

1 HOUSE BILL 238

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Dennis J. Roch and Joseph Cervantes

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10 AN ACT

11 RELATING TO WORKERS' COMPENSATION; AMENDING AND REPEALING  
12 SECTIONS OF THE WORKERS' COMPENSATION ACT TO PROVIDE THAT WAGE  
13 BENEFITS BE PAID IN PROPORTION TO THE CONTRIBUTION OF THE  
14 WORKER'S INTOXICATION TO THE WORKER'S INJURY OR DEATH.

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

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

19 "52-1-11. INJURIES [~~DUE TO INTOXICATION~~] CAUSED BY THE  
20 WILLFULNESS OR INTENTION OF WORKER ARE NONCOMPENSABLE.--No  
21 compensation shall become due or payable from any employer  
22 under the terms of the Workers' Compensation Act in the event  
23 such injury was [~~occasioned by the intoxication of such worker~~  
24 ~~or~~] willfully suffered by [~~him~~] the worker or intentionally  
25 inflicted by [~~himself~~] the worker."

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

3           "52-1-12.1. REDUCTION IN COMPENSATION WHEN ALCOHOL OR  
4 DRUGS CONTRIBUTE TO INJURY OR DEATH.--~~[The compensation~~  
5 ~~otherwise payable a worker pursuant to the Workers'~~  
6 ~~Compensation Act shall be reduced ten percent in cases in which~~  
7 ~~the injury to or death of a worker is not occasioned by the~~  
8 ~~intoxication of the worker as stated in Section 52-1-11 NMSA~~  
9 ~~1978 or occasioned solely by drug influence as described in~~  
10 ~~Section 52-1-12 NMSA 1978, but voluntary intoxication or being~~  
11 ~~under the influence of a depressant, stimulant or~~  
12 ~~hallucinogenic drug as defined in the New Mexico Drug, Device~~  
13 ~~and Cosmetic Act or under the influence of a narcotic drug as~~  
14 ~~defined in the Controlled Substances Act, unless the drug was~~  
15 ~~dispensed to the person upon the prescription of a practitioner~~  
16 ~~licensed by law to prescribe the drug or administered to the~~  
17 ~~person by any person authorized by a licensed practitioner to~~  
18 ~~administer the drug, is a contributing cause to the injury or~~  
19 ~~death. Test results used as evidence of intoxication or drug~~  
20 ~~influence shall not be considered in making a determination of~~  
21 ~~intoxication or drug influence unless the test and testing~~  
22 ~~procedures conform to the federal department of transportation~~  
23 ~~"procedures for transportation workplace drug and alcohol~~  
24 ~~testing programs" and the test is performed by a laboratory~~  
25 ~~certified to do the testing by the federal department of~~

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1 ~~transportation.]~~

2           A. As used in this section, "intoxication" or  
3 "influence" means a temporary state or condition of impaired  
4 physical, mental or cognitive function by means of alcohol, a  
5 drug, a controlled substance or a combination of two or more  
6 substances at the time of injury or death. "Drug" or  
7 "controlled substance" pursuant to this section does not  
8 include medications prescribed to a worker by the worker's  
9 licensed health care provider and taken in accordance with  
10 directions of the prescribing health care provider or  
11 dispensing pharmacy, unless such medication is combined with  
12 alcohol or a non-prescribed drug or controlled substance to  
13 cause intoxication or influence.

14           B. Compensation benefits otherwise due and payable  
15 from an employer under the terms of the Workers' Compensation  
16 Act shall be reduced by the degree to which the intoxication or  
17 influence contributes to the worker's injury or death; provided  
18 that the reduction shall be a minimum of thirty-five percent  
19 but no more than eighty-five percent, subject to the other  
20 requirements of this section.

21           C. Test results relied on as evidence of a worker's  
22 intoxication or influence shall not be considered in making a  
23 reduction in compensation determination unless the test and  
24 testing procedures conform with standard testing procedures  
25 generally accepted in the medical community and the test is

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1 performed by a laboratory certified to do the testing by an  
2 organization nationally recognized to do such certification.  
3 Testing may include testing methods for urine, breath or blood.

4 D. The director shall adopt rules regarding tests,  
5 testing and the cutoff levels for intoxication or influence.

6 E. If a post-accident test pursuant to Subsection C  
7 of this section is required of a worker and the worker refuses  
8 to submit to the test or to release the post-accident test  
9 results to the employer, no compensation otherwise payable from  
10 an employer under the terms of the Workers' Compensation Act  
11 shall be paid to the worker claiming compensation.

12 F. Testing shall be at the employer's expense and  
13 shall not be used as evidence in a criminal proceeding against  
14 the worker. Test samples shall be taken as a split sample.  
15 One part of the sample shall be held by the testing facility  
16 for twelve months from the date of the original test. Within  
17 this twelve-month period, the worker has the right to request a  
18 second test of the original sample at the worker's expense.

19 G. An employer shall be barred from claiming a  
20 reduction in compensation pursuant to this section if the  
21 employer fails to implement a written policy that declares a  
22 drug and alcohol-free workplace, which may include  
23 post-accident testing in accordance with this section, and that  
24 gives its employees notice that workers' compensation benefits  
25 may be reduced in the event intoxication or influence

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1 contributes to a workplace injury.

2 H. Reduction or denial of compensation benefits  
3 authorized under this section shall not affect payment of  
4 medical benefits provided for pursuant to Section 52-1-49 NMSA  
5 1978."

6 SECTION 3. REPEAL.--Section 52-1-12 NMSA 1978 (being Laws  
7 1971, Chapter 55, Section 1, as amended) is repealed.

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