to Section 52-1-6 or 52-1-9 NMSA 1978 to any employer whose injured worker is paid by the uninsured employers' fund.

L. Nothing in this section shall be construed to supersede Section 52-5-10 NMSA 1978.

History: Laws 2003, ch. 258, § 1; 2004, ch. 36, § 1.

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 the compensation otherwise payable under the Workers' Compensation Act shall be reduced ten percent.

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

C. In case the death of a worker results from the failure of an employer to provide safety devices required by law or, in any industry in which safety devices are not prescribed by statute, if the death of a worker results from the negligence of the employer in failing to supply reasonable safety devices in general use for the use or protection of the worker, and the deceased worker leaves no eligible dependents under the Workers' Compensation Act, in addition to the benefits provided for in Subsection A

of Section 52-1-46 NMSA 1978, compensation in the amount of five thousand dollars ($5,000) shall be paid to the surviving father and mother of the deceased or, if either of them be deceased, to the survivor of them. The surviving father and mother, or either of them, may file a claim for the five thousand dollars ($5,000) compensation, provided the father or mother has given notice in the manner and within the time required by Section 52-1-29 NMSA 1978 and the claim is filed within one year from the date of the worker's death. If there be no surviving father or mother, then the five thousand dollars ($5,000) compensation provided for in this subsection shall not be payable.

D. Any increased liability resulting from negligence on the part of the employer shall be recoverable from the employer only and not from the insurer, guarantor or surety of the employer under the Workers' Compensation Act, except that this provision shall not be construed to prohibit an employer from insuring against such increased liability.

E. No employee shall file a claim for increased compensation under the Workers' Compensation Act on the basis of an injury suffered because of the lack of a safety device nor shall a dependent of a deceased employee or the father or mother as provided in Subsection C of this section file a claim on the basis of the death of a worker suffered because of the lack of a safety device, unless the claim identifies the specific safety device which it is claimed was not furnished by the employer. The employer is under a like duty to allege the specific safety device which it is claimed an employee failed to use before the employer may claim a reduction of compensation as herein provided.

History: Laws 1929, ch. 113, § 7; C.S. 1929, § 156-107; Laws 1937, ch. 92, § 5; 1941 Comp., § 57-907; Laws 1953, ch. 96, § 1; 1953 Comp., § 59-10-7; Laws 1955, ch. 29, § 1; 1959, ch. 67, § 3; 1967, ch. 148, § 1; 1989, ch. 263, § 7.

52-1-10.1. Allocation of fault; reimbursement.

Notwithstanding anything in the worker's compensation law to the contrary, if the fault of the worker's employer or those for whom the employer is legally responsible, other than the injured worker, is found to have proximately caused the worker's injury, the employer's right to reimbursement from the proceeds of the worker's recovery in any action against any wrongdoer shall be diminished by the percentage of fault, if any, attributed to the employer or those for whom the employer is responsible, other than the injured worker.

History: Laws 1987, ch. 141, § 4.

52-1-11. Injuries caused by the willfulness or intention of worker are noncompensable.

No compensation shall become due or payable from any employer under the terms of the Workers' Compensation Act in the event such injury was willfully suffered by the worker or intentionally inflicted by the worker.

History: Laws 1929, ch. 113, § 8; C.S. 1929, § 156-108; 1941 Comp., § 57-908; 1953 Comp., § 59-10-8; 1989, ch. 263, § 8; 2016, ch. 24, § 1.

52-1-12. Repealed.

History: 1953 Comp., § 59-10-8.1, enacted by Laws 1971, ch. 55, § 1; 1989, ch. 263, § 9; repealed by Laws 2016, ch. 24, § 3.

52-1-12.1. Reduction in compensation when alcohol or drugs contribute to injury or death; exceptions.

A. As used in this section, "intoxication" or "influence" means a temporary state or condition of impaired physical, mental or cognitive function by means of alcohol, a drug, a controlled substance or a combination of two or more substances at the time of injury or death. "Drug" or "controlled substance" pursuant to this section does not include medications prescribed to a worker by the worker's licensed health care provider and taken in accordance with directions of the prescribing health care provider or dispensing pharmacy, unless such medication is combined with alcohol or a non-prescribed drug or controlled substance to cause intoxication or influence.

B. Except as otherwise provided in this section, compensation benefits otherwise due and payable from an employer to the worker under the terms of the Workers' Compensation Act shall be reduced by the degree to which the intoxication or influence contributes to the worker's injury or death; provided that the reduction shall be a minimum of ten percent but no more than ninety percent.

C. Test results relied on as evidence of a worker's intoxication or influence shall not be considered in making a reduction in compensation determination unless the test and testing procedures conform with standard testing procedures generally accepted in the medical community and the test is performed by a laboratory certified to do the testing by an organization nationally recognized to do such certification. Testing may include testing methods for urine, breath or blood.

D. The director shall adopt rules regarding tests, testing and the cutoff levels for intoxication or influence.

E. If a post-accident test pursuant to Subsection C of this section is required of a worker and the worker refuses to submit to the test or to release the post-accident test results to the employer, no compensation otherwise payable from an employer under the terms of the Workers' Compensation Act shall be paid to the worker claiming compensation.

F. Testing shall be at the employer's expense and shall not be used as evidence in a criminal proceeding against the worker. Test samples shall be taken as a split sample. One part of the sample shall be held by the testing facility for twelve months from the

date of the original test. Within this twelve-month period, the worker has the right to request a second test of the original sample at the worker's expense.

G. An employer shall be barred from claiming a reduction in compensation pursuant to this section if, before the accident, the employer has actual or constructive knowledge of the worker's intoxication or influence and a reasonable opportunity to take appropriate measures in response to the intoxication or influence but fails to take those measures.

H. An employer shall be barred from claiming a reduction in compensation pursuant to this section if the employer fails to implement a written policy that declares a drug- and alcohol-free workplace, which may include post-accident testing in accordance with this section, and that gives its employees notice that workers' compensation benefits may be reduced in the event intoxication or influence contributes to a workplace injury.

I. Reduction or denial of compensation benefits authorized under this section shall not affect payment of medical benefits provided for pursuant to Section 52-1-49 NMSA 1978.

J. Reduction or denial of compensation benefits authorized under this section shall not affect payments of benefits to the dependents of a deceased worker pursuant to Section 52-1-46 NMSA 1978.

History: 1978 Comp., § 52-1-12.1, enacted by Laws 2001, ch. 87, § 1; 2016, ch. 24, § 2.

52-1-13. Termination of agreements.

Any agreement made between such employer and any such worker to be bound by the provisions of the Workers' Compensation Act may be terminated by either party upon giving thirty days notice to the other in writing, prior to any accidental injury suffered by such worker.

History: Laws 1929, ch. 113, § 9; C.S. 1929, § 156-109; 1941 Comp., § 57-909; 1953 Comp., § 59-10-9; Laws 1989, ch. 263, § 10.

52-1-14. [Interstate commerce not subject to state legislation exempted.]

This act [Chapter 52, Article 1 NMSA 1978] shall not be construed to apply to business or pursuits or employments which according to law are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged.

History: Laws 1929, ch. 113, § 11; C.S. 1929, § 156-111; 1941 Comp., § 57-911; 1953 Comp., § 59-10-11.

52-1-15. Employer.

As used in the Workers' Compensation Act, unless the context otherwise requires, "employer" includes any person or body of persons, corporate or incorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership engaged in or carrying on for the purpose of business or trade, charitable organizations, except as provided in Section 52-1-6 NMSA 1978, and also includes the state and each county, municipality, school district, drainage, irrigation or conservancy district and public institution and administrative board thereof employing workers under the terms of the Workers' Compensation Act.

History: 1953 Comp., § 59-10-12.8, enacted by Laws 1965, ch. 295, § 8; 1975, ch. 284, § 5; 1989, ch. 263, § 11.

52-1-16. Worker; real estate salesperson excepted.

A. As used in the Workers' Compensation Act, unless the context otherwise requires, "worker" means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business. The term "worker" shall include "employee" and shall include the singular and plural of both sexes. "Worker" includes public employee, as defined in the Workers' Compensation Act, including salaried public officers.

B. For the purposes of the Workers' Compensation Act, an individual who performs services as a qualified real estate salesperson shall not be treated as an employee and the person for whom the services are performed shall not be treated as an employer.

C. For the purpose of Subsection B of this section, a "qualified real estate salesperson" means an individual who:

(1) is a licensed real estate salesperson, associate broker or broker under contract with a real estate firm;

(2) receives substantially all of his remuneration, whether or not paid in cash, for the services performed as a real estate salesperson, associate broker or broker under contract with a real estate firm in direct relation to sales or other output, including the performance of services, rather than to the number of hours worked; and

(3) performs services pursuant to a written contract between himself and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to such services.

History: 1953 Comp., § 59-10-12.9, enacted by Laws 1965, ch. 295, § 9; 1979, ch. 199, § 3; 1986, ch. 17, § 1; 1989, ch. 263, § 12.

52-1-17. Dependents.

As used in the Workers' Compensation Act, unless the context otherwise requires, the following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of the Workers' Compensation Act:

A. a child under eighteen years of age or incapable of self-support and unmarried or under twenty-three years of age if enrolled as full-time student in any accredited educational institution;

B. the widow or widower, only if living with the deceased at the time of his death or legally entitled to be supported by him, including a divorced spouse entitled to alimony;

C. a parent or grandparent only if actually dependent, wholly or partially, upon the deceased; and

D. a grandchild, brother or sister only if under eighteen years of age or incapable of self-support, and wholly dependent upon the deceased.

The relation of dependency must exist at the time of the injury.

E. Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the injury, and their right to any death benefit shall cease upon the happening of any one of the following contigencies [contingencies]:

(1) upon the marriage of the widow or widower;

(2) upon a child, grandchild, brother or sister reaching the age of eighteen years, unless the child, grandchild, brother or sister at such time is physically or mentally incapacitated from earnings, or upon a dependent child, grandchild, brother or sister becoming self-supporting prior to attaining that age or if a child, grandchild, brother or sister over eighteen years of age who is enrolled as a full-time student in any accredited educational institution ceases to be so enrolled or reaches the age of twenty-three. A child, grandchild, brother or sister who originally qualified as a dependent by virtue of being less than eighteen years of age may, upon reaching age eighteen, continue to qualify if physically or mentally incapable of self-support, actually dependent or enrolled in an educational institution; or

(3) upon the death of any dependent.

History: 1953 Comp., § 59-10-12.10, enacted by Laws 1965, ch. 295, § 10; 1973, ch. 47, § 1; 1977, ch. 275, § 1; 1989, ch. 263, § 13.

52-1-18. Child.

As used in the Workers' Compensation Act, unless the context otherwise requires, "child" includes stepchildren, adopted children, posthumous children and acknowledged illegitimate children but does not include married children unless dependent. The words "adopted" or "adoption" as used in the Workers' Compensation Act shall include cases where persons are treated as adopted as well as those of legal adoption.

History: 1953 Comp., § 59-10-12.11, enacted by Laws 1965, ch. 295, § 11; 1989, ch. 263, § 14.

52-1-19. Injury by accident; course of employment.

As used in the Workers' Compensation Act, unless the context otherwise requires, "injury by accident arising out of and in the course of employment" shall include accidental injuries to workers and death resulting from accidental injury as a result of their employment and while at work in any place where their employer's business requires their presence but shall not include injuries to any worker occurring while on his way to assume the duties of his employment or after leaving such duties, the proximate cause of which is not the employer's negligence.

History: 1953 Comp., § 59-10-12.12, enacted by Laws 1975, ch. 284, § 6; 1986, ch. 22, § 3; 1987, ch. 235, § 9.

52-1-20. Determination of average weekly wage.

As used in the Workers' Compensation Act, unless the context otherwise requires, the average weekly wage of an injured employee shall be taken as the basis upon which to compute compensation payments and shall be determined as follows:

A. "average weekly wage" means the weekly wage earned by the worker at the time of the worker's injury, including overtime pay and gratuities but excluding all fringe or other employment benefits and bonuses. The term "average weekly wage" shall include the reasonable value of board, rent, housing or lodging received from the employer, which shall be fixed and determined from the facts in each particular case. The term "average weekly wage" shall include those gratuities reported to the federal internal revenue service by or for the worker for the purpose of filing federal income tax returns;

B. the average weekly wage shall be determined by computing the total wages paid to the worker during the twenty-six weeks immediately preceding the date of injury and dividing by twenty-six, provided that:

(1) if the worker worked less than twenty-six weeks in the employment in which the worker was injured, the average weekly wage shall be based upon the total wage earned by the worker in the employment in which the worker was injured, divided by the total number of weeks actually worked in that employment;

(2) if a worker sustains a compensable injury before completing his first work week, the average weekly wage shall be calculated as follows:

(a) if the contract was based on hours worked, by determining the number of hours for each week contracted for by the worker multiplied by the worker's hourly rate;

(b) if the contract was based on a weekly wage, by determining the weekly salary contracted for by the worker; or

(c) if the contract was based on a monthly salary, by multiplying the monthly salary by twelve and dividing that figure by fifty-two; and

(3) if the hourly rate of earnings of the worker cannot be ascertained, or if the pay has not been designated for the work required, the average weekly wage, for the purpose of calculating compensation, shall be taken to be the average weekly wage for similar services performed by other workers in like employment for the past twenty-six weeks;

C. provided, further, however, that in any case where the foregoing methods of computing the average weekly wage of the employee by reason of the nature of the employment or the fact that the injured employee has been ill or in business for himself or where for any other reason the methods will not fairly compute the average weekly wage, in each particular case, computation of the average weekly wage of the employee in such other manner and by such other method as will be based upon the facts presented fairly determine such employee's average weekly wage; and

D. provided that in case such earnings have been unusually large on account of the employer's necessity temporarily requiring him to pay extraordinary high wages, such average weekly earnings shall be based upon the usual earnings in the same community for labor of the kind of worker was performing at the time of the injury. In any event, the weekly compensation allowed shall not exceed the maximum or be less than the minimum provided by law.

History: 1953 Comp., § 59-10-12.13, enacted by Laws 1965, ch. 295, § 13; 1989, ch. 263, § 15; 1990 (2nd S.S.), ch. 2, § 6.

52-1-21. Repealed.

52-1-22. Work not casual employment.

As used in the Workers' Compensation Act, unless the context otherwise requires, where any employer procures any work to be done wholly or in part for him by a contractor other than an independent contractor and the work so procured to be done is a part or process in the trade or business or undertaking of such employer, then such employer shall be liable to pay all compensation under the Workers' Compensation Act

to the same extent as if the work were done without the intervention of such contractor. The work so procured to be done shall not be construed to be "casual employment".

History: 1953 Comp., § 59-10-12.15, enacted by Laws 1965, ch. 295, § 15; 1989, ch. 263, § 16.

52-1-23. Contractor becoming employer in casual employment.

For purposes of the Workers' Compensation Act, where any employer procures any work to be done wholly or in part for him by a contractor where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer.

History: 1953 Comp., § 59-10-12.16, enacted by Laws 1965, ch. 295, § 16; 1989, ch. 263, § 17.

52-1-24. Impairment; definition.

As used in the Workers' Compensation Act:

A. "impairment" means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon the most recent edition of the American medical association's guide to the evaluation of permanent impairment or comparable publications of the American medical association. Impairment includes physical impairment, primary mental impairment and secondary mental impairment;

B. "primary mental impairment" means a mental illness arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances, but is not an event in connection with disciplinary, corrective or job evaluation action or cessation of the worker's employment; and

C. "secondary mental impairment" means a mental illness resulting from a physical impairment caused by an accidental injury arising out of and in the course of employment.

History: 1978 Comp., § 52-1-24, enacted by Laws 1987, ch. 235, § 10; 1990 (2nd S.S.), ch. 2, § 7.

52-1-24.1. Date of maximum medical improvement.

As used in the Workers' Compensation Act, "date of maximum medical improvement" means the date after which further recovery from or lasting improvement

to an injury can no longer be reasonably anticipated based upon reasonable medical probability as determined by a health care provider defined in Subsection C, E or G of Section 52-4-1 NMSA 1978.

History: 1978 Comp., § 52-1-24.1, enacted by Laws 1990 (2nd S.S.), ch. 2, § 8.

52-1-25. Permanent total disability.

A. As used in the Workers' Compensation Act, "permanent total disability" means:

(1) the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of them; or

(2) a brain injury resulting from a single traumatic work-related injury that causes, exclusive of the contribution to the impairment rating arising from any other impairment to any other body part, or any preexisting impairments of any kind, a permanent impairment of thirty percent or more as determined by the current American medical association guide to the evaluation of permanent impairment.

B. In considering a claim for total disability, a workers' compensation judge shall not receive or consider the testimony of a vocational rehabilitation provider offered for the purpose of determining the existence or extent of disability.

History: 1978 Comp., § 52-1-25, enacted by Laws 1987, ch. 235, § 11; 1990 (2nd S.S.), ch. 2, § 9; 2003, ch. 265, § 1.

52-1-25.1. Temporary total disability; return to work.

A. As used in the Workers' Compensation Act, "temporary total disability" means the inability of a worker, by reason of accidental injury arising out of and in the course of the worker's employment, to perform the duties of that employment prior to the date of the worker's maximum medical improvement.

B. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work and the employer does not make a reasonable work offer at the worker's pre-injury wage, the worker shall receive temporary total disability compensation benefits equal to two-thirds of the worker's pre-injury wage.

C. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work and the worker returns to work at less than the worker's pre-injury wage, the worker shall receive temporary total disability compensation benefits equal to two-thirds of the difference between the worker's pre-injury wage and the worker's post-injury wage.

D. A worker is not entitled to temporary total disability benefits as set forth in Subsection B or C of this section if:

(1) the employer makes a reasonable work offer at or above the worker's pre-injury wage, within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage; or

(3) the worker is terminated for misconduct connected with the employment that is unrelated to the workplace injury; if the workers' compensation judge finds that an employer terminated the worker for pretextual reasons as a way of attempting to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to temporary total disability benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Upon a finding that an employer has terminated a worker for pretextual reasons, the workers' compensation judge at the judge's discretion may also impose an additional fine, not to exceed ten thousand dollars ($10,000), on the employer, to be paid to the worker.

F. Notwithstanding the provisions of this section, the employer shall continue to provide reasonable and necessary medical care pursuant to Section 52-1-49 NMSA 1978.

G. If there is a dispute between the parties regarding the reasonableness of the employer's work offer or the worker's refusal to return to work, the workers' compensation judge shall decide if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances.

History: 1978 Comp., § 52-1-25.1, enacted by Laws 1990 (2nd S.S.), ch. 2, § 10; 2005, ch. 151, § 1; 2017, ch. 32, § 1.

52-1-26. Permanent partial disability.

A. As a guide to the interpretation and application of this section, the policy and intent of this legislature is declared to be that every person who suffers a compensable injury with resulting permanent partial disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.

B. As used in the Workers' Compensation Act, "partial disability" means a condition whereby a worker, by reason of injury arising out of and in the course of employment, suffers a permanent impairment.

C. Permanent partial disability shall be determined by calculating the worker's impairment as modified by the worker's age, education and physical capacity, pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent.

D. On or after the date of maximum medical improvement, the worker's permanent partial disability rating shall be equal to the worker's impairment and shall not be subject to the modifications calculated pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978 if:

(1) the worker returns to work at a wage at or above the worker's pre-injury wage;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage;

(3) the employer makes a reasonable work offer, at or above the worker's pre-injury wage, within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment; or

(4) the worker is terminated for misconduct connected with the employment that is unrelated to the workplace accident; if the workers' compensation judge finds that an employer terminates the worker for pretextual reasons to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to modifier benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Upon a finding that an employer has terminated a worker for pretextual reasons, the workers' compensation judge at the judge's discretion may also impose an additional fine, not to exceed ten thousand dollars ($10,000), on the employer, to be paid to the worker.

F. In considering a claim for permanent partial disability, a workers' compensation judge shall not receive or consider the testimony of a vocational rehabilitation provider offered for the purpose of determining the existence or extent of disability.

G. If there is a dispute between the parties regarding the reasonableness of the employer's work offer or the worker's refusal to return to work, the workers'

compensation judge shall decide if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances.

History: 1978 Comp., § 52-1-26, enacted by Laws 1987, ch. 235, § 12; 1989, ch. 263, § 18; 1990 (2nd S.S.), ch. 2, § 11; 2017, ch. 32, § 2.

52-1-26.1. Partial disability determination; calculation of modifications.

A. For the purpose of determining the percentage of disability pursuant to Section 52-1-26 NMSA 1978, impairment shall constitute the base value.

B. The appropriate values for the age modification, as determined in Section 52-1-26.2 NMSA 1978, and the education modification, as determined by Section 52-1-26.3 NMSA 1978, shall be added together. If this sum is less than zero, the sum shall be deemed to be zero for the purposes of this calculation. This sum shall be multiplied by the appropriate value of the physical capacity modification, determined in Section 52-1-26.4 NMSA 1978.

C. The product calculated in Subsection B of this section shall be added to the base value. This sum represents the percentage of unscheduled partial disability to be awarded.

History: 1978 Comp., § 52-1-26.1, enacted by Laws 1990 (2nd S.S.), ch. 2, § 12.

52-1-26.2. Partial disability determination; age modification.

A. The range of the age modification is one to five. The modification is based upon the worker's age at the time of the disability rating.

B. For a worker who is:

(1) forty-four years old or younger, one point shall be awarded;

(2) forty-five to forty-nine years old, two points shall be awarded;

(3) fifty to fifty-four years old, three points shall be awarded;

(4) fifty-five to fifty-nine years old, four points shall be awarded; and

(5) sixty years old or older, five points shall be awarded.

History: 1978 Comp., § 52-1-26.2, enacted by Laws 1990 (2nd S.S.), ch. 2, § 13; 2001, ch. 87, § 2.

52-1-26.3. Partial disability determination; education modification.

A. The range of the education modification is one to eight. The modification shall be based upon the worker's formal education, skills and training at the time of the disability rating.

B. A worker shall be awarded points based on the formal education that the worker has received. A worker who:

(1) has completed no higher than the fifth grade shall be awarded three points;

(2) has completed the sixth grade but has completed no higher than the eleventh grade shall be awarded two points;

(3) has completed the twelfth grade or has obtained a high school equivalency credential but has not completed a college degree shall be awarded one point; and

(4) has completed a college degree or more shall receive zero points.

C. A worker shall be awarded points based upon the worker's skills. Skills shall be measured by reviewing the jobs that the worker has successfully performed during the ten years preceding the date of disability determination. For the purposes of this section, "successfully performed" means having remained on the job the length of time necessary to meet the specific vocational preparation (SVP) time requirement for that job as established in the dictionary of occupational titles published by the United States department of labor. The appropriate award of points shall be based upon the highest SVP level demonstrated by the worker in the performance of the jobs that the worker has successfully performed in the ten-year period preceding the date of disability determination, as follows:

(1) a worker with an SVP of one to two shall be awarded four points;

(2) a worker with an SVP of three to four shall be awarded three points;

(3) a worker with an SVP of five to six shall be awarded two points; and

(4) a worker with an SVP of seven to nine shall be awarded one point.

D. A worker shall be awarded points based upon the training that the worker has received. A worker who cannot competently perform a specific vocational pursuit shall be awarded one point. A worker who can perform a specific vocational pursuit shall not receive any points.

E. The sum of the points awarded the worker in Subsections B, C and D of this section shall constitute the education modification.

History: 1978 Comp., § 52-1-26.3, enacted by Laws 1990 (2nd S.S.), ch. 2, § 14; 2001, ch. 87, § 3; 2015, ch. 122, § 20.

52-1-26.4. Partial disability determination; physical capacity modification.

A. The range of the physical capacity modification is one to eight.

B. The award of points to a worker shall be based upon the difference between the physical capacity necessary to perform the worker's usual and customary work and the worker's residual physical capacity. The award of points shall be based upon the following table:

RESIDUAL PHYSICAL CAPACITY

		S	L	M	H
PRE-INJURY	S	1	1	1	1
PHYSICAL CAPACITY	L	3	1	1	1
(USUAL AND	M	5	3	1	1
CUSTOMARY WORK)	H	8	5	3	1.

C. For the purposes of this section:

(1) "H" or "heavy" means the ability to lift over fifty pounds occasionally or up to fifty pounds frequently;

(2) "M" or "medium" means the ability to lift up to fifty pounds occasionally or up to twenty-five pounds frequently;

(3) "L" or "light" means the ability to lift up to twenty pounds occasionally or up to ten pounds frequently. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree or when it involves sitting most of the time with a degree of pushing and pulling of arm or leg controls or both; and

(4) "S" or "sedentary" means the ability to lift up to ten pounds occasionally or up to five pounds frequently. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required only occasionally and other sedentary criteria are met.

D. The determination of a worker's residual physical capacity shall be made by a health care provider defined in Subsection C, E or G of Section 52-4-1 NMSA 1978. If the worker or employer disagrees on who shall make this determination, the dispute shall be resolved in accordance with the provisions set forth in Section 52-1-51 NMSA 1978.

History: 1978 Comp., § 52-1-26.4, enacted by Laws 1990 (2nd S.S.), ch. 2, § 15; 2003, ch. 265, § 2.

52-1-27. Repealed.

52-1-28. Compensable claims; proof.

A. Claims for workers' compensation shall be allowed only:

(1) when the worker has sustained an accidental injury arising out of and in the course of his employment;

(2) when the accident was reasonably incident to his employment; and

(3) when the disability is a natural and direct result of the accident.

B. In all cases where the employer or his insurance carrier deny that an alleged disability is a natural and direct result of the accident, the worker must establish that causal connection as a probability by expert testimony of a health care provider, as defined in Section 52-4-1 NMSA 1978, testifying within the area of his expertise.

History: 1953 Comp., § 59-10-13.3, enacted by Laws 1959, ch. 67, § 7; 1987, ch. 235, § 13.

52-1-28.1. Unfair claim-processing practices; bad faith.

A. Claims may be filed under the Workers' Compensation Act alleging unfair claim-processing practices or bad faith by an employer, insurer or claim-processing representative relating to any aspect of the Workers' Compensation Act. The director may also investigate allegations of unfair claim processing or bad faith on his own initiative.

B. If unfair claim processing or bad faith has occurred in the handling of a particular claim, the claimant shall be awarded, in addition to any benefits due and owing, a benefit penalty not to exceed twenty-five percent of the benefit amount ordered to be paid.

C. If an employer, insurer or claim-processing representative has a history or pattern of repeated unfair claim-processing practices or bad faith, the director or a workers' compensation judge may impose a civil penalty of up to one thousand dollars

($1,000) for each violation. The civil penalty shall be deposited in the workers' compensation administration fund.

D. Any person aggrieved by an order under this section may request a hearing pursuant to the Workers' Compensation Act.

E. The director shall adopt by regulation definitions of unfair claim-processing practices and bad faith.

F. This section shall not be construed as limiting or interfering with the authority of the superintendent of insurance as provided by law to regulate any insurer, including his jurisdiction over unfair claim settlement practices.

History: Laws 1990 (2nd S.S.), ch. 2, § 29.

52-1-28.2. Retaliation against employee seeking benefits; civil penalty.

A. An employer shall not discharge, threaten to discharge or otherwise retaliate in the terms or conditions of employment against a worker who seeks workers' compensation benefits for the sole reason that that employee seeks workers' compensation benefits.

B. Any person who discharges a worker in violation of Subsection A of this section shall rehire that worker pursuant to the provisions of the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law, provided the worker agrees to be rehired.

C. The director or a workers' compensation judge shall impose a civil penalty of up to five thousand dollars ($5,000) for each violation of the provisions of Subsection A or B of this section.

D. The civil penalty shall be deposited in the workers' compensation administration fund.

History: Laws 1990 (2nd S.S.), ch. 2, § 32.

52-1-28.3. False statements or representations with regard to physical condition; forfeiture.

A. When an employer asks by written questionnaire for the disclosure of a worker's medical condition, no compensation is payable from that employer for an injury to that worker under the provisions of the Workers' Compensation Act if:

(1) the worker knowingly and willfully concealed information or made a false representation of his medical condition;

(2) the employer:

(a) was not aware of the concealed information that, if known, would have been a substantial factor in the initial or continued employment of the worker; or

(b) relied upon the false representation, and this reliance was a substantial factor in the initial or continued employment of the worker; and

(3) a medical condition that was concealed or falsely represented substantially contributed to the injury or disability.

B. The provisions of this section do not apply unless, in the written questionnaire, the employer clearly and conspicuously discloses that the worker shall be entitled to no future compensation benefits if he knowingly and willfully conceals or makes a false representation about the information requested.

C. Nothing in this section shall be construed to deny or limit compensation benefits paid or being paid for prior injuries.

D. This section shall apply only prospectively. It shall not alter, as to prior reports, the law governing questionnaires and information reported that was in effect prior to the effective date of this section.

History: Laws 1990 (2nd S.S.), ch. 2, § 31.

52-1-29. Notice of accident to employer; employer to post clear notice of requirement.

A. Any worker claiming to be entitled to compensation from any employer shall give notice in writing to his employer of the accident within fifteen days after the worker knew, or should have known, of its occurrence, unless, by reason of his injury or some other cause beyond his control, the worker is prevented from giving notice within that time, in which case he shall give notice as soon as may reasonably be done and at all events not later than sixty days after the occurrence of the accident. No written notice is required to be given where the employer or any superintendent or foreman or other agent in charge of the work in connection with which the accident occurred had actual knowledge of its occurrence.

