

1 **WORKERS COMPENSATION - EMPLOYEES**

2 **WILLFUL MISCONDUCT**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Parley Hellewell**

6 AN ACT RELATING TO LABOR; AMENDING PROVISIONS RELATED TO EMPLOYEE
7 MISCONDUCT AND WORKERS COMPENSATION; ADDRESSING THE APPLICATION
8 TO STATE INSTITUTIONS OF HIGHER EDUCATION; PROVIDING A SEVERABILITY
9 CLAUSE; AND MAKING TECHNICAL CHANGES.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **34A-2-302**, as last amended by Chapter 187, Laws of Utah 1999

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

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

15 **34A-2-302. Employee's willful misconduct -- Penalty.**

16 (1) For purposes of this section:

17 (a) "controlled substance" is as defined in Section 58-37-2;

18 (b) "local government employee" is as defined in Section 34-41-101;

19 (c) "local governmental entity" is as defined in Section 34-41-101;

20 § [(d) "prescription" is as defined in Section 58-37-2; and]

20a (d) "VALID PRESCRIPTION" IS A PRESCRIPTION, AS DEFINED IN SECTION 58-37-2, THAT:

20b (i) IS PRESCRIBED FOR A CONTROLLED SUBSTANCE FOR USE BY THE EMPLOYEE FOR

20c WHOM IT WAS PRESCRIBED; AND

20d (ii) HAS NOT BEEN ALTERED OR FORGED; AND §

21 (e) "state institution of higher education" is as defined in Section 34-41-101.

22 ~~[(1)]~~ (2) An employee may not:

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

25 (b) interfere in any way with the use of a safety device or safeguard described in
26 Subsection ~~[(1)]~~ (2)(a) by any other person;

27 (c) interfere with the use of any method or process adopted for the protection of any

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 § VALID § 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 § VALID § prescription at the time of injury; or]~~

44a (i) USE OF A CONTROLLED SUBSTANCE THAT THE EMPLOYEE DID NOT OBTAIN UNDER A
44b VALID PRESCRIPTION;

44c (ii) INTENTIONAL ABUSE OF A CONTROLLED SUBSTANCE THAT THE EMPLOYEE
44d OBTAINED UNDER A VALID PRESCRIPTION IF THE EMPLOYEE USES THE CONTROLLED
44e SUBSTANCE INTENTIONALLY:

44f (A) IN EXCESS OF PRESCRIBED THERAPEUTIC AMOUNTS; OR

44g (B) IN AN OTHERWISE ABUSIVE MANNER; 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), h AS SHOWN BY A CHEMICAL TEST THAT
47a CONFORMS TO SCIENTIFICALLY ACCEPTED ANALYTICAL METHODS AND PROCEDURES AND
47b INCLUDES VERIFICATION OR CONFIRMATION OF ANY POSITIVE TEST RESULT BY GAS
47c CHROMATOGRAPHY, GAS CHROMATOGRAPHY-MASS SPECTROSCOPY, OR OTHER
COMPARABLY

47d RELIABLE ANALYTICAL METHOD, BEFORE THE RESULT OF THE TEST MAY BE USED AS A BASIS
47e FOR THE PRESUMPTION, h 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 h [~~as shown by a chemical test] h :~~

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 § VALID § 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 § VALID § prescription for the controlled~~
54a ~~substance;]~~

54b (A) ANY AMOUNT OF A CONTROLLED SUBSTANCE OR ITS METABOLITES IF THE

54c EMPLOYEE DID NOT OBTAIN THE CONTROLLED SUBSTANCE UNDER A VALID PRESCRIPTION; OR

54d (B) A CONTROLLED SUBSTANCE THE EMPLOYEE OBTAINED UNDER A

54e VALID PRESCRIPTION OR THE METABOLITES OF THE CONTROLLED SUBSTANCE IF THE AMOUNT

54f IN THE EMPLOYEE'S SYSTEM IS CONSISTENT WITH THE EMPLOYEE USING THE CONTROLLED

54g SUBSTANCE INTENTIONALLY:

54h (I) IN EXCESS OF PRESCRIBED THERAPEUTIC AMOUNTS; OR

54i (II) IN AN OTHERWISE ABUSIVE MANNER; §

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 § VALID § 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 § VALID § prescription for the controlled~~
79a ~~substance;]~~

79b (A) ANY AMOUNT OF A CONTROLLED SUBSTANCE OR ITS METABOLITES IF THE
79c EMPLOYEE DID NOT OBTAIN THE CONTROLLED SUBSTANCE UNDER A VALID PRESCRIPTION; OR

79d (B) A CONTROLLED SUBSTANCE THE EMPLOYEE OBTAINED UNDER A VALID
79e PRESCRIPTION OR THE METABOLITES OF THE CONTROLLED SUBSTANCE IF THE AMOUNT IN
79f THE EMPLOYEE'S SYSTEM IS CONSISTENT WITH THE EMPLOYEE USING THE CONTROLLED
79g SUBSTANCE INTENTIONALLY:

79h (I) IN EXCESS OF PRESCRIBED THERAPEUTIC AMOUNTS; OR

79i (II) IN AN OTHERWISE ABUSIVE MANNER; §

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
- 3 - Senate 2nd Reading Amendments 2-1-2000 bb/po
Amended in Committee - goldenrod 1-26-2000 rd/po

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S.B. 23

85 creates the presumption under Subsection [~~3~~] 4(a) is taken at the request of the employer, the
86 employer shall comply with:

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- 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.

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