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SENATE BILL 211

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Mark Moores

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING THAT NO INDEMNITY OR MEDICAL BENEFITS PURSUANT TO THE WORKERS' COMPENSATION ACT ARE PAYABLE WHEN A WORKER'S INJURY IS DUE TO THE WILLFULNESS OR INTENTION OF THE WORKER; PROVIDING THAT NO INDEMNITY OR MEDICAL BENEFITS PURSUANT TO THE WORKERS' COMPENSATION ACT ARE PAYABLE WHEN A CONTRIBUTING CAUSE OF THE WORKER'S INJURY IS THE WORKER'S INTOXICATION; REPEALING A SECTION OF THE NMSA 1978.

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 DUE TO INTOXICATION, WILLFULNESS OR INTENTION OF WORKER ARE NONCOMPENSABLE~~] NO BENEFITS PAYABLE, NEITHER INDEMNITY NOR MEDICAL, WHEN WORKER'S WILLFULNESS OR INTENTION CONTRIBUTE TO INJURY OR DEATH.--~~[No compensation~~

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1 ~~shall become due or payable from any employer under the terms~~
2 ~~of the Workers' Compensation Act in event such injury was~~
3 ~~occasioned by the intoxication of such worker or willfully~~
4 ~~suffered by him or intentionally inflicted by himself.]~~

5 Indemnity and medical benefits otherwise payable pursuant to
6 the Workers' Compensation Act shall not be payable in the event
7 that a worker's injury or death was willfully caused by the
8 worker or intentionally inflicted by the worker."

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

11 "52-1-12.1. [~~REDUCTION IN COMPENSATION WHEN ALCOHOL OR~~
12 ~~DRUGS CONTRIBUTE TO INJURY OR DEATH]~~ NO BENEFITS PAYABLE,
13 NEITHER INDEMNITY NOR MEDICAL, WHEN ALCOHOL OR DRUGS CONTRIBUTE
14 TO INJURY OR DEATH.-- [~~The compensation otherwise payable a~~
15 ~~worker pursuant to the Workers' Compensation Act shall be~~
16 ~~reduced ten percent in cases in which the injury to or death of~~
17 ~~a worker is not occasioned by the intoxication of the worker as~~
18 ~~stated in Section 52-1-11 NMSA 1978 or occasioned solely by~~
19 ~~drug influence as described in Section 52-1-12 NMSA 1978, but~~
20 ~~voluntary intoxication or being under the influence of a~~
21 ~~depressant, stimulant or hallucinogenic drug as defined in the~~
22 ~~New Mexico Drug, Device and Cosmetic Act or under the influence~~
23 ~~of a narcotic drug as defined in the Controlled Substances Act,~~
24 ~~unless the drug was dispensed to the person upon the~~
25 ~~prescription of a practitioner licensed by law to prescribe the~~

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1 ~~drug or administered to the person by any person authorized by~~
2 ~~a licensed practitioner to administer the drug, is a~~
3 ~~contributing cause to the injury or death. Test results used~~
4 ~~as evidence of intoxication or drug influence shall not be~~
5 ~~considered in making a determination of intoxication or drug~~
6 ~~influence unless the test and testing procedures conform to the~~
7 ~~federal department of transportation "procedures for~~
8 ~~transportation workplace drug and alcohol testing programs" and~~
9 ~~the test is performed by a laboratory certified to do the~~
10 ~~testing by the federal department of transportation.]~~

11 A. Indemnity and medical benefits otherwise payable
12 pursuant to the Workers' Compensation Act shall not be payable
13 in cases in which a contributing cause, to any degree, to the
14 injury or death of a worker is the worker's intoxication.

15 B. Test results used as evidence of intoxication
16 shall not be considered in making a determination of
17 intoxication unless the test and testing procedures conform to
18 the federal department of transportation, the New Mexico
19 department of transportation or other standard testing
20 procedures generally accepted in the medical community and the
21 test is performed by a laboratory certified to do the testing.
22 Test results in excess of the New Mexico department of
23 transportation's test cutoff concentrations shall be considered
24 evidence of intoxication. Testing may include testing methods
25 for urine, breath or blood.

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1 C. Indemnity and medical benefits otherwise payable
2 pursuant to the Workers' Compensation Act shall not be payable
3 if a worker refuses to submit to a post-accident alcohol,
4 psychoactive substance or drug test pursuant to Subsection B of
5 this section, and indemnity and medical benefits otherwise
6 payable pursuant to the Workers' Compensation Act shall not be
7 payable if a worker refuses to release, to the worker's
8 employer and the employer's workers' compensation provider, the
9 results of worker's post-accident alcohol, psychoactive
10 substance or drug test.

11 D. If a post-accident alcohol, psychoactive
12 substance or drug test pursuant to Subsection B of this section
13 was administered to a worker, benefits otherwise payable to a
14 beneficiary, dependent or other person claiming benefits for or
15 on behalf of a worker shall not be payable if the person
16 claiming benefits refuses to provide, submit or release, to the
17 worker's employer and the employer's workers' compensation
18 provider, the test results.

19 E. Test samples shall be taken as a split sample.
20 One part of the sample is to be used for testing pursuant to
21 Subsection B of this section at the employer's or insurer's
22 expense. The remaining part of the sample shall be held by the
23 testing facility for six months from the date of the original
24 test. The worker has only this six-month time period to
25 exercise the worker's right to testing of the second sample at

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1 the worker's expense.

2 F. For purposes of this section, "intoxication"
3 means a transient condition, following the administration of
4 alcohol or other psychoactive substance, resulting in a
5 disturbance in levels of consciousness, cognition, perception,
6 affect or behavior or other psychophysiological functions and
7 responses."

8 SECTION 3. REPEAL.--Section 52-1-12 NMSA 1978 (being Laws
9 1971, Chapter 55, Section 1, as amended) is repealed.

10 SECTION 4. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2014.

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