

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1253

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

(Public)

Sponsors: Representatives Black; Easterling and Warner.

Referred to: Rules, Calendar, and Operations of the House.

May 5, 1993

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

(b) The premium discount provided by this section shall be applied to an insured's policy of workers' compensation insurance pro rata as of the date the insured receives certification by the Industrial Commission and shall continue for a period not to exceed four years. An insurer shall not be required to credit the actual amount of the premium discount to the account of the insured until the final premium audit under the policy. Certification by an insured shall be required for each of the four years in which the premium discount is granted. Thereafter, any premium discount pursuant to this

1 section shall be determined from the insured's experience rating plan or, in the case of  
2 an insured not rated upon experience, as proved in subsection (c) of this section.

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

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

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

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

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

24 **"ARTICLE 5.**

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

26 **"§ 97-150. Intent.**

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

32 **"§ 97-151. Definitions.**

33 As used in this Article:

- 34 (1) 'Alcohol' means ethyl alcohol, hydrated oxide of ethyl, or spirits of  
35 wine, from whatever source or by whatever process produced.
- 36 (2) 'Chain of custody' means the methodology of tracking specified  
37 materials, specimens, or substances for the purpose of maintaining  
38 control and accountability from initial collection to final disposition  
39 for all such materials, specimens, or substances and providing for  
40 accountability at each stage in handling, testing, and storing materials,  
41 specimens, or substances and reporting test results.
- 42 (3) 'Confirmation test', 'confirmed test', or 'confirmed substance abuse test'  
43 means a second analytical procedure used to identify the presence of a  
44 specific drug or metabolic in a specimen. A confirmation test is

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

- 1           b.     Abnormal conduct or erratic behavior while at work or a  
2                 significant deterioration in work performance;  
3           c.     A report of substance abuse provided by a reliable and credible  
4                 source;  
5           d.     Evidence that an individual has tampered with any substance  
6                 abuse test during the employment with the current employer;  
7           e.     Information that an employee has caused or contributed to an  
8                 accident while at work; or  
9           f.     Evidence that an employee has used, possessed, sold, solicited,  
10                or transferred drugs while working or while on the employer's  
11                premises or while operating the employer's vehicle, machinery,  
12                or equipment.  
13       (13) 'Rehabilitation program' means an established program capable of  
14            providing expert identification, assessment, and resolution of  
15            employee drug or alcohol abuse in a confidential and timely service  
16            and provided by persons licensed or appropriately certified as health  
17            professionals to provide drug or alcohol rehabilitative services.  
18       (14) 'Specimen' means tissue, blood, breath, urine, or other product of the  
19            human body capable of revealing the presence of drugs or their  
20            metabolites or of alcohol.  
21       (15) 'Substance' means drugs or alcohol.  
22       (16) 'Substance abuse test' or 'test' means any chemical, biological, or  
23            physical instrumental analysis administered for the purpose of  
24            determining the presence or absence of a drug or of alcohol.  
25       (17) 'Threshold detection level' means the level at which the presence of a  
26            drug or alcohol can reasonably be expected to be detected by an initial  
27            and confirmatory test performed by a laboratory meeting the standards  
28            specified in this Article.

29 **"§ 97-152. Discount under workers' compensation insurance policy.**

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

34 **"§ 97-153. Drug-free workplace program.**

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

- 37           (1) A written policy statement pursuant to G.S. 97-154;  
38           (2) Substance abuse testing pursuant to G.S. 97-155;  
39           (3) Resources of employee assistance providers maintained in accordance  
40                with G.S. 97-156;  
41           (4) Employee education as provided in G.S. 97-157;  
42           (5) Supervisor training in accordance with G.S. 97-158; and  
43           (6) Confidentiality standards pursuant to G.S. 97-160.

