

1 HOUSE BILL 356

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Dennis J. Roch

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10 AN ACT

11 RELATING TO WORKERS' COMPENSATION; PROHIBITING COMPENSATION
12 UNDER THE WORKERS' COMPENSATION ACT IF THE WORKER IS UNDER THE
13 INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS, WHETHER OR NOT THE CAUSE
14 OF THE INJURY.

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

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

19 "52-1-11. INJURIES [~~DUE TO INTOXICATION~~] TO AN
20 INTOXICATED WORKER OR CAUSED BY THE WILLFULNESS OR INTENTION OF
21 WORKER ARE NONCOMPENSABLE.--No compensation shall become due or
22 payable from any employer under the terms of the Workers'
23 Compensation Act [~~in event such injury was occasioned by the~~
24 ~~intoxication of such worker or~~] if:

25 A. the worker was intoxicated at the time of the

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1 injury;

2 B. the injury was willfully suffered by ~~[him]~~ the
3 worker; or

4 C. the injury was intentionally inflicted by
5 ~~[himself]~~ the injured worker."

6 SECTION 2. Section 52-1-12 NMSA 1978 (being Laws 1971,
7 Chapter 55, Section 1, as amended) is amended to read:

8 "52-1-12. COMPENSATION PROHIBITED WHEN WORKER UNDER
9 INFLUENCE OF CERTAIN DRUGS.--No compensation is payable from
10 any employer under the provisions of the Workers' Compensation
11 Act if, at the time of the injury, the ~~[injury to the]~~ person
12 claiming compensation was ~~[occasioned solely by the person~~
13 ~~being]~~ under the influence of a ~~[depressant, stimulant or~~
14 ~~hallucinogenic]~~ dangerous drug as defined in the New Mexico
15 Drug, Device and Cosmetic Act or under the influence of a
16 ~~[narcotic drug as defined in]~~ controlled substance, as listed
17 in Schedule I or II of the Controlled Substances Act, unless
18 the drug was dispensed to the person upon the prescription of a
19 practitioner licensed by law to prescribe the drug or
20 administered to the person by any person authorized by a
21 licensed practitioner to administer the drug."

22 SECTION 3. Section 52-1-12.1 NMSA 1978 (being Laws 2001,
23 Chapter 87, Section 1) is amended to read:

24 "52-1-12.1. ~~[REDUCTION IN COMPENSATION WHEN ALCOHOL OR~~
25 ~~DRUGS CONTRIBUTE TO INJURY OR DEATH]~~ ADMISSIBLE TEST RESULTS.--

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1 ~~[The compensation otherwise payable a worker pursuant to the~~
2 ~~Workers' Compensation Act shall be reduced ten percent in cases~~
3 ~~in which the injury to or death of a worker is not occasioned~~
4 ~~by the intoxication of the worker as stated in Section 52-1-11~~
5 ~~NMSA 1978 or occasioned solely by drug influence as described~~
6 ~~in Section 52-1-12 NMSA 1978, but voluntary intoxication or~~
7 ~~being under the influence of a depressant, stimulant or~~
8 ~~hallucinogenic drug as defined in the New Mexico Drug, Device~~
9 ~~and Cosmetic Act or under the influence of a narcotic drug as~~
10 ~~defined in the Controlled Substances Act, unless the drug was~~
11 ~~dispensed to the person upon the prescription of a practitioner~~
12 ~~licensed by law to prescribe the drug or administered to the~~
13 ~~person by any person authorized by a licensed practitioner to~~
14 ~~administer the drug, is a contributing cause to the injury or~~
15 ~~death.] For purposes of Section 52-1-11 or 52-1-12 NMSA 1978,~~
16 ~~test results used as evidence of intoxication or drug influence~~
17 ~~shall not be considered in making a determination of~~
18 ~~intoxication or drug influence unless the test and testing~~
19 ~~procedures conform to the federal department of transportation~~
20 ~~"procedures for transportation workplace drug and alcohol~~
21 ~~testing programs" and the test is performed by a laboratory~~
22 ~~certified to do the testing by the federal department of~~
23 ~~transportation."~~