

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 143

Short Title: Workers' Comp. Credit for Drug Program.

(Public)

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Sponsors: Representatives Lemmond and Black.

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Referred to: Business and Labor, if favorable Finance.

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February 9, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE A FIVE PERCENT REDUCTION IN WORKERS'  
2 COMPENSATION INSURANCE TO EMPLOYERS WHO IMPLEMENT AN  
3 APPROVED DRUG-FREE WORKPLACE PROGRAM AND TO PROVIDE  
4 REQUIREMENTS FOR A DRUG-FREE WORKPLACE PROGRAM THAT WILL  
5 ENABLE AN EMPLOYER TO QUALIFY FOR THIS REDUCTION IN  
6 INSURANCE PREMIUMS.  
7

8 The General Assembly of North Carolina enacts:

9 Section 1. Article 36 of Chapter 58 of the General Statutes is amended by  
10 adding a new section to read:

11 "**§ 58-36-61. Workers' compensation insurance premium discount for drug-free**  
12 **workplace programs.**

13 (a) For each policy of workers' compensation insurance issued or renewed, the  
14 insurer shall grant a five percent (5%) reduction in the premium for the policy if the  
15 insured has been certified by the Industrial Commission as having a drug-free workplace  
16 program that complies with the requirements of Article 5 of Chapter 97 of the General  
17 Statutes and has notified its insurer in writing of this certification.

18 (b) The premium discount provided by this section shall be applied to an insured's  
19 policy of workers' compensation insurance pro rata as of the date the insured receives  
20 certification by the Industrial Commission and shall continue for a period not to exceed

1 four years. An insurer shall not be required to credit the actual amount of the premium  
2 discount to the account of the insured until the final premium audit under the policy.  
3 Certification by an insured shall be required for each of the four years in which the  
4 premium discount is granted. Thereafter, any premium discount pursuant to this section  
5 shall be determined from the insured's experience rating plan or, in the case of an insured  
6 not rated upon experience, as proved in subsection (c) of this section.

7 (c) With respect to an insured that is not rated upon experience, any premium  
8 discount given an insured pursuant to this section after the initial four-year period  
9 provided in subsection (b) of this section shall be determined by the Commissioner based  
10 upon data received from the Bureau.

11 (d) The workers' compensation insurance policy of an insured shall be subject to  
12 an additional premium for the purposes of reimbursement of a previously granted  
13 premium discount and to cancellation in accordance with the provisions of the policy if it  
14 is determined by the Industrial Commission that the insured misrepresented the  
15 compliance of its drug-free workplace program with the provisions of Article 5 of  
16 Chapter 97 of the General Statutes.

17 (e) Each insurer shall make an annual report to the Bureau illustrating the total  
18 dollar amount of drug-free workplace premium credit. Standard earned premium figures  
19 reported pursuant to this subsection on the aggregate calls for experience shall reflect the  
20 effects of these credits. The net standard premium shall then be the basis of any premium  
21 adjustment. The drug-free workplace credits shall be reported under a unique  
22 classification code or unit statistical reports submitted to the Bureau pursuant to this  
23 Article.

24 (f) The Commissioner may adopt any rules necessary for the implementation and  
25 enforcement of this section."

26 Sec. 2. Chapter 97 of the General Statutes is amended by adding a new Article  
27 to read:

28 **"ARTICLE 5.**

29 **"DRUG-FREE WORKPLACE PROGRAMS.**

30 **"§ 97-150. Intent.**

31 It is the intent of the General Assembly to promote drug-free workplaces in order that  
32 employers in this State may maximize their levels of productivity, enhance their  
33 competitive positions in the marketplace, and reach their desired levels of success  
34 without experiencing the costs, delays, and tragedies associated with work-related  
35 accidents resulting from substance abuse by employees.

36 **"§ 97-151. Definitions.**

37 As used in this Article:

38 (1) 'Alcohol' means ethyl alcohol, hydrated oxide of ethyl, or spirits of  
39 wine, from whatever source or by whatever process produced.

