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FISCAL IMPACT REPORT

SPONSOR Moore **ORIGINAL DATE** 01/31/14
LAST UPDATED 01/31/14 **HB** _____
SHORT TITLE Worker's Comp Payment for Intent or Drug Use **SB** 211
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Narrative	See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workers' Compensation Administration (WCA)
 Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 State Personnel Office (SPO)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 211 bars indemnity or medical benefits otherwise payable under the Workers' Compensation Act (the Act) when a worker's injury or death was "willfully caused by the worker or intentionally inflicted by the worker" or when alcohol or drugs contribute to any degree to injury or death. Laboratory requirements for drug testing are no longer limited to those in conformance with federal department of transportation procedures but now also include those in conformance with the New Mexico Department of Transportation and other standard testing procedures generally accepted in the medical community at a laboratory certified to perform the testing. If the worker refuses testing or the worker or the worker's representatives refuse to divulge any testing results, both indemnity and medical benefits are denied. Split sample testing is required, and one sample reserved for a maximum of six months so the worker can test the second sample. A definition of intoxication is provided. The bill repeals the exemption for intoxication due to prescribed or otherwise authorized administration of a drug.

The effective date of the bill is July 1, 2014.

FISCAL IMPLICATIONS

Responding agencies report no fiscal impact to their operating budgets. WCA suggests there may be a small reduction in the overall cost of claims in the workers' compensation system as a result of not paying benefits to intoxicated workers. The cost of storing duplicate samples for six months is unknown. While it is presumed that the employer or insurer will pay for the six month storage of samples, this is not clear from the proposed language.

SIGNIFICANT ISSUES

The bill repeals language that required a 10 per cent reduction in the benefits payable to a worker found to be intoxicated at the time of an accident, and adds language prohibiting the payment of any benefits to a worker found to be intoxicated at the time of an accident. SB 211 also repeals language that barred compensation if the worker's injury was caused solely by intoxication unless that intoxication was due to lawfully prescribed medication. Thus, as SPO comments, SB 211 significantly limits the ability of workers found to be intoxicated for any reason at the time of a work-related accident to recover benefits.

WCA suggests the financial impact to a worker's dependents that lose a source of income as the result of the prohibitions set forth in the bill may need to be debated. In addition, WCA questions whether SB 211's changes could lead to constitutional challenge as a possible violation of the U.S. Constitution's prohibition against unreasonable searches, especially as applied to state and local government employees. No other responding agency raised this issue.

Changing the DOT testing laboratory requirements to include other certified laboratories in New Mexico makes testing more readily available, WCA advises. As AGO notes, however, the definition of intoxication contained in the bill does not specify how intoxication is to be measured.

According to AGO, this bill resolves ambiguities and possible conflicts between sections of the Act that 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*, 201-NMCA-099, 148 N.M. 668. However, as currently proposed, the bill bars 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). HB 113 does not address, nor allow for, any exemptions from this general prohibition of recovery for worker intoxication, even if, as noted by AOC, a worker is using a prescribed medication (including medical marijuana) that is being managed under recognized medical supervision.

It does appear, however, that SB 211 leaves room for argument, when injury or death was not willfully caused or intentionally inflicted by the worker, whether the worker's intoxication was a contributing cause to any degree in the injury or death.

DOH comments that language addressing drugs and alcohol in SB 211 is incomplete and needs to be harmonized with the State Personnel Act and Personnel Board protocols and procedures governing intoxicated employees.

PERFORMANCE IMPLICATIONS

AOC reports that since the courts participate in performance-based budgeting, this bill may impact district measures relating to cases disposed of as a percent of cases filed, and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

WCA notes that some medical rules may have to be revised to flesh out storage requirements contained in this bill, as well as set maximum reimbursements for certain testing procedures.

OTHER SUBSTANTIVE ISSUES

SPO reports that a 50 state survey done by Lexis Nexis completed in 2009 demonstrates that many states do not allow workers' compensation benefits for injuries caused by intoxication. At least two states limit benefits available to a worker whose injury was caused by intoxication by at least 50 percent. See http://www.lexisnexis.com/documents/pdf/20090930094905_large.pdf.

ALTERNATIVES

SPO suggests as an alternative reducing benefits available to a work injured while intoxicated by a percentage.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

WCA reports there will be continued ambiguity about the application of existing statutes governing intoxication of a worker at the time of injury or death.

MD/jl