

LFC Requester:	Anne Hanika-Ortiz
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date January 22, 2013
Bill No: HB 139--305

Sponsor: Rep. Dennis J. Roch **Reviewing** Attorney General's Office
Short Reduce Workers Compensation **Person Writing** Rick Word, AAG
Title: Payment For Drug Use **Phone:** 827-6029 **Email** rword@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: HB 139 would significantly alter the manner in which eligible workplace injuries or deaths are compensated under the Workers Compensation Act (Act) where a worker’s injury was related to that worker’s use of alcohol or illegal drugs, or misuse of prescription drugs.

The Act currently bars compensation for a worker where the qualifying injury was “occasioned by the intoxication” of the worker, or otherwise “willfully suffered” or “intentionally inflicted” by the worker. NMSA 1978, Section 52-1-11 (1989) Section 1 of HB 139 would amend Section 52-1-11 by striking “occasioned by the intoxication” and substituting “caused” for “suffered.”

Section 2 of HB 139 would amend NMSA 1978, Section 52-1-12.1 (2001) by striking all of the statute after the heading and replacing it with five subsections. Significantly, this section of the bill would remove the current provision for a ten percent reduction in benefits where voluntary intoxication or the use of certain categories of drugs by a worker is a contributing factor to that worker’s injury or death. The bill substitutes a proportional reduction scheme based on a determination of “the percentage, if any, that the worker’s use of alcohol or illegal drugs or misuse of prescription drugs contributed to the cause of the injury or to the death of the worker.” Such a determination would be made by the workers compensation judge. Notably, the bill would add the misuse of prescription drugs as a basis for such reduction of benefits, and would eliminate the exception in the current Act for drugs otherwise lawfully dispensed to the worker based on a properly issued prescription. This section of HB 139 would also expand permissible drug and alcohol testing procedures by allowing testing other than that conforming to United States Department of Transportation procedures so long as such tests meet standards generally accepted in the medical community. Also significant, this section of HB 139 provides that employers of ten or more workers must implement post-accident drug testing procedures to claim the proportional reduction in workers compensation benefits. The bill further provides that a worker’s refusal to participate in a post-accident alcohol or drug tests or to allow release of their results constitutes “an admission of intoxication.”

Section 3 of HB 139 would repeal NMSA 1978, Section 52-1-12. This section of the Act currently bars compensation where a worker’s injury or death was “occasioned solely” by that worker’s intoxication or having been under the influence of certain specified drugs.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

There are no apparent fiscal implications for this agency.

SIGNIFICANT LEGAL ISSUES

HB 139 would appear to address and resolve ambiguities and possible conflicts between NMSA 1978, Sections 52-1-11, 52-1-12 and 52-1-12.1 on the issue of causation, as identified and discussed at length by the New Mexico Court of Appeals in *Villa v. City of Las Cruces*, 2010 NMCA-099, 148 N.M. 668. Again, this would be accomplished by eliminating the outright bar to compensation provided for in Section 12 and the ten percent reduction in compensation in now provided in Section 12.1, and replacing them with a proportional reduction scheme based on the workers compensation judge's findings after a hearing of the percentage amount that a worker's use of alcohol or illegal drugs or misuse of prescription drugs contributed to the cause of the injury or death.

The post-accident alcohol and drug testing provision in Section 2 of the HB 139 may, if enacted, give rise to constitutional issues. First, to the extent that the bill can be construed to compel employers to mandate post-accident alcohol or drug testing for injured employees, the conduct and results of such testing could become subject to 4th Amendment reasonable search challenges. Second, the bill's provision that a worker's refusal to submit to or release results from a post-accident alcohol or drug test would result in a deemed admission of intoxication could be challenged as a denial of due process rights. Similarly, but less likely, is the possibility of due process challenge by an employer who fails to mandate a post-accident testing regime as required by the bill and is subsequently barred from claiming a reduction in compensation based on the worker's alcohol or drug use.

HB 139 adds the misuse of prescription drugs by a worker as a possible basis for a reduction in compensation under the Act, but fails to define or provide guidance on what would constitute such misuse.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

There are no performance implications for this agency.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

There are no administrative implications for this agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None are noted.

TECHNICAL ISSUES OR DRAFTING ERROR

None are noted.

OTHER SUBSTANTIVE LEGAL ISSUES

None are noted.

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo is maintained.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

The deletion of the bill's post-accident alcohol and drug testing provisions would eliminate possible constitutional issues discussed above.