

SB0044S01 compared with SB0044

~~text~~ shows text that was in SB0044 but was deleted in SB0044S01.

inserted text shows text that was not in SB0044 but was inserted into SB0044S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Karen Mayne proposes the following substitute bill:

WORKERS' COMPENSATION AND EMPLOYEE MISCONDUCT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address use of controlled substances or alcohol.

Highlighted Provisions:

This bill:

- ▶ ~~changes the degree to which~~ addresses reductions or prohibitions on receipt of disability compensation related to the use of controlled substances or alcohol ~~is considered~~ on the basis of the degree to which the conduct is a contributing cause of an injury;
- ▶ addresses knowing use of a controlled substance not obtained under a prescription;
- ▶ clarifies burden of proof to rebut presumption:
- ▶ addresses ~~standard~~ what an employee can prove to rebut presumption;

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- ▶ requires ~~{ that the employee's mental and physical condition is not diminished or compromised at the time of injury;~~

→ ~~requires samples be taken to allow for}~~ split testing; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-302, as last amended by Laws of Utah 2000, Chapter 295

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-2-302** is amended to read:

34A-2-302. Employee's willful misconduct -- Penalty.

(1) For purposes of this section:

- (a) "Controlled substance" is as defined in Section 58-37-2[;].
- (b) "Local government employee" is as defined in Section 34-41-101[;].
- (c) "Local governmental entity" is as defined in Section 34-41-101[;].
- (d) "State institution of higher education" is as defined in Section 34-41-101[; and].
- (e) "Valid prescription" is a prescription, as defined in Section 58-37-2, that:
 - (i) is prescribed for a controlled substance for use by the employee for whom it was

prescribed; and

- (ii) has not been altered or forged.

(2) An employee may not:

(a) remove, displace, damage, destroy, or carry away any safety device or safeguard provided for use in any employment or place of employment;

(b) interfere in any way with the use of a safety device or safeguard described in Subsection (2)(a) by any other person;

(c) interfere with the use of any method or process adopted for the protection of any employee in the employer's employment or place of employment; or

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

(3) Except in case of injury resulting in death:

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

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

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

(b) except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsection ~~[(3)(b)(i) through (iii)]~~ (4):

(i) disability compensation may not be awarded under this chapter or [Title 34A,] Chapter 3, Utah Occupational Disease Act, to an employee when ~~the major~~ the major contributing cause of the employee's injury is the employee's

~~(i)~~ conduct described in Subsection (4); or

(ii) disability compensation to an employee under this chapter or Chapter 3, Utah Occupational Disease Act, shall be reduced by 15% when the employee's conduct is a contributing cause of the employee's injury but not the major contributing cause.

(4) The conduct described in Subsection (3)(b) is the employee's:

(i) (a) knowing use of a controlled substance that the employee did not obtain under a valid prescription;

(ii) (b) intentional abuse of a controlled substance that the employee obtained under a valid prescription if the employee uses the controlled substance intentionally:

(A) (i) in excess of prescribed therapeutic amounts; or

(B) (ii) in an otherwise abusive manner; or

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

~~(4)~~ (5) (a) For purposes of ~~Subsection~~ Subsections (3) and (4), as shown by a chemical test that conforms to scientifically accepted analytical methods and procedures and includes verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of the test may be used as a basis for the presumption, it is presumed that ~~the major~~

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~~a~~ contributing cause of the employee's injury is the employee's conduct described in

~~Subsections (3)(b)(i) through (iii)~~ Subsection (4) if at the time of the injury:

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

(A) any amount of a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or

(B) a controlled substance the employee obtained under a valid prescription or the metabolites of the controlled substance if the amount in the employee's system is consistent with the employee using the controlled substance intentionally:

(I) in excess of prescribed therapeutic amounts; or

(II) in an otherwise abusive manner; ~~or~~

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

(b) The presumption created under Subsection ~~(4)~~ (5)(a) may be rebutted by ~~clear and convincing~~ a preponderance of the evidence showing that:

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

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

(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);

(ii) the employee did not engage in the conduct described in ~~Subsections (3)(b)(i) through (iii)~~ Subsection (4);

(iii) the test results do not exclude the possibility of passive inhalation of marijuana because the concentration of total urinary cannabinoids is less than 50 nanograms/ml as determined by a test conducted in accordance with:

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

(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);

(iv) a competent medical opinion from a physician verifies that the amount of controlled substances, metabolites, or alcohol in the employee's system ~~of the following~~ does not support a finding that the conduct described in ~~Subsections (3)(b)(i) through (iii)~~ Subsection (4) was ~~the~~ major ~~a~~ contributing cause of the employee's injury ~~or a contributing cause of the employee's injury; or~~

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~~[(A) any amount of a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or]~~

~~[(B) a controlled substance the employee obtained under a valid prescription or the metabolites of the controlled substance if the amount in the employee's system is consistent with the employee using the controlled substance intentionally:]~~

~~[(F) in excess of prescribed therapeutic amounts; or]~~

~~[(H) in an otherwise abusive manner;]~~

~~[(C) alcohol; or]~~

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

(v) (A) the conduct described in ~~[(Subsections (3)(b)(i) through (iii)]~~ Subsection (4) was not ~~[the major]~~ a contributing cause of the employee's injury ~~{-};~~ [-]; or

(B) the employee's mental and physical condition were ~~fin no respect diminished or compromised;~~ not impaired at the time of the injury. ~~{-};~~

(c) (i) Except as provided in Subsections ~~[(4)]~~ (5)(c)(ii) and (iii), if a chemical test that creates the presumption under Subsection ~~[(4)]~~ (5)(a) is taken at the request of the employer, the employer shall comply with:

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

(B) if the employee is a local governmental employee or an employee of a state institution of higher education, Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies.

(ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34, Chapter 38, Drug and Alcohol Testing, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection ~~[(4)]~~ (5)(a).

(iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection ~~[(4)]~~ (5)(a).

~~{(d) In taking samples for a test conducted under this section, the employer shall require the employee to provide two samples to permit the employee to have a test conducted that confirms or refutes the test taken;}~~ (6) (a) A test sample taken pursuant to this section shall be taken as a split sample.

(b) One part of the sample is to be used by the employer for testing pursuant to

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Subsection (5)(a):

- (i) at a testing facility selected by the employer; and
- (ii) at the employer's or the employer's workers' compensation carrier's expense.

(c) The testing facility selected under Subsection (~~(4)~~(a):

~~(5)~~ (6)(b) shall hold the part of the sample not used under Subsection (6)(b) until the sooner of:

- (i) six months from the date of the original test; or
- (ii) when the employee requests that the sample be tested.
- (d) The employee has only six months from the date of the original test to have the

remaining sample tested:

- (i) at the employee's expense; and
- (ii) at the testing facility selected by the employee, except that the test shall meet the

requirements of Subsection (5)(a).

~~(5)~~ (7) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

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Legislative Review Note

~~as of 1-23-14 10:08 AM~~

~~Office of Legislative Research and General Counsel}~~