
SUBSTITUTE SENATE BILL 5516

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Labor, Commerce & Trade (originally sponsored by Senators Owen, Prentice, Deccio, Palmer, Sutherland, McDonald, Rinehart, Haugen, Sheldon, Heavey, Fraser, Franklin, Bauer, Roach and Rasmussen)

Read first time 03/01/95.

1 AN ACT Relating to providing for drug-free workplaces; adding a new
2 chapter to Title 49 RCW; providing an expiration date; and declaring an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 promote drug-free workplaces to improve the safety of the workplace,
7 protect the health of workers, and afford employers in this state the
8 opportunity to maximize their levels of productivity, enhance their
9 competitive positions in the marketplace, and reach their desired
10 levels of success without experiencing the costs, delays, and tragedies
11 associated with work-related accidents resulting from substance abuse
12 by employees.

13 NEW SECTION. **Sec. 2.** Unless the context clearly requires
14 otherwise, the definitions in this section apply throughout this
15 chapter.

16 (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or
17 spirits of wine, from whatever source or by whatever process produced.

1 (2) "Alcohol test" means a chemical, biological, or physical
2 instrumental analysis administered for the purpose of determining the
3 presence or absence of alcohol within an individual's body systems.

4 (3) "Chain of custody" means the methodology of tracking specified
5 materials, specimens, or substances for the purpose of maintaining
6 control and accountability from initial collection to final disposition
7 for all such materials, specimens, or substances and providing for
8 accountability at each stage in handling, testing, and storing
9 materials, specimens, or substances and reporting test results.

10 (4) "Collection site" means a place where individuals present
11 themselves for the purpose of providing a urine, breath, or other
12 specimen to be analyzed for the presence of drugs or alcohol.

13 (5) "Collector" means the person who instructs and assists
14 individuals at a collection site and who receives and makes the initial
15 examination of the specimen provided by those individuals.

16 (6) "Confirmation test," "confirmed test," or "confirmed substance
17 abuse test" means a second analytical procedure used to identify the
18 presence of a specific drug or metabolic in a specimen. The
19 confirmation test must be different in scientific principle from that
20 of the initial test procedure. This confirmation method must be
21 capable of providing requisite specificity, sensitivity, and
22 quantitative accuracy. Alcohol tests may be confirmed by a second
23 breath test.

24 (7) "Department" means the department of social and health
25 services.

26 (8) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine
27 (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines,
28 propoxyphene, or a metabolite of any such substances.

29 (9) "Drug test" means a chemical, biological, or physical
30 instrumental analysis administered for the purpose of determining the
31 presence or absence of a drug or its metabolites within an individual's
32 body systems.

33 (10) "Employee" means a person who works for salary, wages, or
34 other remuneration for an employer.

35 (11) "Employee assistance program" means a program designed to
36 assist in the identification and resolution of job performance problems
37 associated with employees impaired by personal concerns. A minimum
38 level of core services must include: Consultation, professional,
39 confidential, appropriate, and timely problem assessment services;

1 short-term problem resolution; referrals for appropriate diagnosis,
2 treatment, and assistance; follow-up and monitoring; employee
3 education; and supervisory training.

4 (12) "Employer" means a person or entity that is subject to the
5 provisions of this chapter but does not include the state or any
6 department, agency, or instrumentality of the state; any county; any
7 county or independent school system or municipal corporation.

8 (13) "Initial test" means a sensitive, rapid, and reliable
9 procedure to identify negative and presumptive positive specimens. An
10 initial drug test must use an immunoassay procedure or an equivalent
11 procedure or must use a more accurate scientifically accepted method
12 approved by the national institute on drug abuse as more accurate
13 technology becomes available in a cost-effective form.

14 (14) "Injury" means a sudden and tangible happening, of a traumatic
15 nature, producing an immediate or prompt result and occurring from
16 without, and such physical conditions as result therefrom.

17 (15) "Job applicant" means a person who has applied for a position
18 with an employer and has been offered employment conditioned upon
19 successfully passing a drug test and may have begun work pending the
20 results of the drug test.