44 **"§ 97-154. Written policy statement.**

1       (a) One time only, prior to testing, all employees and job applicants for  
2 employment shall be given a notice of testing. In addition, all employees shall be given  
3 a written policy statement from the employer that contains:

4           (1) A general statement of the employer's policy on employee substance  
5 abuse that shall identify:

6           a. The types of testing an employee or job applicant may be  
7 required to submit to, including reasonable suspicion or other  
8 basis used to determine when this testing will be required; and

9           b. The actions the employer may take against an employee or job  
10 applicant on the basis of a positive confirmed test result;

11          (2) A statement advising an employee or job applicant of the provisions of  
12 this Article;

13          (3) A general statement concerning confidentiality;

14          (4) The consequences of refusing to submit to a drug test;

15          (5) A statement advising an employee of the employee assistance  
16 program, if offered by the employer, or a statement advising the  
17 employee of the employer's resource file of assistance programs and  
18 other persons, entities, or organizations designed to assist employees  
19 with personal or behavioral problems;

20          (6) A statement that an employee or job applicant who receives a positive  
21 confirmed test result may contest or explain the result to the employer  
22 within five working days after written notification of the positive test  
23 result; and

24          (7) A statement informing an employee of the provisions of the Drug-Free  
25 Workplace Act of 1988, 41 U.S.C. §§ 701, et seq., if applicable to the  
26 employer.

27       (b) An employer not having a substance abuse testing program in effect on July  
28 1, 1994, shall provide a general one-time notice to all employees that a substance abuse  
29 testing program is being implemented no less than 60 days prior to the beginning of the  
30 actual testing.

31       (c) An employer shall include notice of substance abuse testing on vacancy  
32 announcements for those positions for which testing is required. A notice of the  
33 employer's substance abuse testing policy shall also be posted in an appropriate and  
34 conspicuous location on the employer's premises, and copies of the policy shall be made  
35 available for inspection by the employees or job applicants of the employer during  
36 regular business hours in the employer's personnel office and other suitable locations.

37 **"§ 97-155. Substance-abuse testing.**

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

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

- 1           (1) After extending an offer of employment, an employee shall require job  
2 applicants to submit to a substance abuse test or to limited testing of  
3 job applicants if limited testing is conducted on the basis of reasonable  
4 classifications of job positions.
- 5           (2) An employer shall require an employee to submit to reasonable  
6 suspicion testing.
- 7           (3) An employer shall require an employee to submit to a substance abuse  
8 test if the test is conducted as part of a routinely scheduled employee  
9 fitness-for-duty medical examination that is part of the employer's  
10 established policy or that is scheduled routinely for all members of an  
11 employment classification or group.
- 12          (4) If the employee in the course of employment enters an employee  
13 assistance program or a rehabilitation program as the result of a  
14 positive test, the employer shall require the employee to submit to a  
15 substance abuse test as a follow up to the program. However, if an  
16 employee voluntarily entered the program, follow-up testing is not  
17 required. If follow-up testing is conducted, the frequency of the  
18 testing shall be at least once a year for a two-year period after  
19 completion of the program, and advance notice of the testing date shall  
20 not be given to the employee.
- 21          (5) If the employee has caused or contributed to an on-the-job injury that  
22 resulted in a loss of work time, the employer shall require the  
23 employee to submit to a substance abuse test.
- 24          (c) Nothing in this section shall prohibit a private employer from conducting  
25 random testing or other lawful testing of employees.
- 26          (d) All specimen collection and testing under this section shall be performed in  
27 accordance with the following procedures:
- 28               (1) A specimen shall be collected with due regard to the privacy of the  
29 individual providing the specimen, and in a manner reasonably  
30 calculated to prevent substitution or contamination of the specimen.
- 31               (2) Specimen collection shall be documented, and the documentation  
32 procedures shall include:
- 33                   a. Labeling of specimen containers so as to reasonably preclude  
34 the likelihood of erroneous identification of test results; and
- 35                   b. An opportunity for the employee or job applicant to record any  
36 information he or she considers relevant to the test, including  
37 identification of currently or recently used prescription or  
38 nonprescription medication or other relevant medical  
39 information. The providing of information shall not preclude  
40 the administration of the test, but shall be taken into account in  
41 interpreting any positive confirmed results.
- 42               (3) Specimen collection, storage, and transportation to the testing site shall  
43 be performed in a manner that will reasonably preclude specimen  
44 contamination or adulteration.