40 (2) 'Chain of custody' means the methodology of tracking specified  
41 materials, specimens, or substances for the purpose of maintaining  
42 control and accountability from initial collection to final disposition for  
43 all such materials, specimens, or substances and providing for

- 1                    accountability at each stage in handling, testing, and storing materials,  
2                    specimens, or substances and reporting test results.
- 3            (3)            'Confirmation test', 'confirmed test', or 'confirmed substance abuse test'  
4                    means a second analytical procedure used to identify the presence of a  
5                    specific drug or metabolic in a specimen. A confirmation test is  
6                    different in scientific principle from that of the initial test procedure and  
7                    is capable of providing requisite specificity, sensitivity, and quantitative  
8                    accuracy.
- 9            (4)            'Drug' means amphetamines, cannabinoids, cocaine, phencyclidine  
10                    (PCP), methadone, methaqualene, opiates, barbiturates,  
11                    benzodiazepines, propoxyphene, or a metabolite of any such substance.
- 12            (5)            'Employee' has the same meaning as set forth in G.S. 97-2.
- 13            (6)            'Employee assistance program' means a program designed to assist in  
14                    the identification and resolution of job performance problems associated  
15                    with employees impaired by personal concerns and includes  
16                    consultation and training services: professional, confidential,  
17                    appropriate, and timely problem assessment services; short-term  
18                    problem resolution; referrals for appropriate diagnosis, treatment, and  
19                    assistance; follow-up and monitoring; employee education; and quality  
20                    assurance.
- 21            (7)            'Employer' means a person or entity that is subject to the provisions of  
22                    this Chapter but does not include the State or any department, agency,  
23                    or institution of the State; any county; any county or independent school  
24                    system; any municipal corporation; or any employer that is self-insured  
25                    for the purposes of this Chapter.
- 26            (8)            'Initial test' means a sensitive, rapid, and reliable procedure to identify  
27                    negative and presumptive positive specimens.
- 28            (9)            'Job applicant' means a person who has applied for a position with an  
29                    employer and has been offered employment subject to the Workers'  
30                    Compensation Act conditioned upon successfully passing a substance  
31                    abuse test and may have begun work pending the results of the  
32                    substance abuse test.
- 33            (10)            'Nonprescription medication' means a drug or medication authorized  
34                    pursuant to federal or State law for general distribution and use without  
35                    a prescription in the treatment of human disease, ailments, or injuries.
- 36            (11)            'Prescription medication' means a drug or medication lawfully  
37                    prescribed by a physician for an individual and taken in accordance with  
38                    the prescription.
- 39            (12)            'Reasonable suspicion testing' means substance abuse testing based on a  
40                    belief that an employee is using or has used drugs or alcohol in violation  
41                    of the employer's policy drawn from specific objective and articulable  
42                    facts and reasonable inferences drawn from those facts in light of

1           experience. Among other things, these facts and inferences may be  
2           based upon, but not limited to, the following:

- 3           a.     Observable phenomena while at work, such as direct observation  
4           of substance abuse or of the physical symptoms or manifestations  
5           of being impaired due to substance abuse;  
6           b.     Abnormal conduct or erratic behavior while at work or a  
7           significant deterioration in work performance;  
8           c.     A report of substance abuse provided by a reliable and credible  
9           source;  
10          d.     Evidence that an individual has tampered with any substance  
11          abuse test during the employment with the current employer;  
12          e.     Information that an employee has caused or contributed to an  
13          accident while at work; or  
14          f.     Evidence that an employee has used, possessed, sold, solicited, or  
15          transferred drugs while working or while on the employer's  
16          premises or while operating the employer's vehicle, machinery,  
17          or equipment.

18          (13) 'Rehabilitation program' means an established program capable of  
19          providing expert identification, assessment, and resolution of employee  
20          drug or alcohol abuse in a confidential and timely service and provided  
21          by persons licensed or appropriately certified as health professionals to  
22          provide drug or alcohol rehabilitative services.

