

1 HOUSE BILL 359

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Daymon Ely

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10 AN ACT

11 RELATING TO WORKERS' COMPENSATION; AMENDING PROVISIONS OF THE  
12 WORKERS' COMPENSATION ACT RELATING TO THE AWARD OF POINTS FOR  
13 PARTIAL DISABILITY EDUCATION AND PHYSICAL CAPACITY  
14 MODIFICATIONS, INDEPENDENT MEDICAL EXAMINATIONS, UNSANITARY OR  
15 INJURIOUS PRACTICES AND ATTORNEY FEES AND COSTS ASSOCIATED WITH  
16 CLAIMS; ALLOWING PRIVATE RIGHTS OF ACTION FOR BAD FAITH AND  
17 UNFAIR CLAIMS PROCESSING; INCREASING PENALTIES.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

22 "52-1-6. APPLICATION OF PROVISIONS OF ACT.--

23 A. The provisions of the Workers' Compensation Act  
24 shall apply to employers of three or more workers; provided  
25 that act shall apply to all employers engaged in activities

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1 required to be licensed under the provisions of the  
2 Construction Industries Licensing Act regardless of the number  
3 of employees. The provisions of the Workers' Compensation Act  
4 shall not apply to employers of private domestic servants and  
5 farm and ranch laborers.

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

15 C. Every worker shall be conclusively presumed to  
16 have accepted the provisions of the Workers' Compensation Act  
17 if ~~[his]~~ the worker's employer is subject to the provisions of  
18 that act and has complied with its requirements, including  
19 insurance.

20 D. ~~[Such]~~ Compliance with the provisions of the  
21 Workers' Compensation Act, including the provisions for  
22 insurance, shall be ~~[and construed to be]~~ a surrender by the  
23 employer and the worker of their rights to any other method,  
24 form or amount of compensation or determination thereof or to  
25 any cause of action at law, suit in equity or statutory or

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1 common-law right to remedy or proceeding whatever for or on  
2 account of personal injuries or death of the worker than as  
3 provided in the Workers' Compensation Act and shall be an  
4 acceptance of all of the provisions of the Workers'  
5 Compensation Act and shall bind the worker [~~himself~~] and, for  
6 compensation for [~~his~~] the worker's death, shall bind [~~his~~] the  
7 worker's personal representative, [~~his~~] surviving spouse and  
8 next of kin, as well as the employer and those conducting [~~his~~]  
9 the employer's business during bankruptcy or insolvency.

10 E. The Workers' Compensation Act provides exclusive  
11 remedies. No cause of action outside the Workers' Compensation  
12 Act shall be brought by an employee or dependent against the  
13 employer or [~~his~~] the employer's representative, including the  
14 insurer, guarantor or surety of any employer, for any matter  
15 relating to the occurrence of or payment for any injury or  
16 death covered by the Workers' Compensation Act; except that the  
17 Workers' Compensation Act shall not provide the exclusive  
18 remedy for claims of bad faith, unfair claims-processing  
19 practices or other similar common law or statutory claims  
20 against an employer, insurer or other party. Nothing in the  
21 Workers' Compensation Act [~~however~~] shall affect [~~or be~~  
22 ~~construed to affect~~], in any way, the existence of or the mode  
23 of trial of any claim or cause of action that the worker has  
24 against any person other than [~~his~~] the worker's employer or  
25 another employee of [~~his~~] the worker's employer, including a

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1 management or supervisory employee, or the insurer, guarantor  
2 or surety of [~~his~~] the worker's employer."