B. Each employer shall post, and keep posted in conspicuous places upon his premises where notices to employees and applicants for employment are customarily posted, a notice that advises workers of the requirement specified in Subsection A of this section to give the employer notice in writing of an accident within fifteen days of its occurrence. The notice shall be prepared or approved by the director. The failure of an

employer to post the notice required in this subsection shall toll the time a worker has to give the notice in writing specified in Subsection A of this section up to but no longer than the maximum sixty-day period.

C. The notice required in Subsection B of this section shall include as an attachment to it a preprinted form, which shall be approved by the director, that allows the worker to note and briefly describe the accident and sign his name. The employer, any superintendent or foreman, or any agent of the employer in charge of the work where the accident occurred shall also sign the preprinted form that describes the accident. That signature shall not be a concession by the employer of any rights or defenses. It merely acknowledges receipt by the employer or his agent of the form signed by the worker. The preprinted form shall be prepared in duplicate so that both the worker and the employer can retain copies.

History: 1953 Comp., § 59-10-13.4, enacted by Laws 1959, ch. 67, § 8; 1989, ch. 263, § 19; 1990 (2nd S.S.), ch. 2, § 16.

52-1-30. Payment of compensation benefits; installments.

Compensation shall be paid by the employer to the worker in installments. The first installment shall be paid not later than fourteen days after the worker has missed seven days of lost time from work, whether or not the days are consecutive. Remaining installments shall be paid twice a month at intervals not more than sixteen days apart in sums as nearly equal as possible, except as provided in Section 52-5-12 NMSA 1978.

History: 1978 Comp., § 52-1-30, enacted by Laws 1987, ch. 235, § 14; 1993, ch. 193, § 3; 2003, ch. 259, § 4.

52-1-31. Claim to be filed for workers' compensation; effect of failure to give required notice or to file claim within time allowed.

A. If an employer or his insurer fails or refuses to pay a worker any installment of compensation to which the worker is entitled under the Workers' Compensation Act, after notice has been given as required by Section 52-1-29 NMSA 1978, it is the duty of the worker insisting on the payment of compensation to file a claim therefor as provided in the Workers' Compensation Act not later than one year after the failure or refusal of the employer or insurer to pay compensation. This one-year period of limitations shall be tolled during the time a worker remains employed by the employer by whom he was employed at the time of such accidental injury, not to exceed a period of one year. If the worker fails to give notice in the manner and within the time required by Section 52-1-29 NMSA 1978 or if the worker fails to file a claim for compensation within the time required by this section, his claim for compensation, all his right to the recovery of compensation and the bringing of any proceeding for the recovery of compensation are forever barred.

B. In case of the death of a worker who would have been entitled to receive compensation if death had not occurred, claim for compensation may be filed on behalf of his eligible dependents to recover compensation from the employer or his insurer. Payment may be received or claim filed by any person whom the director or the court may authorize or permit on behalf of the eligible beneficiaries. No claim shall be filed, however, to recover compensation benefits for the death of the worker unless he or someone on his behalf or on behalf of his eligible dependents has given notice in the manner and within the time required by Section 52-1-29 NMSA 1978 and unless the claim is filed within one year from the date of the worker's death.

History: 1953 Comp., § 59-10-13.6, enacted by Laws 1959, ch. 67, § 10; 1963, ch. 269, § 6; 1967, ch. 151, § 1; 1986, ch. 22, § 8; 1987, ch. 235, § 15.

52-1-32 to 52-1-35. Repealed.

52-1-36. Effect of failure of worker to file claim by reason of conduct of employer.

The failure of any person entitled to compensation under the Workers' Compensation Act to give any notice or file any claim within the time fixed by the Workers' Compensation Act shall not deprive such person of the right to compensation where the failure was caused in whole or in part by the conduct of the employer or insurer which reasonably led the person entitled to compensation to believe the compensation would be paid.

History: Laws 1937, ch. 92, § 13; 1941 Comp., § 57-914; 1953 Comp., § 59-10-14; Laws 1959, ch. 67, § 15; 1986, ch. 22, § 9; 1989, ch. 263, § 20.

52-1-37. Repealed.

52-1-38. Judgment; provisions; execution; subrogation; contempts.

A. All judgments based upon a supplementary compensation order pursuant to Section 52-5-10 NMSA 1978 shall be against the defendants and each of them for the amount then due and shall also contain an order upon the defendants for the payment to the worker, at regular intervals during the continuance of his disability, the further amounts he is entitled to receive. The judgment shall be so framed as to accomplish the purpose and intent of the Workers' Compensation Act in all particulars. In addition to executions for any amount already due in the judgment, executions for amounts to become due in the future shall be issued by the clerk of the court at any time after the time provided in the judgment for the payment thereof if the worker files his affidavit with the clerk that the same is unpaid and that his disability still continues; provided, however, if application is made for a physical examination of the worker under Section 52-1-51 NMSA 1978, issuance of execution shall await the further order of a workers' compensation judge.

B. All judgments and executions based upon a supplementary compensation order pursuant to Section 52-5-10 NMSA 1978 issued in workers' compensation cases shall be governed by the laws of this state with respect to judgments or executions in civil cases and shall have the same force and effect.

C. When a judgment or execution based upon a supplementary compensation order pursuant to Section 52-5-10 NMSA 1978 is paid or satisfied by a defendant who has an agreement that the judgment or execution should have been paid or satisfied by another party as insurer, guarantor, surety or otherwise, the defendant is entitled to judgment over against the party in the same case. Application for judgment shall be made within ninety days after judgment is paid or execution satisfied. Notice shall be given to the party against whom judgment over is sought, and the application shall be heard according to the procedures for notice and hearing of motions in other civil actions.

D. In any case where the employer has failed to file the undertaking or certificate required by Section 52-1-4 NMSA 1978, the court has power to enforce compliance with any judgment or order granted in a case against the employer by proceedings in contempt against a party failing or refusing to comply.

History: Laws 1929, ch. 113, § 15; C.S. 1929, § 156-115; 1941 Comp., § 57-916; 1953 Comp., § 59-10-16; Laws 1959, ch. 67, § 17; 1986, ch. 22, § 10; 1989, ch. 263, § 21.

52-1-39. Repealed.

52-1-40. Waiting period.

No compensation benefits shall be allowed under the provisions of the Workers' Compensation Act for any accidental injury which does not result in the workers' death or in a disability which lasts for more than seven days; provided, however, if the period of the workers' disability lasts for more than four weeks from the date of his accidental injury, compensation benefits shall be allowed from the date of disability.

History: 1953 Comp., § 59-10-18.1, enacted by Laws 1959, ch. 67, § 19; 1989, ch. 263, § 22.

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

C. For disability resulting from primary mental impairment, the maximum period of compensation is the maximum period allowable for a physical injury, as set forth in Sections 52-1-26 and 52-1-42 NMSA 1978, and subject to the maximum duration and limitations on compensation benefits set forth in Section 52-1-47 NMSA 1978. For disability resulting in secondary mental impairment, the maximum period of compensation is the maximum period allowable for the disability produced by the physical impairment, as set forth in Section 52-1-26 or 52-1-43 NMSA 1978 and Section 52-1-42 NMSA 1978, and subject to the maximum duration and limitations on compensation benefits set forth in Section 52-1-47 NMSA 1978.

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

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

F. For the purpose of the Workers' Compensation Act, the average weekly wage in the state shall be determined by the workforce solutions department on or before June 30 of each year and shall be computed from all wages reported to the workforce solutions department from employing units, including reimbursable employers, in accordance with the rules of the department for the preceding calendar year, divided by the total number of covered employees divided by fifty-two.

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

H. Unless the computation provided for in Subsection F of this section results in an increase or decrease of two dollars ($2.00) or more, raised to the next whole dollar, the statewide average weekly wage determination shall not be changed for any calendar year.

History: 1953 Comp., § 59-10-18.2, enacted by Laws 1959, ch. 67, § 20; 1965, ch. 252, § 1; 1967, ch. 151, § 2; 1969, ch. 173, § 1; 1971, ch. 261, § 3; 1973, ch. 240, § 5; 1975, ch. 284, § 8; 1986, ch. 22, § 11; 1987, ch. 235, § 16; 1989, ch. 263, § 23; 1990 (2nd S.S.), ch. 2, § 17; 1993, ch. 193, § 4; 1999, ch. 172, § 1; 2015, ch. 70, § 1.

52-1-42. Compensation benefits; permanent partial disability; maximum duration of benefits.

A. For permanent partial disability, the workers' compensation benefits not specifically provided for in Section 52-1-43 NMSA 1978 shall be a percentage of the weekly benefit payable for total disability as provided in Section 52-1-41 NMSA 1978. The percentage of permanent partial disability shall be determined pursuant to the provisions of Sections 52-1-26 through 52-1-26.4 NMSA 1978. The duration of partial disability benefits shall depend upon the extent and nature of the partial disability, subject to the following:

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

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

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

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

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

History: 1953 Comp., § 59-10-18.3, enacted by Laws 1959, ch. 67, § 21; 1963, ch. 269, § 2; 1965, ch. 252, § 2; 1975, ch. 284, § 9; 1986, ch. 22, § 12; 1987, ch. 235, § 17; 1989, ch. 263, § 24; 1990 (2nd S.S.), ch. 2, § 18; 2015, ch. 70, § 2.

52-1-43. Compensation benefits; injury to specific body members.

A. For disability resulting from an accidental injury to specific body members, including the loss or loss of use thereof, the worker shall receive the weekly maximum and minimum compensation for disability as provided in Section 52-1-41 NMSA 1978, for the following periods:

Injury	Compensation Benefits Number of Weeks
(1) one arm at or near shoulder, dextrous member	200 weeks
(2) one arm at elbow, dextrous member	160 weeks
(3) one arm between wrist at elbow, dextrous member	150 weeks
(4) one arm at or near shoulder, nondextrous member	175 weeks
(5) one arm at elbow, nondextrous member	155 weeks
(6) one arm between wrist and elbow, nondextrous member	140 weeks
(7) one hand, dextrous member	125 weeks
(8) one hand, nondextrous member	110 weeks
(9) one thumb and the metacarpal bone thereof	55 weeks
(10) one thumb at the proximal joint	34 weeks
(11) one thumb at the second distal joint	22 weeks
(12) one first finger and the metacarpal bone thereof	28 weeks
(13) one first finger at the proximal joint	22 weeks
(14) one first finger at the second joint	17 weeks
(15) one first finger at the distal joint	12 weeks
(16) one second finger and the metacarpal bone thereof	22 weeks
(17) one second finger at the proximal joint	17 weeks
(18) one second finger at the second joint	12 weeks
(19) one second finger at the distal joint	10 weeks
(20) one third finger and the metacarpal bone thereof	17 weeks
(21) one third finger at the proximal joint	12 weeks
(22) one third finger at the second joint	10 weeks

(23) one third finger at the distal joint 10 weeks

(24) one fourth finger and the metacarpal bone thereof 14 weeks

(25) one fourth finger at the proximal joint 14 weeks

(26) one fourth finger at the second joint 10 weeks

(27) one fourth finger at the distal joint 7 weeks

(28) loss of all fingers on one hand where thumb and palm remain 70 weeks

(29) one leg at or near hip joint, so as to preclude the use of an artificial limb 200 weeks

(30) one leg at or above the knee, where stump remains sufficient to permit the use of an artificial limb 150 weeks

(31) one leg between knee and ankle 130 weeks

(32) one foot at the ankle 115 weeks

(33) one great toe with the metatarsal bone thereof 35 weeks

(34) one great toe at the proximal joint 17 weeks

(35) one great toe at the second joint 12 weeks

(36) one toe other than the great toe with the metatarsal bone thereof 14 weeks

(37) one toe other than the great toe at the proximal joint 10 weeks

(38) one toe other than the great toe at second or distal joint 8 weeks

(39) loss of all toes on one foot at proximal joint 40 weeks

(40) eye by enucleation 130 weeks

(41) total blindness of one eye 120 weeks

(42) total deafness in one ear 40 weeks

(43) total deafness in both ears 150 weeks.

B. For a partial loss of use of one of the body members or physical functions listed in Subsection A of this section, the worker shall receive compensation computed on the

basis of the degree of such partial loss of use, payable for the number of weeks applicable to total loss or loss of use of that body member or physical function.

C. In cases of actual amputation of the arm or leg, the workers' compensation judge in his discretion may award compensation benefits in excess of those provided in Subsection A of this section if there is substantial evidence to support a finding that, because of the worker's advanced age, lack of education or lack of training, he has in fact a partial disability which will disable him longer than the time specified in the schedule in Subsection A of this section. The additional compensation period may not in any event exceed twice the time specified in the schedule in Subsection A of this section for such injury.

D. In determining the worker's compensation benefits payable to a worker under this section for a disability resulting from a scheduled injury, the worker is entitled to be compensated as provided in Subsection A of this section up to the date the worker is released from regular treatment by his primary treating health care provider, as defined in Section 52-4-1 NMSA 1978, if he is in fact totally disabled during that time. Any compensation paid up to that date shall be in addition to the compensation allowed under Subsection A of this section, but in no event shall any worker be entitled to compensation for a period in excess of seven hundred weeks.

History: 1978 Comp., § 52-1-31, enacted by Laws 1987, ch. 235, § 18; 1989, ch. 263, § 25; 2003, ch. 259, § 5.

52-1-44. Compensation benefits; facial disfigurement.

For serious permanent disfigurement about the face or head, the workers' compensation judge may allow, in addition to other compensation benefits that may be allowed under the Workers' Compensation Act, an additional sum for compensation on account of the serious permanent disfigurement as he deems just but not to exceed a maximum of twenty-five hundred dollars ($2,500).

History: 1953 Comp., § 59-10-18.5, enacted by Laws 1959, ch. 67, § 23; 1967, ch. 151, § 4; 1986, ch. 22, § 14; 1989, ch. 263, § 26.

52-1-45. Compensation benefits; hernia; proof of claim; failure to be operated [upon]; examination; medical care.

A worker, in order to be entitled to compensation for a hernia, must clearly prove:

A. that the hernia is of recent origin;

B. that its appearance was accompanied by pain;

C. that it was immediately preceded by some accidental strain suffered in the course of the employment; and

D. that it did not exist prior to the date of the alleged injury. If a worker, after establishing his right to compensation for a hernia as above provided, elects to be operated upon, the operating fee and reasonable hospital expenses shall be paid by the employer or his or its insurer. In case such worker elects not to be operated upon and the hernia becomes strangulated in the future, the results from the strangulation shall not be compensated; provided, before the worker is compelled to prove the facts above mentioned, in order to be entitled to compensation for hernia, the employer must first prove that he caused the worker to be physically examined, previous to his employment, for the existence of a hernia; and, provided further, that where the employer has not made provisions for and does not have at the service of the worker adequate surgical, hospital and medical facilities and attention or fails to offer them during the period necessary, the worker shall have the right to select the surgeon to operate upon him and the hospital where the operation is to be performed and the worker is to be treated therefor.

History: 1953 Comp., § 59-10-18.6, enacted by Laws 1959, ch. 67, § 24; 1963, ch. 269, § 4; 1989, ch. 263, § 27.

52-1-46. Compensation benefits for death.

Subject to the limitation of compensation payable under Subsection G of this section, if an accidental injury sustained by a worker proximately results in the worker's death within the period of two years following the worker's accidental injury, compensation shall be paid in the amount and to the persons entitled thereto as follows:

A. if there are no eligible dependents, except as provided in Subsection C of Section 52-1-10 NMSA 1978 of the Workers' Compensation Act, the compensation shall be limited to the funeral expenses, not to exceed seven thousand five hundred dollars ($7,500), and the expenses provided for medical and hospital services for the deceased, together with all other sums that the deceased should have been paid for compensation benefits up to the time of the worker's death;

B. if there are eligible dependents at the time of the worker's death, payment shall consist of a sum not to exceed seven thousand five hundred dollars ($7,500) for funeral expenses and expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased should have been paid for compensation benefits up to the time of the worker's death and compensation benefits to the eligible dependents as hereinafter specified, subject to the limitations on maximum periods of recovery provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978;

C. if there are eligible dependents entitled thereto, compensation shall be paid to the dependents or to the person authorized by the director or appointed by the court to receive the same for the benefit of the dependents in such portions and amounts, to be computed and distributed as follows:

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

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

(3) if there is a widow or widower and children:

(a) if all the children are living with the widow or widower, forty-five percent of the weekly compensation benefits as provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978 to the widow or widower and fifty-five percent divided equally to the children; or

(b) if no child is living with a widow or widower, forty percent of the weekly compensation benefits as provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978 to the widow or widower and sixty percent divided equally to the children; and

(4) two years' compensation benefits in one lump sum shall be payable to a widow or widower upon remarriage; however, the total benefits shall not exceed the maximum compensation benefit as provided in Subsection B of this section;

D. if there is neither widow, widower nor children, compensation may be paid to the father and mother or the survivor of them, if dependent to any extent upon the worker for support at the time of the worker's death, twenty-five percent of the average weekly wage of the deceased, and in no event shall the maximum compensation to such dependents exceed the amounts contributed by the deceased worker for their care; provided that if the father and mother, or the survivor of them, was totally dependent upon such worker for support at the time of the worker's death, they shall be entitled to fifty percent of the average weekly wage of the deceased;

E. if there is neither widow, widower nor children nor dependent parent, then to the brothers and sisters and grandchildren if actually dependent to any extent upon the deceased worker for support at the time of the worker's death, thirty-five percent of the average weekly wage of the deceased worker with fifteen percent additional for brothers and sisters and grandchildren in excess of two, with a maximum of sixty-six and two-thirds percent of the average weekly wage of the deceased, and in no event shall the maximum compensation to partial dependents exceed the respective amounts contributed by the deceased worker for their care;

F. in the event of the death or remarriage of the widow or widower entitled to compensation benefits as provided in this section, the surviving children shall then be entitled to compensation benefits computed and paid as provided in Paragraph (1) of Subsection C of this section for the remainder of the compensable period. In the event compensation benefits payable to children as provided in this section are terminated as provided in Subsection E of Section 52-1-17 NMSA 1978, a surviving widow or widower

shall then be entitled to compensation benefits computed and paid as provided in Paragraphs (2) and (4) of Subsection C of this section for the remainder of the compensable period; and

G. no compensation benefits payable by reason of a worker's death shall exceed the maximum weekly compensation benefits as provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978, and no dependent or any class thereof, other than a widow, widower or children, shall in any event be paid total benefits in excess of seven thousand five hundred dollars ($7,500) exclusive of funeral expenses and the expenses provided for medical and hospital services for the deceased paid for by the employer.

History: 1953 Comp., § 59-10-18.7, enacted by Laws 1959, ch. 67, § 25; 1963, ch. 269, § 5; 1965, ch. 252, § 3; 1967, ch. 151, § 5; 1969, ch. 173, § 3; 1972, ch. 65, § 2; 1973, ch. 240, § 7; 1975, ch. 284, § 11; 1977, ch. 275, § 2; 1986, ch. 22, § 15; 1987, ch. 235, § 19; 1999, ch. 172, § 2; 2013, ch. 134, § 3.

52-1-47. Limitations on compensation benefits.

Subject to the limitation of compensation payable under Subsection G of Section 52-1-46 NMSA 1978 and except for provision of lifetime benefits for permanent total disability awarded pursuant to Section 52-1-41 NMSA 1978:

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

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

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

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

History: 1953 Comp., § 59-10-18.8, enacted by Laws 1959, ch. 67, § 26; 1963, ch. 269, § 8; 1967, ch. 151, § 6; 1968, ch. 46, § 1; 1969, ch. 173, § 4; 1971, ch. 261, § 4; 1973, ch. 240, § 8; 1975, ch. 284, § 12; 1987, ch. 235, § 20; 1990 (2nd S.S.), ch. 2, § 19; 2015, ch. 70, § 3.

52-1-47.1. Compensation benefits limit.

A. Unless otherwise contracted for by the worker and employer, workers' compensation benefits shall be limited so that no worker receives more in total payments, including wages and benefits from his employer, by not working than by continuing to work. Compensation benefits under the Workers' Compensation Act shall accordingly be reduced, if necessary, to account for any wages and employer-financed disability benefits a worker receives after the time of injury. For the purposes of this section, total payments shall be determined on an after-tax basis. This section does not apply to social security payments, employee-financed disability benefits, benefits or payments a worker received from a prior employer, payments for medical or related expenses or general retirement payments, except it does apply to disability retirement benefits.

B. This section shall only apply to injuries that occur after the effective date of this section; it shall not reduce benefits received or due or affect the benefits due for injuries that occur before the effective date of this section.

History: Laws 1990 (2nd S.S.), ch. 2, § 30.

52-1-48. Additional limitation on benefits.

The benefits that the worker shall receive during the entire period of disability and the benefits for death shall be based on and limited to the benefits in effect on the date of the accidental injury resulting in the disability or death.

History: 1953 Comp., § 59-10-18.9, enacted by Laws 1975, ch. 284, § 13; 1989, ch. 263, § 28.

52-1-49. Medical and related benefits; selection of health care provider; artificial members.

A. After an injury to a worker and subject to the requirements of the Workers' Compensation Act, and continuing as long as medical or related treatment is reasonably necessary, the employer shall, subject to the provisions of this section, provide the worker in a timely manner reasonable and necessary health care services from a health care provider.

B. The employer shall initially either select the health care provider for the injured worker or permit the injured worker to make the selection. Subject to the provisions of

this section, that selection shall be in effect during the first sixty days from the date the worker receives treatment from the initially selected health care provider.

C. After the expiration of the initial sixty-day period set forth in Subsection B of this section, the party who did not make the initial selection may select a health care provider of his choice. Unless the worker and employer otherwise agree, the party seeking such a change shall file a notice of the name and address of his choice of health care provider with the other party at least ten days before treatment from that health care provider begins. The director shall adopt rules and regulations governing forms, which employers shall post in conspicuous places, to enable this notice to be promptly and efficiently provided. This notice may be filed on or after the fiftieth day of the sixty-day period set forth in Subsection B of this section.

D. If a party objects to the choice of health care provider made pursuant to Subsection C of this section, then he shall file an objection to that choice pursuant to Subsection E of this section with a workers' compensation judge within three days from receiving the notice. He shall also provide notice of that objection to the other party. If the employer does not file his objection within the three-day period, then he shall be liable for the cost of treatment provided by the worker's health care provider until the employer does file his objection and the workers' compensation judge has rendered his decision as set forth in Subsection F of this section. If the worker does not file his objection within the three-day period, then the employer shall only be liable for the cost of treatment from the health care provider selected by the employer, subject to the provisions of Subsections E, F and G of this section. Nothing in this section shall remove the employer's obligation to provide reasonable and necessary health care services to the worker so long as the worker complies with the provisions of this section.

E. If the worker or employer disagrees with the choice of the health care provider of the other party at any time, including the initial sixty-day period, and they cannot otherwise agree, then he shall submit a request for a change of health care provider to a workers' compensation judge. The director shall adopt rules and regulations governing forms, which employers shall post in conspicuous places, to submit to a workers' compensation judge a request for change of a health care provider.

F. The request shall state the reasons for the request and may state the applicant's choice for a different health care provider. The applicant shall bear the burden of proving to the workers' compensation judge that the care being received is not reasonable. The workers' compensation judge shall render his decision within seven days from the date the request was submitted. If the workers' compensation judge grants the request, he shall designate either the applicant's choice of health care provider or a different health care provider.

G. If the worker continues to receive treatment or services from a health care provider rejected by the employer and not in compliance with the workers' compensation judge's ruling, then the employer is not required to pay for any of the additional treatment or services provided to that worker by that health care provider.

H. In all cases where the injury is such as to permit the use of artificial members, including teeth and eyes, the employer shall pay for the artificial members.

History: 1953 Comp., § 59-10-19.1, enacted by Laws 1959, ch. 67, § 27; 1963, ch. 269, § 3; 1965, ch. 252, § 4; 1971, ch. 261, § 5; 1973, ch. 240, § 9; 1977, ch. 275, § 3; 1987, ch. 235, § 21; 1990 (2nd S.S.), ch. 2, § 20.

52-1-50. Repealed.

52-1-50.1. Rehiring of injured workers.

A. If an employer is hiring, the employer shall offer to rehire the employer's worker who has stopped working due to an injury for which the worker has received, or is due to receive, benefits under the Workers' Compensation Act and who applies for his pre-injury job or modified job similar to the pre-injury job, subject to the following conditions:

(1) the worker's treating health care provider certifies that the worker is fit to carry out the pre-injury job or modified work similar to the pre-injury job without significant risk of reinjury; and

(2) the employer has the pre-injury job or modified work available.

B. If an employer is hiring, that employer shall offer to rehire a worker who applies for any job that pays less than the pre-injury job and who has stopped working due to an injury for which he has received, or is due, benefits under the Workers' Compensation Act, provided that the worker is qualified for the job and provided that the worker's treating health care provider certifies that the worker is fit to carry out the job offered. Compensation benefits of a worker rehired prior to maximum medical improvement and pursuant to this subsection shall be reduced as provided in Section 52-1-25.1 NMSA 1978.

C. As used in this section, "rehire" includes putting the injured worker back to active work, regardless of whether he was carried on the employer's payroll during the period of his inability to work.

D. The exclusive remedy for a violation of the section shall be a fine as specified in Section 52-1-61 NMSA 1978.

History: 1978 Comp., § 52-1-50.1, enacted by Laws 1990 (2nd S.S.), ch. 2, § 21.

52-1-51. Physical examinations of worker; independent medical examination; unsanitary or injurious practices by worker; testimony of health care providers.

A. In the event of a dispute between the parties concerning the reasonableness or necessity of medical or surgical treatment, the date upon which maximum medical improvement was reached, the correct impairment rating for the worker, the cause of an injury or any other medical issue, if the parties cannot agree upon the use of a specific independent medical examiner, either party may petition a workers' compensation judge for permission to have the worker undergo an independent medical examination. If a workers' compensation judge believes that an independent medical examination will assist the judge with the proper determination of any issue in the case, including the cause of the injury, the workers' compensation judge may order an independent medical examination upon the judge's own motion. The independent medical examination shall be performed immediately, pursuant to procedures adopted by the director, by a health care provider other than the designated health care provider, unless the employer and the worker otherwise agree.

B. In deciding who may conduct the independent medical examination, the workers' compensation judge shall not designate the health care provider initially chosen by the petitioner. The workers' compensation judge shall designate a health care provider on the approved list of persons authorized by the committee appointed by the advisory council on workers' compensation to create that list. The decision of the workers' compensation judge shall be final. The employer shall pay for any independent medical examination.

C. Only a health care provider who has treated the worker pursuant to Section 52-1-49 NMSA 1978 or the health care provider providing the independent medical examination pursuant to this section may offer testimony at any workers' compensation hearing concerning the particular injury in question.

D. If, pursuant to Subsection C of Section 52-1-49 NMSA 1978, either party selects a new health care provider, the other party shall be entitled to periodic examinations of the worker by the health care provider the other party previously selected. Examinations may not be required more frequently than at six-month intervals; except that upon application to the workers' compensation judge having jurisdiction of the claim and after reasonable cause therefor, examinations within six-month intervals may be ordered. In considering such applications, the workers' compensation judge shall exercise care to prevent harassment of the claimant.

E. If an independent medical examination or an examination pursuant to Subsection D of this section is requested, the worker shall travel to the place at which the examination shall be conducted. Within thirty days after the examination, the worker shall be compensated by the employer for all necessary and reasonable expenses incidental to submitting to the examination, including the cost of travel, meals, lodging, loss of pay or other like direct expense, but the amount to be compensated for meals and lodging shall not exceed that allowed for nonsalaried public officers under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

F. No attorney shall be present at any examination authorized under this section.

G. Both the employer and the worker shall be given a copy of the report of the examination of the worker made by the independent health care provider pursuant to this section.

H. If a worker fails or refuses to submit to examination in accordance with this section, the worker shall forfeit all workers' compensation benefits that would accrue or become due to the worker except for that failure or refusal to submit to examination during the period that the worker persists in such failure and refusal unless the worker is by reason of disability unable to appear for examination.

I. If any worker persists in any unsanitary or injurious practice that tends to imperil, retard or impair the worker's recovery or increase the worker's disability or refuses to submit to such medical or surgical treatment as is reasonably essential to promote the worker's recovery, the workers' compensation judge may in the judge's discretion reduce or suspend the workers' compensation benefits.

History: Laws 1929, ch. 113, § 19; C.S. 1929, § 156-119; 1941 Comp., § 57-920; Laws 1947, ch. 109, § 1; 1953 Comp., § 59-10-20; Laws 1986, ch. 22, § 17; 1987, ch. 235, § 23; 1989, ch. 263, § 30; 1990 (2nd S.S.), ch. 2, § 22; 2005, ch. 150, § 1; 2013, ch. 134, § 4.

52-1-52. Exemption from creditors.

A. Compensation benefits shall be exempt from claims of creditors and from any attachment, garnishment or execution and shall be paid only to such worker or his personal representative or such other persons as the court may, under the terms hereof, appoint to receive or collect compensation benefits.

B. Notwithstanding the provisions of Subsection A of this section, compensation benefits being paid or owing to a worker shall be considered wages for the purpose of securing support for a minor dependent. No order may be entered against such benefits which results in the worker retaining less than one hundred dollars ($100) a week or an amount each week equal to forty times the federal minimum wage rate if legally required to support minor dependents other than those for whom the action is brought.