21 (16) "Last-chance agreement" means a notice to an employee who is
22 referred to the employee assistance program due to a verified positive
23 alcohol or drug test or for violating an alcohol or drug-related
24 company rule that states the terms and conditions of continued
25 employment with which the employee must comply. Failure to comply with
26 all the terms of this agreement normally will result in termination of
27 employment.

28 (17) "Medical review officer" means a licensed physician trained in
29 the field of drug testing who provides medical assessment of positive
30 test results, requests reanalysis if necessary, and makes a
31 determination whether or not drug misuse has occurred.

32 (18) "Nonprescription medication" means a drug or medication
33 authorized under federal or state law for general distribution and use
34 without a prescription in the treatment of human disease, ailments, or
35 injuries.

36 (19) "Prescription medication" means a drug or medication lawfully
37 prescribed by a physician, or other health care provider licensed to
38 prescribe medication, for an individual and taken in accordance with
39 the prescription.

1 (20) "Rehabilitation program" means a program approved by the
2 department that is capable of providing expert identification,
3 assessment, and resolution of employee drug or alcohol abuse in a
4 confidential and timely service. Any rehabilitation program under this
5 chapter must contain a two-year continuing care component.

6 (21) "Specimen" means tissue, blood, breath, urine, or other
7 product of the human body capable of revealing the presence of drugs or
8 their metabolites or of alcohol.

9 (22) "Substance" means drugs or alcohol.

10 (23) "Substance abuse test" or "test" means a chemical, biological,
11 or physical instrumental analysis administered for the purpose of
12 determining the presence or absence of a drug or its metabolites or of
13 alcohol.

14 (24) "Threshold detection level" means the level at which the
15 presence of a drug or alcohol can be reasonably expected to be detected
16 by an initial and confirmatory test performed by a laboratory meeting
17 the standards specified in this chapter. The threshold detection level
18 indicates the level at which a valid conclusion can be drawn that the
19 drug or alcohol is present in the employee's specimen.

20 (25) "Verified positive test result" means a confirmed positive
21 test result by the drug testing laboratory that has been reviewed and
22 verified by a medical review officer in accordance with medical review
23 officer guidelines promulgated by the United States department of
24 health and human services.

25 NEW SECTION. **Sec. 3.** (1) An employer, except an employer that is
26 self-insured for the purposes of Title 51 RCW, implementing a drug-free
27 workplace program in accordance with section 4 of this act, shall
28 qualify for a five percent premium discount under the employer's
29 workers' compensation insurance policy as provided under chapter 51.16
30 RCW upon certification by the division of alcohol and substance abuse
31 of the department as provided in section 13 of this act. A self-
32 insured employer shall implement a drug-free workplace program in
33 accordance with section 4 of this act.

34 (2) The premium discount must remain in effect for three years from
35 the date of certification.

36 (3) A certified employer may stop operating a drug-free workplace
37 program at any time. The qualification for a discount shall expire in

1 accordance with decertification rules adopted by the department under
2 section 13 of this act.

3 (4) Employers who meet, as of July 1, 1995, all of the requirements
4 for the discount provided in this section are not eligible for
5 certification. Employers who meet, as of July 1, 1995, some, but not
6 all, of the requirements for the discount provided in this section may,
7 upon subsequent compliance with the requirements, be eligible for
8 certification.

9 (5) Nothing in this chapter creates or alters an obligation on the
10 part of an employer seeking to participate in this program to bargain
11 with a collective bargaining representative of its employees.

12 (6) An employer may not receive more than one premium discount from
13 the department of labor and industries. An employer participating in
14 and meeting all of the requirements for the discount provided in this
15 section and also participating in another premium discount program
16 offered by the department of labor and industries is entitled to
17 whichever premium discount is the highest.

18 NEW SECTION. **Sec. 4.** (1) A drug-free workplace program
19 established under this chapter must contain the following elements:

20 (a) A written policy statement as provided in section 5 of this
21 act;

22 (b) Substance abuse testing as provided in section 6 of this act;

23 (c) An employee assistance program as provided in accordance with
24 section 7 of this act;

25 (d) Employee education as provided in section 9 of this act; and

26 (e) Supervisor training in accordance with section 10 of this act.