3 SECTION 2. Section 52-1-26.3 NMSA 1978 (being Laws 1990  
4 (2nd S.S.), Chapter 2, Section 14, as amended) is amended to  
5 read:

6 "52-1-26.3. PARTIAL DISABILITY DETERMINATION--EDUCATION  
7 MODIFICATION.--

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

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

14 (1) has completed no higher than the fifth  
15 grade shall be awarded [~~three~~] four points;

16 (2) has completed the sixth grade but has  
17 [~~completed no higher than the eleventh grade~~] not graduated  
18 from the twelfth grade or has not obtained a high school  
19 equivalency credential shall be awarded [~~two~~] three points;

20 (3) has [~~completed~~] graduated from the twelfth  
21 grade or has obtained a high school equivalency credential but  
22 has not completed a four-year college degree shall be awarded  
23 [~~one point; and~~] two points;

24 (4) has completed a four-year college degree  
25 [~~or more~~] shall receive [~~zero points~~] one point; and

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1                   (5) has completed a two-year or more graduate  
2 degree shall receive zero points.

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

17                   (1) a worker with an SVP of one to two shall  
18 be awarded [~~four~~] six points;

19                   (2) a worker with an SVP of three to four  
20 shall be awarded [~~three~~] five points;

21                   (3) a worker with an SVP of five to six shall  
22 be awarded [~~two~~] four points; and

23                   (4) a worker with an SVP of seven to nine  
24 shall be awarded [~~one point~~] two points.

25                   D. A worker shall be awarded points based upon the

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1 training that the worker has received. A worker who cannot  
2 competently perform a specific vocational pursuit shall be  
3 awarded one ~~[point]~~ to five points pursuant to an agreement of  
4 the parties or a determination of the workers' compensation  
5 judge based on the reasonable likelihood that the worker will  
6 be able to return to a job for which the worker is trained and  
7 otherwise able to do. A worker who can perform a specific  
8 vocational pursuit shall not receive ~~[any]~~ less than two points  
9 or more than four points.

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

13 SECTION 3. Section 52-1-26.4 NMSA 1978 (being Laws 1990  
14 (2nd S.S.), Chapter 2, Section 15, as amended) is amended to  
15 read:

16 "52-1-26.4. PARTIAL DISABILITY DETERMINATION--PHYSICAL  
17 CAPACITY MODIFICATION.--

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

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

25 RESIDUAL PHYSICAL CAPACITY

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

6 C. For the purposes of this section:

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

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

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

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

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1 other sedentary criteria are met.

2 D. If a worker suffers a primary mental impairment,  
3 the workers' compensation judge shall award points to a worker  
4 based upon the difference between the physical capacity  
5 necessary to perform the worker's usual and customary work and  
6 the worker's residual physical capacity as affected by the  
7 primary mental impairment.

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

14 **SECTION 4.** Section 52-1-28.1 NMSA 1978 (being Laws 1990  
15 (2nd S.S.), Chapter 2, Section 29) is amended to read:

16 "52-1-28.1. UNFAIR CLAIM-PROCESSING PRACTICES--BAD  
17 FAITH.--

18 A. Claims may be filed under the Workers'  
19 Compensation Act alleging unfair claim-processing practices or  
20 bad faith by an employer, insurer or claim-processing  
21 representative relating to any aspect of the Workers'  
22 Compensation Act. The director may also investigate  
23 allegations of unfair claim processing or bad faith on [~~his~~]  
24 the director's own initiative.

25 B. If unfair claim processing or bad faith has

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1 occurred in the handling of a particular claim, the claimant  
2 shall be awarded, in addition to any benefits due and owing, a  
3 benefit penalty not to exceed twenty-five percent of the  
4 benefit amount ordered to be paid.

5 C. If an employer, insurer or claim-processing  
6 representative has a history or pattern of repeated unfair  
7 claim-processing practices or bad faith, the director or a  
8 workers' compensation judge may impose a civil penalty of up to  
9 ~~[one thousand dollars (\$1,000)]~~ five thousand dollars (\$5,000)  
10 for each violation. The civil penalty shall be deposited in  
11 the workers' compensation administration fund.

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

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

17 F. This section shall not be construed as limiting  
18 or interfering with the authority of the superintendent of  
19 insurance as provided by law to regulate any insurer, including  
20 ~~[his]~~ the superintendent's jurisdiction over unfair claim-  
21 settlement practices.

22 G. This section shall not limit or interfere with a  
23 person's ability to pursue other remedies in the common law or  
24 statute for recovery of bad faith or unfair claims-processing  
25 practices against an employer, insurer or other party."