History: Laws 1929, ch. 113, § 20; C.S. 1929, § 156-120; 1941 Comp., § 57-921; 1953 Comp., § 59-10-21; Laws 1983, ch. 78, § 1; 1984, ch. 95, § 1; 1989, ch. 263, § 31.

52-1-53. [Accident prevention laws not affected.]

Nothing in this act [Chapter 52, Article 1 NMSA 1978] contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in any occupational pursuit.

History: Laws 1929, ch. 113, § 21; C.S. 1929, § 156-121; 1941 Comp., § 57-922; 1953 Comp., § 59-10-22.

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

C. 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 and the claimant is represented by an attorney, the total amount paid or to be paid by the employer in settlement of the claim shall be stated in the settlement papers. The workers' compensation judge shall determine and fix a reasonable fee for the claimant's attorney, taking into account any sum previously paid, and the fee fixed by the workers' compensation judge shall be the limit of the fee received or to be received by the attorney in connection with the claim, subject to the limitation of Subsection I of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

G. In all actions arising under the provisions of Section 52-1-56 NMSA 1978 where the jurisdiction of the workers' compensation administration is invoked to determine the question whether the claimant's disability has increased or diminished and the claimant is represented by an attorney, the workers' compensation judge or courts upon appeal shall determine and fix a reasonable fee for the services of the claimant's attorney only if the claimant is successful in establishing that the claimant's disability has increased or if the employer is unsuccessful in establishing that the claimant's disability has diminished. The fee when fixed by the workers' compensation judge or courts upon appeal shall be the limit of the fee received or to be received by the attorney for services in the action, subject to the limitation of Subsection I of this section.

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

I. Attorney fees, including, but not limited to, the costs of paralegal services, legal clerk services and any other related legal services costs on behalf of a claimant or an employer for a single accidental injury claim, including representation before the workers' compensation administration and the courts on appeal, shall not exceed twenty-two thousand five hundred dollars ($22,500). This limitation applies whether the claimant or employer has one or more attorneys representing the claimant or employer and applies as a cumulative limitation on compensation for all legal services rendered in all proceedings and other matters directly related to a single accidental injury to a claimant. The workers' compensation judge may exceed the maximum amount stated in this subsection in awarding a reasonable attorney fee if the judge finds that a claimant, an insurer or an employer acted in bad faith with regard to handling the injured worker's claim and the injured worker or employer has suffered economic loss as a result. However, in no case shall this additional amount exceed five thousand dollars ($5,000). As used in this subsection, "bad faith" means conduct by the claimant, insurer or employer in the handling of a claim that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of the worker or employer. Any determination of bad faith shall be made by the workers' compensation judge through a separate fact-finding proceeding. Notwithstanding the provisions of Subsection J of this section, the party found to have acted in bad faith shall pay one hundred percent of the additional fees awarded for representation of the prevailing party in a bad faith action.

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

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

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

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

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

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

History: 1978 Comp., § 52-1-54, enacted by Laws 1987, ch. 235, § 24; 1989, ch. 263, § 32; 1990 (2nd S.S.), ch. 2, § 23; 1993, ch. 193, § 5; 2003, ch. 265, § 3; 2013, ch. 168, § 1.

52-1-55. Physical examinations; statements regarding dependents; pre-employment physical condition statements.

A. It is the duty of the worker at the time of the worker's employment or thereafter at the request of the employer to submit to examination by a physician or surgeon duly authorized to practice medicine in the state, or by a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, who shall be paid by the employer, for the purpose of determining the worker's physical condition.

B. It is also the duty of the worker, if required, to give the names, addresses, relationship and degree of dependency of the worker's dependents, if any, or any subsequent change thereof to the employer, and when the employer or the employer's insurance carrier requires, the worker shall make a detailed verified statement relating to such dependents, matters of employment and other information incident thereto.

C. It is also the duty of the worker, if requested by the employer or the employer's insurance carrier, to make a detailed verified statement as part of an application for employment disclosing specifically any preexisting permanent physical impairment.

History: Laws 1929, ch. 113, § 23; C.S. 1929, § 156-123; 1941 Comp., § 57-924; 1953 Comp., § 59-10-24; 1987, ch. 235, § 25; 2015, ch. 116, § 14.

52-1-56. Diminution; termination or increase of compensation.

The workers' compensation judge may, upon the application of the employer, worker or other person bound by the compensation order, fix a time and place for hearing upon

the issue of claimant's recovery. If it appears upon such hearing that diminution or termination of disability has taken place, the workers' compensation judge shall order diminution or termination of payments of compensation as the facts may warrant. If it appears upon such hearing that the disability of the worker has become more aggravated or has increased without the fault of the worker, the workers' compensation judge shall order an increase in the amount of compensation allowable as the facts may warrant. Hearings shall not be held more frequently than at six-month intervals. In the event the employer or other person upon whose application the hearing is had to diminish or terminate compensation is unsuccessful in diminishing or terminating the compensation previously awarded to the worker, the worker shall be entitled to recover from the applicant all reasonable and necessary expenses incidental to his attending the hearing, including the cost of travel, meals, lodging, loss of pay or other like direct expense together with his costs. If the worker has, prior to his application to the workers' compensation judge, made demand in writing to the employer or other person bound by the compensation order for examination as provided in Section 52-1-51 NMSA 1978 for the purpose of determining whether compensation should be increased and if the employer or other person bound by the compensation order has failed to provide the examination within a period of one month after receipt of the demand or, after the examination, has denied to the worker any increase in compensation, then if the worker is successful in obtaining an increase of compensation, he is entitled to recover from the employer or other person bound by the compensation order all reasonable and necessary expenses incidental to his attending the hearing, including the cost of travel, meals, lodging, loss of pay or other like direct expense together with his costs. The compensation of the worker as previously awarded shall continue while the hearing is pending. If the applicant decides to have the worker examined after he has come to the place of hearing pursuant to notice given, he shall pay the worker his expenses necessarily incurred in attending the hearing before the worker is required to submit to such examination, but such worker is not entitled to receive expense money more than one time for the same trip.

History: 1978 Comp., § 52-1-56, enacted by Laws 1987, ch. 235, § 26; 1989, ch. 263, § 33.

52-1-57. Repealed.

52-1-58. Reports to be filed with director.

A. It is the duty of every employer of labor in this state subject to the provisions of the Workers' Compensation Act or the employer's workers' compensation insurance carrier to make a written report to the director of all accidental injuries or occupational diseases that occur to any of his employees during the course of their employment and that result in lost time of an employee of more than seven days. A copy of the report shall be sent by the employer to the worker. Such reports shall be made within ten days after such accidental injury or ten days after notification to the employer of employee disability, upon forms approved by the director and shall contain such information concerning the accident or injury as may be required by the director.

B. Upon request of the director, it is also the duty of every workers' compensation self-insurer and insurance carrier to file with the director closing reports upon the closing of a claim on forms approved by the director. Annual reports will be required on a form approved by the director.

History: Laws 1937, ch. 92, § 14; 1941 Comp., § 57-927; 1953 Comp., § 59-10-27; Laws 1986, ch. 22, § 20; 1987, ch. 235, § 27; 1989, ch. 263, § 34; 1990 (2nd S.S.), ch. 2, § 24.

52-1-59. Effect of failure to file report.

No claim for compensation under the Workers' Compensation Act, as it now provides or as it may hereafter be amended, shall be barred prior to the filing of such report or within thirty days thereafter, but this section does not shorten the time now provided for filing claims with the director.

History: Laws 1937, ch. 92, § 15; 1941 Comp., § 57-928; 1953 Comp., § 59-10-28; Laws 1986, ch. 22, § 21; 1989, ch. 263, § 35.

52-1-60. Notice to director of date of payment.

A. Every employer's workers' compensation insurance carrier shall notify the director of the date on which the initial payment of any claim for benefits has been made within ten days of such payment.

B. The director shall provide on a quarterly basis to the child support enforcement division of the human services department [health care authority department] the name, social security number, home address and employer of all injured workers reported.

C. A court order filed by the child support enforcement division of the human services department [health care authority department] in the claim of the workers' compensation administration stating that the claimant owes past due or ongoing support shall constitute a notice that lump sum and partial-lump sum payment of benefits to a claimant are barred contingent on satisfaction of the child support arrearage. No order approving a lump sum or partial-lump sum payment to a claimant pursuant to Section 52-5-12 NMSA 1978 shall be executed or entered until:

(1) the arrearage has been satisfied;

(2) provision has been made in the order for lump sum or partial-lump sum settlement for direct payment of sufficient funds to the child support enforcement division to satisfy the arrearage; or

(3) the workers' compensation judge makes a specific written finding of extreme hardship to the worker excusing the satisfaction of the arrearages from those funds.

History: Laws 1937, ch. 92, § 16; 1941 Comp., § 57-929; 1953 Comp., § 59-10-29; Laws 1983, ch. 78, § 2; 1986, ch. 22, § 22; 1989, ch. 263, § 36; 1990 (2nd S.S.), ch. 2, § 25; 1993, ch. 202, § 1.

52-1-61. Penalties.

The director shall impose a penalty on any person who fails to file a report required by, or who violates any provision of, the Workers' Compensation Act or any rule or regulation adopted pursuant to that act. Unless specified otherwise in the Workers' Compensation Act, the penalty shall be a fine of not less than twenty-five dollars ($25.00) and not more than one thousand dollars ($1,000) for each occurrence, subject to the director's discretion.

History: 1978 Comp., § 52-1-61, enacted by Laws 1990 (2nd S.S.), ch. 2, § 26.

52-1-62. Director to enforce Workers' Compensation Act.

For the purpose of enforcing the Workers' Compensation Act, there are hereby conferred upon the director the following powers and duties:

A. when any employer subject to the provisions of the Workers' Compensation Act fails to comply with Section 52-1-4 NMSA 1978 relating to the filing of an undertaking in the nature of insurance or security for the payment of benefits under the Workers' Compensation Act, the director is empowered to institute in his own name an action in the district court of Santa Fe county or the county where the employer resides or has his principal office or place of business to enjoin the employer from continuing his business operations until he has complied with the provisions of Section 52-1-4 NMSA 1978, and upon a showing of the facts above recited, the court shall grant such injunction. In any such action, the attorney general or district attorney for the judicial district where the action is brought shall represent the director; and

B. for the purpose of ascertaining the correctness of any reported wage expenditure, the number of men employed and other information necessary in the administration of the Workers' Compensation Act, the director may, upon his own initiative or upon request of any interested party, hold hearings and subpoena all books, records and payrolls of any employer subject to the provisions of the Workers' Compensation Act which show or reflect in any way upon the amount of wage expenditures of such employer or other facts, data or statistics appertaining to the purposes of that act.

History: Laws 1937, ch. 92, § 18; 1941 Comp., § 57-931; 1953 Comp., § 59-10-31; Laws 1986, ch. 22, § 24; 1989, ch. 263, § 38.

52-1-63. Educational institutions exempt.

Any educational institution in this state employing student labor in aid of students attending the institution by enabling students to defray their tuition and expenses and in which institution any class of machinery or appliances are [is] used for instruction or otherwise and which would subject the institution to the terms of the Workers' Compensation Act as engaging in a hazardous calling or business as defined by that act is hereby exempted from the terms and operations of the Workers' Compensation Act as to any liability accruing to any student so employed; provided, the terms of that act shall in no way relieve any institution from any liability for damages or injuries to any student which would otherwise be recoverable by law.

History: Laws 1939, ch. 232, § 1; 1941 Comp., § 57-932; 1953 Comp., § 59-10-32; Laws 1989, ch. 263, § 39.

52-1-64. Extra-territorial coverage.

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee or, in the event of the employee's death, the employee's dependents would have been entitled to the benefits provided by the Workers' Compensation Act, had such injury occurred within this state, the employee or, in the event of the employee's death resulting from the injury, the employee's dependents shall be entitled to the benefits provided by that act; provided that at the time of the injury:

A. the employee's employment is principally localized in this state;

B. the employee is working under a contract of hire made in this state in employment not principally localized in any state;

C. the employee is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to the employee's employer;

D. the employee is working under a contract of hire made in this state for employment outside the United States and Canada; or

E. the employee is an unpaid health professional deployed outside this state by the department of health in response to a request for emergency health personnel made pursuant to the Emergency Management Assistance Compact [12-10-14, 12-10-15 NMSA 1978].

History: 1953 Comp., § 59-10-33.1, enacted by Laws 1975, ch. 241, § 1; 1989, ch. 263, § 40; 2007, ch. 328, § 2.

52-1-65. Credit for benefits furnished or paid under laws of other jurisdictions.

The payment or award of benefits under the workers' compensation law of another state, territory, province or foreign nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of the Workers' Compensation Act shall not be a bar to a claim for benefits under that act; provided that claim under that act is filed within one year after such injury or death. If compensation is paid or awarded under that act:

A. the medical and related benefits furnished or paid for by the employer under such other workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under the Workers' Compensation Act had claim been made solely under that act;

B. the total amount of all income benefits paid or awarded the employee under such other workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under the Workers' Compensation Act had claim been made solely under that act; and

C. the total amount of death benefits paid or awarded under such other workers' compensation law shall be credited against the total amount of death benefits due under the Workers' Compensation Act.

History: 1953 Comp., § 59-10-33.2, enacted by Laws 1975, ch. 241, § 2; 1989, ch. 263, § 41.

52-1-66. Nonresident employers employing workers in state; requirement for insurance; enforcement.

A. Every employer not domiciled in the state who employs workers engaged in activities required to be licensed under the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] and every other employer not domiciled in the state who employs three or more workers within the state, whether that employment is permanent, temporary or transitory and whether the workers are residents or nonresidents of the state, shall comply with the provisions of Section 52-1-4 NMSA 1978 and, unless self-insured, shall obtain a workers' compensation insurance policy, or an endorsement to an existing policy, issued in accordance with the provisions of Section 59A-17-10.1 NMSA 1978. An employer who does not comply with the foregoing requirement shall be enjoined from doing business in the state pursuant to Section 52-1-62 NMSA 1978 and shall be barred from recovery by legal action for labor or materials furnished during any period of time in which he was not in compliance with the requirements of this section, and, if the noncomplying employment is in an activity for which the employer is licensed under the provisions of the Construction Industries Licensing Act, the employer's license is subject to revocation or suspension for the violation.

B. The construction industries division of the regulation and licensing department shall promulgate rules and regulations to insure compliance with Subsection A of this section.

History: 1978 Comp., § 52-1-66, enacted by Laws 1988, ch. 119, § 1; 1990 (2nd S.S.), ch. 2, § 27; 2003, ch. 259, § 6.

52-1-67. Locale of employment; definitions.

A. A person's employment is principally localized in this or another state when:

(1) his employer has a place of business in this or such other state and he regularly works at or from such place of business; or

(2) if Paragraph (1) of this subsection is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.

B. An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provided [provide] that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under the Workers' Compensation Act.

C. As used in Sections 52-1-64 through 52-1-67 NMSA 1978:

(1) "United States" includes only the states of the United States and the District of Columbia;

(2) "state" includes any state of the United States, the District of Columbia or any province of Canada; and

(3) "carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law.

History: 1953 Comp., § 59-10-33.4, enacted by Laws 1975, ch. 241, § 4; 1989, ch. 263, § 42.

52-1-68. Reciprocal recognition of extra-territorial coverage with other jurisdictions.

For the purpose of effecting mutually satisfactory reciprocal arrangements with other states respecting extra-territorial jurisdictions, the director of workers' compensation division is empowered to promulgate special and general regulations not inconsistent with the provisions of the Workers' Compensation Act and, with the approval of the

governor, to enter into reciprocal agreements with appropriate boards, commissions, officers or agencies of other states having jurisdiction over workers' compensation claims.

History: 1953 Comp., § 59-10-33.6, enacted by Laws 1975, ch. 241, § 5; 1989, ch. 263, § 43.

52-1-69. Repealed.

52-1-70. Offset of unemployment compensation benefits.

A. No total disability benefits shall be payable under the Workers' Compensation Act for any weeks in which the injured worker has received or is receiving unemployment compensation benefits, except as provided in this section.

B. If a worker is entitled to receive unemployment compensation benefits and would otherwise be entitled to receive total disability benefits, the unemployment compensation benefits shall be primary and total disability benefits shall be supplemental only, and the sum of the two benefits shall not exceed the amount of total disability benefits that would otherwise be payable.

History: 1978 Comp., § 52-1-70, enacted by Laws 1987, ch. 235, § 28.

ARTICLE 2
Subsequent Injuries (Repealed, Recompiled.)

52-2-1 to 52-2-3. Repealed.

52-2-3.1. Recompiled.

52-2-4 to 52-2-14. Repealed.

ARTICLE 3
Occupational Disease Disablement

52-3-1. Name of act.

This act shall be known as the "New Mexico Occupational Disease Disablement Law".

History: 1941 Comp., § 57-1101, enacted by Laws 1945, ch. 135, § 1; 1953 Comp., § 59-11-1.

52-3-2. Employers who come within the New Mexico Occupational Disease Disablement Law.

A. The following employers, when the conditions and hazards inherent in the occupation involved are such as to expose the employees to any of the hazards of occupational disease, shall be subject to the provisions of the New Mexico Occupational Disease Disablement Law: the state and each county, municipality, school district, drainage, irrigation or conservancy district and public institution and administrative board thereof, every charitable organization and every private person, firm or corporation engaged in carrying on business or trade within the state having in service four or more employees regularly employed in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, except employers of ranching or agricultural laborers and employers of private domestic servants; provided, however, effective January 1, 1978, the provisions of the New Mexico Occupational Disease Disablement Law shall apply to employers of three or more employees, except employers of ranching or agricultural laborers and employers of private domestic servants and, effective January 1, 1990, the provisions of the New Mexico Occupational Disease Disablement Law shall apply to all employers of employees, except employers of ranching or agricultural laborers and employers of private domestic servants. Employers who have in service less than four employees and after January 1, 1978 less than three employees, employers of ranching or agricultural laborers, employers of private domestic servants and partners and self-employed persons and, effective January 1, 1990, employers of ranching or agricultural laborers, employers of private domestic servants and partners and self-employed persons shall have the right to come under the terms of the New Mexico Occupational Disease Disablement Law by complying with the provisions hereof.

B. The term "regularly employed", as herein used, unless the context otherwise requires, shall include all employments in the usual course of the trade, business, profession or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

C. Any person, firm or corporation engaged in the performance of work as an independent contractor shall be deemed an employer within the meaning of this section. The term "independent contractor", as herein used, is defined to be any person, association or corporation engaged in the performance of any work for another, who, while so engaged, is independent of the employer in all that pertains to the execution of the work, is not subject to the rule or control of the employer, is engaged only in the performance of a definite job or piece of work and is subordinate to the employer only in effecting a result in accordance with the employer's design.

D. For the purposes of the New Mexico Occupational Disease Disablement Law, an individual who performs services as a qualified real estate salesperson shall not be treated as an employee and the person for whom the services are performed shall not be treated as an employer.

E. For the purpose of Subsection D of this section, a "qualified real estate salesperson" means an individual who:

(1) is a licensed real estate salesperson, associate broker or broker under contract with a real estate firm;

(2) receives substantially all of his remuneration, whether or not paid in cash, for the services performed as a real estate salesperson, associate broker or broker under contract with a real estate firm in direct relation to sales or other output, including the performance of services, rather than to the number of hours worked; and

(3) performs services pursuant to written contract between himself and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to such services.

History: 1941 Comp., § 57-1102, enacted by Laws 1945, ch. 135, § 2; 1953 Comp., § 59-11-2; Laws 1971, ch. 261, § 6; 1972, ch. 65, § 3; 1973, ch. 239, § 1; 1975, ch. 317, § 1; 1987, ch. 260, § 2; 1989, ch. 263, § 48.

52-3-3. Definitions; employee and lessee in mines.

The term "employee" or "worker" as used in the New Mexico Occupational Disease Disablement Law means:

A. every person in the service of the state and of a county, municipality or school district, including the regular members of lawfully constituted police and fire departments of municipalities;

B. every person in the service of any employer subject to the New Mexico Occupational Disease Disablement Law including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of the trade, business or occupation of the employer and not including ranching or agricultural workers and domestic servants of employers exempt under Section 52-3-2 NMSA 1978 unless the employer shall so elect; and

C. lessees of mining property and their employees who are engaged in the performance of work that is a part of the business conducted by the lessor and over whose work the lessor retains supervision or control are within the meaning of this section employees of such lessor.

History: 1941 Comp., § 57-1103, enacted by Laws 1945, ch. 135, § 3; 1953 Comp., § 59-11-3; Laws 1975, ch. 317, § 2; 1990 (2nd S.S.), ch. 2, § 33.

52-3-3.1. Recompiled.

52-3-4. Definitions.

As used in the New Mexico Occupational Disease Disablement Law:

A. "award" means the final compensation order made by the workers' compensation judge pursuant to Section 52-5-7 NMSA 1978;

B. "compensation" means the payments and benefits provided for in the New Mexico Occupational Disease Disablement Law;

C. "compensation order" means a compensation order of the workers' compensation division issued by a workers' compensation judge pursuant to Section 52-5-7 NMSA 1978; and

D. "disablement" means:

(1) the total physical incapacity, by reason of an occupational disease, of an employee to perform any work for remuneration or profit in the pursuit in which the employee was engaged, provided that silicosis, when complicated by active tuberculosis of the lungs, shall be presumed to result in disablement; or

(2) the partial physical incapacity of an employee, by reason of an occupational disease, to perform to some percentage extent any work for which he is fitted by age, education and training.

History: 1978 Comp., § 52-3-4, enacted by Laws 1987, ch. 235, § 31; 1989, ch. 263, § 49.

52-3-5. Acceptance.

A. All employers of employees, subject to the provisions of the New Mexico Occupational Disease Disablement Law, shall be conclusively presumed to have accepted the provisions of the New Mexico Occupational Disease Disablement Law.

B. Election on the part of the employer or of an employer of private domestic servants or of an employer of ranching or agricultural laborers or of a person for whom the services of a qualified real estate salesperson are performed exempt from the New Mexico Occupational Disease Disablement Law under the provisions of Section 52-3-2 NMSA 1978 and partners or self-employed persons to be subject to the New Mexico Occupational Disease Disablement Law may be made by filing in the office of the superintendent of insurance a written statement to the effect that he accepts the provisions of the New Mexico Occupational Disease Disablement Law or an insurance or security undertaking as required by Section 52-3-9 NMSA 1978.

C. Every employee shall be conclusively presumed to have accepted the provisions of the New Mexico Occupational Disease Disablement Law if his employer is subject to its provisions and has complied with its requirements, including insurance.

D. Such compliance with the provisions of the New Mexico Occupational Disease Disablement Law, including the provisions for insurance, shall be construed to be a surrender by the employer and the employee of their rights to any other method, form or amount of compensation or determination thereof or to any cause of action, action at law, suit in equity or statutory or common law right or remedy or proceeding whatever for or on account of such disablement or death of such employee resulting therefrom than as provided in the New Mexico Occupational Disease Disablement Law and shall bind the employee himself and, for compensation for his death, shall bind his personal representative, his surviving spouse and next of kin, as well as the employer and those conducting his business during bankruptcy or insolvency.

History: 1941 Comp., § 57-1105, enacted by Laws 1945, ch. 135, § 5; 1953 Comp., § 59-11-5; Laws 1971, ch. 261, § 7; 1972, ch. 65, § 4; 1973, ch. 239, § 2; 1975, ch. 317, § 3; 1980, ch. 88, § 1; 1987, ch. 260, § 3; 1989, ch. 263, § 50; 1990 (2nd S.S.), ch. 2, § 34.

52-3-6. Application of provisions of the New Mexico Occupational Disease Disablement Law to certain corporations' employees.

A. Notwithstanding any provisions to the contrary in the New Mexico Occupational Disease Disablement Law, an employee, as defined in Subsection F of this section, of a business or professional corporation who is also an employee as defined in the New Mexico Occupational Disease Disablement Law may affirmatively elect not to accept the provisions of the New Mexico Occupational Disease Disablement Law.

B. Each employee desiring to affirmatively elect not to accept the provisions of the New Mexico Occupational Disease Disablement Law may do so by filing an election in the office of the director.

C. Each employee desiring to revoke his affirmative election not to accept the provisions of the New Mexico Occupational Disease Disablement Law may do so by filing a revocation of the affirmative election with the occupational disease disablement insurer and in the office of the director. The revocation shall become effective thirty days after filing. The employee shall cause a copy of the revocation to be mailed to the board of directors of the business or professional corporation.

D. The filing of an affirmative election not to accept the provisions of the New Mexico Occupational Disease Disablement Law shall create a conclusive presumption that such employee is not covered by the New Mexico Occupational Disease Disablement Law until the effective date of a revocation filed pursuant to this section. The filing of an affirmative election not to accept the provisions of the New Mexico Occupational Disease Disablement Law shall apply to all corporations in which the employee has a financial interest.

E. In counting the number of workers of an employer to determine whether the employer comes within the New Mexico Occupational Disease Disablement Law, an

employee who has filed an affirmative election not to be subject to the New Mexico Occupational Disease Disablement Law shall also be counted as one of the workers employed by such employer.

F. For purposes of this section:

(1) "executive officer" means the chairman of the board, president, vice president, secretary or treasurer; and

(2) "employee" means an executive officer owning ten percent or more of the outstanding stock of the business or professional corporation.

History: 1953 Comp., § 59-11-5.1, enacted by Laws 1975, ch. 317, § 4; 1980, ch. 88, § 2; 1987, ch. 235, § 32.

52-3-7. Defenses to action by employee.

In an action against an employer who has not complied with Section 52-3-9 NMSA 1978 to recover damages for an occupational disease sustained by an employee while engaged in the line of his duty as such, or for death resulting from occupational diseases so sustained in which recovery is sought upon the ground of want of ordinary care of the employer or of the officer, agent or servant of the employer, it shall not be a defense:

A. that the employee, either expressly or impliedly assumed the risk of the hazard complained of as due to the employer's negligence;

B. that the occupational disease or death was caused, in whole or in part, by the want of ordinary care of a fellow servant; or

C. that the occupational disease or death was caused, in whole or in part, by the want of ordinary care of the employee where such want of care was not wilful.

Any employer who has complied with the provisions of this act, including the provisions relating to insurance, shall not be subject to any other liability whatsoever for the disablement of or death of any employee from occupational disease, except as in this act provided; and all causes of action, actions at law, suits in equity and proceedings whatever, and all statutory and common-law rights and remedies for and on account of such death of, or occupational disease of, any such employee and accruing to any and all persons whomsoever, are hereby abolished except as in this act provided.

History: 1941 Comp., § 57-1106, enacted by Laws 1945, ch. 135, § 6; 1953 Comp., § 59-11-6; Laws 1973, ch. 239, § 3.

52-3-8. Right to compensation; exclusive when.

The right to the compensation provided for in this act, in lieu of any other liability whatsoever, to any and all persons whomsoever, for any disablement from occupational disease or death resulting therefrom, shall obtain in all cases where the following conditions occur:

A. where at the time of disablement both employer and employee are subject to the provisions of this act; and where the employer has complied with the provisions hereof regarding insurance;

B. where at the time of disablement the employee is performing service arising out of and in the course of his employment;

C. where the disablement or death is proximately caused by an occupational disease arising out of and in the course of his employment, and is not intentionally self-inflicted.

History: 1941 Comp., § 57-1107, enacted by Laws 1945, ch. 135, § 7; 1953 Comp., § 59-11-7.

52-3-9. Filing insurance under the New Mexico Occupational Disease Disablement Law.

A. Every employer subject to the New Mexico Occupational Disease Disablement Law shall file in the office of the director evidence of workers' occupational disease disablement insurance coverage in the form of a certificate containing that information required by regulation of the director. The required certificate must be provided by an authorized insurer as defined in Section 59A-1-8 NMSA 1978. In case any employer is able to show to the satisfaction of the director that he is financially solvent and that providing insurance coverage is unnecessary, the director shall issue him a certificate to that effect, which shall be filed in lieu of the certificate of insurance. The director shall provide by regulation the procedures for reviewing, renewing and revoking any certificate excusing an employer from filing a certificate of insurance, including provisions permitting the director to condition the issuance of the certificate upon the employer's proving adequate security.

B. Any certificate of the director filed under the provisions of this section shall show the post office address of that employer.

C. Every contract or policy insuring against liability for workers' occupational disease disablement benefits or certificate that is filed under the provisions of this section shall provide that the insurance carrier or the employer shall be directly and primarily liable to the worker and, in event of his death, his dependents, to pay the compensation for which the employer is liable.

D. In the event of an insurance policy cancellation, the occupational disease disablement insurance carrier shall file notice with the director within ten days of such cancellation on a form approved by the director.

History: 1978 Comp., § 52-3-9, enacted by Laws 1987, ch. 235, § 33; 1990 (2nd S.S.), ch. 2, § 35.

52-3-9.1. Repealed.

52-3-9.2. Destruction of policies, bonds and undertakings.

From and after the expiration of three years following the date of filing any insurance policy or certificate thereof, bond or undertaking pursuant to the provisions of Section 52-3-9 NMSA 1978, the director may, in his discretion, authorize the destruction of such insurance policies, certificates, bonds and undertakings.

History: 1978 Comp., § 52-3-9.2, enacted by Laws 1980, ch. 88, § 5; 1987, ch. 235, § 35.

52-3-9.3. Repealed.