23          (14) 'Specimen' means tissue, blood, breath, urine, or other product of the  
24          human body capable of revealing the presence of drugs or their  
25          metabolites or of alcohol.

26          (15) 'Substance' means drugs or alcohol.

27          (16) 'Substance abuse test' or 'test' means any chemical, biological, or  
28          physical instrumental analysis administered for the purpose of  
29          determining the presence or absence of a drug or of alcohol.

30          (17) 'Threshold detection level' means the level at which the presence of a  
31          drug or alcohol can reasonably be expected to be detected by an initial  
32          and confirmatory test performed by a laboratory meeting the standards  
33          specified in this Article.

34        **"§ 97-152. Discount under workers' compensation insurance policy.**

35        If an employer implements a drug-free workplace program that is substantially in  
36        accordance with G.S. 97-153, the employer shall qualify for certification for a five  
37        percent (5%) premium discount under the employer's workers' compensation insurance  
38        policy as provided in G.S. 58-36-61.

39        **"§ 97-153. Drug-free workplace program.**

40        (a) In order to qualify for the discount under G.S. 58-36-61, an employer's drug-  
41        free workplace program shall contain the following elements:

42           (1) A written policy statement pursuant to G.S. 97-154;

43           (2) Substance abuse testing pursuant to G.S. 97-155;

- 1           (3) Resources of employee assistance providers maintained in accordance
- 2           with G.S. 97-156;
- 3           (4) Employee education as provided in G.S. 97-157;
- 4           (5) Supervisor training in accordance with G.S. 97-158; and
- 5           (6) Confidentiality standards pursuant to G.S. 97-160.

6 **"§ 97-154. Written policy statement.**

7           (a) One time only, prior to testing, all employees and job applicants for

8 employment shall be given a notice of testing. In addition, all employees shall be given a

9 written policy statement from the employer that contains:

- 10           (1) A general statement of the employer's policy on employee substance
- 11           abuse that shall identify:
- 12           a. The types of testing an employee or job applicant may be
- 13           required to submit to, including reasonable suspicion or other
- 14           basis used to determine when this testing will be required; and
- 15           b. The actions the employer may take against an employee or job
- 16           applicant on the basis of a positive confirmed test result;
- 17           (2) A statement advising an employee or job applicant of the provisions of
- 18           this Article;
- 19           (3) A general statement concerning confidentiality;
- 20           (4) The consequences of refusing to submit to a drug test;
- 21           (5) A statement advising an employee of the employee assistance program,
- 22           if offered by the employer, or a statement advising the employee of the
- 23           employer's resource file of assistance programs and other persons,
- 24           entities, or organizations designed to assist employees with personal or
- 25           behavioral problems;
- 26           (6) A statement that an employee or job applicant who receives a positive
- 27           confirmed test result may contest or explain the result to the employer
- 28           within five working days after written notification of the positive test
- 29           result; and
- 30           (7) A statement informing an employee of the provisions of the Drug-Free
- 31           Workplace Act of 1988, 41 U.S.C. §§ 701, et seq., if applicable to the
- 32           employer.

33           (b) An employer not having a substance abuse testing program in effect on July 1,

34 1996, shall provide a general one-time notice to all employees that a substance abuse

35 testing program is being implemented no less than 60 days prior to the beginning of the

36 actual testing.

37           (c) An employer shall include notice of substance abuse testing on vacancy

38 announcements for those positions for which testing is required. A notice of the

39 employer's substance abuse testing policy shall also be posted in an appropriate and

40 conspicuous location on the employer's premises, and copies of the policy shall be made

41 available for inspection by the employees or job applicants of the employer during

42 regular business hours in the employer's personnel office and other suitable locations.