27 (2) In addition to the requirements of subsection (1) of this
28 section, a drug-free workplace program must be implemented in
29 compliance with the confidentiality standards provided in section 12 of
30 this act.

31 NEW SECTION. **Sec. 5.** (1) An alcohol and drug-free workplace
32 program must contain a written substance abuse policy statement in
33 order to qualify for the premium discount provided under section 3 of
34 this act. The policy must:

35 (a) Notify employees that the use or being under any influence of
36 alcohol during working hours is prohibited;

1 (b) Notify employees that the use, purchase, possession, or
2 transfer of drugs or having illegal drugs in their system is prohibited
3 and that prescription or nonprescription medications are not prohibited
4 when taken in accordance with a lawful prescription or consistent with
5 standard dosage recommendations;

6 (c) Identify the types of testing an employee or job applicant may
7 be required to submit to or other basis used to determine when such a
8 test will be required;

9 (d) Identify the actions the employer may take against an employee
10 or job applicant on the basis of a verified positive test result;

11 (e) Contain a statement advising an employee or job applicant of
12 the existence of this chapter;

13 (f) Contain a general statement concerning confidentiality;

14 (g) Identify the consequences of refusing to submit to a drug test;

15 (h) Contain a statement advising an employee of the employee
16 assistance program;

17 (i) Contain a statement that an employee or job applicant who
18 receives a verified positive confirmed test result may contest or
19 explain the result to the employer within five working days after
20 written notification of the positive test result;

21 (j) Contain a statement informing an employee of the provisions of
22 the federal drug-free workplace act or chapter 23 of Title 45, the
23 drug-free public work force act of 1990, if applicable to the employer;
24 and

25 (k) Notify employees that the employer may discipline an employee
26 for failure to report an injury in the workplace.

27 (2) An employer not having a substance abuse testing program in
28 effect on July 1, 1995, shall ensure that at least sixty days elapse
29 between a general one-time notice to all employees that a substance
30 abuse testing program is being implemented and the beginning of the
31 actual testing. An employer having a substance abuse testing program
32 in place before July 1, 1995, is not required to provide a sixty-day
33 notice period.

34 (3) An employer shall include notice of substance abuse testing to
35 all applicants. A notice of the employer's substance abuse testing
36 policy must also be posted in an appropriate and conspicuous location
37 on the employer's premises, and copies of the policy must be made
38 available for inspection by the employees or job applicants of the
39 employer during regular business hours in the employer's personnel

1 office or other suitable locations. An employer with employees or job
2 applicants who have trouble communicating in English shall make
3 reasonable efforts to help the employees understand the policy
4 statement.

5 NEW SECTION. **Sec. 6.** (1) Substance abuse testing must be in
6 conformity with the standards and procedures established in this
7 chapter and all applicable rules adopted by the department under this
8 chapter. This chapter does not establish a legal duty for employers to
9 conduct alcohol or drug tests of employees or job applicants. However,
10 if an employer fails to maintain an alcohol and drug-free workplace
11 program in accordance with the standards, procedures, and rules
12 established in or under this chapter, the employer shall not qualify
13 for the workers' compensation premium discount provided under section
14 3 of this act.

15 (2) To qualify for the discount under section 3 of this act, an
16 employer shall:

17 (a) Be in good standing and remain in good standing with the
18 department of labor and industries with respect to the employer's
19 workers' compensation premium obligations;

20 (b) Require job applicants to submit to a drug test after extending
21 an offer of employment. The employer may use a refusal to submit to a
22 drug test or a verified positive test as a basis for not hiring the job
23 applicant;

24 (c) Investigate each injury that results in a worker needing off-
25 site medical attention and require an employee to submit to drug and
26 alcohol tests if the employer reasonably believes the employee has
27 caused or contributed to an injury which resulted in off-site medical
28 attention. Under this chapter, a first-time verified test result
29 cannot be used as a basis to terminate an employee's employment.
30 However, an employee may be terminated for independent reasons, such as
31 a violation of a safety rule or regulation;