52-3-10. Employer liability for compensation; conditions when no payment to be made.

A. There is imposed upon every employer a liability for the payment of compensation to every employee of such employer who suffers total disablement by reason of an occupational disease arising out of his employment, subject to the following conditions:

(1) no compensation shall be paid when the last day of injurious exposure of the employee to the hazards resulting in an occupational disease occurred prior to the passage of the New Mexico Occupational Disease Disablement Law; and

(2) no compensation shall be paid in case of silicosis or asbestosis unless during the ten years immediately preceding the disablement the injured employee was exposed to harmful quantities of silicon dioxide dust or asbestos dust for a total period of no less than twelve hundred fifty work shifts in employment in this state and unless disablement results within two years from the last day upon which the employee actually worked for the employer against whom compensation is claimed. For the purpose of computing work shifts under this section, employment for less than one-half of a normal shift shall be disregarded, and employment for one-half or more of a normal shift shall be deemed a full shift.

B. There is imposed upon every employer a liability for the payment of compensation to the dependents of every employee in cases where death results from

an occupational disease arising out of his employment, subject to the following conditions:

(1) no compensation shall be paid when the last day of exposure of the employee to the hazards resulting in death from occupational disease occurred prior to the passage of the New Mexico Occupational Disease Disablement Law;

(2) no compensation shall be paid for death from silicosis or asbestosis unless during the ten years immediately preceding the disablement the deceased employee was exposed to harmful quantities of silicon dioxide dust or asbestos dust for a period of not less than twelve hundred fifty work shifts in this state;

(3) no compensation shall be paid for death from silicosis or asbestosis unless the death results within two years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous disablement from silicosis or asbestosis for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the director, and in these cases compensation shall be paid if death results within five years from the last day upon which the employee actually worked for the employer against whom compensation is claimed; and

(4) no compensation shall be paid for death from an occupational disease other than silicosis or asbestosis unless death results within one year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous disablement from an occupational disease other than silicosis or asbestosis for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the director, and in these cases compensation shall be paid if death results within three years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

C. The time limits prescribed by this section shall not apply in the case of an employee whose disablement or death is due to occupational exposure to radioactive or fissionable materials, provided no compensation shall be paid in such a case unless such disablement or death occurs within ten years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

History: 1941 Comp., § 57-1110, enacted by Laws 1945, ch. 135, § 10; 1953 Comp., § 59-11-10; Laws 1965, ch. 39, § 1; 1973, ch. 239, § 4; 1986, ch. 22, § 56.

52-3-11. Last employer liable; exception.

Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazards of employment resulting in such disease, provided that in the case of

silicosis or asbestosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust or asbestos dust during a period of sixty days or more.

History: 1941 Comp., § 57-1111, enacted by Laws 1945, ch. 135, § 11; 1953 Comp., § 59-11-11.

52-3-12. Not applicable in certain cases.

This act shall not be construed to apply to business pursuits or employments which according to law are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged.

History: 1941 Comp., § 57-1112, enacted by Laws 1945, ch. 135, § 12; 1953 Comp., § 59-11-12.

52-3-13. Dependents defined; determination of.

A. The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of the New Mexico Occupational Disease Disablement Law:

(1) a child under eighteen years of age or incapable of self-support and unmarried or under twenty-three years of age if enrolled as a full-time student in any accredited educational institution;

(2) the widow or widower, only if living with the deceased at the time of his death or legally entitled to be supported by him, including a divorced spouse entitled to alimony;

(3) a parent or grandparent only if actually dependent, wholly or partially, upon the deceased;

(4) a grandchild, brother or sister only if under eighteen years of age, or incapable of self-support, and wholly dependent upon the deceased.

The relation of dependency must exist at the time of the disablement.

(5) questions as to who constitute dependents, and the extent of their dependency, shall be determined as of the date of the disablement and their right to any death benefits shall cease upon the happening of any one of the following contingencies:

(a) upon the marriage of the widow or widower;

(b) upon a child, grandchild, brother or sister reaching the age of eighteen years, unless at such time said child, grandchild, brother or sister is physically or mentally incapacitated from earnings, or upon a dependent child, grandchild, brother or sister becoming self-supporting prior to attaining said age, or, if a child, grandchild, brother or sister over eighteen who is enrolled as a full-time student in any accredited educational institution ceases to be so enrolled or reaches the age of twenty-three. A child, grandchild, brother or sister who originally qualified as a dependent by virtue of being less than eighteen years of age may, upon reaching age eighteen, continue to qualify if physically or mentally incapable of self-support and actually dependent or enrolled in an educational institution;

(c) upon the death of any dependent.

B. As used in this section the term "child" includes stepchildren, adopted children, posthumous children, wholly dependent grandchildren and acknowledged illegitimate children, but does not include married children unless dependent. The words "adopted" and "adoption" as used in the New Mexico Occupational Disease Disablement Law shall include cases where persons are treated as adopted as well as those of legal adoption.

History: 1941 Comp., § 57-1113, enacted by Laws 1945, ch. 135, § 13; 1953 Comp., § 59-11-13; Laws 1965, ch. 299, § 1; 1973, ch. 46, § 1; 1977, ch. 276, § 1.

52-3-14. Compensation; limitations.

A. The compensation to which a worker who has suffered disablement, or the worker's dependents, shall be entitled under the New Mexico Occupational Disease Disablement Law is limited to the provisions of that law. No compensation shall be due or payable under the New Mexico Occupational Disease Disablement Law for any disablement that does not result in either the temporary disablement of the worker lasting for more than seven days or in the worker's permanent disablement as herein described or in death; provided, however, that if the period of temporary disablement of the worker lasts for more than four weeks from the date of the disablement, compensation under the New Mexico Occupational Disease Disablement Law shall be payable in addition to the amount hereinafter stated in a like amount for the first seven days after the date of disablement. But for any such disablement for which compensation is payable under the New Mexico Occupational Disease Disablement Law, the employer shall in all proper cases, as herein provided, pay to the disabled worker or to some person authorized by the director to receive the same, for the use and benefit of the beneficiaries entitled thereto, compensation at regular intervals of no more than sixteen days apart, in accordance with this section, less proper deductions on account of default in failure to give notice of such disablement as required in Section 52-3-19 NMSA 1978.

B. For total disablement, the worker shall receive sixty-six and two-thirds percent of the worker's average weekly wage, not to exceed a maximum compensation of eighty-

five percent of the average weekly wage in the state, a week, effective July 1, 1987, continuing through December 31, 1999, and thereafter not to exceed a maximum of one hundred percent of the average weekly wage in the state, a week, but not to be less than a minimum compensation of thirty-six dollars ($36.00) a week, during the period of such disablement, but in no event to exceed a period of seven hundred weeks; provided, however, that when the workers' wages are less than thirty-six dollars ($36.00) a week, then the compensation to be paid such worker shall be the full amount of such weekly wages; provided further that the benefits paid or payable during a worker's entire period of disablement shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement.

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

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

E. For the purpose of the New Mexico Occupational Disease Disablement Law, the average weekly wage in the state shall be determined by the workforce solutions department on or before June 30 of each year and shall be computed from all wages reported to the department from employing units, including reimbursable employers, in accordance with the rules of the department for the preceding calendar year, divided by the total number of covered employees divided by fifty-two. The first such determination by the employment security division of the average weekly wage in the state shall be made on or before June 30, 1975 from reported wages and covered employees for the calendar year ending December 31, 1974.

F. The average weekly wage in the state, determined as provided in Subsection E of this section, shall be applicable for the full period during which compensation is payable when the date of the occurrence of the disablement falls within the calendar year commencing January 1 following the June 30 determination.

G. Unless the computation provided for in Subsection E of this section results in an increase or decrease of two dollars ($2.00) or more, raised to the next whole dollar, the statewide average weekly wage determination shall not be changed for any calendar year.

H. In case death proximately results from the disablement within the period of two years, compensation benefits to be paid such worker shall be in the amounts and to the persons as follows:

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

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

(2) if there are dependents at the time of death, the payment shall consist of a sum not to exceed seven thousand five hundred dollars ($7,500) for funeral expenses and expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased may have been paid for disability, and a percentage specified in this paragraph for average weekly wages subject to the limitations of the New Mexico Occupational Disease Disablement Law to continue for the period of seven hundred weeks from the date of death of such worker; provided that the total death compensation, unless otherwise specified, payable in any of the cases mentioned in this section shall not be less than the minimum weekly compensation provided in Subsection B of this section or more than the maximum weekly compensation provided in Subsection B of this section and shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement. If there are dependents entitled thereto, compensation shall be paid to the dependents or to the person authorized by the director or the court to receive the same for the benefit of the dependents in such portions and amounts as the director or the court, bearing in mind the necessities of the case and the best interests of the dependents and of the public, may determine, to be computed on the following basis and distributed to the following persons:

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

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

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

(d) two years' compensation benefits in one lump sum shall be payable to a widow or widower upon remarriage; however, the total benefits shall not exceed the maximum compensation benefits as provided in Paragraph (2) of this subsection;

(e) if there is neither widow, widower nor children, then to the father and mother or the survivor of them if dependent to any extent upon the worker for support at the time of the worker's death, twenty-five percent of the average weekly wage of the deceased; provided that if such father and mother, or the survivor of them, was totally

dependent upon such worker for support at the time of the worker's death, they shall be entitled to fifty percent of the average weekly wage of the deceased, subject to the maximum weekly compensation provided for in Subsection B of this section;

(f) no disablement benefits payable by reason of a worker's death shall exceed the maximum weekly compensation provided for in Subsection B of this section, and no dependent or any class thereof other than a widow or widower or children shall in any event be paid total benefits in excess of seven thousand five hundred dollars ($7,500) exclusive of funeral expenses and the expenses provided for medical and hospital services for the deceased paid for by the employer. If there is neither widow, widower nor children nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the deceased for support at the time of the deceased's death, thirty-five percent of the average weekly wage of the deceased, with fifteen percent additional for brothers or sisters in excess of two, with a maximum of sixty-six and two-thirds percent to be paid to their guardian; provided that the maximum compensation to partial dependents shall not exceed the respective amounts therefor contributed by the deceased employee or the maximum weekly compensation provided for in Subsection B of this section; and

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

History: 1941 Comp., § 57-1114, enacted by Laws 1945, ch. 135, § 14; 1949, ch. 113, § 1; 1951, ch. 184, § 1; 1953 Comp., § 59-11-14; Laws 1965, ch. 299, § 2; 1967, ch. 152, § 1; 1969, ch. 247, § 1; 1971, ch. 261, § 8; 1973, ch. 239, § 5; 1975, ch. 317, § 5; 1977, ch. 276, § 2; 1986, ch. 22, § 57; 1987, ch. 235, § 36; 1989, ch. 263, § 51; 1999, ch. 172, § 3; 2015, ch. 70, § 4.

52-3-15. Disablement compensation restrictions; medical and related services; selection of health care provider; artificial members.

A. No compensation shall be allowed for the first seven days after the employee has suffered disablement unless such disablement continues for a period of more than four weeks after the disablement occurs, or in any case, unless the employer is notified thereof within the period specified in Section 52-3-16 NMSA 1978.

B. After disablement and continuing so long as medical and surgical attention is reasonably necessary, the employer shall, subject to the provisions of this section,

provide the worker in a timely manner reasonable and necessary health care services from a health care provider.

C. The employer shall initially either select the health care provider for the injured worker or permit the injured worker to make the selection. Subject to the provisions of this section, that selection shall be in effect during the first sixty days from the date the worker receives treatment from the initially selected health care provider.

D. After the expiration of the initial sixty-day period set forth in Subsection C of this section, the party who did not make the initial selection may select a health care provider of his choice. Unless the worker and employer otherwise agree, the party seeking such a change shall file a notice of the name and address of his choice of health care provider with the other party at least ten days before treatment from that health care provider begins. The director shall adopt rules and regulations governing forms, which employers shall post in conspicuous places, to enable this notice to be promptly and efficiently provided. This notice may be filed on or after the fiftieth day of the sixty-day period set forth in Subsection C of this section.

E. If a party objects to the choice of health care provider made pursuant to Subsection D of this section, then he shall file an objection to that choice pursuant to Subsection F of this section with a workers' compensation judge within three days from receiving the notice. He shall also provide notice of that objection to the other party. If the employer does not file his objection within the three-day period, then he shall be liable for the cost of treatment provided by the worker's health care provider until the employer does file his objection and the workers' compensation judge has rendered his decision as set forth in Subsection G of this section. If the worker does not file his objection within the three-day period, then the employer shall only be liable for the cost of treatment from the health care provider selected by the employer, subject to the provisions of Subsections F, G and H of this section. Nothing in this section shall remove the employer's obligation to provide reasonable and necessary health care services to the worker so long as the worker complies with the provisions of this section.

F. If the worker or employer disagrees with the choice of the health care provider of the other party at any time, including the initial sixty-day period, and they cannot otherwise agree, then he shall submit a request for a change of health care provider to a workers' compensation judge. The director shall adopt rules and regulations governing forms, which employers shall post in conspicuous places, to submit to a workers' compensation judge a request for a change of a health care provider.

G. The request shall state the reasons for the request and may state the applicant's choice for a different health care provider. The applicant shall bear the burden of proving to the workers' compensation judge that the care being received is not reasonable. The workers' compensation judge shall render his decision within seven days from the date the request was submitted. If the workers' compensation judge grants the request, he shall designate either the applicant's choice of health care provider or a different health care provider.

H. If the worker continues to receive treatment or services from a health care provider rejected by the employer and not in compliance with the workers' compensation judge's ruling, then the employer is not required to pay for any of the additional treatment or services provided to that worker by that health care provider.

I. In all cases where the disablement is such as to permit the use of artificial members, including teeth and eyes, the employer shall pay for such artificial members.

History: 1941 Comp., § 57-1114a, enacted by Laws 1951, ch. 184, § 2; 1953 Comp., § 59-11-15; Laws 1965, ch. 299, § 3; 1971, ch. 261, § 9; 1973, ch. 239, § 6; 1977, ch. 276, § 3; 1987, ch. 235, § 37; 1990 (2nd S.S.), ch. 2, § 36.

52-3-16. Claim to be filed for occupational disease disablement benefits; effect of failure to give required notice or to file claim within time allowed.

A. If any employer or his insurer fails or refuses to pay a worker any installment of benefits to which the worker is entitled under the New Mexico Occupational Disease Disablement Law, after notice has been given as required by Section 52-3-19 NMSA 1978, it is the duty of the worker insisting on the payment of benefits to file a claim therefor as provided in the New Mexico Occupational Disease Disablement Law not later than one year after the failure or refusal of the employer or insurer to pay benefits.

B. If the worker fails to give notice in the manner and within the time required by Section 52-3-19 NMSA 1978 or if the worker fails to file a claim for benefits within the time required by this section, his claim for benefits, all his right to the recovery of benefits and the bringing of any proceeding for the recovery of compensation are forever barred.

C. In case of the death of a worker who would have been entitled to receive benefits if death had not occurred, claim for benefits may be filed on behalf of his eligible dependents to recover benefits from the employer or his insurer.

D. Payment may be received or claim filed by any person whom the court may authorize or permit on behalf of the eligible beneficiaries.

E. No claim shall be filed, however, to recover benefits for the death of the worker unless he or someone on his behalf or on behalf of his eligible dependents has given notice in the manner and within the time required by Section 52-3-19 NMSA 1978 and unless the claim is filed within one year from the date of the worker's death.

History: 1953 Comp., § 59-11-15.1, enacted by Laws 1965, ch. 299, § 4; 1986, ch. 22, § 58; 1989, ch. 263, § 52.

52-3-17. Vocational rehabilitation services.

A. The purpose of this section is the restoration of the disabled employee to gainful employment, preferably that for which he has had training or experience.

B. Vocational rehabilitation services are those services designed to return the employee to gainful employment, in the following priority:

(1) pre-injury job with the same employer;

(2) modified work with the same employer;

(3) job related to former employment; or

(4) suitable employment in a nonrelated work field.

C. Subject to the requirements imposed upon the employee and the other limitations of this section, the employer shall furnish vocational rehabilitation services for the employee who has suffered disablement that is covered by the New Mexico Occupational Disease Disablement Law. When, as a result of the injury, the employee is unable to perform the pre-injury job with the same employer or unable to perform modified work with the same employer, he shall be entitled to vocational rehabilitation evaluation, counseling and training if necessary to return the employee to either a job related to his former employment or suitable employment in a nonrelated field. The total amount required to be paid by an employer for vocational evaluation and counseling shall not exceed two thousand five hundred dollars ($2,500).

D. The employer shall notify the employee in writing of the provisions of this section within thirty days of the first report of disablement required to be filed by the employer under Section 52-3-51 NMSA 1978 if the employee is at the time disabled.

E. To be entitled to vocational rehabilitation services or benefits, a disabled employee must notify the employer in writing that he has been released within one hundred twenty days from the date that he is released from regular treatment by his primary treating health care provider as defined in Section 52-4-1 NMSA 1978. In the event the employee fails to notify the employer, the employer shall not be liable for any vocational rehabilitation benefits.

F. A referral for an evaluation of a [an] employee for suitability for vocational rehabilitation services shall be made by the employer of an employee who notifies the employer under Subsection E of this section. If the evaluation or vocational rehabilitation services are requested and these services are not voluntarily offered by the employer or if offered but not accepted by the employee, the workers' compensation judge upon application affording the parties an opportunity to be heard may determine whether the employee needs evaluation or vocational rehabilitation services and shall cooperate with and refer promptly all cases in need of such services to the appropriate public or private agencies in this state or where necessary in any other state for such services.

G. An employee who is entitled to vocational rehabilitation training shall receive payment for board, lodging, tuition, travel and all other expenses, including the cost or charges for the vocational rehabilitation training, for a period of time not to exceed two years from the date vocational rehabilitation training is determined to be necessary. Any benefits to which an employee is entitled under this section shall not be considered or paid as part of any lump sum settlement of a claim by an employee and payment by the employer shall only be required as services are incurred.

H. It shall be the responsibility of the employee to submit to all reasonable requests for evaluations made by the employer or required by the workers' compensation judge, as may be necessary, to determine the need for or to develop a plan for vocational rehabilitation. However, the employee shall not be required to bear the cost of any evaluation requested by the employer, notwithstanding the limitation on expenditures specified in Subsection C of this section. If the employee refuses to submit to evaluation or to accept vocational rehabilitation training pursuant to an order of a workers' compensation judge, the employer's liability to the employee shall be limited to medical and disability benefits under the New Mexico Occupational Disease Disablement Law.

History: 1978 Comp., § 52-3-17, enacted by Laws 1987, ch. 235, § 38; 1989, ch. 263, § 53.

52-3-18. Determination by worker's compensation division of the labor department.

All issues of fact or law arising under the New Mexico Occupational Disease Disablement Law shall be determined by the worker's compensation division of the labor department pursuant to the provisions of Chapter 52 NMSA 1978.

History: 1953 Comp., § 59-11-16, enacted by Laws 1965, ch. 299, § 5; 1986, ch. 22, § 60; 1987, ch. 342, § 29.

52-3-19. Notice of disablement to employer; employer to post clear notice of requirement.

A. Any worker claiming to be entitled to benefits under the New Mexico Occupational Disease Disablement Law from any employer shall give notice in writing to his employer of the occupational disease within fifteen days after the beginning of such disablement, unless, by reason of his disablement or some other cause beyond his control, the worker is prevented from giving notice within that time, in which case he shall give notice as soon as may reasonably be done and at all events not later than sixty days after the beginning of such disablement.

B. No written notice is required to be given where the employer or any superintendent or foreman or other agent in charge of the work in connection with which the disablement was occasioned had actual knowledge of such disablement.

C. Each employer shall post, and keep posted in conspicuous places upon his premises where notices to employees and applicants for employment are customarily posted, a notice that advises workers of the requirement specified in Subsection A of this section to give the employer notice in writing of the disablement within fifteen days of its occurrence. The notice shall be prepared or approved by the director. The failure of an employer to post the notice required in this subsection shall toll the time a worker has to give the notice in writing specified in Subsection A of this section up to but no longer than the maximum sixty-day period.

D. An employer may not use lack of notice under this section as a defense to a worker's disablement compensation claim when the employer files a report of accident under Section 52-3-51 NMSA 1978.

History: 1953 Comp., § 59-11-16.1, enacted by Laws 1965, ch. 299, § 6; 1989, ch. 263, § 54; 1990 (2nd S.S.), ch. 2, § 37.

52-3-20. Payment of benefits in installments.

Benefits shall be paid by the employer to the worker in installments. The first installment shall be paid not later than fourteen days after the worker has missed seven days of lost time from work, whether or not the days are consecutive. Remaining installments shall be paid twice a month at intervals not more than sixteen days apart, in sums as nearly equal as possible, except as provided in Section 52-5-12 NMSA 1978.

History: 1953 Comp., § 59-11-16.2, enacted by Laws 1965, ch. 299, § 7; 1989, ch. 263, § 55; 1993, ch. 193, § 6; 2003, ch. 259, § 7.

52-3-21 to 52-3-24. Repealed.

52-3-25. Effect of failure of worker to file claim by reason of conduct of employer.

The failure of any person entitled to benefits under the New Mexico Occupational Disease Disablement Law to give any notice or file any claim within the time fixed by that law shall not deprive the person of the right to benefits where the failure was caused in whole or in part by the conduct of the employer or insurer which reasonably led the person entitled to compensation to believe the benefits would be paid.

History: 1953 Comp., § 59-11-16.7, enacted by Laws 1965, ch. 299, § 12; 1986, ch. 22, § 61; 1989, ch. 263, § 56.

52-3-26 to 52-3-30. Repealed.

52-3-31. Repealed.

52-3-32. Occupational diseases; proximate causation.

The occupational diseases defined in Section 52-3-33 NMSA 1978 shall be deemed to arise out of the employment only if there is a direct causal connection between the conditions under which the work is performed and the occupational disease and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence. In all cases where the defendant denies that an alleged occupational disease is the material and direct result of the conditions under which work was performed, the worker must establish that causal connection as a medical probability by medical expert testimony. No award of compensation benefits shall be based on speculation or on expert testimony that as a medical possibility the causal connection exists.

History: 1941 Comp., § 57-1119, enacted by Laws 1945, ch. 135, § 19; 1953 Comp., § 59-11-20; Laws 1965, ch. 299, § 17; 1989, ch. 263, § 57.

52-3-32.1. Firefighter occupational conditions.

A. As used in this section, "firefighter" means a person who is employed as a full-time non-volunteer firefighter by the state or a local government entity and who has taken the oath prescribed for firefighters.

B. If a firefighter is diagnosed with one or more of the following conditions after the period of employment indicated, and the condition was not revealed during an initial employment medical screening examination or during a subsequent medical review pursuant to the Occupational Health and Safety Act [50-9-1 to 50-9-25 NMSA 1978] and rules promulgated pursuant to that act, the condition is presumed to be proximately caused by employment as a firefighter:

(1) brain cancer after ten years;

(2) bladder cancer after twelve years;

(3) kidney cancer after fifteen years;

(4) colorectal cancer after ten years;

(5) non-Hodgkin's lymphoma after fifteen years;

(6) leukemia after five years;

(7) ureter cancer after twelve years;

(8) testicular cancer after five years if diagnosed before the age of forty with no evidence of anabolic steroids or human growth hormone use;

(9) breast cancer after five years if diagnosed before the age of forty without a breast cancer 1 or breast cancer 2 genetic predisposition to breast cancer;

(10) esophageal cancer after ten years;

(11) multiple myeloma after fifteen years;

(12) hepatitis, tuberculosis, diphtheria, meningococcal disease and methicillin-resistant staphylococcus aureus appearing and diagnosed after entry into employment; or

(13) posttraumatic stress disorder diagnosed by a physician or psychologist that results in physical impairment, primary or secondary mental impairment or death.

C. The presumptions created in Subsections B and D of this section may be rebutted by a preponderance of evidence in a court of competent jurisdiction showing that the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing a described condition.

D. If a firefighter is diagnosed with a heart injury or stroke suffered within twenty-four hours of fighting a fire, while responding to an alarm, while returning from an alarm call, while engaging in supervised physical training or while responding to or performing in a non-fire emergency, the heart injury or stroke is presumed to be proximately caused by employment as a firefighter. The presumption created in this subsection shall not be made if the firefighter's employer does not have a current physical training program and the firefighter does not have a current medical screening examination or review pursuant to the Occupational Health and Safety Act and rules promulgated pursuant to that act allowing participation in that program.

E. When any presumptions created in this section do not apply, it shall not preclude a firefighter from demonstrating a causal connection between employment and condition or injury by a preponderance of evidence in a court of competent jurisdiction.

F. Medical treatment based on the presumptions created in this section shall be provided by an employer as for a job-related condition or injury unless and until a court of competent jurisdiction determines that the presumption does not apply. If the court determines that the presumption does not apply or that the condition or injury is not job related, the employer's workers' compensation insurance provider shall be reimbursed for health care costs by the medical or health insurance plan or benefit provided for the firefighter by the employer.

History: Laws 2009, ch. 252, § 1; 2019, ch. 118, § 1.

52-3-33. Occupational diseases; definition.

As used in the New Mexico Occupational Disease Disablement Law, "occupational disease" includes any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such and includes any disease due to, or attributable to, exposure to or contact with any radioactive material by an employee in the course of his employment.

History: 1953 Comp., § 59-11-21, enacted by Laws 1973, ch. 239, § 7.

52-3-34. When complicated with other diseases; payments.

In cases of disablement or death from silicosis, complicated with tuberculosis of the lungs, compensation shall be payable as for disablement or death from silicosis alone. In case of disablement or death from silicosis when complicated with any disease other than tuberculosis of the lungs, compensation shall be reduced as provided in Section 30 [52-3-43 NMSA 1978].

History: 1941 Comp., § 57-1121, enacted by Laws 1945, ch. 135, § 21; 1953 Comp., § 59-11-22.

52-3-35. Termination of compensation; reopening award; time; limits.

Payment of compensation for disablement shall cease upon the termination of the disablement. An application to terminate compensation awarded may be made to the director by any person in interest, or the termination may be decided by the workers' compensation judge upon his own motion. Notice of decision as to termination shall be given by the workers' compensation judge to all parties in interest. Where the disablement has terminated and within one year thereafter, or in case of silicosis or asbestosis within two years, the disablement recurs as a result of the occupational disease for which the award was made, the workers' compensation judge may order resumption of compensation if claim therefor is made within sixty days after the recurrence of the disablement.

History: 1941 Comp., § 57-1122, enacted by Laws 1945, ch. 135, § 22; 1953 Comp., § 59-11-23; Laws 1986, ch. 22, § 62; 1989, ch. 263, § 58.

52-3-36. Conversion to lump-sum payment.

The workers' compensation judge may approve an agreement for the conversion of disease disablement benefits into a lump-sum payment.

History: 1978 Comp., § 52-3-36, enacted by Laws 1987, ch. 235, § 39; 1989, ch. 263, § 59.

52-3-37. Compensation exempt from execution.

Compensation shall be exempt from claims of creditors and from any attachment, garnishment or execution, and shall be paid only to such claimant or his personal representative, or such other persons as the court may, under the terms hereof, appoint to receive or collect the same. No claim or judgment for compensation, under this act, shall accrue to or be recovered by relatives or dependents not residents of the United States.

History: 1941 Comp., § 57-1124, enacted by Laws 1945, ch. 135, § 24; 1953 Comp., § 59-11-25.

52-3-38. Minor deemed sui juris.

A minor working at an age and at an occupation legally permitted shall be deemed of the age of majority for the purpose of the New Mexico Occupational Disease Disablement Law, and no other person shall have any cause of action or right to compensation for disablement of the minor worker, but in the event of the approval of an agreement for lump sum settlement of compensation to the minor, the sum shall be paid only to the legally appointed guardian of the minor.

History: 1941 Comp., § 57-1125, enacted by Laws 1945, ch. 135, § 25; 1953 Comp., § 59-11-26; Laws 1989, ch. 263, § 60.

52-3-39. Physical examinations of worker; independent medical examination; unsanitary or injurious practices by worker; testimony of health care providers.

A. In the event of a dispute concerning any medical issue, if the parties cannot agree upon the use of a specific independent medical examiner, either party may petition a workers' compensation judge for permission to have the worker undergo an independent medical examination. The independent medical examination shall be performed immediately, pursuant to procedures adopted by the director, by a health care provider other than the designated health care provider, unless the employer and the worker otherwise agree.

B. In deciding who may conduct the independent medical examination, the workers' compensation judge shall not designate the health care provider initially chosen by the petitioner. The workers' compensation judge shall designate a health care provider on the approved list of persons authorized by the committee appointed by the advisory council on workers' compensation to create that list. The decision of the workers'

compensation judge shall be final. The employer shall pay for any independent medical examination.

C. Only the health care provider who has treated the worker pursuant to Section 52-3-15 NMSA 1978 or the health care provider providing the independent medical examination pursuant to this section may offer testimony at any workers' compensation hearing concerning the particular disablement in question.

D. If, pursuant to Subsection D of Section 52-3-15 NMSA 1978, the injured worker selects a new health care provider, the employer shall be entitled to periodic examinations of the worker by the health care provider he previously selected. Examinations may not be required more frequently than at six-month intervals; except that upon application to the workers' compensation judge having jurisdiction of the claim and after reasonable cause therefor, examinations within six-month intervals may be ordered. In considering such applications, the workers' compensation judge should exercise care to prevent harassment of the claimant.

