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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 1/26/05 HB _____

SHORT TITLE Tort Defense of Assumption of Risk SB 156

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Corrections Department (CD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 156 adopts the common law doctrine of assumption of a risk as a defense to tort actions in New Mexico. Consequently, tort defendants would not incur any liability to a plaintiff if it could be shown (either through direct or circumstantial evidence) that the plaintiff knew of, appreciated the risk of, and voluntarily exposed himself to the danger that proximately caused the injury or harm giving rise the tort action.

Significant Issues

The AGO provided the following:

The doctrine of “comparative negligence”, or “comparative fault”, has been adopted and applied by the New Mexico Courts since 1981. *Scott v. Rizzo*, 96 N.M. 682, 634 P.2d 1234 (1981). In that decision the Court ruled that the doctrine of “contributory negligence” was no longer recognized in New Mexico and any negligence on the part of the plaintiff would not operate as a complete bar to damage recovery. Comparative negligence or fault apportions fault and damages among negligent parties, including the plaintiff. It has also been recognized in state statutes. See for example NMSA Section 41-3A-1 1978 comp.

The Supreme Court in Rizzo adopted Judge Walter's opinion in the Court of Appeals decision on appeal to the Supreme Court. Judge Walters stated: "Assumption of risk is a form of negligence (see Williamson v. Smith, 83 N.M. 336, 491 P.2d 1147 (1971)), and other liability concepts based on or related to negligence of either plaintiff, defendant, or both, are subject to the comparative negligence rule." Judge Walters also stated: "We hold that the doctrine of comparative negligence more equitably apportions damages and, in the interest of fundamental justice, is adopted in this jurisdiction and replaces the "all-or-nothing" rule of contributory negligence."

Insofar as this bill is an attempt to statutorily overrule judicial decisions adopting and applying the doctrine of comparative fault (since 1981), and reinstate the absolute defense of "assumption of risk", it will likely run afoul of the separation of powers doctrine in Article III section 1 of the New Mexico Constitution, and Article VI Section 1 vesting the judicial power in the courts. It is unlikely that New Mexico courts will reinstate and recognize the absolute defense of assumption of risk.

FISCAL IMPLICATIONS

Minimal to moderate decrease in expenditures for payment of tort action judgments and awards.

CD believes this bill will increase the probability that they will prevail in inmate pro se actions because it is likely that the CD will be able to show in most inmate cases involving injury, that the inmate assumed the risk of the danger giving rise to his action.

DW/lg:yr