32 (d) If the employee in the course of employment is referred to the
33 employee assistance program by the employer as a result of a positive
34 drug or alcohol test or an alcohol or drug-related incident in
35 violation of company rules, require the employee to submit to drug and
36 alcohol testing in conjunction with any recommended rehabilitation
37 program. If the employee assistance program determines that the
38 employee does not require treatment services, the employee is still

1 required to participate in follow-up testing. However, if an employee
2 voluntarily enters an employee assistance program, without a verified
3 positive drug or alcohol test or a violation of any drug or alcohol
4 related company rule, follow-up testing is not required. If follow-up
5 testing is conducted, the frequency of the testing shall be at least
6 four times a year for a two-year period after completion of the
7 rehabilitation program and advance notice of the testing date may not
8 be given. A positive follow-up test result shall normally require
9 termination of employment.

10 (3) This section does not prohibit a private employer from
11 conducting other drug or alcohol testing, such as upon reasonable
12 suspicion or a random basis.

13 (4) Specimen collection and substance abuse testing under this
14 section must be performed in accordance with regulations and procedures
15 approved by the United States department of health and human services
16 and the United States department of transportation regulations for
17 alcohol and drug testing and must include testing for marijuana,
18 cocaine, amphetamines, opiates, and phencyclidine. Employers may test
19 for any drug listed in section 2(8) of this act.

20 (a) A specimen must be collected with due regard to the privacy of
21 the individual providing the specimen and in a manner reasonably
22 calculated to prevent substitution or contamination of the specimen.

23 (b) Specimen collection and analysis must be documented. The
24 documentation procedures must include:

25 (i) Labeling of specimen containers so as to reasonably preclude
26 the likelihood of erroneous identification of test results; and

27 (ii) An opportunity for the employee or job applicant to provide to
28 a medical review officer information the employee or applicant
29 considers relevant to the drug test, including identification of
30 currently or recently used prescription or nonprescription medication
31 or other relevant medical information.

32 (c) Specimen collection, storage, and transportation to the testing
33 site must be performed in a manner that reasonably precludes specimen
34 contamination or adulteration.

35 (d) An initial and confirmation test conducted under this section,
36 not including the taking or collecting of a specimen to be tested, must
37 be conducted by a laboratory as described in subsection (5) of this
38 section.

1 (e) A specimen for a test may be taken or collected by any of the
2 following persons:

3 (i) A physician, a physician's assistant, a registered professional
4 nurse, a licensed practical nurse, a nurse practitioner, or a certified
5 paramedic who is present at the scene of an accident for the purpose of
6 rendering emergency medical service or treatment;

7 (ii) A qualified person certified or employed by a laboratory
8 certified by the substance abuse and mental health administration or
9 the college of American pathologists; or

10 (iii) A qualified person certified or employed by a collection
11 company using collection procedures adopted by the United States
12 department of health and human services and the United States
13 department of transportation for alcohol collection.

14 (f) Within five working days after receipt of a verified positive
15 confirmed test result from the laboratory, an employer shall inform an
16 employee or job applicant in writing of the positive test result, the
17 consequences of the result, and the options available to the employee
18 or job applicant.

19 (g) The employer shall provide to the employee or job applicant,
20 upon request, a copy of the test results.

21 (h) An initial test having a positive result must be verified by a
22 confirmation test.

23 (i) An employer who performs drug testing or specimen collection
24 shall use chain of custody procedures to ensure proper recordkeeping,
25 handling, labeling, and identification of all specimens to be tested.

26 (j) An employer shall pay the cost of all drug or alcohol tests,
27 initial and confirmation, that the employer requires of employees.

28 (k) An employee or job applicant shall pay the cost of additional
29 tests not required by the employer.

