



28 employee in the employer's employment or place of employment; or

29 (d) fail or neglect to follow and obey orders and to do every other thing reasonably  
30 necessary to protect the life, health, and safety of employees.

31 [~~2~~] (3) Except in case of injury resulting in death:

32 (a) compensation provided for by this chapter shall be reduced 15% when injury is caused  
33 by the willful failure of the employee:

34 (i) to use safety devices when provided by the employer; or

35 (ii) to obey any order or reasonable rule adopted by the employer for the safety of the  
36 employee; and

37 (b) except when the employer permitted, encouraged, or had actual knowledge of the  
38 conduct described in Subsection [~~2~~] (3)(b)(i) through (iii), disability compensation may not be  
39 awarded under this chapter or Title 34A, Chapter 3, Utah Occupational Disease Act, to an  
40 employee when the major contributing cause of the employee's injury is the employee's:

41 (i) use of [~~illegal substances~~] a controlled substance for which the employee does not have  
42 a prescription at the time of the injury;

43 (ii) intentional abuse [~~of drugs~~] in excess of prescribed therapeutic amounts of a controlled  
44 substance for which the employee has a prescription at the time of injury; or

45 (iii) intoxication from alcohol with a blood or breath alcohol concentration of .08 grams  
46 or greater as shown by a chemical test.

47 [~~3~~] (4) (a) For purposes of Subsection [~~2~~] (3), it is presumed that the major contributing  
48 cause of the employee's injury is the employee's conduct described in Subsections [~~2~~] (3)(b)(i)  
49 through (iii) if at the time of the injury, as shown by a chemical test:

50 (i) the employee has in the employee's system:

51 (A) any amount of [~~an illegal~~] a controlled substance or its metabolites if at the time of the  
52 injury the employee does not have a prescription for the controlled substance; or

53 (B) [~~drugs~~] a controlled substance or its metabolites in excess of prescribed therapeutic  
54 amounts if at the time of the injury the employee has a prescription for the controlled substance;  
55 or

56 (ii) the employee has a blood or breath alcohol concentration of .08 grams or greater.

57 (b) The presumption created under Subsection [~~3~~] (4)(a) may be rebutted by evidence  
58 showing that:

59 (i) the chemical test creating the presumption is inaccurate because the employer failed to  
60 comply with:

61 (A) Sections 34-38-4 through 34-38-6; or

62 (B) if the employer is a local governmental entity or state institution of higher education,

63 Section 34-41-104 and Subsection 34-41-103(5);

64 (ii) the employee did not engage in the conduct described in Subsections [(2)] (3)(b)(i)  
65 through (iii);

66 (iii) the test results do not exclude the possibility of passive inhalation of marijuana

67 because the concentration of total urinary cannabinoids is less than 50 nanograms/ml as

68 determined by a test conducted in accordance with:

69 (A) Sections 34-38-4 through 34-38-6; or

70 (B) if the employer is a local governmental entity or state institution of higher education,

71 Section 34-41-104 and Subsection 34-41-103(5);

72 [(iii)] (iv) a competent medical opinion from a physician verifies that the amount in the

73 employee's system of the following does not support a finding that the conduct described in

74 Subsections [(2)] (3)(b)(i) through (iii) was the major contributing cause of the employee's injury

75 [is not supported by the amount in the employee's system of]:

76 (A) [~~illegal substances~~] a controlled substance or its metabolites if at the time of the injury  
77 the employee does not have a prescription for the controlled substance;

78 (B) [~~drugs~~] a controlled substance or its metabolites in excess of prescribed therapeutic  
79 amounts if at the time of the injury the employee has a prescription for the controlled substance;

80 (C) alcohol; or

81 (D) a combination of Subsections [(3)] (4)(b)(iii)(A) through (C); or

82 [(iv)] (v) the conduct described in Subsections [(2)] (3)(b)(i) through (iii) was not the  
83 major contributing cause of the employee's injury.

84 (c) (i) Except as provided in Subsections [(3)] (4)(c)(ii) and (iii), if a chemical test that  
85 creates the presumption under Subsection [(3)] (4)(a) is taken at the request of the employer, the  
86 employer shall comply with:

87 (A) Title 34, Chapter 38, Drug and Alcohol Testing; or

88 (B) if the employee is a local governmental employee [as defined in Section 34-41-101]

89 or an employee of a state institution of higher education, Title 34, Chapter 41, Local Governmental

90 Entity Drug-Free Workplace Policies.

91 (ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34, Chapter  
92 38, may be disclosed to the extent necessary to establish or rebut the presumption created under  
93 Subsection [~~3~~] (4)(a).

94 (iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34, Chapter  
95 41, may be disclosed to the extent necessary to establish or rebut the presumption created under  
96 Subsection [~~3~~] (4)(a).

97 (5) If any provision of this section, or the application of any provision of this section to  
98 any person or circumstance, is held invalid, the remainder of this section shall be given effect  
99 without the invalid provision or application.

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**Legislative Review Note**  
**as of 1-5-00 11:16 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**