E. If the employer requests an independent medical examination or an examination pursuant to Subsection D of this section, the worker shall travel to the place at which the examination shall be conducted. Within thirty days after the examination, the worker shall be compensated by the party requesting the examination for all necessary and reasonable expenses incidental to submitting to the examination, including the cost of travel, meals, lodging, loss of pay or other like direct expense, but the amount to be compensated for meals and lodging shall not exceed that allowed for nonsalaried public officers under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

F. No attorney shall be present at any examination authorized under this section.

G. Both the employer and the worker shall be given a copy of the report of the examination of the worker made by the independent health care provider pursuant to this section.

H. If a worker fails or refuses to submit to examination in accordance with this section, he shall forfeit all disablement compensation benefits that would accrue or become due to him except for such failure or refusal to submit to examination during the period that he persists in such failure and refusal unless he is by reason of disability unable to appear for examination.

I. If any employee persists in any unsanitary or injurious practice that tends to imperil, retard or impair his recovery or increase his disability or refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the workers' compensation judge may in his discretion reduce or suspend the employee's disablement compensation benefits.

History: 1978 Comp., § 52-3-39, enacted by Laws 1987, ch. 235, § 40; 1989, ch. 263, § 61; 1990 (2nd S.S.), ch. 2, § 38.

52-3-40. Autopsy in death claims.

A. On the filing of a claim for compensation for death from an occupational disease where an autopsy is necessary to ascertain the cause of death, it may be ordered by the workers' compensation judge and shall be made by a qualified person designated by the workers' compensation judge. Any interested person may designate a licensed physician to attend the autopsy, and the findings of the person performing the autopsy shall be filed with the workers' compensation judge and be a public record. All proceedings for compensation shall be suspended upon the refusal of a claimant or claimants to permit the autopsy when so ordered.

B. When an autopsy has been performed pursuant to any order of the workers' compensation judge, no cause of action therefor shall be against any person, firm or corporation participating in or requesting the autopsy.

History: 1941 Comp., § 57-1127, enacted by Laws 1945, ch. 135, § 27; 1953 Comp., § 59-11-28; reenacted by Laws 1986, ch. 22, § 64; 1989, ch. 263, § 62.

52-3-41. Absence; employee to give notices of.

Any employee to whom compensation has been allowed or awarded who desires to leave the locality in which he was employed shall report to his attending physician for examination and shall notify the director in writing of his intention, accompanying the notice with a certificate from the attending physician setting forth the exact nature of the disablement and the condition of the employee with a statement of the probable length of time the disablement will continue. The director may, after the receipt of the request and certificate, consent that the employee leave the locality and give notice thereof to the employer. Otherwise, no compensation shall be paid during such absence. The director shall have the authority to order any employee to return for treatment or further examination to the locality in which he was employed, and in the event of noncompliance with the order, no further payments of compensation shall be made by the employer.

History: 1941 Comp., § 57-1128, enacted by Laws 1945, ch. 135, § 28; 1953 Comp., § 59-11-29; Laws 1986, ch. 22, § 65.

52-3-42. Limitation on filing of claims; rights barred unless timely filed.

The right to benefits under the New Mexico Occupational Disease Disablement Law for disablement or death from an occupational disease shall be forever barred unless written claim is filed with the workers' compensation administration within the time provided:

A. if the claim is made by an employee and based upon silicosis, asbestosis, poisoning by benzol or its poisonous derivatives or any other disease except as provided in this section, it must be filed within one year from the date of the beginning of disablement of the employee; but

B. in cases involving radiation injury or disability, the one-year period for filing claims shall not begin to run until the employee:

(1) sustains such injury or disability; and

(2) knows or by the exercise of reasonable diligence should know of the existence of the injury or disability and its possible relationship to his employment;

C. if the claim is made by a dependent of an employee and based upon death resulting from an occupational disease, it must be filed within one year after the date of death of the employee; and

D. in the event that after disablement or death the employer or his surety has commenced the payment of benefits hereunder, without a claim being filed therefor, the times provided in Subsections A, B and C of this section shall not begin to run until thirty-one days after the employer or surety discontinues the payment of compensation.

History: 1953 Comp., § 59-11-30, enacted by Laws 1965, ch. 299, § 18; 1971, ch. 261, § 11; 1986, ch. 22, § 66; 1989, ch. 263, § 63.

52-3-43. When occupational disease aggravated by other diseases.

Where an occupational disease is aggravated by any other disease or infirmity not itself compensable, or where disablement or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disablement or death, as such occupational disease as a causative factor bears to all the causes of such disablement or death, such reduction to be effected by reducing the number of weekly payments.

History: 1941 Comp., § 57-1130, enacted by Laws 1945, ch. 135, § 30; 1953 Comp., § 59-11-31.

52-3-44. No liability prior to effective date.

Nothing in this act shall create any liability on the part of any employer where disablement or death occurred prior to the date on which this act becomes effective nor for death or injury by accident arising out of and in the course of employment.

History: 1941 Comp., § 57-1131, enacted by Laws 1945, ch. 135, § 31; 1953 Comp., § 59-11-32.

52-3-45. Employees [Employee's] willful misconduct, willful self-exposure; defined.

Notwithstanding anything herein contained no employee or dependent of any employee shall be entitled to receive compensation for disablement or death from an occupational disease when such disablement or death, wholly or in part, was caused by the willful misconduct, willful self-exposure or willful disobedience to such reasonable rules and regulations as may be adopted by the employer and which rules and regulations have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of such employee. As used in this section the term "willful self-exposure" shall include:

A. failure or omission on the part of an employee or applicant for employment truthfully to state in writing to the best of his knowledge in answer to any inquiry made by the employer, the place, duration and nature of previous employment;

B. failure or omission on the part of an applicant for employment to truthfully state in writing to the best of his knowledge in answer to an inquiry made by the employer, whether or not he had previously been disabled, laid off or compensated in damages, or otherwise, because of any physical disability;

C. failure or omission on the part of an employee or applicant for employment truthfully to give in writing to the best of his knowledge in answer to any inquiry made by the employer, full information about the previous status of his health, previous medical and hospital attention and direct and continuous exposure to active pulmonary tuberculosis.

History: 1941 Comp., § 57-1132, enacted by Laws 1945, ch. 135, § 32; 1953 Comp., § 59-11-33.

52-3-45.1. Unfair claim-processing practices; bad faith.

A. Claims may be filed under the New Mexico Occupational Disease Disablement Law alleging unfair claim-processing practices or bad faith by an employer, insurer or claim-processing representative relating to any aspect of the New Mexico Occupational Disease Disablement Law. The director may also investigate allegations of unfair claim processing or bad faith on his own initiative.

B. If unfair claim processing or bad faith has occurred in the handling of a particular claim, the claimant shall be awarded, in addition to any benefits due and owing, a benefit penalty not to exceed twenty-five percent of the benefit amount ordered to be paid.

C. If an employer, insurer or claim-processing representative has a history or pattern of repeated unfair claim-processing practices or bad faith, the director or a workers' compensation judge may impose a civil penalty of up to one thousand dollars ($1,000) for each violation. The civil penalty shall be deposited in the workers' compensation administration fund.

D. Any person aggrieved by an order under this section may request a hearing pursuant to the New Mexico Occupational Disease Disablement Law.

E. The director shall adopt by regulation definitions of unfair claim-processing practices and bad faith.

F. This section shall not be construed as limiting or interfering with the authority of the superintendent of insurance as provided by law to regulate any insurer, including his jurisdiction over unfair claim settlement practices.

History: Laws 1990 (2nd S.S.), ch. 2, § 44.

52-3-45.2. Retaliation against employee seeking benefits; civil penalty.

A. An employer shall not discharge, threaten to discharge or otherwise retaliate in the terms or conditions of employment against a worker who seeks occupational disease disablement benefits for the sole reason that that employee seeks occupational disease disablement benefits.

B. Any person who discharges a worker in violation of Subsection A of this section shall rehire that worker pursuant to the provisions of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] and the New Mexico Occupational Disease Disablement Law, provided the worker agrees to be rehired.

C. The director or a workers' compensation judge shall impose a civil penalty of up to five thousand dollars ($5,000) for each violation of the provisions of Subsection A or B of this section.

D. The civil penalty shall be deposited in the workers' compensation administration fund.

History: Laws 1990 (2nd S.S.), ch. 2, § 47.

52-3-45.3. False statements or representations with regard to physical condition; forfeiture.

A. When an employer asks by written questionnaire for the disclosure of a worker's medical condition, no compensation is payable from that employer for a disablement to

that worker under the provisions of the New Mexico Occupational Disease Disablement Law if:

(1) the worker knowingly and willfully concealed information or made a false representation of his medical condition;

(2) the employer:

(a) was not aware of the concealed information that, if known, would have been a substantial factor in the initial or continued employment of the worker; or

(b) relied upon the false representation, and this reliance was a substantial factor in the initial or continued employment of the worker; and

(3) a medical condition that was concealed or falsely represented substantially contributed to the disablement.

B. The provisions of this section do not apply unless, in the written questionnaire, the employer clearly and conspicuously discloses that the worker shall be entitled to no future compensation benefits if he knowingly and willfully conceals or makes a false representation about the information requested.

C. Nothing in this section shall be construed to deny or limit compensation benefits paid or being paid for prior disablements.

D. This section shall apply only prospectively. It shall not alter, as to prior reports, the law governing questionnaires and information reported that was in effect prior to the effective date of this section.

History: Laws 1990 (2nd S.S.), ch. 2, § 46.

52-3-45.4. Compensation benefits limit.

A. Unless otherwise contracted for by the worker and employer, occupational disease disablement benefits shall be limited so that no worker receives more in total payments, including wages and benefits from his employer, by not working than by continuing to work. Compensation benefits under the New Mexico Occupational Disease Disablement Law shall accordingly be reduced, if necessary, to account for any wages and employer-financed disability benefits a worker receives after the time of disablement. For the purposes of this section, total payments shall be determined on an after-tax basis. This section does not apply to social security payments, employee-financed disability benefits, benefits or payments a worker received from a prior employer, payments for medical or related expenses or general retirement payments, except it does apply to disability retirement benefits.

B. This section shall only apply to disablements that occur after the effective date of this section; it shall not reduce benefits received or due or affect the benefits due for disablements that occur before the effective date of this section.

History: Laws 1990 (2nd S.S.), ch. 2, § 45.

52-3-46. Compensation limited to Occupational Disease Disablement Law; not additional to that provided for accidents.

In all cases where injury results by reason of an accident arising out of or in the course of employment, no compensation under the New Mexico Occupational Disease Disablement Law shall be payable nor shall any compensation be payable under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] for any occupational disease.

History: 1941 Comp., § 57-1133, enacted by Laws 1945, ch. 135, § 33; 1953 Comp., § 59-11-34; Laws 1973, ch. 239, § 8; 1989, ch. 263, § 64.

52-3-47. 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 New Mexico Occupational Disease Disablement Law 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 New Mexico Occupational Disease Disablement Law, 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 the settlement should be approved. In the event of such an appointment, a reasonable fee for the services of the attorney shall be fixed by the workers' compensation judge, subject to the limitation of Subsection I of this section.

C. In all cases where the jurisdiction of the workers' compensation administration is invoked to approve a settlement of a compensation claim under the New Mexico Occupational Disease Disablement Law and the claimant is represented by an attorney, the total amount paid or to be paid by the employer in settlement of the claim shall be stated in the settlement papers, and the workers' compensation judge shall determine and fix a reasonable fee for the claimant's attorney, taking into account any sum previously paid. The fee fixed by the workers' compensation judge shall be the limit of the fee received or to be received by the attorney in connection with the claim, subject to the limitation of Subsection I of this section.

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

E. In all cases where compensation to which any person is entitled under the provisions of the New Mexico Occupational Disease Disablement Law is refused and the claimant thereafter collects compensation through proceedings before the workers' compensation administration or courts in an amount in excess of the amount offered in writing by an employer five business days or more prior to the informal hearing before the administration, the compensation to be paid the attorney for the claimant shall be fixed by the workers' compensation judge hearing the claim or the courts upon appeal in the amount the workers' compensation judge or courts deem reasonable and proper, subject to the limitation of Subsection I of this section. In determining and fixing a reasonable fee, the workers' compensation judge or courts shall take into consideration:

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

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

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

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

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

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

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

(1) if, within ten days after the service of the offer, the opposing party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon that compensation order may be entered as the workers' compensation judge may direct. An offer not accepted shall be deemed withdrawn, and evidence thereof is not admissible except in a proceeding to determine costs. If the compensation order finally obtained by the party

is not more favorable than the offer, that party shall pay the costs incurred by the opposing party after the making of the offer. The fact that an offer has been made but not accepted does not preclude a subsequent offer;

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

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

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

G. In all actions arising under the provisions of Section 52-3-35 NMSA 1978, where the jurisdiction of the workers' compensation administration is invoked to determine the question of whether the claimant's disablement has terminated and the claimant is represented by an attorney, the workers' compensation judge or courts upon appeal shall determine and fix a reasonable fee for the services of the claimant's attorney only if the employer is unsuccessful in establishing that the claimant's disablement has terminated. The fee when fixed by the workers' compensation judge or courts upon appeal shall be taxed as part of the costs against the employer and shall be the limit of the fee received or to be received by the attorney for services in the action, subject to the limitation of Subsection I of this section.

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

I. Attorney fees, including, but not limited to, the costs of paralegal services, legal clerk services and any other related legal services costs on behalf of a claimant or an employer for a single disablement claim, including representation before the workers' compensation administration and the courts on appeal, shall not exceed twenty-two thousand five hundred dollars ($22,500). This limitation applies whether the claimant or employer has one or more attorneys representing the claimant or employer and applies as a cumulative limitation on compensation for all legal services rendered in all proceedings and other matters directly related to a single occupational disease of a claimant. The workers' compensation judge may exceed the maximum amount stated in

this subsection in awarding a reasonable attorney fee if the judge finds that a claimant, an insurer or an employer acted in bad faith with regard to handling the disabled employee's claims and the employer or disabled employee has suffered economic loss as a result thereof. However, in no case shall this additional amount exceed five thousand dollars ($5,000). As used in this subsection, "bad faith" means conduct by the claimant, insurer or employer in the handling of a claim that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of the employee or employer. Any determination of bad faith shall be made by the workers' compensation judge through a separate fact-finding proceeding. Not withstanding the provisions of Subsection J of this section, the party found to have acted in bad faith shall pay one hundred percent of the additional fees awarded for representation of the prevailing party in a bad faith action.

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

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

L. Nothing in this section applies to agents, excluding attorneys, representing employers, insurance carriers or the subsequent injury fund in any matter arising from a claim under the New Mexico Occupational Disease Disablement Law.

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

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

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

History: 1978 Comp., § 52-3-47, enacted by Laws 1987, ch. 235, § 41; 1989, ch. 263, § 65; 1990 (2nd S.S.), ch. 2, § 39; 1993, ch. 193, § 7; 2013, ch. 168, § 2.

52-3-48. Employee to submit to examination and give information regarding self.

A. It is the duty of the employee at the time of his employment or thereafter from time to time at the request of the employer to submit himself to examination by a physician or surgeon duly authorized to practice medicine, who shall be paid by the employer, for the purpose of determining his physical condition.

B. It is also the duty of the employee if requested by his employer to give the names, addresses, relationship and degree of dependency of his dependents, if any, or any subsequent change thereof to the employer, and when the employer or his insurance carrier requires, the employee shall make a detailed verified statement relating to such dependents, matters of employment and other information incident thereto.

C. It is also the duty of the employee, if requested by the employer or his insurance carrier, to make a detailed verified statement as part of an application for employment disclosing specifically a pre-existing permanent physical impairment as that term is defined in Section 52-2-6 NMSA 1978.

History: 1941 Comp., § 57-1135, enacted by Laws 1945, ch. 135, § 35; 1953 Comp., § 59-11-36; 1987, ch. 235, § 42.

52-3-49. Rights and liabilities of employer and employee after award; penalty for failure to file undertaking or become exempt therefrom.

A. Any employee awarded compensation for disablement under the New Mexico Occupational Disease Disablement Law shall, previous to the due date of any installment of compensation provided for in the compensation order upon the order of the workers' compensation judge if requested by his employer or any other person bound by the compensation order, submit himself to medical examination by a physician licensed to practice medicine at a place designated by the person so demanding and which shall be reasonably convenient for the employee, and the employee may have a licensed physician present of his own election. The person requesting such examination shall, at the employee's request, bear the cost of transportation and necessary travel expense to and from the point of examination if the point of examination is more than twenty-five miles from the residence of the employee. The purpose of the examination shall be to determine whether the employee has recovered so that his earning power at any kind of work is restored, and the workers' compensation judge shall be empowered to hear evidence upon such issue. If it is disclosed upon such hearing that termination of disablement has taken place, the workers' compensation judge shall order termination of payment of compensation. If the employee in such cases refuses to submit to examination or obstructs the same, his right to payments shall be suspended until an examination has taken place, and no compensation shall be payable during the period of refusal.

B. The right of any employee or, in case of his death, of those entitled to receive payment or damages for injuries occasioned to him by the negligence or wrong of any person other than the employer as hereinafter defined, shall not be affected by the New Mexico Occupational Disease Disablement Law; but he or they, as the case may be, shall not be allowed to receive payment or recover damages therefor and also claim compensation from the employer hereunder, and in such case the receipt of compensation from the employer hereunder shall operate as an assignment to the

employer, his or its insurer, guarantor or surety, as the case may be, of any cause of action, to the extent of the liability of the employer to the employee occasioned by such injury which the employee or his legal representative or others may have against any other party for such injuries or death.

C. Any employer who fails in any case covered by the New Mexico Occupational Disease Disablement Law to file undertaking of insurance, guaranty or security for the payment of compensation which may become due hereunder or, in lieu thereof, the certificate of the superintendent of insurance as herein provided within the time herein required, shall be deemed guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars ($1,000) for any such offense.

History: 1941 Comp., § 57-1136, enacted by Laws 1945, ch. 135, § 36; 1953 Comp., § 59-11-37; Laws 1980, ch. 88, § 7; 1986, ch. 22, § 68; 1989, ch. 263, § 66.

52-3-49.1. Rehiring of disabled workers.

A. If an employer is hiring, the employer shall offer to rehire any worker who has stopped working due to a disablement for which he has received or is due to receive benefits under the New Mexico Occupational Disease Disablement Law and who applies for his pre-disablement job or modified job similar to the pre-disablement job, subject to the following conditions:

(1) the worker's treating health care provider certifies that the worker is fit to carry out the pre-disablement job or modified work similar to the pre-disablement job without significant risk of repeating or compounding the disablement; and

(2) the employer has the pre-disablement job or modified work available.

B. If an employer is hiring, that employer shall offer to rehire a worker who applies for any job that pays less than the pre-disablement job and who has stopped working due to a disablement for which he has received, or is due, benefits under the New Mexico Occupational Disease Disablement Law, provided that the worker is qualified for the job and provided that the worker's treating health care provider certifies that the worker is fit to carry out the job offered. Occupational disease disablement benefits of a worker hired pursuant to this subsection shall be reduced as provided in Section 52-1-25.1 NMSA 1978.

C. As used in this section, "rehire" includes putting the disabled worker back to active work, regardless of whether he was carried on the employer's payroll during the period of his inability to work.

History: Laws 1990 (2nd S.S.), ch. 2, § 48.

52-3-50. Effect of failure of employee to file claim by reason of conduct of employer.

The failure of any person entitled to compensation under the New Mexico Occupational Disease Disablement Law to give notice of disablement or file claim within the time fixed by that law shall not deprive the person of the right to compensation where failure was caused in whole or in part by the conduct of the employer or insurer which reasonably led the person entitled to compensation to believe the compensation would be paid.

History: 1941 Comp., § 57-1137, enacted by Laws 1945, ch. 135, § 37; 1953 Comp., § 59-11-38; Laws, 1986, ch. 22, § 69.

52-3-51. Reports to be filed with director.

It is the duty of every employer of labor in this state subject to the provisions of the New Mexico Occupational Disease Disablement Law or the employer's disease disablement compensation insurance carrier to make a written report to the director of all claims for disablement that may be filed by any of his employees during the course of their employment. A copy of the report shall be sent by the employer to the worker. Such reports shall be made within ten days after the employer has received notice from the employee of the disablement and upon forms to be furnished by the director containing such information as he may require. Upon request of the director, it is also the duty of the employer or the employer's insurance carrier to file with the director closing reports upon the closing of a claim upon forms approved by the director.

History: 1941 Comp., § 57-1138, enacted by Laws 1945, ch. 135, § 38; 1953 Comp., § 59-11-39; Laws 1986, ch. 22, § 70; 1987, ch. 235, § 43; 1990 (2nd S.S.), ch. 2, § 40.

52-3-52. Notice to director.

A. Every employer of labor within this state subject to the provisions of the New Mexico Occupational Disease Disablement Law or his insurer shall notify the director of the date on which the initial payment of any claim for benefits under the New Mexico Occupational Disease Disablement Law has been made, within ten days after such payment.

B. The director shall provide on a quarterly basis to the child support enforcement bureau of the human services department [health care authority department] the name, social security number, home address and employer of all disabled workers reported.

History: 1941 Comp., § 57-1139, enacted by Laws 1945, ch. 135, § 39; 1953 Comp., § 59-11-40; Laws 1986, ch. 22, § 71; 1990 (2nd S.S.), ch. 2, § 41.

52-3-53. Penalties.

The director shall impose a penalty on any person who fails to file a report required by, or who violates any provision of, the New Mexico Occupational Disease Disablement Law or any rule or regulation adopted pursuant to that act. Unless

specified otherwise in the New Mexico Occupational Disease Disablement Law, the penalty shall be a fine of not less than twenty-five dollars ($25.00) and not more than one thousand dollars ($1,000), subject to the director's discretion.

History: 1978 Comp., § 52-3-53, enacted by Laws 1990 (2nd S.S.), ch. 2, § 42.

52-3-54. Director to enforce the New Mexico Occupational Disease Disablement Law.

For the purpose of enforcing the New Mexico Occupational Disease Disablement Law, there are hereby conferred upon the director the following powers and duties, so that when any employer subject to the provisions of the New Mexico Occupational Disease Disablement Law fails to comply with Section 52-3-9 NMSA 1978 relating to the filing of an undertaking in the nature of insurance or security for the payment of benefits under the New Mexico Occupational Disease Disablement Law, the director is hereby empowered to institute in his own name an action in the district court of Santa Fe county or the county wherein the employer resides or has his principal office or place of business to enjoin the employer from continuing his business operations until he has complied with the provisions of Section 52-3-9 NMSA 1978, and upon a showing of the facts above recited, the court shall grant the injunction. In any such action, the attorney general or district attorney for the judicial district wherein the action is brought shall represent the director.

History: 1941 Comp., § 57-1141, enacted by Laws 1945, ch. 135, § 41; 1953 Comp., § 59-11-42; Laws 1986, ch. 22, § 73.

52-3-55. Extraterritorial coverage.

If an employee, while working outside the territorial limits of this state suffers an occupational disease on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by the New Mexico Occupational Disease Disablement Law had such disease occurred within this state, such employee, or in the event of his death resulting from such disease his dependents, shall be entitled to the benefits provided by this act [52-3-55 to 52-3-59 NMSA 1978], provided that at the time of such disease:

A. his employment is principally localized in this state;

B. he is working under a contract of hire made in this state in employment not principally localized in any state;

C. he is working under a contract of hire made in this state in employment principally localized in another state whose occupational disease disablement law is not applicable to his employer; or

D. he is working under a contract of hire made in this state for employment outside the United States and Canada.

History: 1953 Comp., § 59-11-43, enacted by Laws 1975, ch. 268, § 1.

52-3-56. Credit for benefits furnished or paid under laws of other jurisdictions.

The payment or award of benefits under the occupational disease disablement law of another state, territory, province or foreign nation to an employee or his dependents otherwise entitled on account of such occupational disease to the benefits of this act [52-3-55 to 52-3-59 NMSA 1978] shall not be a bar to a claim for benefits under this act; provided that claim under this act is filed within one year after such occupational disease. If compensation is paid or awarded under this act:

A. the medical and related benefits furnished or paid for by the employer under such other occupational disease disablement law on account of such occupational disease shall be credited against the medical and related benefits to which the employee would have been entitled under this act had claim been made solely under this act;

B. the total amount of all income benefits paid or awarded the employee under such other occupational disease disablement law shall be credited against the total amount of income benefits which would have been due the employee under this act, had claim been made solely under this act; and

C. the total amount of death benefits paid or awarded under such other occupational disease disablement law shall be credited against the total amount of death benefits due under this act.

History: 1953 Comp., § 59-11-43.1, enacted by Laws 1975, ch. 268, § 2.

52-3-57. Nonresident employers employing workers in state; requirement for insurance; enforcement.

A. Every employer not domiciled in the state who employs workers engaged in activities required to be licensed under the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] and every other employer not domiciled in the state who employs three or more workers within the state, whether that employment is permanent, temporary or transitory and whether the workers are residents or nonresidents of the state, shall comply with the provisions of Section 52-3-9 NMSA 1978 and, unless self-insured, shall obtain an occupational disease disablement compensation insurance policy or an endorsement to an existing policy, issued in accordance with the provisions of Section 59A-17-10.1 NMSA 1978. An employer who does not comply with the foregoing requirement shall be barred from recovery by legal action for labor or materials furnished during any period of time in which he was not in

compliance with the requirements of this section and, if the noncomplying employment is in an activity for which the employer is licensed under the provisions of the Construction Industries Licensing Act, the employer's license is subject to revocation or suspension for the violation.

B. The construction industries division of the regulation and licensing department, or a local government that is carrying out those duties, shall not issue any permit required for a contractor to undertake a construction contract if that contract is for an amount in excess of one hundred thousand dollars ($100,000) unless the contractor has filed with the division proof of compliance with Subsection A of this section.

History: 1978 Comp., § 52-3-57, enacted by Laws 1990 (2nd S.S.), ch. 2, § 43.

52-3-58. Locale of employment.

A. A person's employment is principally localized in this or another state when:

(1) his employer has a place of business in this or such other state and he regularly works at or from such place of business; or

(2) if Paragraph (1) of this subsection is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.

B. An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall be given effect under the New Mexico Occupational Disease Disablement Law.

C. As used in Sections 52-3-55 through 52-3-58 NMSA 1978:

(1) "United States" includes only the states of the United States and the District of Columbia;

(2) "state" includes any state of the United States, the District of Columbia or any province of Canada; and

(3) "carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under an occupational disease disablement law.

History: 1953 Comp., § 59-11-43.3, enacted by Laws 1975, ch. 268, § 4; 1989, ch. 263, § 67.

52-3-59. Reciprocal recognition of extra-territorial coverage with other jurisdictions.

For the purpose of effecting mutually satisfactory reciprocal arrangements with other states respecting extra-territorial jurisdictions, the employment security division of the labor department is empowered to promulgate special and general regulations not inconsistent with the provisions of the New Mexico Occupational Disease Disablement Law and, with the approval of the governor, to enter into reciprocal agreements with appropriate boards, commissions, officers or agencies of other states having jurisdiction over workers' compensation claims.

History: 1953 Comp., § 59-11-43.5, enacted by Laws 1975, ch. 268, § 5; 1989, ch. 263, § 68.

52-3-60. Offset of unemployment compensation benefits.

A. No total disablement benefits shall be payable under the New Mexico Occupational Disease Disablement Law for any weeks in which the disabled employee has received or is receiving unemployment compensation benefits, except as provided in this section.

B. If an employee is entitled to receive unemployment compensation benefits and would otherwise be entitled to receive total disablement benefits, the unemployment compensation benefits shall be primary, and the total disablement benefits shall be supplemental only, and the sum of the two benefits shall not exceed the amount of total disablement benefits that would otherwise be payable.

History: 1978 Comp., § 52-3-60, enacted by Laws 1987, ch. 235, § 44.

ARTICLE 4
Health Care Providers

52-4-1. Definition; health care provider.

As used in Chapter 52 NMSA 1978, "health care provider" means:

A. a hospital maintained by the state or a political subdivision of the state or any place currently licensed as a hospital by the department of health that has:

(1) accommodations for resident bed patients;

(2) a licensed professional registered nurse always on duty or call;

(3) a laboratory; and

(4) an operating room where surgical operations are performed;

B. an optometrist licensed pursuant to the provisions of Chapter 61, Article 2 NMSA 1978;

C. a chiropractic physician licensed pursuant to the provisions of Chapter 61, Article 4 NMSA 1978;

D. a dentist licensed pursuant to the provisions of Chapter 61, Article 5 NMSA 1978;

E. a physician licensed pursuant to the provisions of Chapter 61, Article 6 NMSA 1978;

F. a podiatrist licensed pursuant to the provisions of Chapter 61, Article 8 NMSA 1978;

G. an osteopathic physician licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978;

H. a physician assistant licensed pursuant to the provisions of Section 61-6-7 NMSA 1978;

I. a certified nurse practitioner licensed pursuant to Section 61-3-23.2 NMSA 1978;

J. a physical therapist licensed pursuant to the provisions of Chapter 61, Article 12 NMSA 1978;

K. an occupational therapist licensed pursuant to the provisions of Chapter 61, Article 12A NMSA 1978;

L. a doctor of oriental medicine licensed pursuant to the provisions of Chapter 61, Article 14A NMSA 1978;

M. an athletic trainer licensed pursuant to the provisions of Chapter 61, Article 14D NMSA 1978;

N. a psychologist who is duly licensed or certified in the state where the service is rendered, holding a doctorate degree in psychology and having at least two years of clinical experience in a recognized health setting, or who has met the standards of the national register of health services providers in psychology;

O. a certified nurse-midwife licensed by the board of nursing as a registered nurse and registered with the behavioral health services division of the human services department [health care authority department] as a certified nurse-midwife;

P. a pharmacist licensed pursuant to the provisions of Chapter 61, Article 11 NMSA 1978; or

Q. any person or facility that provides health-related services in the health care industry, as approved by the director.

