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## FISCAL IMPACT REPORT

**SPONSOR** Cook **ORIGINAL DATE** 02/06/14  
**LAST UPDATED** 02/13/14 **HB** 290

**SHORT TITLE** Workers' Comp Benefits & Intoxication **SB** \_\_\_\_\_

**ANALYST** Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 113 and SB 211.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Personnel Office (SPO)

Workers' Compensation Administration (WCA)

### SUMMARY

#### Synopsis of Bill

House Bill 290 clarifies the provision barring worker's compensation when the injury was willfully self-inflicted by the worker. It also imposes a new standard to be employed as to the existing bar to compensation when an injury to or death of a worker is due solely to the worker's intoxication, which is when test results for intoxication are in excess of the Department of Transportation's cutoff concentrations for intoxicating substances, unless the intoxicating substance had been prescribed or administered to the worker as authorized by a licensed practitioner. It also imposes this same standard, with the same exception, to the provision reducing compensation by ten percent when a worker's intoxication contributes to but is not the sole cause of an injury to or death of that worker.

### FISCAL IMPLICATIONS

Responding agencies report no fiscal impact to their operating budgets.

## SIGNIFICANT ISSUES

WCA advises that it, and the workers' compensation community as a whole, depend on clarity in the law so that claims can be adjusted or, if need be, adjudicated quickly and efficiently. It believes HB 290 does not further that interest as it relates to issues of intoxication/drug use.

In particular, WCA advises that HB 290 attempts to codify the New Mexico Court of Appeals' decision in *Villa v. City of Las Cruces*, 2010-NMCA-099, although the Court itself in that case noted that its decision did not result in a good outcome: "We think it unfortunate that the Legislature created a span of a complete bar on the one hand and a 90 percent recovery on the other hand, while leaving the language in the two statutes ambiguous." WCA believes that, when analyzed in light of the New Mexico Supreme Court's decision in *Ortiz v. Overland Express*, this bill does not address the extreme challenge in meeting an "occasioned solely by" standard: the Supreme Court noted that medical/toxicology experts cannot eliminate every other possible cause or determine that drugs/alcohol alone caused an accident. WCA concludes that because of that extreme standard, the only likely outcome currently in a workers' compensation case, where a workers' intoxication is proved to have caused his own injury, is a 10 percent reduction in the workers' indemnity payout.

## OTHER SUBSTANTIVE ISSUES

WCA notes the Advisory Council on Workers' Compensation and Occupational Disease, created in 1990 to, among other responsibilities, make recommendations relating to the adoption of legislation, has not considered this bill. See Section 52-1-1.2, NMSA 1978.

SPO reports in its analysis on a related bill that a 50 state survey done by Lexis Nexis completed in 2009 demonstrates that many states do not allow workers' compensation benefits for injuries caused by intoxication. At least two states limit benefits available to a worker whose injury was caused by intoxication by at least 50 percent.

See [http://www.lexisnexis.com/documents/pdf/20090930094905\\_large.pdf](http://www.lexisnexis.com/documents/pdf/20090930094905_large.pdf)

WCA points out that this bill does not address the limited availability of testing facilities required by the current requirement in law that test results used as evidence of intoxication must be performed by a laboratory certified by the federal department of transportation to perform testing in conformance with its "procedures for transportation workplace drug and alcohol testing programs". In addition, WCA reports those procedures test only for certain substances. These matters are addressed in HB 113.

In a similar vein, SPO takes issue with existing language in the law being amended in Section 2 of HB 920 (but not changed in this bill) that allows a worker to receive compensation if a worker is injured while intoxicated due to taking prescribed drugs, which it states is in conflict with its policies that require workers to be fit for duty, regardless of whether the drug was legally prescribed.

## CONFLICT

House Bill 113 and Senate Bill 211 amend these same statutes in a manner different than contained in this bill.

**ALTERNATIVES**

WCA believes that HB 113 presents a more workable, more easily understood, standard for dealing with issues of intoxication and drug use that cause workplace injury.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

WCA warns there will be continued ambiguity about the application of these statutes as noted by New Mexico appellate courts.

MD/jl