30 (5)(a) A laboratory may not analyze initial or confirmation drug
31 specimens unless:

32 (i) The laboratory is approved by the substance abuse and mental
33 health administration or the college of American pathologists;

34 (ii) The laboratory has written procedures to ensure the chain of
35 custody; and

36 (iii) The laboratory follows proper quality control procedures
37 including, but not limited to:

38 (A) The use of internal quality controls including the use of
39 samples of known concentrations that are used to check the performance

1 and calibration of testing equipment, and periodic use of blind samples
2 for overall accuracy;

3 (B) An internal review and certification process for test results,
4 conducted by a person qualified to perform that function in the testing
5 laboratory;

6 (C) Security measures implemented by the testing laboratory to
7 preclude adulteration of specimens and test results; and

8 (D) Other necessary and proper actions taken to ensure reliable and
9 accurate drug test results.

10 (b) A laboratory shall disclose to the employer a written test
11 result report within seven working days after receipt of the sample.
12 A laboratory report of a substance abuse test result must, at a
13 minimum, state:

14 (i) The name and address of the laboratory that performed the test
15 and the positive identification of the person tested;

16 (ii) Positive results on confirmation tests only, or negative
17 results, as applicable;

18 (iii) A list of the drugs for which the drug analyses were
19 conducted; and

20 (iv) The type of tests conducted for both initial and confirmation
21 tests and the minimum cut-off levels of the tests.

22 A report may not disclose the presence or absence of a drug other
23 than a specific drug and its metabolites listed under this chapter.

24 (c) A laboratory shall provide technical assistance through the use
25 of a medical review officer to the employer, employee, or job applicant
26 for the purpose of interpreting a positive confirmed drug test result
27 that could have been caused by prescription or nonprescription
28 medication taken by the employee or job applicant. The medical review
29 officer shall interpret and evaluate the laboratory's positive drug
30 test result and eliminates test results that could have been caused by
31 prescription medication or other medically documented sources in
32 accordance with the United States department of health and human
33 services medical review officer manual.

34 (6) A positive initial drug test must be confirmed using the gas
35 chromatography/mass spectrometry (GC/MC) method or an equivalent or
36 more accurate scientifically accepted methods approved by the substance
37 abuse and mental health administration as the technology becomes
38 available in a cost-effective form.

1 NEW SECTION. **Sec. 7.** (1) The employee assistance program required
2 under this chapter shall provide the employer with a system for dealing
3 with employees whose job performances are declining due to unresolved
4 problems, including alcohol or other drug-related problems, marital
5 problems, or legal or financial problems.

6 (2) To ensure appropriate assessment and referral to treatment:

7 (a) The employer must notify the employees of the benefits and
8 services of the employee assistance program;

9 (b) The employer shall publish notice of the employee assistance
10 program in conspicuous places and explore alternative routine and
11 reinforcing means of publicizing the services; and

12 (c) The employer shall provide the employee with notice of the
13 policies and procedures regarding access to and utilization of the
14 employee assistance program.

15 (3) A list of approved employee assistance programs must be
16 provided by the department according to recognized program standards.

17 NEW SECTION. **Sec. 8.** (1)(a) Rehabilitation of employees suffering
18 from either or both alcohol or drug addiction shall be a primary focus
19 of an employee assistance program.

20 (b) Under any program under this chapter, the employer may not use
21 a first-time verified positive drug or alcohol test as the basis for
22 termination of an employee. After a first-time positive test result,
23 the employee must be given an opportunity to keep his or her job
24 through the use of a last-chance agreement. The last-chance agreements
25 shall require an employee to:

26 (i) Submit to an employee assistance program evaluation for
27 chemical dependency;

28 (ii) Comply with any treatment recommendations;

29 (iii) Be subject to follow-up drug and alcohol testing for two
30 years;

31 (iv) Meet the same standards of performance and conducts that are
32 set for other employees; and

33 (v) Authorize the company to receive all relevant information
34 regarding their progress in treatment, if applicable.

35 (2) When substance abuse treatment is necessary, employees must use
36 treatment services approved by the department, which include a
37 continuing care component lasting for two years.

1 (a) The employee assistance program shall monitor the employee's
2 progress while in treatment, including the two-year continuing care
3 component, and notify the company when an employee is not complying
4 with the programs's treatment recommendations.