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1           SECTION 5. Section 52-1-51 NMSA 1978 (being Laws 1929,  
2 Chapter 113, Section 19, as amended) is amended to read:

3           "52-1-51. PHYSICAL EXAMINATIONS OF WORKER--INDEPENDENT  
4 MEDICAL EXAMINATION--UNSANITARY OR INJURIOUS PRACTICES BY  
5 WORKER--TESTIMONY OF HEALTH CARE PROVIDERS.--

6           A. In the event of a dispute between the parties  
7 concerning [~~the reasonableness or necessity of medical or~~  
8 ~~surgical treatment, the date upon which maximum medical~~  
9 ~~improvement was reached, the correct impairment rating for the~~  
10 ~~worker, the cause of an injury or any other medical issue, if~~  
11 ~~the parties cannot agree upon the use of a specific independent~~  
12 ~~medical examiner, either party may petition a workers'~~  
13 ~~compensation judge for permission to have the worker undergo an~~  
14 ~~independent medical examination] any medical issue, the parties  
15 may agree to have the worker undergo an independent medical  
16 examination to try to resolve the dispute. If the parties  
17 cannot agree on the doctor or doctors to perform the  
18 independent medical examination, they shall petition the  
19 administration to decide which doctor shall perform the  
20 independent medical examination. A workers' compensation judge  
21 may order an independent medical examination on a party's  
22 motion only if admissible medical evidence tends to prove that  
23 there is a bona fide medical dispute between the worker's  
24 authorized health care providers. If a workers' compensation  
25 judge believes that an independent medical examination will~~

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1 assist the judge with the proper determination of ~~[any]~~ a  
2 medical issue in the case, ~~[including the cause of the injury]~~  
3 the workers' compensation judge may order an independent  
4 medical examination upon the judge's own motion. The workers'  
5 compensation judge shall describe in the order authorizing the  
6 independent medical examination, citing specific medical  
7 evidence from the case, how an independent medical examination  
8 will assist the judge with the proper determination of any  
9 medical issue. An independent medical examination shall be  
10 performed ~~[immediately]~~ as soon as possible, pursuant to  
11 procedures adopted by the director ~~[by a health care provider~~  
12 ~~other than the designated health care provider, unless the~~  
13 ~~employer and the worker otherwise agree]~~.

14 B. ~~[In deciding who may conduct]~~ If the workers'  
15 compensation judge is required to decide who shall perform the  
16 independent medical examination, the workers' compensation  
17 judge ~~[shall not]~~ may designate the health care provider  
18 initially chosen by the petitioner. The workers' compensation  
19 judge ~~[shall]~~ may also designate a health care provider ~~[on]~~  
20 from the approved list of ~~[persons]~~ health care providers  
21 authorized by the committee appointed by the advisory council  
22 on workers' compensation to create that list. The decision of  
23 the workers' compensation judge shall be final. The employer  
24 shall pay for ~~[any]~~ all independent medical ~~[examination]~~  
25 examinations.

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1 C. Only a health care provider who has treated the  
2 worker pursuant to Section 52-1-49 NMSA 1978 or the health care  
3 provider providing the independent medical examination pursuant  
4 to this section may offer testimony at any workers'  
5 compensation hearing concerning the particular injury in  
6 question. An independent medical examination report shall be  
7 admissible evidence at any hearings pursuant to the Workers'  
8 Compensation Act, including formal hearings.

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

20 E. If an independent medical examination or an  
21 examination pursuant to Subsection D of this section is  
22 requested, the worker shall travel to the place at which the  
23 examination shall be conducted, which shall be set by the  
24 workers' compensation judge, unless the parties agree on the  
25 place at which the examination will be conducted. Within

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1 thirty days after the examination, the worker shall be  
2 compensated by the employer for all necessary and reasonable  
3 expenses incidental to submitting to the examination, including  
4 the cost of travel, meals, lodging, loss of pay or other like  
5 direct expense, but the amount to be compensated for meals and  
6 lodging shall not exceed that allowed for nonsalaried public  
7 officers under the Per Diem and Mileage Act.

