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 <b>34A-2-302</b> 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
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

\*SB0023\*

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:

## 01-11-00 7:15 AM

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

## S.B. 23

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 <u>without the invalid provision or application.</u>

## 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