43 **"§ 97-155. Substance-abuse testing.**

1       (a) Any testing conducted by an employer shall be in conformity with the  
2 standards and procedures established in this Article and any applicable rules adopted by  
3 the Industrial Commission pursuant to this Article. However, an employer is not required  
4 by this Article to request all employees or applicants for employment to undergo testing.

5       (b) An employee shall conduct the following types of tests in order to qualify for  
6 the workers' compensation insurance premium discounts provided under G.S. 58-36-61:

7           (1) After extending an offer of employment, an employee shall require job  
8 applicants to submit to a substance abuse test or to limited testing of job  
9 applicants if limited testing is conducted on the basis of reasonable  
10 classifications of job positions.

11           (2) An employer shall require an employee to submit to reasonable  
12 suspicion testing.

13           (3) An employer shall require an employee to submit to a substance abuse  
14 test if the test is conducted as part of a routinely scheduled employee  
15 fitness-for-duty medical examination that is part of the employer's  
16 established policy or that is scheduled routinely for all members of an  
17 employment classification or group.

18           (4) If the employee in the course of employment enters an employee  
19 assistance program or a rehabilitation program as the result of a positive  
20 test, the employer shall require the employee to submit to a substance  
21 abuse test as a follow up to the program. However, if an employee  
22 voluntarily entered the program, follow-up testing is not required. If  
23 follow-up testing is conducted, the frequency of the testing shall be at  
24 least once a year for a two-year period after completion of the program,  
25 and advance notice of the testing date shall not be given to the  
26 employee.

27           (5) If the employee has caused or contributed to an on-the-job injury that  
28 resulted in a loss of work time, the employer shall require the employee  
29 to submit to a substance abuse test.

30       (c) Nothing in this section shall prohibit a private employer from conducting  
31 random testing or other lawful testing of employees.

32       (d) All specimen collection and testing under this section shall be performed in  
33 accordance with the following procedures:

34           (1) A specimen shall be collected with due regard to the privacy of the  
35 individual providing the specimen, and in a manner reasonably  
36 calculated to prevent substitution or contamination of the specimen.

37           (2) Specimen collection shall be documented, and the documentation  
38 procedures shall include:

39           a. Labeling of specimen containers so as to reasonably preclude the  
40 likelihood of erroneous identification of test results; and

41           b. An opportunity for the employee or job applicant to record any  
42 information he or she considers relevant to the test, including  
43 identification of currently or recently used prescription or

- 1                    nonprescription medication or other relevant medical  
2                    information. The providing of information shall not preclude the  
3                    administration of the test, but shall be taken into account in  
4                    interpreting any positive confirmed results.
- 5            (3)   Specimen collection, storage, and transportation to the testing site shall  
6                    be performed in a manner that will reasonably preclude specimen  
7                    contamination or adulteration.
- 8            (4)   Each initial and confirmation test conducted under this section, not  
9                    including the taking or collecting of a specimen to be tested, shall be  
10                   conducted by a laboratory that complies with subsection (e) of this  
11                   section.
- 12           (5)   A specimen for a test may be taken or collected by any of the following  
13                   persons:
- 14                a.   A physician, a physician's assistant, a registered professional  
15                   nurse, a licensed practical nurse, a nurse practitioner, or a  
16                   certified paramedic who is present at the scene of an accident for  
17                   the purpose of rendering emergency medical service or  
18                   treatment;
- 19                b.   A qualified person certified or employed by a laboratory certified  
20                   by the National Institute on Drug Abuse, the College of  
21                   American Pathologists, or the Department of Human Resources;  
22                   or
- 23                c.   A qualified person certified or employed by a collection  
24                   company.
- 25           (6)   Within five working days after receipt of a positive confirmed test result  
26                   from the laboratory, an employer shall inform an employee or job  
27                   applicant in writing of positive test results, the consequences of positive  
28                   test results, and the options available to the employee or job applicant.
- 29           (7)   The employer shall provide to the employee or job applicant, upon  
30                   request, a copy of the test results.
- 31           (8)   An initial test having a positive result shall be verified by a confirmation  
32                   test.
- 33           (9)   An employer who performs drug testing or specimen collection shall  
34                   use chain or custody procedures to ensure proper record keeping,  
35                   handling, labeling, and identification of all specimens to be tested.
- 36           (10)   An employer shall pay the cost of all drug tests, initial and confirmation,  
37                   that the employer requires of the employees.
- 38           (11)   An employee or job applicant shall pay the cost of any additional tests  
39                   not required by the employer.
- 40           (12)   If the testing is being conducted based on reasonable suspicion, the  
41                   employer shall promptly detail in writing the circumstances that formed  
42                   the basis of the determination that reasonable suspicion existed to  
43                   warrant the testing. A copy of this documentation shall be given to the