- 1           (4) Each initial and confirmation test conducted under this section, not  
2 including the taking or collecting of a specimen to be tested, shall be  
3 conducted by a laboratory that complies with subsection (e) of this  
4 section.
- 5           (5) A specimen for a test may be taken or collected by any of the  
6 following persons:
- 7           a. A physician, a physician's assistant, a registered professional  
8 nurse, a licensed practical nurse, a nurse practitioner, or a  
9 certified paramedic who is present at the scene of an accident  
10 for the purpose of rendering emergency medical service or  
11 treatment;
- 12           b. A qualified person certified or employed by a laboratory  
13 certified by the National Institute on Drug Abuse, the College  
14 of American Pathologists, or the Department of Human  
15 Resources; or
- 16           c. A qualified person certified or employed by a collection  
17 company.
- 18           (6) Within five working days after receipt of a positive confirmed test  
19 result from the laboratory, an employer shall inform an employee or  
20 job applicant in writing of positive test results, the consequences of  
21 positive test results, and the options available to the employee or job  
22 applicant.
- 23           (7) The employer shall provide to the employee or job applicant, upon  
24 request, a copy of the test results.
- 25           (8) An initial test having a positive result shall be verified by a  
26 confirmation test.
- 27           (9) An employer who performs drug testing or specimen collection shall  
28 use chain or custody procedures to ensure proper record keeping,  
29 handling, labeling, and identification of all specimens to be tested.
- 30           (10) An employer shall pay the cost of all drug tests, initial and  
31 confirmation, that the employer requires of the employees.
- 32           (11) An employee or job applicant shall pay the cost of any additional tests  
33 not required by the employer.
- 34           (12) If the testing is being conducted based on reasonable suspicion, the  
35 employer shall promptly detail in writing the circumstances that  
36 formed the basis of the determination that reasonable suspicion existed  
37 to warrant the testing. A copy of this documentation shall be given to  
38 the employee upon request and the original documentation shall be  
39 kept confidential by the employer pursuant to G.S. 97-160 and retained  
40 by the employer for at least one year.
- 41           (e) No laboratory shall analyze initial or confirmation drug specimens unless:
- 42           (1) The laboratory is approved by the National Institute on Drug Abuse or  
43 by the College of American Pathologists;

- 1           (2) The laboratory has written procedures to ensure the chain of custody;  
2           and
- 3           (3) The laboratory follows proper quality control procedures including:
- 4           a. The use of internal quality controls, including the use of  
5           samples of known concentrations that are used to check the  
6           performance and calibration of testing equipment and the  
7           periodic use of blind samples for overall accuracy;
- 8           b. An internal review and certification process for drug test  
9           results, conducted by a person qualified to perform that function  
10           in the testing laboratory;
- 11           c. Security measures implemented by the testing laboratory to  
12           preclude adulteration of specimens and drug test results.
- 13       (f) A laboratory shall disclose to the employer a written test result report within  
14 seven working days after receipt of the sample. All laboratory reports of a substance  
15 abuse test result shall, at a minimum, state:
- 16           (1) The name and address of the laboratory that performed the test and the  
17           positive identification of the person tested;
- 18           (2) Positive results on confirmation tests only, or negative results, as  
19           applicable;
- 20           (3) A list of the drugs for which the drug analyses were conducted; and
- 21           (4) The type of tests conducted for both initial and confirmation tests and  
22           the minimum cutoff levels of the tests.

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

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

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

32       (i) All initial tests shall use an immunoassay procedure or an equivalent  
33 procedure or shall use a more accurate scientifically accepted method approved by the  
34 National Institute on Drug Abuse as such more accurate technology becomes available  
35 in a cost-effective form. All confirmation tests shall use the gas chromatography/mass  
36 spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted  
37 methods approved by the National Institute on Drug Abuse that is available in a cost-  
38 effective form.

