HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

DISCUSSION DRAFT

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.

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~~] <u>CAUSED BY THE</u> 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 <u>the</u> event such injury was [~~occasioned by the intoxication of such worker or~~] willfully suffered by [~~him~~] <u>the worker</u> or intentionally

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

inflicted by [~~himself~~] 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.--[~~The compensation otherwise payable a worker pursuant to the Workers' Compensation Act shall be reduced ten percent in cases in which the injury to or death of a worker is not occasioned by the intoxication of the worker as stated in Section 52-1-11 NMSA 1978 or occasioned solely by drug influence as described in Section 52-1-12 NMSA 1978, but voluntary intoxication or being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act or under the influence of a narcotic drug as defined in the Controlled Substances Act, unless the drug was dispensed to the person upon the prescription of a practitioner licensed by law to prescribe the drug or administered to the person by any person authorized by a licensed practitioner to administer the drug, is a contributing cause to the injury or death. Test results used as evidence of intoxication or drug influence shall not be considered in making a determination of intoxication or drug influence unless the test and testing procedures conform to the federal department of transportation "procedures for transportation workplace drug and alcohol testing programs" and the test is performed by a laboratory~~

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

~~certified to do the testing by the federal department of transportation.~~]

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

B. Compensation benefits otherwise due and payable from an employer to the worker under the terms of the Workers' Compensation Act shall be reduced by the degree to which the intoxication or influence contributes to the worker's injury or death; provided that the reduction shall be a minimum of ten percent but no more than ninety percent, subject to the other requirements of this section.

C. Test results relied on as evidence of a worker's intoxication or influence shall not be considered in making a reduction in compensation determination unless the test and testing procedures conform with standard testing procedures

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

generally accepted in the medical community and the test is performed by a laboratory certified to do the testing by an organization nationally recognized to do such certification. Testing may include testing methods for urine, breath or blood.

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

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

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

G. An employer shall be barred from claiming a reduction in compensation pursuant to this section if the employer fails to implement a written policy that declares a drug- and alcohol-free workplace, which may include post-accident testing in accordance with this section, and that gives its employees notice that workers' compensation benefits

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

may be reduced in the event intoxication or influence contributes to a workplace injury.

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

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

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

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