1           employee upon request and the original documentation shall be kept  
2           confidential by the employer pursuant to G.S. 97-160 and retained by  
3           the employer for at least one year.

4       (e) No laboratory shall analyze initial or confirmation drug specimens unless:

5           (1) The laboratory is approved by the National Institute on Drug Abuse or  
6           by the College of American Pathologists;

7           (2) The laboratory has written procedures to ensure the chain of custody;  
8           and

9           (3) The laboratory follows proper quality control procedures including:

10           a. The use of internal quality controls, including the use of samples  
11           of known concentrations that are used to check the performance  
12           and calibration of testing equipment and the periodic use of blind  
13           samples for overall accuracy;

14           b. An internal review and certification process for drug test results,  
15           conducted by a person qualified to perform that function in the  
16           testing laboratory;

17           c. Security measures implemented by the testing laboratory to  
18           preclude adulteration of specimens and drug test results.

19       (f) A laboratory shall disclose to the employer a written test result report within  
20 seven working days after receipt of the sample. All laboratory reports of a substance  
21 abuse test result shall, at a minimum, state:

22           (1) The name and address of the laboratory that performed the test and the  
23           positive identification of the person tested;

24           (2) Positive results on confirmation tests only, or negative results, as  
25           applicable;

26           (3) A list of the drugs for which the drug analyses were conducted; and

27           (4) The type of tests conducted for both initial and confirmation tests and  
28           the minimum cutoff levels of the tests.

29       No report shall disclose the presence or absence of any drug other than alcohol, a  
30 specific drug listed in G.S. 97-151(4) or its metabolites.

31       (g) Laboratories shall provide technical assistance to the employer, employee, or  
32 job applicant for the purpose of interpreting any positive confirmed test results that could  
33 have been caused by prescription or nonprescription medication taken by the employee or  
34 job applicant.

35       (h) If an initial drug test is negative, the employer may, in the employer's sole  
36 discretion, seek a confirmation test. Only laboratories that comply with subsection (e) of  
37 this section shall conduct confirmation drug tests.

38       (i) All initial tests shall use an immunoassay procedure or an equivalent  
39 procedure or shall use a more accurate scientifically accepted method approved by the  
40 National Institute on Drug Abuse as such more accurate technology becomes available in  
41 a cost-effective form. All confirmation tests shall use the gas chromatography/mass  
42 spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted



1 methods approved by the National Institute on Drug Abuse that is available in a cost-  
2 effective form.

3 **"§ 97-156. Employee assistance programs.**

4 (a) If an employer has an employee assistance program, the employer shall inform  
5 the employee of the benefits and services of the employee assistance program. In  
6 addition, the employer shall provide the employee with notice of the policies and  
7 procedures regarding access to and use of the program.

8 (b) If an employer does not have an employee assistance program, the employer  
9 shall maintain a resource file of providers of other employee assistance including drug  
10 and alcohol abuse programs, mental health providers, and other persons, entities, or  
11 organizations available to assist employees with personal or behavioral problems and  
12 shall notify the employee of the availability of this resource file. In addition, the  
13 employer shall post in a conspicuous place a listing of providers of employee assistance  
14 in the area.