39 **"§ 97-156. Employee assistance programs.**

40       (a) If an employer has an employee assistance program, the employer shall  
41 inform the employee of the benefits and services of the employee assistance program.  
42 In addition, the employer shall provide the employee with notice of the policies and  
43 procedures regarding access to and use of the program.

1 (b) If an employer does not have an employee assistance program, the employer  
2 shall maintain a resource file of providers of other employee assistance including drug  
3 and alcohol abuse programs, mental health providers, and other persons, entities, or  
4 organizations available to assist employees with personal or behavioral problems and  
5 shall notify the employee of the availability of this resource file. In addition, the  
6 employer shall post in a conspicuous place a listing of providers of employee assistance  
7 in the area.

8 **"§ 97-157. Employee education on substance abuse.**

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

- 13 (1) The explanation of the disease model of addiction for alcohol and  
14 drugs;
- 15 (2) The effects and dangers of the commonly abused substances in the  
16 workplace; and
- 17 (3) The company's policies and procedures regarding substance abuse in  
18 the workplace and how employees who wish to obtain substance abuse  
19 treatment can do so.

20 **"§ 97-158. Supervisor training on substance abuse.**

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

- 24 (1) How to recognize signs of employee substance abuse;
- 25 (2) How to document and collaborate signs of employee substance abuse;  
26 and
- 27 (3) How to refer substance abusing employees to the proper treatment  
28 providers.

29 **"§ 97-159. Limitations of Article.**

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

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

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

43 (d) Nothing in this Article shall be construed to prohibit an employer from  
44 conducting medical screening or other tests required, permitted, or not disallowed by

1 any statute, or rule for the purpose of monitoring exposure of employees to toxic or  
2 other unhealthy materials in the workplace or in the performance of job responsibilities.  
3 Such screening or test shall be limited to the specific materials expressly identified in  
4 the statute or rule, unless prior written consent of the employee is obtained for other  
5 tests.

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

8 **"§ 97-160. Confidentiality.**

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

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

- 22 (1) The name of the person who is authorized to obtain the  
23 information;
- 24 (2) The purpose of the disclosure;
- 25 (3) The precise information to be disclosed;
- 26 (4) The duration of the consent; and
- 27 (5) The signature of the person authorizing release of the  
28 information.

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

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

36 **"§ 97-161. Authority to adopt rules.**

37 The Industrial Commission may adopt rules, procedures, and forms regarding the  
38 certification of employers who establish and maintain a drug-free workplace that  
39 complies with the provisions of this Article. The Industrial Commission may charge a  
40 fee for the certification of a drug-free workplace program in an amount that  
41 approximates the administrative costs to the Industrial Commission of this certification.  
42 Certification of an employer shall be required for each year in which a premium  
43 discount is granted. The Industrial Commission may adopt any other rules necessary for  
44 the implementation of this Article."

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

2 **"§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful**  
3 **disobedience of statutory duty, safety regulation or rule.**

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

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

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

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

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

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

32 (d) When the injury or death is caused by the willful failure of the employer to  
33 comply with any statutory requirement or any lawful order of the Commission,  
34 compensation shall be increased ten percent (10%). When the injury or death is caused  
35 by the willful failure of the employee to use a safety appliance or perform a statutory  
36 duty or by the willful breach of any rule or regulation adopted by the employer and  
37 approved by the Commission and brought to the knowledge of the employee prior to the  
38 injury compensation shall be reduced ten percent (10%).

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

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

1           Sec. 4. There is appropriated from the General Fund to the Department of  
2 Commerce for the Industrial Commission the sum of ten thousand dollars (\$10,000) for  
3 the 1993-94 fiscal year for the costs of implementing this act.

4           Sec. 5. This act becomes effective January 1, 1994, and applies to all  
5 workers' compensation insurance policies issued or renewed on or after that date.