

1 HOUSE BILL 139

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Dennis J. Roch

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10 AN ACT

11 RELATING TO WORKERS' COMPENSATION; REDUCING THE AMOUNT OF
12 WORKERS' COMPENSATION BENEFITS PAYABLE IN PROPORTION TO THE
13 PERCENT A WORKER'S USE OF ALCOHOL OR ILLEGAL DRUGS OR MISUSE OF
14 PRESCRIPTION DRUGS CONTRIBUTED TO THE WORKER'S INJURY OR DEATH;
15 AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 52-1-11 NMSA 1978 (being Laws 1929,
19 Chapter 113, Section 8, as amended) is amended to read:

20 "52-1-11. INJURIES [~~DUE TO INTOXICATION~~] CAUSED BY THE
21 WILLFULNESS OR INTENTION OF WORKER ARE NONCOMPENSABLE.--No
22 compensation benefits shall [~~become due or payable from any~~
23 ~~employer~~] be paid to a worker under the terms of the Workers'
24 Compensation Act in event such injury was [~~occasioned by the~~
25 ~~intoxication of such worker or~~] willfully [~~suffered~~] caused by

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1 [him] the worker or intentionally inflicted by [himself] the
2 worker."

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

5 "52-1-12.1. REDUCTION IN COMPENSATION WHEN ALCOHOL OR
6 DRUGS CONTRIBUTE TO INJURY OR DEATH.--~~[The compensation~~
7 ~~otherwise payable a worker pursuant to the Workers'~~
8 ~~Compensation Act shall be reduced ten percent in cases in which~~
9 ~~the injury to or death of a worker is not occasioned by the~~
10 ~~intoxication of the worker as stated in Section 52-1-11 NMSA~~
11 ~~1978 or occasioned solely by drug influence as described in~~
12 ~~Section 52-1-12 NMSA 1978, but voluntary intoxication or being~~
13 ~~under the influence of a depressant, stimulant or~~
14 ~~hallucinogenic drug as defined in the New Mexico Drug, Device~~
15 ~~and Cosmetic Act or under the influence of a narcotic drug as~~
16 ~~defined in the Controlled Substances Act, unless the drug was~~
17 ~~dispensed to the person upon the prescription of a practitioner~~
18 ~~licensed by law to prescribe the drug or administered to the~~
19 ~~person by any person authorized by a licensed practitioner to~~
20 ~~administer the drug, is a contributing cause to the injury or~~
21 ~~death. Test results used as evidence of intoxication or drug~~
22 ~~influence shall not be considered in making a determination of~~
23 ~~intoxication or drug influence unless the test and testing~~
24 ~~procedures conform to the federal department of transportation~~
25 ~~"procedures for transportation workplace drug and alcohol~~

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1 ~~testing programs" and the test is performed by a laboratory~~
2 ~~certified to do the testing by the federal department of~~
3 ~~transportation.]~~

4 A. In cases in which the use of alcohol or the use
5 of illegal drugs or the clear misuse of prescription drugs
6 contributes to the cause of the injury or death of a worker,
7 the weekly compensation benefit pursuant to Section 52-1-41
8 NMSA 1978 and otherwise payable to a worker pursuant to the
9 Workers' Compensation Act shall be reduced proportionally after
10 a hearing to be held on the record before a workers'
11 compensation judge. The workers' compensation judge, in the
12 judge's discretion, shall determine what percentage, if any,
13 the worker's use of alcohol or illegal drugs or misuse of
14 prescription drugs contributed to the cause of the injury to or
15 the death of the worker and shall reduce the weekly benefits by
16 that percentage.

17 B. Nothing in this section shall be construed to
18 reduce or limit an injured worker's entitlement to medical
19 benefits pursuant to the Workers' Compensation Act.

20 C. Test results used as evidence of intoxication or
21 drug influence shall not be considered in making a
22 determination of intoxication or drug influence unless the test
23 procedures and facilities conform, at a minimum, to the United
24 States department of transportation procedures for
25 transportation workplace drug and alcohol testing programs or

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1 other standards generally accepted in the medical community and
2 may include testing methods for urine, breath or blood.

3 D. An employer of ten or more employees that does
4 not implement a drug testing policy that mandates postaccident
5 drug or alcohol testing shall be barred from claiming a
6 reduction in compensation pursuant to Subsection A of this
7 section.

8 E. Any refusal by a worker to submit to a
9 postaccident drug or alcohol test, or a refusal to release test
10 results of a postaccident drug or alcohol test required by the
11 worker's employer, shall constitute an admission of
12 intoxication."

13 SECTION 3. REPEAL.--Section 52-1-12 NMSA 1978 (being Laws
14 1971, Chapter 55, Section 1, as amended) is repealed.