15 **"§ 97-157. Employee education on substance abuse.**

16 An employer shall provide all employees with a semiannual education program on  
17 substance abuse, in general, and its effects on the workplace, specifically. An education  
18 program for a minimum of one hour should include, but is not limited, to the following  
19 information:

20 (1) The explanation of the disease model of addiction for alcohol and drugs;

21 (2) The effects and dangers of the commonly abused substances in the  
22 workplace; and

23 (3) The company's policies and procedures regarding substance abuse in the  
24 workplace and how employees who wish to obtain substance abuse  
25 treatment can do so.

26 **"§ 97-158. Supervisor training on substance abuse.**

27 In addition to the education program provided in G.S. 97-157, an employer shall  
28 provide all supervisory personnel with a minimum of two hours of supervisor training,  
29 that shall include, but is not limited to, the following information:

30 (1) How to recognize signs of employee substance abuse;

31 (2) How to document and collaborate signs of employee substance abuse;  
32 and

33 (3) How to refer substance abusing employees to the proper treatment  
34 providers.

35 **"§ 97-159. Limitations of Article.**

36 (a) No physician-patient relationship is created between an employee or job  
37 applicant and an employer, medical review officer, or any person performing or  
38 evaluating a drug test solely by the establishment, implementation, or administration of a  
39 drug-testing program.

40 (b) Nothing in this Article shall be construed to prevent an employer from  
41 establishing reasonable work rules related to employee possession, use, sale, or  
42 solicitation of drugs, including convictions for drug-related offenses, and taking action  
43 based upon a violation of any of those rules.

1 (c) Nothing in this Article shall be construed to operate retroactively, and nothing  
2 in this Article shall abrogate the right of an employer under State or federal law to  
3 conduct drug tests, or implement employee drug-testing programs. Only those programs  
4 that meet the criteria set forth in this Article shall qualify for reduced workers'  
5 compensation insurance premiums under G.S. 58-36-61.

6 (d) Nothing in this Article shall be construed to prohibit an employer from  
7 conducting medical screening or other tests required, permitted, or not disallowed by any  
8 statute, or rule for the purpose of monitoring exposure of employees to toxic or other  
9 unhealthy materials in the workplace or in the performance of job responsibilities. Such  
10 screening or test shall be limited to the specific materials expressly identified in the  
11 statute or rule, unless prior written consent of the employee is obtained for other tests.

12 (e) No cause of action shall arise in favor of any person based upon the failure of  
13 an employer to establish or conduct a program or policy for substance abuse testing.

14 **"§ 97-160. Confidentiality.**

15 (a) All information, interviews, reports, statements, memoranda, and test results,  
16 written or otherwise, received by the employer through a substance abuse testing program  
17 are confidential communications, but may be used or received in evidence, obtained in  
18 discovery, or disclosed in any civil or administrative proceeding, except as provided in  
19 subsection (d) of this section.

20 (b) Employers, laboratories, medical review officers, employee assistance  
21 programs, drug or alcohol rehabilitation programs, and their agents who receive or have  
22 access to information concerning test results shall keep all information confidential.  
23 Release of such information under any other circumstance shall be solely pursuant to a  
24 written consent form signed voluntarily by the person tested, unless such release is  
25 compelled by the State or a court of competent jurisdiction or unless deemed appropriate  
26 by a professional or occupational licensing board in a related disciplinary proceeding.  
27 The consent form shall contain at a minimum:

- 28 (1) The name of the person who is authorized to obtain the  
29 information;  
30 (2) The purpose of the disclosure;  
31 (3) The precise information to be disclosed;  
32 (4) The duration of the consent; and  
33 (5) The signature of the person authorizing release of the  
34 information.

35 (c) Information on test results shall not be released or used in any criminal  
36 proceeding against the employee or job applicant. Information released contrary to this  
37 subsection shall be inadmissible as evidence in any such criminal proceeding.