History: 1978 Comp., § 52-4-1, enacted by Laws 1983, ch. 116, § 1; 1989, ch. 263, § 69; 1990 (2nd S.S.), ch. 2, § 49; 1993, ch. 158, § 2; 2007, ch. 325, § 11; 2007, ch. 327, § 1; 2007, ch. 328, § 3.

52-4-2. Utilization review; penalties.

A. The director shall establish a system of peer group utilization review of selected outpatient and inpatient health care provider services to workers claiming benefits under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978]. Subject to the provisions of this section, the decisions issued pursuant to the utilization review system shall be binding on the affected health care providers, workers, employers, insurers and their representatives.

B. As used in this section, "utilization review" means an evaluation of the necessity, appropriateness, efficiency and quality of health care services provided to an injured or disabled worker based on medically accepted standards and an objective evaluation of the health care services provided.

C. The director shall also establish a system of pre-admission review of all hospital admissions, except for emergency services. Utilization review shall commence within one working day of all emergency hospital admissions.

D. The director may contract with an independent utilization review organization to provide utilization review, including peer review.

E. Nothing in this section shall prevent an employer from electing to provide his own utilization review; however, if the worker, provider or any other party not contractually bound to the employer's utilization review program disagrees with that employer's utilization review, then that worker, provider or other party shall have recourse to the workers' compensation administration's utilization review program.

F. Pursuant to utilization review conducted by the director, including providing an opportunity for a hearing, any health care provider who imposes excessive charges or renders inappropriate services shall be subject to:

(1) a forfeiture of the right to payment for those services that are found to be excessive or inappropriate or payment of excessive charges;

(2) a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000); or

(3) a temporary or permanent suspension of the right to provide health care services for workers' compensation or occupational disease disablement claims if the health care provider has established a pattern of violations.

History: 1978 Comp., § 52-4-2, enacted by Laws 1990 (2nd S.S.), ch. 2, § 50; 1993, ch. 193, § 8.

52-4-3. Case management.

A. The director shall establish a system of case management for coordinating the health care services provided to workers claiming benefits under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978].

B. As used in this section, "case management" means the ongoing coordination of health care services provided to an injured or disabled worker, including but not limited to:

(1) developing a treatment plan to provide appropriate health care services to an injured or disabled worker;

(2) systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker;

(3) assessing whether alternate health care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;

(4) ensuring that the injured or disabled worker is following the prescribed health care plan; and

(5) formulating a plan for return to work.

C. The director shall contract with an independent organization to assist with the administration of the provisions of this section.

D. Nothing in this section shall prevent an employer from establishing his own program of case management; however, for the purposes of resolving choice of health care provider disputes, an employer or worker shall only use the program as provided by the workers' compensation administration, as set forth in Section 52-1-49 NMSA 1978.

History: 1978 Comp., § 52-4-3, enacted by Laws 1990 (2nd S.S.), ch. 2, § 51.

52-4-4. Temporary provision; rules and regulations.

A. The director shall adopt and promulgate regulations and contract with a peer review organization pursuant to Section 52-4-2 NMSA 1978 no later than October 1, 1990.

B. The director shall establish a baseline period of no less than six months, adjusted for seasonal variations, for the purpose of providing data for the calculations required pursuant to Subsection C of this section no later than January 1, 1991.

C. For the one-year period ending December 31, 1991, the director shall issue a report concerning the results of the utilization review program as provided in Section 52-4-3 NMSA 1978 no later than December 1, 1992. If the director determines that based on such data the program has not resulted in a ten percent reduction in the utilization and cost of services subject to the utilization program, he shall have the authority to adopt and promulgate regulations, after notice and public hearings, to establish schedules of maximum charges for fees that are payable to health care providers as defined in Section 52-4-1 NMSA 1978. Such schedules shall be annually revised.

D. For the purposes of calculating the percentage as provided in Subsection C of this section, a comparison of both baseline and utilization program data shall be performed. Factors that shall be considered include, but are not limited to:

(1) severity and frequency of illness or injury;

(2) average length of stay of hospitalization;

(3) number of admissions per one hundred workers' compensation claims;

(4) number of services provided per one hundred workers' compensation claims; and

(5) factors that may affect the utilization and cost of medical services provided under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978].

History: Laws 1990, ch. 65, § 4.

52-4-5. Fee schedule.

A. The director shall adopt and promulgate regulations establishing a schedule of maximum charges as deemed necessary for treatment or attendance, service, devices, apparatus or medicine provided by a health care provider. The rates in the schedules of maximum charges shall not fall below the sixtieth percentile or above the eightieth percentile of current rates for health care providers. In determining current rates for health care providers, the director shall utilize a variety of health care provider charges,

including the charges of those providers serving low income, medicare and medicaid patients.

B. A health care provider shall be paid his usual and customary fee for services rendered or the maximum charge established pursuant to Subsection A of this section, whichever is less. However, in no case shall the usual and customary fee exceed the maximum charge allowable.

C. The fee schedule shall be revised annually by the director.

D. No amount in excess of the amount required by Subsection B of this section for a service shall be paid by the employer, the employer's insurer, the worker, a representative of the worker or any other person to a health care provider for rendering that service in connection with an injury or disablement within the purview of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978].

E. If it is determined by the person primarily responsible for payment that the charges of a health care provider exceed the amount established pursuant to Subsection B of this section or that a health care provider over-utilized or otherwise rendered or ordered inappropriate health care or health care services, and payment is withheld on those grounds, the health care provider may appeal to the director regarding that determination. The director shall establish by regulation procedures for an appeal by a health care provider.

F. The director shall establish an advisory committee that shall:

(1) be appointed and serve at the pleasure of the director;

(2) consist of members, a majority of whom represent health care providers;

(3) reflect the diversity of authorized licensed health care providers available for workers' compensation and occupational disease disablement cases;

(4) assist in establishing the schedules of maximum charges under Subsection A of this section for any fees that are payable to health care providers;

(5) assist the director in adopting regulations for employers' utilization review procedures and the establishment and conduct of utilization review boards; and

(6) report its findings, upon request, to the director and the advisory council on workers' compensation.

G. The schedule of maximum charges specified in this section shall not apply to hospital charges. The director shall establish a separate schedule of maximum charges for hospital charges no later than April 1, 1991.

H. Nothing in this section shall prevent an employer from contracting with a health care provider for fees less than the maximum charges allowable.

History: 1978 Comp., § 52-4-5, enacted by Laws 1990 (2nd S.S.), ch. 2, § 52; 1993, ch. 193, § 9.

ARTICLE 5
Workers' Compensation Division

52-5-1. Purpose.

It is the intent of the legislature in creating the workers' compensation administration that the laws administered by it to provide a workers' benefit system be interpreted to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to the employers who are subject to the provisions of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] and the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978]. It is the specific intent of the legislature that benefit claims cases be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' benefits legislation shall not apply in these cases. The workers' benefit system in New Mexico is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Accordingly, the legislature declares that the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

History: 1978 Comp., § 52-5-1, enacted by Laws 1987, ch. 342, § 30; 1989, ch. 263, § 70; 1990 (2nd S.S.), ch. 2, § 53.

52-5-1.1. Short title.

Chapter 52, Article 5 NMSA 1978 [except 52-5-22 NMSA 1978] may be cited as the "Workers' Compensation Administration Act".

History: Laws 1990 (2nd S.S.), ch. 2, § 61.

52-5-1.2. Workers' compensation administration created.

There is created as an entity of state government the "workers' compensation administration".

History: Laws 1990 (2nd S.S.), ch. 2, § 62; 2003, ch. 259, § 8.

52-5-1.3. Enforcement bureau.

A. There is created in the workers' compensation administration an "enforcement bureau".

B. The enforcement bureau shall investigate to determine whether any fraudulent conduct relating to workers' compensation is being practiced. The enforcement bureau shall refer to an appropriate law enforcement agency any finding of fraud. For any claim pending in the administration, the enforcement bureau shall also bring its findings to the attention of the workers' compensation judge assigned to that claim.

C. For the purposes of this section, "fraud" includes the intentional misrepresentation of a material fact resulting in workers' compensation or occupational disablement coverage, the payment or withholding of benefits or an attempt to obtain or withhold benefits. The intentional misrepresentation of a material fact may occur through the conduct, practices, omissions or representations of any person. Any person found guilty of committing fraud shall be sentenced pursuant to the provisions of Section 30-16-6 NMSA 1978 and the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978].

History: Laws 1990 (2nd S.S.), ch. 2, § 63; 2013, ch. 134, § 5.

52-5-1.4. Ombudsman program.

A. The director shall establish an ombudsman program to assist injured or disabled workers, persons claiming death benefits, employers and other persons in protecting their rights and obtaining information available under workers' compensation and occupational disease disablement laws.

B. An ombudsman shall meet with or otherwise provide information to injured or disabled workers, investigate complaints and communicate with employers, insurance carriers and health care providers on behalf of injured or disabled workers. An ombudsman shall otherwise assist unrepresented claimants, employers and other parties to enable them to protect their rights in the workers' compensation and occupational disease disablement system. At least one specially qualified employee in each location that the administration has an office shall be designated by the director as an ombudsman, and duties described in this section shall be that person's primary responsibility. The director may designate additional ombudsmen and assign them as the director deems appropriate.

C. An ombudsman need not be an attorney but shall demonstrate familiarity with workers' compensation and occupational disease disablement laws.

D. An ombudsman shall not be an advocate for any person and shall restrict ombudsman's activities to providing information and facilitating communication. An

ombudsman shall not assist a claimant, employer or any other person in any proceeding beyond the informal conference held pursuant to Section 52-5-5 NMSA 1978.

E. Each employer shall notify the employer's employees of the ombudsman service in a manner prescribed by the director. The notice shall include the posting of a notice in one or more conspicuous places. The director shall also describe clearly the availability of the ombudsmen on the first report of accident form required under Section 52-1-58 NMSA 1978, or the first report of disablement form required under Section 52-3-51 NMSA 1978.

History: Laws 1990 (2nd S.S.), ch. 2, § 64; 2004, ch. 118, § 1; 2013, ch. 134, § 6.

52-5-2. Director; appointment; employees; workers' compensation judges.

A. The workers' compensation administration shall be in the charge of a director, who shall be appointed by the governor for a term of five years with the consent of the senate. The appointed director shall serve and have the authority of that office during the period of time prior to final action by the senate confirming or rejecting the appointment. The appointment shall be made on the basis of administrative ability, education, training and experience relevant to the duties of the director. Upon the expiration of the term, the director shall continue to serve until the successor is appointed and qualified. Before entering upon the duties, the director shall subscribe to an oath to faithfully discharge the duties of the office. The director shall devote full time to the duties of the office.

B. The director shall appoint necessary workers' compensation judges. Workers' compensation judges shall not be subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978] except as provided by Subsection C of this section. Workers' compensation judges shall be appointed for an initial term of one year and shall be compensated at a rate equal to ninety percent of that of district court judges. Ninety days prior to the expiration of a workers' compensation judge's term, the director shall review his performance. If approved by the director, the workers' compensation judge may be reappointed to a subsequent five-year term.

C. Workers' compensation judges shall be lawyers licensed to practice law in this state and shall have a minimum five years' experience as a practicing lawyer. They shall devote their entire time to their duties and shall not engage in the private practice of law and shall not hold any other position of trust or profit or engage in any occupation or business interfering with or inconsistent with the discharge of their duties as workers' compensation judges. A workers' compensation judge shall be required to conform to all canons of the code of judicial conduct as adopted by the supreme court, except canon 21-900 of that code. Violation of those canons shall be exclusive grounds for dismissal prior to the expiration of his term. Any complaints against a workers' compensation judge shall be filed with the state personnel board, which shall report its findings to the director.

D. Workers' compensation judges shall have the same immunity from liability for their adjudicatory actions as district court judges.

History: Laws 1986, ch. 22, § 28; 1987, ch. 235, § 46; 1987, ch. 342, § 31; 1989, ch. 263, § 71; 1990 (2nd S.S.), ch. 2, § 54; 2004, ch. 118, § 2.

52-5-3. Reports; data gathering.

A. The intent of this section is to allow the director to gather data and conduct studies to evaluate the workers' compensation and occupational disease disablement system in New Mexico. This includes evaluating the benefits structure and the costs incurred under each version of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] and the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978]. To this end, the director shall establish baseline data against which to assess the changes in the law.

B. The director shall independently evaluate insurance industry data pertaining to workers' compensation and occupational disease disablement claims and payments, as well as other information the director believes to be necessary and relevant to a thorough evaluation of the system's effectiveness. In addition to data generated by insurance industry representatives and organizations, the director shall collect data from employers, claimants and other relevant parties.

C. Unless otherwise provided by law, the director shall have access to insurance industry information that contains workers' compensation and occupational disease disablement claim data as the director determines is necessary to carry out the provisions of this section.

D. The director shall have access to files and records of:

(1) the workforce solutions department that pertain to:

(a) the name and number of employees reported by employers;

(b) employers' mailing addresses;

(c) federal identification numbers; and

(d) general wage information;

(2) the office of superintendent of insurance that pertain to:

(a) historical insurance classification rates and total premiums paid during given periods of time;

(b) insurers licensed to underwrite casualty insurance; and

(c) records of group self-insurers;

(3) the human services department [health care authority department] that include names, addresses and other identifying information of recipients of benefits and services pertaining to income support;

(4) the taxation and revenue department that identify employers paying workers' compensation assessments in accordance with Section 52-5-19 NMSA 1978; and

(5) the motor vehicle division of the taxation and revenue department that pertain to the identity of licensed drivers and the ownership of motor vehicles.

E. Information that is confidential under state law shall be accessible to the director and shall remain confidential.

F. The director shall prepare an annual report. The director shall publish in that report and in other reports as the director deems appropriate such statistical and informational reports and analyses based on reports and records available as, in the director's opinion, will be useful in increasing public understanding of the purposes, effectiveness, costs, coverage and administrative procedures of workers' compensation and in providing basic information regarding the occurrence and sources of work injuries or disablements to public and private agencies engaged in industrial injury prevention activities. The reports shall include information concerning the nature and frequency of injuries and occupational diseases sustained and the resulting benefits, costs and other factors that are important to furthering the intent of this section.

History: Laws 1986, ch. 22, § 29; 1987, ch. 342, § 32; 1989, ch. 263, § 72; 1990 (2nd S.S.), ch. 2, § 55; 2003, ch. 259, § 9; 2013, ch. 74, § 5.

52-5-4. Authority to adopt rules, regulations and fee schedules.

A. The director is authorized to adopt reasonable rules and regulations, after notice and public hearing, for effecting the purposes of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978]. All rules and regulations shall be published upon adoption and be made available to the public and, if not inconsistent with law, shall be binding on the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law. All rules and regulations adopted shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. Such rules and regulations shall include provisions for procedures in the nature of conferences or other techniques to dispose of cases informally or to expedite claim adjudication, narrow issues and simplify the methods of proof at hearings.

C. The director shall promulgate and enforce schedules of reimbursement for such nonprofessional services as providing testimony and depositions, the production of records or the completion of medical capacity forms to health care providers as defined in Section 52-4-1 NMSA 1978 as he deems appropriate and necessary in the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

D. The director shall adopt rules for approval and establishment of controlled insurance plans, including performance standards compliance enforcement. In an advisory role only to participate in the rulemaking process, the director shall provide for the participation of:

(1) general contractors;

(2) subcontractors;

(3) organized labor;

(4) municipalities;

(5) counties; and

(6) business.

History: Laws 1986, ch. 22, § 30; 1989, ch. 263, § 73; 2003, ch. 263, § 3.

52-5-4.1. Qualifications to be a self-insurer; certification; application; fee.

A. The director shall adopt rules and regulations to determine the qualifications necessary to be a self-insurer. To qualify to be a self-insurer, a private employer must show to the satisfaction of the director that the employer is financially solvent and that providing workers' compensation and occupational disease disablement insurance coverage is unnecessary. The director shall consider the employer's financial ability to pay promptly workers' compensation and occupational disease disablement benefits and assessments that may be imposed under the Self-Insurers' Guarantee Fund Act.

B. The director shall certify each private employer who qualifies to be a self-insurer.

C. Each application for certification as a self-insurer shall be accompanied by payment of a fee not to exceed one hundred fifty dollars ($150). The fee shall be set by the director as necessary to cover the administrative costs of evaluating the applicants' qualifications. The fee shall be deposited in the workers' compensation administration fund.

D. Any employer formerly certified as a self-insurer who ceases to be certified may not apply again for certification until three years after certification ceases.

History: Laws 1990 (2nd S.S.), ch. 3, § 6.

52-5-5. Claims; informal conferences.

A. When a dispute arises under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978], any party may file a claim with the director no sooner than thirty-one days from the date of injury or the occurrence of the disabling disease. The director shall assist workers and employees not represented by counsel in the preparation of the claim document.

B. The director shall prepare a form of claim, which shall be available to all parties. The claim shall state concisely in numbered paragraphs the questions at issue or in dispute that the claimant expects to be determined with sufficient particularity that the responding or opposing party may be notified adequately of the claim and its basis, including, if applicable, the specific benefit that is due and not paid.

C. Upon receipt, every claim shall be evaluated by the director or the director's designee, who shall then contact all parties and attempt to informally resolve the dispute. Within sixty days after receipt of the claim, the director shall issue recommendations for resolution and serve the parties with a copy. Within thirty days of receipt of the recommendation of the director, each party shall notify the director on a form provided by the director of the acceptance or rejection of the recommendation. A party failing to notify the director waives any right to reject the recommendation and is bound conclusively by the director's recommendation unless, upon application made to the director within thirty days after the foregoing deadline, the director finds that the party's failure to notify was the result of excusable neglect. If either party makes a timely rejection of the director's recommendation, the claim shall be assigned to a workers' compensation judge for hearing.

D. Each party to a dispute shall have a peremptory right to disqualify one workers' compensation judge; provided that:

(1) the employer and the employer's insurer shall constitute a single party for purposes of this subsection;

(2) this peremptory right to disqualify one worker's compensation judge shall not apply to the judge appointed pursuant to Section 52-1-49 NMSA 1978 to render a decision within seven days on a request for a different health care provider; and

(3) no party shall be required to disqualify a workers' compensation judge until a judge has been assigned to a case.

History: Laws 1986, ch. 22, § 31; 1987, ch. 235, § 47; 1989, ch. 263, § 74; 1993, ch. 193, § 10; 2013, ch. 134, § 7.

52-5-6. Authority of the director to conduct hearings.

A. Unless the parties agree otherwise, or it is ordered by the workers' compensation judge or the director in the case of a director's hearing, hearings shall be held at an office of the workers' compensation administration that is located nearest to the location of injury or disablement. In determining the site of hearing, the judge or the director shall consider cost-effectiveness, judicial efficiency, the health and mobility of the worker and the convenience of parties and witnesses. Hearings may be conducted by videoconferencing or by telephone at the discretion of the judge or the director.

B. The workers' compensation judge and the director shall have the power to preserve and enforce order during hearings; administer oaths; issue subpoenas to compel the attendance and testimony of witnesses, the production of books, papers, documents and other evidence or the taking of depositions before a designated individual competent to administer oaths; examine witnesses; enter noncriminal sanctions for misconduct; and do all things conformable to law that may be necessary to enable the judge or the director to discharge the duties of the judge's or the director's office effectively.

C. In addition to the noncriminal sanctions that may be ordered by the workers' compensation judge or the director, any person committing any of the following acts in a proceeding before a workers' compensation judge or the director may be held accountable for the person's conduct in accordance with the provisions of Subsection D of this section:

(1) disobedience of or resistance to any lawful order or process;

(2) misbehavior during a hearing or so near the place of the hearing as to obstruct it;

(3) failure to produce any pertinent book, paper or document after having been ordered to do so;

(4) refusal to appear after having been subpoenaed;

(5) refusal to take the oath or affirmation as a witness; or

(6) refusal to be examined according to law.

D. The director may certify to the district court of the district in which the acts were committed the facts constituting any of the acts specified in Paragraphs (1) through (6) of Subsection C of this section. The court shall hold a hearing and, if the evidence so warrants, may punish the offending person in the same manner and to the same extent

as for contempt committed before the court, or it may commit the person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

History: Laws 1986, ch. 22, § 32; 1987, ch. 235, § 48; 1989, ch. 263, § 75; 2001, ch. 87, § 4; 2013, ch. 134, § 8.

52-5-7. Hearing procedure.

A. When matters in dispute cannot be resolved by informal conference or other techniques, the director shall transmit a copy of the claim to the other parties with notice to respond by written answer. The other parties shall respond with a written answer within twenty days after receiving a notice or within such extension of that time as the director may allow. If no timely answer is filed by a party after notice, a workers' compensation judge may, if he determines it to be appropriate, grant the relief sought against that party. However, if, in order to enable the workers' compensation judge to enter an order and carry out its effect, it is necessary to take an account, determine the amount of benefits due, establish the truth of any claims by evidence or make an investigation of any matter, the workers' compensation judge may conduct such hearings as he deems necessary and proper.

B. A hearing shall be held for determining the questions at issue within sixty days of the filing of the answer. All parties in interest shall be given at least twenty days' notice of the hearing and of the issues to be heard, served personally or by mail. Following the presentation of the evidence, the workers' compensation judge shall determine the questions at issue and file the decision with the director within thirty days, unless the time for filing the decision is extended by the mutual agreement of the parties. At the time of filing, a certified copy of the decision shall be sent by first class mail to all interested parties at the last known address of each. The decision of the workers' compensation judge shall be made in the form of a compensation order, appropriately titled to show its purpose and containing a report of the case, findings of fact and conclusions of law and, if appropriate, an order for the payment of benefits under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978].

C. The decision of the workers' compensation judge shall be final and conclusive as to all matters adjudicated by him upon the expiration of the thirtieth day after a copy of the decision has been mailed to the parties, unless prior to that day a party in interest seeks judicial review of the decision pursuant to Section 52-5-8 NMSA 1978.

D. All hearings before the workers' compensation judge shall be open to the public. The director shall by regulation provide for the preparation of a record of each hearing.

E. The director may authorize a workers' compensation judge or his duly authorized representative to enter at any reasonable time the premises where an injury or death has occurred and to make such examination of any tool, appliance, process, machinery

or environmental or other condition as may be relevant to a determination of the cause and circumstances of the injury, disablement or death.

F. The testimony of any witness may be taken by deposition or interrogatories according to the rules of civil procedure for the district courts and may be taken before any workers' compensation judge or any person authorized to take testimony, but discovery procedure shall be conducted only upon the workers' compensation judge's findings that good cause exists. The cost and expense of any discovery procedure allowed by the workers' compensation judge shall be paid as provided in Section 52-1-54 NMSA 1978. No costs shall be charged, taxed or collected by the workers' compensation judge except fees for witnesses who testify under subpoena. The witnesses shall be allowed the same fee for attendance and mileage as is fixed by the law in civil actions, except that the workers' compensation judge may assess against the employer the fees allowed any expert witness, as provided in Section 38-6-4 NMSA 1978, whose examination of the claimant, report or hearing attendance the workers' compensation judge deems necessary for resolution of matters at issue.

History: Laws 1986, ch. 22, § 33; 1987, ch. 235, § 49; 1989, ch. 263, § 76; 1993, ch. 193, § 11.

52-5-8. Judicial review of decision by workers' compensation judge.

A. Any party in interest may, within thirty days of mailing of the final order of the workers' compensation judge, file a notice of appeal with the court of appeals.

B. A decision of a workers' compensation judge is reviewable by the court of appeals in the manner provided for other cases and is subject to stay proceedings as provided by the rules of civil procedure for the district courts, except that the appeal shall be advanced on the calendar and disposed of as promptly as possible.

C. When an appeal is taken to the court of appeals by the worker or the person appointed by a court of competent jurisdiction to act on behalf of dependents, he is entitled to the record of the hearing and proceedings in the case, which shall be prepared, transcribed, certified and forwarded by the director to the clerk of the court of appeals without cost. No docket fee or other costs shall be charged the worker on appeal.

History: Laws 1986, ch. 22, § 34; 1989, ch. 263, § 77.

52-5-9. Application for modification of compensation order.

A. Compensation orders are reviewable subject to the conditions stated in this section upon application of any party in interest in accordance with the procedures relating to hearings. The workers' compensation judge, after a hearing, may issue a compensation order to terminate, continue, reinstate, increase, decrease or otherwise properly affect compensation benefits provided by the Workers' Compensation Act

[Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978] or in any other respect, consistent with those acts, modify any previous decision, award or action.

B. A review may be obtained upon application of a party in interest filed with the director at any time within two years after the date of the last payment or the denial of benefits upon the following grounds:

(1) change in condition;

(2) mistake, inadvertence, surprise or excusable neglect;

(3) clerical error or mistake in mathematical calculations;

(4) newly discovered evidence which by due diligence could not have been discovered prior to the issuance of the compensation order;

(5) fraud, misrepresentation or other misconduct of an adverse party;

(6) the compensation order is void; or

(7) the compensation order has been satisfied, released or discharged or a prior order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the order should have prospective application.

History: Laws 1986, ch. 22, § 35; 1989, ch. 263, § 78.

52-5-10. Enforcement of payment in default.

A. In the event of default in the payment of compensation due under a compensation order, the person to whom compensation is payable may, after the thirtieth day from the date on which the compensation became due and before the lapse of one year from that due date, make application for a supplementary compensation order declaring the amount of compensation in default. The application shall be filed with the director, who shall forthwith notify the employer and the issuer of the filing of the application, giving opportunity to be heard in respect of the application. In the absence of an allegation and proof of fraud in the procurement of the compensation order and if the workers' compensation judge determines that payment of compensation is in default, the workers' compensation judge shall make and file a supplementary compensation order declaring the amount of the compensation in default. In case the payment in default is an installment of an award of determinable amount, the workers' compensation judge may, in his discretion, declare the entire balance of the award due. The claimant or workers' compensation judge may file a certified copy of the supplementary compensation order with the clerk of any district court.

B. The applicant or director may thereafter petition such district court solely for the purposes of entry of judgment upon the supplementary compensation order and the imposition of appropriate sanctions, serving notice of the petition on the employer and any other person in default. If the employer maintains no place of business in the state, he shall be deemed to have appointed the superintendent of insurance as his agent for the purpose of acceptance of service of process in all matters under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978] or related thereto. The district court shall accept the supplementary compensation order as valid, and shall not review or supplement the findings and conclusions of the workers' compensation judge, other than to enforce the supplementary compensation order and impose appropriate sanctions. The district court shall enter judgment against the person in default for the amount due under the order. No fees shall be required for the filing of a supplementary compensation order, for the petition for judgment, for the entry of judgment or for any enforcement procedure for the judgment. No supersedeas bond shall be granted by any court with respect to a judgment entered under this section.

C. Proceedings to enforce a compensation order or decision shall not be instituted other than as provided by the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

History: Laws 1986, ch. 22, § 36; 1989, ch. 263, § 79; 1990 (2nd S.S.), ch. 2, § 56.

52-5-11. Minors and incompetents.

A. If a guardian or legal representative has been appointed for a person who is incompetent or a minor, payment of compensation benefits under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978] shall be made to the guardian or legal representative.

B. If no guardian or legal representative has been appointed and notwithstanding any provisions of law to the contrary, the compensation benefits payable to a minor or incompetent person may, upon approval of the director after hearing, be paid by the employer in whole or in such part as the director determines for and on behalf of the minor or incompetent person directly to the person caring for, supporting or having custody of the minor or incompetent person, without requiring the appointment of a guardian or legal representative. The director may petition a court of competent jurisdiction for appointment of a guardian or other representative to receive compensation benefits payable to, or to represent in compensation proceedings, any person who is incompetent or a minor.

C. The director may require of a guardian or other legal representative or of any person to whom compensation benefits may be paid under this section an accounting of the disposition of the funds received by the person under the Workers' Compensation

Act or the New Mexico Occupational Disease Disablement Law and for and on behalf of the minor or incompetent person.

D. Nothing in the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law precludes the payment of compensation benefits directly to a minor or incompetent person with the approval of the director.

E. The payment of compensation by the employer in accordance with the order of the director discharges the employer from all further obligation as to that compensation.

History: Laws 1986, ch. 22, § 37; 1989, ch. 263, § 80.

52-5-12. Payment; periodic or lump sum; settlement.

A. It is stated policy for the administration of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] and the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978] that it is in the best interest of the injured worker or disabled employee that the worker or employee receive benefit payments on a periodic basis. Except as provided in this section, lump-sum payments in exchange for the release of the employer from liability for future payments of compensation or medical benefits shall not be allowed.