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

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

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

20 I. If any worker persists in any unsanitary or  
21 injurious practice that [~~tends to imperil, retard or impair~~]  
22 imperils, retards or impairs the worker's recovery or  
23 [~~increase~~] increases the worker's disability or if the worker  
24 refuses to submit to [~~such~~] medical [~~or surgical~~] treatment  
25 [~~as~~] that is reasonably essential to promote the worker's

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1 recovery, the workers' compensation judge may in the judge's  
2 discretion reduce or suspend the workers' compensation  
3 benefits. Once the worker ceases the unsanitary or injurious  
4 practice or submits to the medical treatment, the employer and  
5 insurer shall reinstate the workers' compensation benefits and  
6 shall pay the worker any benefits that were not paid due to a  
7 reduction or suspension of benefits by the judge."

8 SECTION 6. Section 52-1-54 NMSA 1978 (being Laws 1987,  
9 Chapter 235, Section 24, as amended) is amended to read:

10 "52-1-54. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY  
11 THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY  
12 COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

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

17 B. No party shall pay an attorney a fee unless a  
18 workers' compensation judge has approved the fee.

19 [~~B-~~] C. In all cases where the jurisdiction of the  
20 workers' compensation administration is invoked to approve a  
21 settlement of a compensation claim under the Workers'  
22 Compensation Act, the director or workers' compensation judge,  
23 unless the claimant is represented by an attorney, may in the  
24 director's or judge's discretion appoint an attorney to aid the  
25 workers' compensation judge in determining whether the

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

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

18 [~~D~~] E. The cost of discovery shall be borne by the  
19 party who requests it. If, however, the claimant requests any  
20 discovery, the employer shall advance the cost of paying for  
21 discovery up to a limit of [~~three thousand dollars (\$3,000)~~]  
22 six thousand dollars (\$6,000). If the claimant [~~substantially~~]  
23 prevails on the claim, as determined by a workers' compensation  
24 judge, any discovery cost advanced by the employer shall be  
25 paid by that employer. If the claimant does not

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1 [substantially] prevail on the claim, as determined by a  
2 workers' compensation judge, the claimant shall reimburse the  
3 employer [~~shall be reimbursed~~] for discovery costs advanced  
4 according to a schedule for reimbursement approved by a  
5 workers' compensation judge.

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

19 G. In determining and fixing a reasonable fee for  
20 the parties' attorneys, the workers' compensation judge or  
21 courts shall take into consideration:

- 22 (1) the sum, if any, offered by the employer:  
23 (a) before the worker's attorney was  
24 employed;  
25 (b) after the attorney's employment but



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1 before proceedings were commenced; and

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

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

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

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

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

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1 incurred by the opposing party after the making of the offer.  
2 The fact that an offer has been made but not accepted does not  
3 preclude a subsequent offer;

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

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

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

24 [~~G-~~] I. In all actions arising under the provisions  
25 of Section 52-1-56 NMSA 1978 where the jurisdiction of the

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

14 [~~H~~] J. In determining reasonable attorney fees for  
15 a claimant, the workers' compensation judge shall consider only  
16 those benefits to the worker that the attorney is responsible  
17 for securing. At the judge's discretion, the value of future  
18 medical benefits [~~shall not~~] may be considered in determining  
19 attorney fees.