38 (d) Nothing contained in this Article shall be construed to prohibit the employer or  
39 laboratory conducting a test from having access to employee test information when  
40 consulting with legal counsel when the information is relevant to its defense in a civil or  
41 administrative matter.

42 **"§ 97-161. Authority to adopt rules.**

1       The Industrial Commission may adopt rules, procedures, and forms regarding the  
2 certification of employers who establish and maintain a drug-free workplace that  
3 complies with the provisions of this Article. The Industrial Commission may charge a  
4 fee for the certification of a drug-free workplace program in an amount that approximates  
5 the administrative costs to the Industrial Commission of this certification. Certification  
6 of an employer shall be required for each year in which a premium discount is granted.  
7 The Industrial Commission may adopt any other rules necessary for the implementation  
8 of this Article."

9           Sec. 3. G.S. 97-12 reads as rewritten:

10 **"§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful**  
11 **disobedience of statutory duty, safety regulation or rule.**

12       (a) No compensation shall be payable if the injury or death to the employee was  
13 proximately caused by:

14           (1) His intoxication, provided the intoxicant was not supplied by the  
15 employer or his agent in a supervisory capacity to the employee; or

16           (2) His being under the influence of any controlled substance listed in the  
17 North Carolina Controlled Substances Act, G.S. 90-86, **et seq.**, where  
18 such controlled substance was not by prescription by a ~~practitioner~~; or  
19 practitioner and that affected the employee to such an extent that the  
20 employee's normal faculties were impaired; or

21           (3) His willful intention to injure or kill himself or another.

22       (b) If there was at the time of the injury one-tenth percent (.1%) or more by weight  
23 of alcohol in the employee's blood, or if the employee has a positive confirmation of a  
24 drug, it shall be presumed that the injury was occasioned primarily by the intoxication of,  
25 or by the influence of the drug upon, the employee. In the absence of a drug-free  
26 workplace program under Article 5 of this Chapter, this presumption may be rebutted by  
27 clear and convincing evidence that the intoxication or influence of the drug did not  
28 contribute to the injury. Percent by weight of alcohol in the blood shall be based upon  
29 grams of alcohol per 100 milliliters of blood.

30       (c) To ensure that the workplace is a drug and alcohol-free environment and to  
31 deter the use of drugs and alcohol at the workplace, if the employer has reason to suspect  
32 that the injury was occasioned primarily by the intoxication of the employee or by the use  
33 of any drug that affected the employee to the extent that the employee's normal faculties  
34 were impaired, the employer may require the employee to submit to a test for the  
35 presence of any or all drugs or alcohol in his system. If the injured worker refuses to  
36 submit to a test or nonprescription controlled substances or alcohol, it shall be presumed  
37 in the absence of clear and convincing evidence to the contrary that the injury was  
38 occasioned primarily by the influence of a nonprescription controlled substance or  
39 alcohol.

40       (d) When the injury or death is caused by the willful failure of the employer to  
41 comply with any statutory requirement or any lawful order of the Commission,  
42 compensation shall be increased ten percent (10%). When the injury or death is caused  
43 by the willful failure of the employee to use a safety appliance or perform a statutory duty

1 or by the willful breach of any rule or regulation adopted by the employer and approved  
2 by the Commission and brought to the knowledge of the employee prior to the injury  
3 compensation shall be reduced ten percent (10%).

4 (e) The burden of proof shall be upon him who claims an exemption or forfeiture  
5 under this section.

6 (f) The Industrial Commission shall adopt rules regarding the authorization and  
7 regulation of drug testing policies, procedures, and methods. Testing of injured  
8 employees pursuant to this section shall not commence until such rules are adopted."

9 Sec. 4. There is appropriated from the General Fund to the Department of  
10 Commerce for the Industrial Commission the sum of ten thousand dollars (\$10,000) for  
11 the 1995-96 fiscal year for the costs of implementing this act.

12 Sec. 5. This act becomes effective January 1, 1996, and applies to all workers'  
13 compensation insurance policies issued or renewed on or after that date.