

LFC Requester:	Daly, Marty
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**AGENCY BILL ANALYSIS
2014 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 23, 2014
Bill No: HB113-305 Jan 24

Sponsor: Rep. Dennis J. Roch
Short Title: Workers' Comp Payment for Intent or Drug Use

Reviewing Person Writing Attorney General's Office
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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: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

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 113 amends Section 52-1-11 and repeals Section 52-1-12 from, as well as, adds Section 52-1-12.1 to the Worker’s Compensation Act (“Act”). As it is currently written, Section 52-1-11 precludes a worker from receiving worker’s compensation benefits when a worker’s injury is “occasioned by intoxication” or intentionally inflicted upon himself. Section 1 of HB 113 would replace language in Section 52-1-11 with language stating that indemnity and medical benefits shall not be payable in the event that a worker’s injury or death was willfully caused, or intentionally inflicted, by the worker.

Section 52-1-12.1(B) would require that test results used as evidence of intoxication comply with test and testing procedures set forth by the U.S. Department of Transportation, New Mexico Department of Transportation, and other standard testing procedures generally accepted in the medical community. Section 52-1-12.1(C) would deny indemnity and medical benefits otherwise payable if a worker refuses to submit to a post-accident alcohol, psychoactive, substance, or drug test, or otherwise refuses to release the results of such test to his or her employer or worker’s compensation provider. Similarly, Section 52-1-12.1(D) would deny benefits otherwise payable to a worker’s beneficiary in the event that the beneficiary refuses to release the results of a post-accident drug test to the worker’s employer. Section 52-1-12.1(E) would require any test samples to be taken as split samples. It further requires one part of the test sample to be held by the testing facility for six months from the date of the original test in order to give the worker an opportunity to conduct an independent assessment. Section 52-1-12.1(F) defines intoxication for purposes of the Act.

HB 113 would also repeal NMSA 1978, Section 52-1-12, which 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 drugs.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

N/A

SIGNIFICANT LEGAL ISSUES

HB 113 would resolve ambiguities and possible conflicts between Sections of the WCA to address causation. *See, Villa v. City of Las Cruces*, 2010-NMCA-099, 148 N.M. 668.

An employer has traditionally been able to use intoxication as a partial defense in a worker's compensation matter. *Villa*, 2010-NMCA-099, 148 N.M. 668. However, as currently proposed, the Bill would bar recovery *in all circumstances* of worker intoxication, potentially even in a case where an employer may have contributed to the worker's intoxication (e.g. when an employer reimburses a worker's alcohol expenses for a client dinner). The Bill also does not address, nor allow for, any exemptions from this general prohibition of recovery for worker intoxication.

In addition, although the Bill provides a definition for the term "intoxication" it does not specifically describe how intoxication is to be measured.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

N/A

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

None noted.

TECHNICAL ISSUES OR DRAFTING ERROR

HB113 should specify who will be financially responsible for the post-accident test.

OTHER SUBSTANTIVE LEGAL ISSUES

N/A

ALTERNATIVES TO ENACTING THIS BILL

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

N/A