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AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING AND REPEALING
SECTIONS OF THE WORKERS' COMPENSATION ACT TO PROVIDE THAT
COMPENSATION BENEFITS BE REDUCED IN PROPORTION TO THE
CONTRIBUTION OF THE WORKER'S INTOXICATION TO THE WORKER'S
INJURY OR DEATH; PROVIDING EXCEPTIONS.

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

SECTION 1. Section 52-1-11 NMSA 1978 (being Laws 1929,
Chapter 113, Section 8, as amended) is amended to read:

"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."

SECTION 2. Section 52-1-12.1 NMSA 1978 (being
Laws 2001, Chapter 87, Section 1) is amended to read:

"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

1 "controlled substance" pursuant to this section does not
2 include medications prescribed to a worker by the worker's
3 licensed health care provider and taken in accordance with
4 directions of the prescribing health care provider or
5 dispensing pharmacy, unless such medication is combined with
6 alcohol or a non-prescribed drug or controlled substance to
7 cause intoxication or influence.

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

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

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

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

8 F. Testing shall be at the employer's expense and
9 shall not be used as evidence in a criminal proceeding
10 against the worker. Test samples shall be taken as a split
11 sample. One part of the sample shall be held by the testing
12 facility for twelve months from the date of the original
13 test. Within this twelve-month period, the worker has the
14 right to request a second test of the original sample at the
15 worker's expense.

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

23 H. An employer shall be barred from claiming a
24 reduction in compensation pursuant to this section if the
25 employer fails to implement a written policy that declares a

1 drug- and alcohol-free workplace, which may include
2 post-accident testing in accordance with this section, and
3 that gives its employees notice that workers' compensation
4 benefits may be reduced in the event intoxication or
5 influence contributes to a workplace injury.

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

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

14 SECTION 3. REPEAL.--Section 52-1-12 NMSA 1978
15 (being Laws 1971, Chapter 55, Section 1, as amended) is
16 repealed. _____

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