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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/11

SPONSOR     Roch     LAST UPDATED                      HB     356    

SHORT TITLE     No Workers' Comp. If Drugs/Alcohol Involved     SB                                     

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ANALYST     Peery-Galon    

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		*	*	*	Recurring	Uninsured Employers' Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**\*Operating budget impact is minimal to moderate (See FISCAL IMPLICATIONS).**

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

State Personnel Office (SPO)

Workers' Compensation Administration (WCA)

Department of Transportation (DOT)

#### No Response Received From

General Services Department

### SUMMARY

#### Synopsis of Bill

House Bill 356 amends statute to eliminate benefits for workers who are intoxicated or under the influence of an illegal drug at the time of an accident. It removes the 10 percent reduction in benefits a worker receives who used illegal drugs and removes the provisions that allowed for an absolute bar to benefits if illegal drugs were the sole cause of injury. Also, the proposed legislation changes the description of drugs causing such intoxication to include controlled substances as listed in the Controlled Substance Act.

### FISCAL IMPLICATIONS

WCA reported the uninsured employers' fund paid approximately \$130 thousand in burial, emergency medical and other related benefits in FY11 to a worker who died in a car accident and had amphetamine, methamphetamine and morphine in his system. The Supreme Court in *Ortiz*

*ex rel. Baros v. Overland Express* ruled the employer failed to prove the worker's drug use was the sole cause of his death and his family, therefore, was eligible to receive death benefits.

## **SIGNIFICANT ISSUES**

WCA reported the Court of Appeals struggled to interpret the statutes as currently written in the case of *Villa v. City of Las Cruces*. Judge Garcia, in concurring with the majority wrote, "the statutory conflict in this case is not reconcilable by any established basis of statutory construction. We have now done our part to interpret the irreconcilable language that will utilized into Section 52-1-12.1. I would hope that the Legislature will now utilize its authority and policy-making prerogative to clarify its intent and revisit the wording in Sections 52-1-11 and 52-1-12.1." WCA noted the courts have had a difficult time interpreting the language of the statutes.

WCA stated the requirement that testing be conducted only by a federal Department of Transportation certified laboratory creates a situation where some test results are inadmissible. In the *Villa v. City of Las Cruces*, the workers' compensation judge could not consider the laboratory result of Villa's blood alcohol level because it was not performed by a DOT approved laboratory. WSD noted in rural areas of the state, this could be a standard that is difficult to meet.

WCA noted that on the other hand, the statute will deny benefits to workers whose intoxication or drug use had no relationship to the work accident or injury. For example, if an employee is rear-ended in a motor vehicle accident, arguably the alcohol or drug use would be irrelevant to the injury. However, the worker would be denied benefits under the proposed legislation.

WCA noted there is no exemption for medical marijuana patients in the proposed legislation.

WCA reported if statutes are amended, it would give workers' compensation judges and the appellate courts clearer guidance in handling drug cases. It would potentially protect the uninsured employers' fund from having to pay benefits to workers who indulge in illegal drugs or come to work inebriated.

AGO stated the public policy of encouraging safe working conditions is limited by the proposed legislation that expands exclusion even if the worker's intoxication is not the cause of the injury. The current statute allows exclusion where the intoxication is related to the injury so the public policy of discouraging intoxication at work was already being served by existing law, therefore if challenged, the increased exclusion must serve a rational government basis.

AGO reported the proposed legislation could draw a challenge from individuals who are disabled within the meaning of the Americans with Disabilities Act, and whose intoxication did not cause the injury arguing that it discriminates against them by denying them an equal opportunity to receive this aid, benefit or service. A similar challenge could be made as an equal protection claim arguing unequal opportunity to participate in government benefit program and that intoxication that did not cause the injury at issue is not rationally related to receipt of workers' compensation benefits.

DOT reported while the definition for those drugs upon which influence prohibits compensation is broadened, because the proposed legislation has no impact on the pre-existing testing

procedure for testing intoxication and drug influence, which is pursuant to federal standards, the end result is that the broadening of the definitions may likely have no appreciable impact. DOT also noted it is unclear what impact will occur to the state by removing the 10 percent compensation reduction from Section 52-1-12.1 NMSA 1978.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 356 has a relationship with Senate Bill 263 which proposes exclusion from unemployment benefits for positive drug tests.

**OTHER SUBSTANTIVE ISSUES**

WCA noted the proposed legislation references “dangerous” drugs, but does not define “dangerous”. Adding the word “dangerous” could create litigation involving the application of the word “dangerous” drug as oppose to “drug” alone.

RPG/mew