20 [~~F~~] K. Attorney fees, including [~~but not limited~~  
21 ~~to~~] the costs of paralegal services, legal clerk services and  
22 any other related legal services costs on behalf of a claimant  
23 or an employer for a single accidental injury claim, including  
24 representation before the workers' compensation administration  
25 and the courts on appeal, shall not exceed twenty-two thousand

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1 five hundred dollars (\$22,500). This limitation applies  
2 whether the claimant or employer has one or more attorneys  
3 representing the claimant or employer and applies as a  
4 cumulative limitation on compensation for all legal services  
5 rendered in all proceedings and other matters directly related  
6 to a single accidental injury to a claimant. The workers'  
7 compensation judge may exceed the maximum amount stated in this  
8 subsection in awarding [a] reasonable attorney [~~fee~~] fees if  
9 the judge finds that a claimant, an insurer or an employer  
10 acted in bad faith with regard to handling the injured worker's  
11 claim and the injured worker or employer has suffered economic  
12 loss as a result. However, in no case shall this additional  
13 amount exceed [~~five thousand dollars (\$5,000)~~] fifteen thousand  
14 dollars (\$15,000). As used in this subsection, "bad faith"  
15 means conduct by the claimant, insurer or employer in the  
16 handling of a claim that amounts to fraud, malice, oppression  
17 or willful, wanton or reckless disregard of the rights of the  
18 worker or employer. Any determination of bad faith shall be  
19 made by the workers' compensation judge through a separate  
20 fact-finding proceeding. Notwithstanding the provisions of  
21 Subsection [J] M of this section, the party found to have acted  
22 in bad faith shall pay one hundred percent of the additional  
23 fees awarded for representation of the prevailing party in a  
24 bad faith action.

25 L. The limitation on the parties' attorney fees in

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1 Subsection K of this section shall not apply to permanent total  
2 disability claims. In a permanent total disability claim,  
3 either party's attorney may petition the administration for an  
4 order authorizing fees to be paid above the fee limit. If the  
5 fees requested satisfy the requirements for awarding fees, a  
6 judge shall order them paid.

7 [J-] M. Except as provided in Paragraphs (3) and  
8 (4) of Subsection [F] H of this section, the payment of a  
9 claimant's attorney fees determined under this section shall be  
10 shared equally by the worker and the employer.

11 [K-] N. It is unlawful for any person except a  
12 licensed attorney to receive or agree to receive any fee or  
13 payment for legal services in connection with any claim for  
14 compensation under the Workers' Compensation Act.

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

19 [M-] P. No attorney fees shall be paid to any party  
20 until the claim has been settled or adjudged.

21 [N-] Q. Every person violating the provisions of  
22 this section is guilty of a misdemeanor and upon conviction  
23 shall be fined not less than [~~fifty dollars (\$50.00)~~] five  
24 hundred dollars (\$500) or more than [~~five hundred dollars~~  
25 ~~(\$500)~~] five thousand dollars (\$5,000), to which may be added

underscored material = new  
[bracketed material] = delete

1 imprisonment in the county jail for a term not exceeding ninety  
2 days.

3           ~~[θ-]~~ R. Nothing in this section shall restrict a  
4 claimant from being represented before the workers'  
5 compensation administration by a nonattorney as long as that  
6 nonattorney receives no compensation for that representation  
7 from the claimant."

8           SECTION 7. Section 59A-16-30 NMSA 1978 (being Laws 1984,  
9 Chapter 127, Section 296.1, as amended) is amended to read:

10           "59A-16-30. PRIVATE RIGHT OF ACTION.--~~[Any]~~ A person  
11 covered by Chapter 59A, Article 16 NMSA 1978 who has suffered  
12 damages as a result of a violation of that article by an  
13 insurer or agent is granted a right to bring an action in  
14 district court to recover actual damages. Costs shall be  
15 allowed to the prevailing party unless the court otherwise  
16 directs. The court may award ~~[attorneys']~~ attorney fees to the  
17 prevailing party if:

18           A. the party complaining of the violation of that  
19 article has brought an action that ~~[he]~~ the party knew to be  
20 groundless; or

21           B. the party charged with the violation of that  
22 article has willfully engaged in the violation. The relief  
23 provided in this section is in addition to remedies otherwise  
24 available against the same conduct under the common law or  
25 other statutes of this state ~~[provided, however, that the~~

.206146.2

underscoring material = new  
~~[bracketed material] = delete~~

1 ~~Workers' Compensation Act and the New Mexico Occupational~~  
2 ~~Disease Disablement Law provide exclusive remedies]."~~

3 SECTION 8. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2017.

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