

LFC Requester:	Kelly Klundt
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**AGENCY BILL ANALYSIS
2016 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: Date 1/18/16
Original **Amendment** **Bill No:** HB 63
Correction **Substitute**

Sponsor: Dennis Roch **Agency Code:** 305
Short Title: Workers' Comp Benefits & Intoxication **Person Writing:** Dylan Lange
Phone: 827-7479 **Email:** dlange@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

N/A

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

House Bill 63 amends and repeals sections of the Workers’ Compensation Act to provide that benefits be reduced in proportion to the contribution of the worker’s intoxication to the injury or death.

Section 1 amends NMSA 1978, Section 52-1-11 by providing that a willful or intentional injury would bar total compensation for any worker under the WCA.

Section 2 adds new proposed language outlining the procedures for reducing a worker compensation award due to intoxication of the worker.

Subsection A defines intoxication and influence as a “temporary state or condition of impaired physical, mental or cognitive function.” It defines drug as not including prescribed medications taken in accordance with directions, unless the medication is combined with alcohol.

Subsection B allows for an award to be reduced by the degree to which the intoxication or influence contributed to the injury a minimum of 10% but not more than 90%.

Subsection C allows for a new procedure for testing a worker for intoxication after an injury. The standards must conform to the generally accepted procedures in the medical community and be performed by a laboratory certified to do so.

Subsection D allows for the director to adopt rules for testing for intoxication

Subsection E allows for the department to refuse compensation if a worker refuses to take a post-accident test for intoxication. Part F implements further test procedures to follow regarding the test sample taken from the worker.

Subsection G, mandates the employer provide proper notice of the reduction in compensation policy and that the workplace is a drug/alcohol free environment. Without proper notice a reduction cannot be made to an award. Subsections H and I, protect the benefits available to the worker provided under to NMSA 1978, Section 52-1-49 and 52-1-46.

Section 3 *Repeals* Section 52-1-12 “Compensation prohibited when worker under influence of certain drugs.”

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

- 1) As Section NMSA 1978, 15-1-12.1 currently reads, the percentage of the award of a worker who was injured either due to or while intoxicated can only be reduced by 10%. Under House Bill 63, the award may be reduced anywhere from 10% to 90%, a larger reduction than currently allowed.
- 2) Section 2 (I) speaks to a “*denial* of compensation benefits authorized under this section.” There is no mention of denial of benefits due to intoxication in any other section of the proposed Section 52-1-12.1. This section only contemplates the reduction of benefits not the denial of any benefits.
- 3) This bill needs to ensure the legal procedure and other rights of a worker are protected when submitting them to mandatory tests regarding intoxication. Section 2 (F) says that the test results cannot be used in a criminal proceeding against the worker, but the department must be mindful of other procedural rights of the worker in civil claims against the department or another entity.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

See Significant Issues (2)

OTHER SUBSTANTIVE ISSUES

The bill is noticed as amending the workers compensation act relating to injuries contributed by a worker’s intoxication. However, Section one of the bill separates the willful or intentional injuries from injuries contributed by intoxication. Therefore, Section 1 of the bill relates only to willful or intentional acts, and Section 2 now relates only to injuries contributed by intoxication.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A