B. With the approval of the workers' compensation judge, a worker may elect to receive compensation benefits to which the worker is entitled in a lump sum if the worker has returned to work for at least six months, earning at least eighty percent of the average weekly wage the worker earned at the time of injury or disablement. If a worker receives the benefit income in a lump sum, the worker is not entitled to any additional benefit income for the compensable injury or disablement and the worker shall only receive that portion of the benefit income that is attributable to the impairment rating as determined in Section 52-1-24 NMSA 1978. In making lump-sum payments, the payment due the worker shall not be discounted at a rate greater than a sum equal to the present value of all future payments of compensation computed at a five-percent discount compounded annually.

C. After maximum medical improvement and with the approval of the workers' compensation judge, a worker may elect to receive a partial lump-sum payment of workers' compensation benefits for the sole purpose of paying debts that may have accumulated during the course of the injured or disabled worker's disability.

D. The worker and employer may elect to resolve a claim for injury with a lump-sum payment to the worker for all or a portion of past, present and future payments of compensation benefits, medical benefits or both in exchange for a full and final release or an appropriate release of the employer from liability for such compromised benefits. The proposed lump-sum payment agreement shall be presented to the workers' compensation judge for approval, and a hearing shall be held on the record. The

workers' compensation judge shall approve the lump-sum payment agreement if the judge finds that:

(1) a written agreement describing the nature of the proposed settlement has been mutually agreed upon and executed by the worker and the employer;

(2) the worker has been fully informed and understands the terms, conditions and consequences of the proposed settlement;

(3) the lump-sum payment agreement is fair, equitable and provides substantial justice to the worker and employer; and

(4) the lump-sum payment agreement complies with the requirements for approval set forth in Sections 52-5-13 and 52-5-14 NMSA 1978.

E. The workers' compensation judge shall approve a lump-sum payment agreement pursuant to Subsection D of this section by order. Once the agreement has been approved and filed with the clerk of the administration, any further challenge to the terms of the settlement is barred and the lump-sum payment agreement shall not be reopened, set aside or reconsidered nor shall any additional benefits be imposed.

F. If a worker and employer elect to enter into a lump-sum payment agreement pursuant to Subsection D of this section, the limit on attorney fees pursuant to Subsection I of Section 52-1-54 NMSA 1978 shall apply.

G. If an insurer pays a lump-sum payment to an injured or disabled worker without the approval of a workers' compensation judge and if at a later date benefits are due for the injured or disabled worker's claim, the insurer alone shall be liable for that claim and shall not in any manner, including rate determinations and the employer's experience modifier, pass on the cost of the benefits due to the employer.

H. If the compensation benefit to which a worker is entitled is less than fifty dollars ($50.00) per week, any party may petition the workers' compensation judge to consolidate that payment into quarterly installments.

History: Laws 1986, ch. 22, § 38; 1987, ch. 235, § 50; 1990 (2nd S.S.), ch. 2, § 57; 1993, ch. 193, § 12; 2003, ch. 259, § 10; 2009, ch. 235, § 1.

52-5-13. Approval of lump sum settlement by workers' compensation judge.

The lump sum payment agreement entered into between the worker or his dependents and the employer shall be presented to the workers' compensation judge for approval upon a joint petition signed by all parties and verified by the worker or his dependents. The workers' compensation judge shall in every case assure that the worker or his dependents understand the terms and conditions of the proposed

settlement, and he may require a hearing for that purpose. All parties shall have the right to attend any such hearing and present testimony.

History: Laws 1986, ch. 22, § 39; 1989, ch. 263, § 81.

52-5-14. Order of approval.

A. If the workers' compensation judge finds the lump-sum payment agreement to be fair, equitable and consistent with provisions of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978], he shall approve the agreement by order, and the order shall not be set aside or modified except as provided in the applicable law. The workers' compensation judge may refuse to approve a settlement if he does not believe that it provides substantial justice to the parties.

B. In making lump-sum settlements, the payment due the worker or his dependents shall not be discounted at a greater rate than a sum equal to the present value of all future payments of compensation benefits computed at a five percent discount compounded annually.

History: Laws 1986, ch. 22, § 40; 1989, ch. 263, § 82; 1990 (2nd S.S.), ch. 2, § 58.

52-5-15. Awards; provisions.

All awards shall be against the employer for the amount then due and shall contain an order upon the employer for the payment to the worker, at regular intervals during the time he is entitled to receive compensation, of the further amounts he is entitled to receive. The awards shall be so framed as to accomplish the purpose and intent of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978] in all particulars.

History: Laws 1986, ch. 22, § 41; 1989, ch. 263, § 83.

52-5-16. Physical examination of worker; statements regarding dependents.

A. It is the duty of the worker, at the time of his employment or thereafter at the request of the employer, to submit himself to examination by a physician authorized to practice medicine in the state, who shall be paid by the employer, for the purpose of determining the worker's physical condition.

B. It is the duty of the worker, if required, to give the employer the names, addresses, relationships and degree of dependency of the worker's dependents, if any, or any subsequent change thereof. When the employer requires, the worker shall make

a detailed verified statement relating to such dependents, matters of employment and other information incident thereto.

History: Laws 1986, ch. 22, § 42; 1989, ch. 263, § 84.

52-5-17. Subrogation.

A. The right of any worker or, in case of his 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 [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978], but the claimant shall not be allowed to receive payment or recover damages for those injuries or disablement and also claim compensation from the employer, except as provided in Subsection C of this section.

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

C. The worker or his legal representative may retain any compensation due under the uninsured motorist coverage provided in Section 66-5-301 NMSA 1978 if the worker paid the premium for that coverage. If the employer paid the premium, the worker or his legal representative may not retain any compensation due under Section 66-5-301 NMSA 1978, and that amount shall be due to the employer. For the purposes of this section, the employer shall not be deemed to pay the premium for uninsured motorist coverage in a lease arrangement in which the employer pays the worker an expense or mileage reimbursement amount that may include as one factor an allowance for insurance coverage.

History: Laws 1986, ch. 22, § 43; 1987, ch. 235, § 51; 1989, ch. 263, § 85; 1990 (2nd S.S.), ch. 2, § 59.

52-5-18. Limitation on filing claims.

No additional claim shall be filed by any worker who is receiving maximum compensation except that a worker claiming additional compensation because of his employer's alleged failure to provide a safety device may file claim for that compensation, but in that event, only the safety devices issue may be determined in the claim.

History: Laws 1986, ch. 22, § 44; 1989, ch. 263, § 86.

52-5-19. Fee for funding administration; workers' compensation administration fund created.

A. Beginning with the calendar quarter ending September 30, 2004 and for each calendar quarter thereafter, there is assessed against each employer who is required or elects to be covered by the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] a fee equal to two dollars thirty cents ($2.30) multiplied by the number of employees covered by the Workers' Compensation Act that the employer has on the last working day of each quarter. At the same time, there is assessed against each employee covered by the Workers' Compensation Act on the last working day of each quarter a fee of two dollars ($2.00), which shall be deducted from the wages of the employee by the employer and remitted along with the fee assessed on the employer. The fees shall be remitted by the last day of the month following the end of the quarter for which they are due.

B. The taxation and revenue department may deduct from the gross fees collected an amount not to exceed five percent of the gross fees collected to reimburse the department for costs of administration.

C. The taxation and revenue department shall pay over the net fees collected to the state treasurer to be deposited by him in a fund hereby created and to be known as the "workers' compensation administration fund". Expenditures shall be made from this fund on vouchers signed by the director for the necessary expenses of the workers' compensation administration; provided that an amount equal to thirty cents ($.30) per employee of the fee assessed against an employer shall be distributed from the workers' compensation administration fund to the uninsured employers' fund.

D. The workers' compensation fee authorized in this section shall be administered and enforced by the taxation and revenue department under the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1978 Comp., § 52-5-19, enacted by Laws 1987, ch. 235, § 52; 1988, ch. 71, § 2; 1989, ch. 263, § 87; 1990 (2nd S.S.), ch. 3, § 3; 1992, ch. 52, § 1; 2004, ch. 36, § 2.

52-5-20. Notification to employer; penalty.

A. Each insurer, guarantor, surety or group self-insurance administrator shall, on written request of the insured employer, provide the employer with a list of claims made against the employer. The information provided to the employer shall include amounts paid for closed claims, the combined cumulative reserve for all open claims and, if requested, details regarding the treatment and condition of the injured or disabled worker. The employer shall also receive notice of any proposed settlement of any claim against the employer if he so requests in writing.

B. Failure to comply with this section may subject the violator to a fine, upon hearing held by the director, of not less than twenty-five dollars ($25.00) or more than one hundred dollars ($100).

History: 1978 Comp., § 52-5-20, enacted by Laws 1990 (2nd S.S.), ch. 2, § 60.

52-5-21. Administration records confidentiality; authorized use.

Except as otherwise provided in this section, unless introduced as evidence in an administrative or judicial proceeding or filed with the clerk of the court as part of an enforcement or compliance proceeding, all records of the administration shall be confidential. Once an accident or disablement occurs, any person who is a party to a claim upon that accident or disablement is entitled to access to all files relating to that accident or disablement and to all files relating to any prior accident, injury or disablement of the worker. Upon the filing of a rejection of a recommended resolution, all records filed with the clerk of the court as part of the judicial proceeding shall be open to the public.

History: Laws 1990 (2nd S.S.), ch. 2, § 65; 2001, ch. 87, § 5.

52-5-22. Accident and payment reports; penalties.

A. The director shall monitor the accident or disablement and payment reports filed by employers or insurers pursuant to Sections 52-1-58, 52-1-60 and 52-3-51 NMSA 1978. The director shall publish reports on those employers or insurers who are late either in submitting their accident or disablement reports or in making their initial payments on claims. In determining the timeliness of an initial payment on a claim, the director shall consider any initial payment to be late if it is received more than fourteen days after the filing of the report required in Section 52-1-58 or 52-3-51 NMSA 1978.

B. The director is authorized to take corrective action to prevent delays from occurring and may impose a penalty upon an employer or insurer who is at fault in causing a late initial payment on a claim. The insurance policy may not provide that any such penalty imposed upon an employer be paid by his insurer. That penalty may be an additional award to the worker who received the late payment of up to one hundred percent of the amount of the initial payment due.

History: Laws 1990 (2nd S.S.), ch. 2, § 89.

ARTICLE 6
Group Self-Insurance

52-6-1. Short title.

Chapter 52, Article 6 NMSA 1978 may be cited as the "Group Self-Insurance Act".

History: Laws 1986, ch. 22, § 75; 1990 (2nd S.S.), ch. 2, § 66.

52-6-2. Definitions.

As used in the Group Self-Insurance Act:

A. "administrator" means an individual, partnership or corporation engaged by a group's board of trustees to carry out the policies established by that board and to provide day-to-day management of the group;

B. "group" means a not-for-profit unincorporated association consisting of two or more public hospital employers or private employers that are engaged in the same or similar type of business, are members of the same bona fide trade or professional association that has been in existence for not less than five years and that enter into agreements to pool their liabilities for workers' compensation benefits; except that public hospital employers shall segregate their accounting records and investment accounts from those of private employers in accordance with applicable state law;

C. "insolvent" means that a group is unable to pay its outstanding lawful obligations as they mature in the regular course of business, as shown both by having an excess of required reserves and other liabilities over assets and by not having sufficient assets to reinsure all outstanding liabilities after paying all accrued claims owed;

D. "net premium" means premium derived from standard premium adjusted by any advance premium discounts;

E. "private employer" means every employer that is not a public employer or a public hospital employer;

F. "public employer" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions and all school districts and all political subdivisions of the state or any of their agencies, instrumentalities or institutions. "Public employer" does not include a public hospital employer;

G. "public hospital employer" means any local, county, district, city-county or other public hospital or health-related facility, whether operating in wholly or partially owned or leased premises;

H. "service company" means a person or entity that provides services not provided by the administrator, including claims adjustment; safety engineering; compilation of statistics and the preparation of premium, loss and tax reports; preparation of other required self-insurance reports; development of members' assessments and fees; and administration of a claim fund;

I. "standard premium" means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts;

J. "superintendent" means the superintendent of insurance; and

K. "workers' compensation benefits" means benefits pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978].

History: Laws 1986, ch. 22, § 76; 1987, ch. 11, § 1; 1989, ch. 263, § 88; 1990 (2nd S.S.), ch. 2, § 67; 2013, ch. 74, § 6.

52-6-3. Scope.

The provisions of the Group Self-Insurance Act apply to groups. Except as provided by the provisions of that act, groups that are issued a certificate of approval by the director shall not be deemed to be insurers or businesses of insurance and shall not be subject to the provisions of the Insurance Code or other insurance laws and regulations.

History: Laws 1986, ch. 22, § 77; 1990 (2nd S.S.), ch. 2, § 68.

52-6-4. Authority to act as a group.

No person, association or other entity shall act as a group unless it has been issued a certificate of approval by the director.

History: Laws 1986, ch. 22, § 78; 1990 (2nd S.S.), ch. 2, § 69.

52-6-5. Initial approval and continued approval to act as a group; qualifications.

A. A proposed group shall file with the director an application for a certificate of approval accompanied by a nonrefundable filing fee in an amount established by the director. The application shall include the group's name, the location of its principal office, the date of organization, the name and address of each member and such other information as the director may reasonably require, together with the following:

(1) proof of compliance with the provisions of Subsection B of this section;

(2) a copy of the articles of association, if any;

(3) a copy of agreements with the administrator and with any service company;

(4) a copy of the bylaws of the proposed group;

(5) a copy of the agreement between the group and each member securing the payment of workers' compensation and occupational disease disablement benefits,

which shall include provision for payment of assessments as provided for in Section 52-6-20 NMSA 1978;

(6) designation of the initial board of trustees and administrator;

(7) the address in this state where the books and records of the group will be maintained at all times;

(8) a pro-forma financial statement on a form acceptable to the director showing the financial ability of the group to pay the workers' compensation and occupational disease disablement obligations of its members; and

(9) proof of payment to the group by each member of not less than twenty-five percent of that member's first-year estimated annual net premium on a date approved by the director. Each payment shall be considered to be part of the first-year premium payment of each member if the proposed group is granted a certificate of approval.

B. To obtain and to maintain its certificate of approval, a group shall comply with the following requirements as well as any other requirements established by law or regulation not inconsistent with the following:

(1) a combined net worth of all members of a group of private employers of three million dollars ($3,000,000) or greater, as determined by the director; provided that if a group's annual financial statement for the prior calendar year shows that at the end of that year the group had a surplus of at least one-third of its claim reserves and not less than five million dollars ($5,000,000), then for the current calendar year, the group shall not be required to provide the director with evidence of the net worth of all of the group's members;

(2) security in a form and amount prescribed by the director, which shall be provided by either a surety bond, security deposit or financial security endorsement or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposits in a federally insured savings and loan association or credit union; or any bond or security issued by a state of the United States and backed by the full faith and credit of the state. Any such securities shall be deposited with the director and assigned to and made negotiable by the director pursuant to a trust document acceptable to the director. Interest accruing on a negotiable security so deposited shall be collected and transmitted to the depositor, provided the depositor is not in default. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit or financial security endorsement shall be for the benefit of the state solely to pay claims and associated expenses and payable

upon the failure of the group to pay workers' compensation or occupational disease disablement benefits it is legally obligated to pay. The director may establish and adjust requirements of the amount of security based on differences among groups in their size, types of local government services provided by members of the group, years in existence and other relevant factors; provided that the director shall not require an amount lower than one hundred thousand dollars ($100,000) for any group during its first year of operation. Subsequent to the first year of operation, the director may waive the requirements of this paragraph;

(3) specific and aggregate excess insurance in a form, in an amount and by an insurance company acceptable to the director. The director may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, types of employment, years in existence and other relevant factors and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in Paragraph (2) of this subsection;

(4) an estimated annual standard premium of at least two hundred fifty thousand dollars ($250,000) during a group's first year of operation. Thereafter, the annual standard premium shall be at least five hundred thousand dollars ($500,000);

(5) an indemnity agreement jointly and severally binding the group and each member of the group to meet the workers' compensation and occupational disease disablement obligations of each member. The indemnity agreement shall be in a form prescribed by the director and shall include minimum uniform substantive provisions prescribed by the director. Subject to the director's approval, a group may add other provisions needed because of its particular circumstances. The requirements of this paragraph shall only apply to private employers;

(6) a fidelity bond for the administrator in a form and amount prescribed by the director; and

(7) a fidelity bond for the service company in a form and amount prescribed by the director. The director may also require the service company providing claim services to furnish a performance bond in a form and amount prescribed by the director.

C. A group shall notify the director of any change in the information required to be filed under Subsection A of this section or in the manner of its compliance with Subsection B of this section no later than thirty days after that change.

D. The director shall evaluate the information provided by the application required to be filed under Subsection A of this section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation and occupational disease disablement benefits will be available on a timely basis.

E. The director shall act upon a completed application for a certificate of approval within sixty days. If, because of the number of applications, the director is unable to act upon an application within that period, the director shall have an additional sixty days to so act.

F. The director shall issue to the group a certificate of approval upon finding that the proposed group has met all requirements, or the director shall issue an order refusing the certificate, setting forth reasons for refusal, upon finding that the proposed group does not meet all requirements.

G. Each group shall be deemed to have appointed the director as its attorney to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest and shall remain in effect as long as there is in this state any obligation or liability of the group for workers' compensation or occupational disease disablement benefits.

History: Laws 1986, ch. 22, § 79; 1989, ch. 263, § 89; 1990 (2nd S.S.), ch. 2, § 70; 2007, ch. 112, § 1.

52-6-6. Certificate of approval; termination.

A. The certificate of approval issued by the director to a group authorizes the group to provide workers' compensation and occupational disease disablement benefits. The certificate of approval remains in effect until terminated at the request of the group or revoked by the director, pursuant to provisions of Section 52-6-23 NMSA 1978.

B. The director shall not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation or occupational disease disablement obligations with an authorized insurer under an agreement filed with and approved in writing by the director. Such obligations shall include both known claims and associated expenses and claims incurred but not reported and associated expenses.

C. Subject to approval of the director, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. The director may hold a hearing on the merger and shall do so if any party, including a member of either group, so requests.

History: Laws 1986, ch. 22, § 80; 1989, ch. 263, § 90; 1990 (2nd S.S.), ch. 2, § 71.

52-6-7. Examinations.

The director may examine the affairs, transactions, accounts, records and assets and liabilities of each group as often as the director deems advisable. The expense of such examinations shall be assessed against the group in the same manner that insurers are assessed for examinations.

History: Laws 1986, ch. 22, § 81; 1990 (2nd S.S.), ch. 2, § 72.

52-6-8. Board of trustees; membership, powers, duties and prohibitions.

Each group shall be operated by a board of trustees that shall consist of not less than five persons whom the members of a group elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers or directors of members of the group. The group's administrator or service company, or any owner, officer or employee of, or any other person affiliated with, the administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

A. the board of trustees shall:

(1) maintain responsibility for all money collected or disbursed from the group and segregate all money into a claims fund account and an administrative fund account. At least seventy percent of the net premium shall be placed into a designated depository, to be called the "claims fund account", for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance and special fund contributions, including second-injury and other loss-related funds; provided that income taxes may be paid from the actuarially determined surplus portion of the claims fund account at the discretion of the board of trustees. The remaining net premium shall be placed into a designated depository, to be called the "administrative fund account", for the payment of taxes, general regulatory fees and assessments and administrative costs. The director may approve an administrative fund account of more than thirty percent and a claims fund account of less than seventy percent only if the group shows to the director's satisfaction that:

(a) more than thirty percent is needed for an effective safety and loss-control program; or

(b) the group's aggregate excess insurance attaches at less than seventy percent;

(2) maintain minutes of its meetings and make the minutes available to the director;

(3) designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; and

(4) retain an independent certified public accountant to prepare the statement of financial condition required by Subsection A of Section 52-6-12 NMSA 1978; and

B. the board of trustees shall not:

(1) extend credit to individual members for payment of a premium except pursuant to payment plans approved by the director; or

(2) borrow any money from the group or in the name of the group except in the ordinary course of business, without first advising the director of the nature and purpose of the loan and obtaining prior approval from the director.

History: Laws 1986, ch. 22, § 82; 1987, ch. 11, § 2; 1990 (2nd S.S.), ch. 2, § 73; 1997, ch. 184, § 1.

52-6-9. Group membership; termination; liability.

A. An employer joining a group after the group has been issued a certificate of approval shall:

(1) submit an application for membership to the board of trustees or its administrator; and

(2) if applicable, enter into the indemnity agreement required by Paragraph (5) of Subsection B of Section 52-6-5 NMSA 1978.

Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

B. Individual members of a group shall be subject to cancellation by the group pursuant to the bylaws of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the director of the termination or cancellation of a member within ten days and shall maintain coverage of each canceled or terminated member for thirty days after such notice, at the terminating member's expense, unless the group is notified sooner by the director that the canceled or terminated member has procured workers' compensation and occupational disease disablement insurance, has become an approved self-insurer or has become a member of another group.

C. The group shall pay all workers' compensation and occupational disease disablement benefits for which each member incurs liability during its period of membership. A private employer member who elects to terminate his membership or is canceled by a group remains jointly and severally liable for workers' compensation and occupational disease disablement obligations of the group and its members that were incurred during the canceled or terminated member's period of membership.

D. A group member is not relieved of his workers' compensation or occupational disease disablement liabilities incurred during his period of membership except through payment by the group or the member of required workers' compensation and occupational disease disablement benefits.

E. The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation or occupational disease disablement benefits incurred during the insolvent or bankrupt member's period of membership.

History: Laws 1986, ch. 22, § 83; 1989, ch. 263, § 91; 1990 (2nd S.S.), ch. 2, § 74.

52-6-10. Administrators and service companies; conflicts.

A. Each group shall have an administrator. In providing day-to-day management for the group, the administrator may provide claims adjustment; safety engineering; compilation of statistics and the preparation of premium, loss and tax reports; preparation of other required self-insurance reports; development of members' assessments and fees; and administration of a claim fund.

B. Each group may have a service company. The service company may provide services the administrator delegates to it or does not itself provide.

C. No service company or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, an administrator for the same group. No administrator or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a service company for the same group. Nothing in this section shall prohibit an administrator or service company for one group from being an administrator or service company for another group.

D. An administrator, officer, trustee or employee of a group or an employee of an administrator shall disclose in writing to the group's board of trustees and director a conflict of interest. For purposes of this subsection, a "conflict of interest" means that a person accepts or is a beneficiary of a fee, brokerage, gift or other thing of value, other than fixed salary or compensation, as consideration for an investment, loan, deposit, purchase, sale, exchange, insurance, reinsurance or other similar transaction made by or for the group, or that a person is financially interested in any capacity in a transaction for the group except on behalf of the group.

E. No group shall pay remuneration, compensation or any thing of value to an officer, administrator or director of the group unless the payment has been authorized by the group's board of trustees.

F. A service contract shall state that, unless the director permits otherwise, the service company shall handle, to their conclusion, all claims and other obligations incurred during the contract period.

History: Laws 1986, ch. 22, § 84; 1990 (2nd S.S.), ch. 2, § 75; 1993, ch. 96, § 1.

52-6-11. Licensing of agent.

Except for a salaried employee of a group, its administrator or its service company, any person soliciting membership in a group shall be a licensed solicitor or agent pursuant to the provisions of the Insurance Code.

History: Laws 1986, ch. 22, § 85.

52-6-12. Financial statements; other reports.

A. Each group shall submit to the director a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. The financial statement shall be on a form prescribed by the director and shall include actuarially appropriate reserves for:

(1) known claims and associated expenses;

(2) claims incurred but not reported and associated expenses;

(3) unearned premiums; and

(4) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for:

(a) known claims and associated expenses; and

(b) claims incurred but not reported and associated expenses shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American academy of actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the national association of insurance commissioners.

B. The director may prescribe the format and frequency of other reports, which may include payroll audit reports, summary loss reports and quarterly financial statements.

History: Laws 1986, ch. 22, § 86; 1990 (2nd S.S.), ch. 2, § 76.

52-6-13. Repealed.

History: Laws 1986, ch. 22, § 87; 1987, ch. 145, § 1; repealed by Laws 2021, ch. 65, § 38.

52-6-14. Subsequent injury fund.

A group shall be subject to the provisions of the Subsequent Injury Act.

History: Laws 1986, ch. 22, § 88.

52-6-15. Misrepresentation prohibited.

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of membership of a group.

History: Laws 1986, ch. 22, § 89.

52-6-16. Investments.

Funds not needed for current obligations may be invested by the board of trustees in accordance with the provisions of Chapter 59A, Article 9 NMSA 1978 applicable to investments, except that, notwithstanding the provisions of Section 59A-9-18 NMSA 1978:

A. the board of trustees may make loans or investments not otherwise expressly permitted under Chapter 59A, Article 9 NMSA 1978, in an aggregate amount not exceeding ten percent of the group's assets and not exceeding two percent of such assets as to any one such loan or investment, provided that such loans and investments do not constitute an amount that is greater than total surplus, if the loan or investment meets the requirements of Section 59A-9-3 NMSA 1978 and by reason of safety of principal and yield otherwise qualifies as a sound investment; and

B. the calculation of the group's other loans and investments described in Subsection A of this section shall not include the fair market value of any real property occupied by the group.

History: Laws 1986, ch. 22, § 90; 2007, ch. 205, § 1.

52-6-17. Rates; reporting.

A. Every group shall adhere to the uniform classification system, uniform experience-rating plan and manual rules filed with the superintendent by an advisory organization designated by the director.

B. Premium contributions to the group shall be determined by applying the manual rates and rules to the appropriate classification of each member, which shall be

adjusted by each member's experience credit or debit. Subject to approval by the director, premium contributions may also be reduced by an advance premium discount reflecting the group's expense levels and loss experience.

C. Notwithstanding Subsection B of this section, a group may apply to the director for permission to make its own rates. Such rates shall be based on at least three years of the group's experience.

D. Each group shall be audited at least annually by an auditor acceptable to the director to verify proper classifications, experience rating, payroll and rates. A report of the audit shall be filed with the director in a form acceptable to him. A group or any member thereof may request a hearing on any objections to the classifications. If the director determines that, as a result of an improper classification, a member's premium contribution is insufficient, he shall order the group to assess that member an amount equal to the deficiency. If the director determines that, as a result of an improper classification, a member's premium is excessive, he shall order the group to refund to the member the excess collected. The audit shall be at the expense of the group.

History: Laws 1986, ch. 22, § 91; 1987, ch. 11, § 3; 1990 (2nd S.S.), ch. 2, § 77.

52-6-18. Refunds.

A. Any money for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than twelve months after the end of the fund year.

B. Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any fund year shall be paid only to those employers who remain participants in the group for the entire fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

History: Laws 1986, ch. 22, § 92.

52-6-19. Premium payment; reserves.

A. Each group shall establish to the satisfaction of the director a premium payment plan that shall include:

(1) an initial payment by each member of at least twenty-five percent of that member's annual premium before the start of the group's fund year; and

(2) payment of the balance of each member's annual premium in monthly or quarterly installments during that fund year.

B. Upon approval by the director, a group may establish an alternative premium payment plan that shall include:

(1) provision by each member of premium security by surety bond in an amount equal to at least twenty-five percent of the member's annual premium; provided that the surety bond shall be in a form acceptable to the group, shall be issued by a corporate surety company authorized to transact business in this state and shall be effective before the start of the group's fund year; and

(2) payment by each member of the member's annual premium in monthly or quarterly installments during the group's fund year.

C. Each group shall establish and maintain actuarially appropriate loss reserves that shall include reserves for:

(1) known claims and associated expenses; and

(2) claims incurred but not reported and associated expenses.

D. Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

History: Laws 1986, ch. 22, § 93; 1990 (2nd S.S.), ch. 2, § 78; 1997, ch. 146, § 1.

52-6-20. Deficits and insolvencies.

A. If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under the Group Self-Insurance Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

B. In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from:

(1) surplus from a fund year other than the current fund year;

(2) administrative funds;

(3) assessment of the membership, if ordered by the group; or

(4) such alternate method as the director may approve or direct.

The director shall be notified prior to any transfer of surplus funds from one fund year to another.

C. If the group fails to assess its members or to otherwise make up such deficit within thirty days, the director shall order it to do so.

D. If the group fails to make the required assessment of its members within thirty days after the director orders it to do so, or if the deficiency is not fully made up within sixty days after the date on which such assessment is made, or within such longer period of time as may be specified by the director, the group shall be deemed to be insolvent.

E. The director shall proceed against an insolvent group in the same manner as the superintendent would proceed against an insolvent domestic insurer in this state as prescribed by the Insurance Code. The director shall have the same powers and limitations in such proceedings as are provided to the superintendent under that code, except as otherwise provided in the Group Self-Insurance Act.

F. In the event of the liquidation of a group, the director shall levy an assessment upon its members for such an amount as the director determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

History: Laws 1986, ch. 22, § 94; 1990 (2nd S.S.), ch. 2, § 79.

52-6-21. Monetary penalties.

After notice and opportunity for a hearing, the director may impose a monetary penalty on any person or group found to be in violation of any provision of the Group Self-Insurance Act or of any rules or regulations promulgated thereunder. The monetary penalty shall not exceed one thousand dollars ($1,000) for each act or violation and shall not exceed ten thousand dollars ($10,000) in the aggregate. The amount of the monetary penalty shall be paid to the director for credit to the workers' compensation administration fund.

History: Laws 1986, ch. 22, § 95; 1990 (2nd S.S.), ch. 3, § 4.

52-6-22. Cease and desist orders.

A. After notice and opportunity for a hearing, the director may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of the Group Self-Insurance Act or of any rules or regulations promulgated thereunder.

B. Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the director may do either or both of the following:

(1) impose a monetary penalty of not more than ten thousand dollars ($10,000) for each and every act or violation of such order not to exceed an aggregate monetary penalty of one hundred thousand dollars ($100,000); and

(2) revoke the group's certificate of approval or any insurance license held by the person.

History: Laws 1986, ch. 22, § 96; 1990 (2nd S.S.), ch. 2, § 80.

52-6-23. Revocation of certificate of approval.

A. After notice and opportunity for a hearing, the director may revoke a group's certificate of approval if it:

(1) is found to be insolvent;

(2) fails to pay any premium tax, regulatory fee or assessment or special fund contribution imposed upon it; or

(3) fails to comply with any of the provisions of the Group Self-Insurance Act, with any rules or regulations promulgated thereunder or with any lawful order of the director within the time prescribed.

B. The director may revoke a group's certificate of approval if, after notice and opportunity for hearing, he finds that:

(1) any certificate of approval that was issued to the group was obtained by fraud;

(2) there was a material misrepresentation in the application for the certificate of approval; or

(3) the group or its administrator has misappropriated, converted, illegally withheld or refused to pay over, upon proper demand, any money that belongs to a member, an employee of a member or a person otherwise entitled to it and that has been entrusted to the group or its administrator in its fiduciary capacities.

History: Laws 1986, ch. 22, § 97; 1990 (2nd S.S.), ch. 2, § 81.

52-6-24. Notice and hearing; appeal.

Notice and hearing required by the provisions of Sections 52-6-21, 52-6-22 and 52-6-23 NMSA 1978 shall be given and held pursuant to the applicable provisions of Chapter 59A, Article 4 NMSA 1978. A party may appeal from an order of the director made after a hearing, pursuant to Section 39-3-1.1 NMSA 1978.

History: Laws 1986, ch. 22, § 98; 2003, ch. 259, § 11.

52-6-25. Rules and regulations.

The director may make rules and regulations necessary to implement the provisions of the Group Self-Insurance Act.

History: Laws 1986, ch. 22, § 99; 1990 (2nd S.S.), ch. 2, § 82.

ARTICLE 7
Workers' Compensation Oversight Committee (Repealed.)

52-7-1 to 52-7-6. Repealed.

ARTICLE 8
Self-Insurers' Guarantee Fund Act

52-8-1. Short title.

Sections 109 through 120 [52-8-1 to 52-8-12 NMSA 1978] of this act may be cited as the "Self-Insurers' Guarantee Fund Act".

History: Laws 1990 (2nd S.S.), ch. 2, § 109.

52-8-2. Purpose.

The purpose of the Self-Insurers' Guarantee Fund Act is to provide a guarantee fund for self-insurers to protect the workers and the families of workers employed by self-insurers who become insolvent. The Self-Insurers' Guarantee Fund Act is designed to help ensure the integrity and financial health of the workers' compensation and occupational disease disablement system as it applies to self-insurers in New Mexico.

History: Laws 1990 (2nd S.S.), ch. 2, § 110.

52-8-3. Definitions.

As used in the Self-Insurers' Guarantee Fund Act:

A. "benefits" means any benefits to which a worker may be entitled under the provisions of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978], the Subsequent Injury Act or the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978];

B. "board" means the board of directors of the self-insurers' guarantee fund commission;

C. "commission" means the self-insurers' guarantee fund commission;

D. "director" means the director of the workers' compensation administration;

E. "fund" means the self-insurers' guarantee fund;

F. "insolvent" means that a self-insurer is unable to pay its outstanding lawful obligations as they mature in the regular course of business, as shown both by having an excess of required reserves and other liabilities over assets and by not having sufficient assets to reinsure all outstanding liabilities after paying all accrued claims owed;

G. "private employer" means an employer subject to the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law who is not a public employer or a public hospital employer;

H. "public employer" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions and all school districts and all political subdivisions of the state or any of their agencies, instrumentalities or institutions. "Public employer" does not include a public hospital employer;

I. "public hospital employer" means any local, county, district, city-county or other public hospital or public health-related facility, whether operating in wholly or partially owned or leased premises;

J. "self-insurer" means a private employer certified by the director as being qualified to be self-insured for workers' compensation purposes. "Self-insurer" does not include a member of a group covered by the Group Self-Insurance Act [Chapter 52, Article 6 NMSA 1978]; and

K. "worker" means an individual who is defined to be a "worker" under Section 52-1-16 NMSA 1978 or "employee" under Section 52-3-3 NMSA 1978.

History: Laws 1990 (2nd S.S.), ch. 2, § 111.

52-8-4. Scope of act.

Every private, individual certified self-insurer shall be a general member of the commission and shall comply with the provisions of the Self-Insurers' Guarantee Fund Act.

History: Laws 1990 (2nd S.S.), ch. 2, § 112.

52-8-5. Self-insurers' guarantee fund commission created; organized as an independent commission; board created; administrative support.

A. The "self-insurers' guarantee fund commission" is created as a nonprofit, independent, public corporation for the purpose of administering the Self-Insurers' Guarantee Fund Act. The commission shall not be considered either a state agency or an insurance company.

B. The commission shall have a board of directors which shall consist of five members. Four members shall represent small, medium and large employers, provided that not more than one member shall be from any single employer or industry. The director shall serve, ex officio, as the fifth member. The initial membership of the board shall include four self-insurer representatives appointed by the director. Two of the four self-insurer members originally appointed to the board shall be appointed for an initial term of two years, and two for an initial term of four years. Thereafter, except for the director, members of the board shall serve four-year terms and shall be elected by the general membership of the commission. In the event of a resignation prior to the end of a board member's term, the board shall appoint a replacement to serve the remainder of the term.

C. The workers' compensation administration shall provide office space, staff and supplies as is necessary to support the board's operation.

D. Each general member of the commission shall have one vote in determining the board membership.

History: Laws 1990 (2nd S.S.), ch. 2, § 113.

52-8-6. Board powers and duties; liability.

A. The board may:

(1) purchase insurance or reinsurance as is necessary to insure any potential liabilities to the fund;

(2) provide for the imposition of assessments to ensure the financial stability of the fund; and

(3) adopt bylaws and rules necessary to carry out the functions of the commission.

B. Except for intentional acts or acts of gross negligence, neither board members nor general members of the commission shall be liable for their acts or omissions in the administration of the Self-Insurers' Guarantee Fund Act.

History: Laws 1990 (2nd S.S.), ch. 2, § 114.

52-8-7. Guarantee fund created; assessment for funding.

A. Each certified self-insurer shall contribute to a fund to be known as the "self-insurers' guarantee fund". The fund shall be used as a last resort to provide benefits to workers and the families of workers of self-insurers who become insolvent and otherwise unable to meet their financial obligations. The board shall determine, subject to approval by the director, when payments may be made from the fund and when a self-insurer becomes insolvent and otherwise unable to meet his financial obligations.

B. At the time of the initial certification, each self-insurer shall deposit in the fund an amount equal to one percent of his paid losses for the immediately preceding year or an average of the preceding three years' New Mexico paid losses, whichever is less or, in the event the self-insurer has no previous experience, an amount to be determined by the board and approved by the director.

C. After the initial contribution, each certified self-insurer shall continue to make an annual contribution, based on one percent of the previous year's paid losses, for two more years. After three years of consecutive contributions, a certified self-insurer shall no longer be required to pay additional contributions to the fund unless:

(1) the director determines that, due to the insolvency of a member of the fund, an additional assessment is necessary to make the fund actuarially sound; or

(2) the board determines the need for any special assessment to ensure the financial stability of the fund.

D. If, at any time, the fund account balance of the self-insurer exceeds one hundred fifty percent, as calculated in Subsection C of this section, the amount in excess of one hundred fifty percent shall be refunded to the insurer.

E. In computing the account balance due, a self-insurer shall be credited with past contributions, including interest earned on those contributions.

F. Each self-insurer may be required to contribute additional amounts, as determined by the board and approved by the director, to maintain the financial stability of the fund. The board shall review at least annually the fund account balance and shall assess members as appropriate to maintain an adequate fund balance. Catastrophic losses shall be accounted for by a special assessment on members as determined by the board and approved by the director.

G. The assets of the fund are the sole property of the fund; they are not the property of the self-insurers who contribute to the fund.

H. The fund shall be maintained at one or more New Mexico financial institutions as determined by the board. The fund shall not be considered public money.

History: Laws 1990 (2nd S.S.), ch. 2, § 115.

52-8-8. Fund liability period for guarantee fund.

A. The fund may be used to pay benefits to the worker or legal representative of the worker that are required of the self-insurer who becomes insolvent and otherwise unable to meet his financial obligations, provided that the injury or death occurred on or after January 1, 1992, or, in the case of an occupational disease, that the last injurious exposure occurred on or after January 1, 1992.

B. Notwithstanding the provisions of Subsection A of this section, the fund may only be used to pay benefits to an injured worker if the worker's injury occurs after the date on which the self-insurer is certified and has made a contribution to the fund.

History: Laws 1990 (2nd S.S.), ch. 2, § 116.

52-8-9. Fund membership termination.

A. The board may recommend to the director that a private employer be terminated as a self-insurer. The director may also terminate a self-insurer at his own initiative.

B. In the case of termination, the fund shall remain liable for future compensation for injuries and diseases to workers of the private employer that occurred prior to termination as a qualified self-insurer.

History: Laws 1990 (2nd S.S.), ch. 2, § 117.

52-8-10. Withdrawal of certification; grounds.

A. If certification of a self-insurer is withdrawn by the director, the private employer shall not be considered a self-insurer during any appeal of that determination. The private employer shall therefore obtain any necessary coverage from other sources pending resolution of the appeal.

B. Certification of a self-insurer may be withdrawn by the director in accordance with regulations he adopts. The regulations shall consider the following as grounds for termination:

(1) the employer no longer meets the requirements, financial or otherwise, of being a qualified self-insurer;

(2) the self-insurer engages in or induces workers to engage in fraudulent practices;

(3) the self-insurer fails to comply with rules and regulations of the director; or

(4) the self-insurer fails to maintain a sufficient fund balance, in which event certification shall be withdrawn effective the date that the fund balance is insufficient.

History: Laws 1990 (2nd S.S.), ch. 2, § 118.

52-8-11. Rules and regulations.

The director shall adopt rules and regulations that he determines are necessary or appropriate to fulfill the purposes of and implement the provisions of the Self-Insurers' Guarantee Fund Act including requiring adequate accountability of the collection and disbursement of money in the fund.

History: Laws 1990 (2nd S.S.), ch. 2, § 119.

52-8-12. Regulations remain in effect; initial commission general members.

A. The regulations adopted by the director to determine whether a private employer is financially solvent and does not need insurance coverage under Section 52-1-4 NMSA 1978 shall remain in effect until superceded by regulations adopted by the director pursuant to the Self-Insurers' Guarantee Fund Act. The director may require a self-insurer to provide a bond or other suitable financial instrument.

B. The initial general members of the commission shall be private employers certified as of January 1, 1992, as being financially solvent and not needing insurance coverage under Section 52-1-4 NMSA 1978.

History: Laws 1990 (2nd S.S.), ch. 2, § 120.

ARTICLE 9
Employers Mutual Company

52-9-1. Short title.

Sections 121 through 144 [52-9-1 to 52-9-24 NMSA 1978] of this act may be cited as the "Employers Mutual Company Act".

History: Laws 1990 (2nd S.S.), ch. 2, § 121.

52-9-2. Findings and purpose.

A. The legislature finds that the cost, service and benefits of workers' compensation and occupational disease disablement insurance are of utmost importance to the health, welfare and economic well-being of all the citizens of New Mexico. To help provide competitive workers' compensation insurance coverage, the legislature enacts the Employers Mutual Company Act.

B. The legislature finds that, based on the relative amounts of premiums paid, small and medium-sized employers who are good risks for workers' compensation and occupational disease disablement insurance nevertheless can face serious obstacles in securing insurance at reasonable rates in the private voluntary market. A primary purpose of the Employers Mutual Company Act is to create an insurance entity that will provide, consistent with sound underwriting practices, assistance and competitively priced workers' compensation and occupational disease disablement insurance to those small and medium-sized employers.

C. The legislature finds that employers of all sizes should benefit from the availability of competitively priced insurance from the employers mutual company. A purpose of the Employers Mutual Company Act is to create an insurance entity that will provide assistance and competitively priced workers' compensation and occupational disease disablement insurance to all employers; provided, however, that priority attention is reserved for small and medium-sized employers.

D. The legislature finds that workers' compensation and occupational disease disablement insurance premiums and costs are at a critically high level that threatens the health of New Mexico's economy. A purpose of the Employers Mutual Company Act is to improve and stimulate the state's economy, including critical industries relating to oil and gas production in the state. The legislature further finds that improving the workers' compensation and occupational disease disablement system in New Mexico by creating the employers mutual company will enhance the performance of industries relating to oil and gas production and increase severance tax revenues. For these reasons, the legislature finds investment of the severance tax permanent fund in revenue bonds issued by the employers mutual company is a prudent investment and provides adequate legal consideration for the state.

E. The legislature finds a serious lack of relevant data based on New Mexico experience alone that can be used to assess the impact of workers' compensation and occupational disease disablement laws in the state. A purpose of the Employers Mutual Company Act is to generate data on New Mexico experience alone to assess more accurately the performance of New Mexico's workers' compensation and occupational disease disablement system and the impact of New Mexico's laws.

History: Laws 1990 (2nd S.S.), ch. 2, § 122.

52-9-3. Definitions.

As used in the Employers Mutual Company Act:

A. "benefits" means any benefits to which a worker may be entitled under the provisions of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978], the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law [52-3-1 NMSA 1978];

B. "board" means the board of directors of the employers mutual company created under the Employers Mutual Company Act;

C. "claim" means the assertion by or on behalf of a worker of a right to benefits;

D. "company" means the employers mutual company created and authorized under the Employers Mutual Company Act;

E. "director" or "member" means a member of the board;

F. "president" means the president of the employers mutual company; and

G. "worker" means an individual who is included in the definition of "worker" under Section 52-1-16 NMSA 1978 or "employee" under Section 52-3-3 NMSA 1978.

History: Laws 1990 (2nd S.S.), ch. 2, § 123.

52-9-4. Employers mutual company created; organized as a domestic mutual insurance company.

The "employers mutual company" is created as a nonprofit, independent, public corporation for the purpose of insuring employers against the risk of liability for payment of benefits claims to workers. The company shall be organized as a domestic mutual insurance company and shall be domiciled in a class A county.

History: Laws 1990 (2nd S.S.), ch. 2, § 124.

52-9-5. Company's board of directors; appointment; powers.

A. The company's board of directors shall consist of the president and eight members appointed or elected as provided in this section.

B. Each director shall hold office until a successor is appointed or elected and begins service on the board.

C. The governor shall appoint, with the consent of the senate, the initial eight directors of the board, and they shall then appoint the president, who shall be the ninth member of the board.

D. After the governor appoints the initial eight directors of the board, those directors shall determine by lot their initial terms, which shall be two directors for two years, three

directors for four years and three directors for six years. Thereafter, each director shall be appointed or elected to a six-year term. At the expiration of the terms of the two initial directors whose terms are two years, the governor shall appoint one director and the policyholders shall elect one director for full six-year terms. At the expiration of the terms of the three initial directors whose terms are four years, the governor shall appoint two directors and the policyholders shall elect one director for full six-year terms. At the expiration of the terms of the three initial directors whose terms are six years, the governor shall appoint two directors and the policyholders shall elect one director for full six-year terms. Thereafter, as vacancies arise, directors shall be appointed or elected so that at all times five directors shall be appointed by the governor and three directors shall be elected by the company's policyholders in accordance with provisions determined by the board.

E. The governor shall not remove a director he appoints unless the removal is approved by a two-thirds vote of the members of the senate.

F. At all times, two of the governor's appointees to the board shall be public members who have general expertise in workers' compensation, but they shall not be employed by or represent policyholders of the company. Of the remaining six appointed or elected board members, excluding the company president, three directors shall be managers or represent the management of policyholders of the company and three directors shall be nonmanagement employees or represent the nonmanagement employees of policyholders of the company, subject to the following restrictions:

(1) at least two of the three directors who are managers or represent the management of policyholders of the company shall be from or represent private, for-profit enterprises;

(2) at least five members of the board, including the president, shall be knowledgeable in investments and economics;

(3) no member of the board shall represent or be an employee or member of the board of directors of an insurance company;

(4) no two members of the board shall be employed by or represent the same company or institution;

(5) no more than two members of the board shall be employed by or represent a governmental entity; and

(6) any director who has served a full six-year term shall not be eligible for another term until one year after the end of his term.

The provisions of this subsection that apply to managers or representatives of management and nonmanagement employees or representatives of nonmanagement employees of policyholders shall, in the case of the governor's initial director

appointments, apply instead to the management and nonmanagement employees of any employer in the state.

G. The board shall annually elect a chairman from among its members and shall elect those other officers it determines necessary for the performance of its duties.

H. The power to set the policies and procedures for the company is vested in the board. The board may perform all acts necessary or appropriate to exercise that power. The board shall have the same power, authority and jurisdiction as that authorized by law for the governing body of a private insurance carrier. The board shall, consistent with sound underwriting practices, seek to provide priority assistance and competitively priced workers' compensation and occupational disease and disablement insurance to small and medium-sized employers who are good risks for that insurance.

I. Directors' compensation shall be set by the board but shall be limited so that total compensation and reimbursement for expenses incurred as a director, except for the president, do not exceed two thousand five hundred dollars ($2,500) for each director annually.

History: Laws 1990 (2nd S.S.), ch. 2, § 125; 1991, ch. 134, § 1.

52-9-6. Board; directors as appointed public officials of state; excluded from personal liability.

Directors are appointed public officials of the state while carrying out their duties and activities under the Employers Mutual Company Act. The directors and the employees of the company are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the company or for any act performed or obligation entered into in an official capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the company or affairs relating to it.

History: Laws 1990 (2nd S.S.), ch. 2, § 126.

52-9-7. President.

The company is under the administrative control of the president. He shall be in charge of the day-to-day operation and management of the company. The board shall appoint the president, and he shall serve at the pleasure of the board. He shall receive compensation as set by the board. The president shall have proven successful experience as an executive at the general management level in the insurance, or self-insurance, business.

History: Laws 1990 (2nd S.S.), ch. 2, § 127.

52-9-8. Exclusion of state's liability.

The state shall not be liable for any obligations incurred by the company.

History: Laws 1990 (2nd S.S.), ch. 2, § 128.

52-9-9. Use of company assets.

The assets of the company shall be applicable to the payment of losses sustained on account of insurance issued by it and to the payment of salaries, dividends as provided in Sections 131 and 132 [52-9-11, 52-9-12 NMSA 1978] of this act and other expenses.

History: Laws 1990 (2nd S.S.), ch. 2, § 129.

52-9-10. Company to be competitive; safety incentives and penalties; loss control, case management and utilization review.

A. The company shall be competitive with other insurers of workers' compensation and occupational disease disablement insurance. It is the expressed intent of the legislature that the company shall ultimately become self-supporting. For that purpose, loss experience and expense shall be ascertained, and dividends, credits or rate deviations may be made, as provided in the Employers Mutual Company Act. In order to control costs, the company shall provide as many of its services in-house as practicable.

B. The company shall be liable to the same extent as any private insurance company for the payments that are required to be made under Chapter 59A, Article 43 NMSA 1978 to protect against the insolvency of any other insurer of workers' compensation or occupational disease disablement. Likewise, the company shall receive the same benefits under those provisions as any other insurer of workers' compensation or occupational disease disablement.

C. The company shall provide necessary assistance to its policyholders regarding workplace safety. The company may reward or penalize policyholders depending upon their participation in workplace safety programs, actual loss reduction and safety performance. The company shall notify its policyholders of all safety services provided at the time of issuance or renewal of a policy.

D. The company shall provide its policyholders with loss-control services to prevent accidents from occurring, case management review to monitor the status, progress and appropriateness of each claim filed and to help workers return to work, and utilization review to determine the appropriateness of medical services charged.

History: Laws 1990 (2nd S.S.), ch. 2, § 130.

52-9-11. Annual accountings; possible dividends and credits.

The incurred loss experience and expense of the company shall be ascertained each year. If there is an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared to or a credit allowed to an employer who has been insured with the company in accordance with criteria approved by the board, which may account for the employer's safety record and performance.

History: Laws 1990 (2nd S.S.), ch. 2, § 131.

52-9-12. Amount of dividends or credits.

The cash dividend or credit to an employer shall be an amount that the board in its discretion considers appropriate.

History: Laws 1990 (2nd S.S.), ch. 2, § 132.

52-9-13. Ability of company to transact workers' benefits insurance.

Effective no later than January 1, 1992, the company shall transact insurance business to provide coverage for workers' benefits and employers' liability.

History: Laws 1990 (2nd S.S.), ch. 2, § 133.

52-9-14. Investment counsel.

The company may retain an independent investment counsel. The board shall periodically review and appraise the investment strategy being followed and the effectiveness of such services. Any investment counsel retained or hired shall report at least once a month to the board on investment results and related matters.

History: Laws 1990 (2nd S.S.), ch. 2, § 134.

52-9-15. Powers of company.

The company may:

A. insure any New Mexico employer for workers' compensation and employer's liability coverage to the same extent as any other insurer;

B. indemnify a New Mexico employer against his liability for workers' compensation and employer's liability coverage under the laws of any other state for New Mexico employees temporarily working outside this state if the company insures the employer's workers who work within this state;

C. sue and be sued in all actions arising out of any act or omission in connection with its business or affairs;

D. enter into any contracts or obligations relating to the company that are authorized or permitted by law;

E. issue revenue bonds as authorized pursuant to the Employers Mutual Company Act;

F. invest and reinvest money belonging to the company as provided in the Employers Mutual Company Act; and

G. conduct all business and affairs and perform all acts in carrying out its function whether or not specifically designated in the Employers Mutual Company Act.

History: Laws 1990 (2nd S.S.), ch. 2, § 135.

52-9-16. Powers of president.

In conducting the business and affairs of the company, the president may, subject to restrictions imposed by the board, carry out the policies and procedures established by the board and may:

A. enter into contracts of workers' compensation and employer's liability insurance;

B. sell annuities covering workers' compensation and employer's liability insurance;

C. decline to insure any risk that does not meet the minimum underwriting standards established by the board;

D. reinsure any risk or a part of a risk;

E. cause the payrolls or other operations of employers applying for insurance to the company to be inspected and audited;

F. make rules for the settlement of claims against the company;

G. contract, on the same basis as insurers, with health care providers, as defined in Section 52-4-1 NMSA 1978, for the treatment and care of workers entitled to benefits from the company;

H. make safety inspections of risks and furnish advisory services to employers on safety and health measures;

I. act for the company in collecting and disbursing money necessary to administer the company and conduct its business;

J. sign contracts and incur obligations, including revenue bonds, on behalf of the company;

K. perform all acts necessary to exercise power, authority or jurisdiction over the company to discharge its functions and fulfill its responsibilities, including the establishment of premium rates; and

L. conduct all business and affairs and perform all acts in carrying out his duties whether or not specifically designated in the Employers Mutual Company Act.

History: Laws 1990 (2nd S.S.), ch. 2, § 136.

52-9-17. Company audit.

The board shall cause an annual audit of the books of accounts, funds and securities of the company to be made by a competent and independent firm of certified public accountants, the cost of the audit to be a charge against the company. A copy of the audit report shall be filed with the superintendent of insurance and the president. The audit shall be open to the public for inspection.

History: Laws 1990 (2nd S.S.), ch. 2, § 137.

52-9-18. Company assets.

In addition to other provisions of law governing regulation of insurance companies, if the superintendent of insurance finds that the company does not own assets at least equal to all liabilities and required reserves together with the minimum basic surplus and free surplus required of a mutual casualty insurer by the Insurance Code, or that its condition is such as to render the continuance of its business hazardous to the public or to the holders of its policies or certificates of insurance, the superintendent shall:

A. notify the president and chairman of the board of that determination;

B. furnish the company with a written list of the superintendent's recommendations to abate the determination; and

C. notify the governor, the president pro tempore of the senate, the speaker of the house of representatives and the legislative finance committee of the recommendations of the superintendent and any actions taken in response by the company.

History: Laws 1990 (2nd S.S.), ch. 2, § 138.

52-9-19. Money and property of the company.

All premiums and other money paid to the company, all property and securities acquired through the use of money belonging to the company and all interest and

dividends earned upon money belonging to the company and deposited or invested by the company are the sole property of the company and shall be used exclusively for the operation and obligations of the company. The money of the company is not state money. The property of the company is not state property.

History: Laws 1990 (2nd S.S.), ch. 2, § 139.

52-9-20. No state appropriation.

The company shall not receive any state appropriation.

History: Laws 1990 (2nd S.S.), ch. 2, § 140.

52-9-21. Exemption from and applicability of certain laws.

The company shall not be considered a state agency for any purpose. This includes exempting the company from all state personnel, salary and procurement statutes, rules and regulations. The insurance operations of the company are subject to all of the applicable provisions of the Insurance Code in the same manner as those provisions apply to a private insurance company. The company is subject to the same tax liabilities and assessments as a private insurance company.

History: Laws 1990 (2nd S.S.), ch. 2, § 141.

52-9-22. Marketing.

A. Pursuant to rules adopted by the board, the company, private independent insurance agents licensed to sell workers' compensation insurance in New Mexico and any insurance association acting as a general agent, provided the association has at least one hundred members, may sell insurance coverage for the company. The board shall establish a standard agency contract for any insurance association acting as a general agent with which the board contracts. The board shall adopt a schedule of commissions that the company will pay to any qualified independent insurance agent or association.

B. The marketing representatives employed directly by the company shall obtain a license from the superintendent of insurance. The marketing representatives employed directly by the company shall not be licensed to sell any type of insurance other than workers' compensation or occupational disease disablement insurance.

History: Laws 1990 (2nd S.S.), ch. 2, § 142.

52-9-23. Annual report.

The president shall submit an annual, independently audited report, in accordance with procedures governing annual reports adopted by the national association of insurance commissioners, by October 1 of each year to the governor, the legislative finance committee and any other appropriate legislative committee indicating the business done by the company during the previously completed fiscal year and containing a statement of the resources and liabilities of the company. The report shall include:

A. the volume of premiums insured through the company and its share of the workers' benefits market in the state;

B. the percent division of the premium dollars among various types of benefit payments and administrative costs for policies and claims under the company;

C. the average rate of return enjoyed by the company on invested assets;

D. recommendations concerning desired changes in the company to promote its prompt and efficient administration of policies and claims;

E. recommendations to the legislature and the governor regarding the continued operation of the company; and

F. any other information the president deems appropriate.

History: Laws 1990 (2nd S.S.), ch. 2, § 143.

52-9-24. Loan fund created.

There is hereby created in the state treasury a fund to be known as the "employers mutual company loan fund".

History: Laws 1990 (2nd S.S.), ch. 2, § 144.

52-9-25. Authorization to issue revenue bonds.

A. In order to provide funds for the continued development and operation of the employers mutual company, the board of directors of the company is authorized to issue revenue bonds from time to time, in a principal amount outstanding not to exceed ten million dollars ($10,000,000) at any given time, payable solely from premiums received from insurance policies and other revenues generated by the company.

B. The board may issue bonds to refund other bonds issued pursuant to this section.

C. The bonds shall have a maturity of no more than ten years from the date of issuance. The board of directors of the employers mutual company shall determine all

other terms, covenants and conditions of the bonds; provided, however, that the bonds may provide for prepayment in part or in full of the balance due at any time without penalty, and the company shall not make any prepayments until it has established adequate reserves for the risks it has insured and has received approval from the superintendent of insurance for the proposed prepayment.

D. The bonds shall be executed with the manual or facsimile signature of the president of the employers mutual company or the chairman of the board of directors of the company and attested by an other member of the board. The bonds may bear the seal, if any, of the company.

E. The proceeds of the bonds and the earnings on those proceeds are appropriated to the board of directors of the employers mutual company for the development and operation of the employers mutual company, to pay expenses incurred in the preparation, issuance and sale of the bonds, to pay any obligations relating to the bonds and the proceeds of the bonds under the federal Internal Revenue Code of 1986, as amended, and for any other lawful purpose.

F. The bonds may be sold either at a public sale or at a private sale to the state investment officer or to the state treasurer. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be as determined by the president or the board of directors of the employers mutual company.

G. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

H. An amount of money from the sources specified in Subsection A of this section sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal and interest on the bonds.

I. The bonds shall be legal investments for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.

J. The bonds shall be payable by the employers mutual company, which shall keep a complete record relating to the payment of the bonds.

History: Laws 1990 (2nd S.S.), ch. 3, § 7; 1992, ch. 24, § 1.

ARTICLE 10
Release of Medical Records

52-10-1. Release of medical records.

A. A health care provider shall immediately release to a worker, that worker's employer, that employer's insurer, the appropriate peer review organization or the health care selection board all medical records, medical bills and other information concerning any health care or health care service provided to the worker, upon either party's written request to the health care provider for that information. Except for those records that are directly related to any injuries or disabilities claimed by a worker for which that worker is receiving benefits from his employer, the request shall be accompanied by a signed authorization for that request by the worker.

B. An employer or worker shall not be required to continue to pay any health care provider who refuses to comply with Subsection A of this section.

History: Laws 1990 (2nd S.S.), ch. 2, § 90.