5 (b) The employer shall monitor job performance and conduct follow-
6 up testing.

7 (3) An employer may terminate an employee for the following
8 reasons:

9 (a) Refusal to submit to a drug or alcohol test;

10 (b) Refusal to agree to or failure to comply with the conditions of
11 a last-chance agreement;

12 (c) A second verified positive drug or alcohol test result; or

13 (d) After the first verified positive drug or alcohol test, any
14 violation of company rules pertaining to alcohol and drugs.

15 (4) Nothing in this chapter limits the ability of any employer who
16 participates in the worker's compensation discount program under this
17 chapter to terminate employment for any other reason.

18 NEW SECTION. **Sec. 9.** An employer shall provide all employees with
19 an annual education program on substance abuse, in general, and its
20 effects on the workplace, specifically. An employer with employees who
21 have trouble communicating in English shall make reasonable efforts to
22 help the employees understand the substance of the education program.
23 An education program for a minimum of one hour should include but is
24 not limited to the following information:

25 (1) The explanation of the disease model of addiction for alcohol
26 and drugs;

27 (2) The effects and dangers of the commonly abused substances in
28 the workplace; and

29 (3) The company's policies and procedures regarding substance abuse
30 in the workplace and how employees who wish to obtain substance abuse
31 treatment can do so.

32 NEW SECTION. **Sec. 10.** In addition to the education program
33 provided in section 9 of this act, an employer shall provide all
34 supervisory personnel with a minimum of two hours of supervisor
35 training, that should include but is not limited to the following
36 information:

37 (1) How to recognize signs of employee substance abuse;

1 (2) How to document and collaborate signs of employee substance
2 abuse;

3 (3) How to refer employees to the employee assistance program or
4 proper treatment providers; and

5 (4) Circumstances and procedures for postinjury testing.

6 NEW SECTION. **Sec. 11.** (1) A physician-patient relationship is not
7 created between an employee or job applicant and an employer, medical
8 review officer, or person performing or evaluating a drug test solely
9 by the establishment, implementation, or administration of a testing
10 program.

11 (2) This chapter may not be construed to prevent an employer from
12 establishing reasonable work rules related to employee possession, use,
13 sale, or solicitation of drugs, including convictions for drug-related
14 offenses, and taking action based upon a violation of any of those
15 rules.

16 (3) This chapter may not be construed to operate retroactively.
17 This chapter does not abrogate the right of an employer under state or
18 federal law to conduct tests or implement employee testing programs.
19 However, only those programs that meet the criteria outlined in this
20 chapter qualify for reduced workers' compensation insurance premiums.

21 (4) This chapter may not be construed to prohibit an employer from
22 conducting medical screening or other tests required, permitted, or not
23 disallowed by a statute or rule for the purpose of monitoring exposure
24 of employees to toxic or other unhealthy materials in the workplace or
25 in the performance of job responsibilities. The screening or tests
26 must be limited to the specific material expressly identified in the
27 statute or rule, unless prior written consent of the employee is
28 obtained for other tests.

29 (5) A cause of action may not arise in favor of a person based upon
30 the failure of an employer to establish or conduct a program or policy
31 for substance abuse testing or to conduct a program or policy in
32 conformance with the standards and procedures established in this
33 chapter. This chapter does not create individual rights of action and
34 may be enforced only by the department by denial of the workers'
35 compensation discount benefit identified in section 3 of this act.

36 NEW SECTION. **Sec. 12.** (1) Information, interviews, reports,
37 statements, memoranda, and test results, written or otherwise, received

1 by the employer through a substance abuse testing program are
2 confidential communications, and may not be used or received in
3 evidence, obtained in discovery, or disclosed in a civil or
4 administrative proceeding, except as provided in subsection (5) of this
5 section.

6 (2) An employer, laboratory, medical review officer, employee
7 assistance program, drug or alcohol rehabilitation program, and their
8 agents who receive or have access to information concerning test
9 results shall keep the information confidential, except as provided in
10 subsection (5) of this section.

11 (3) Any release of the information must be pursuant to a written
12 consent form that complies with RCW 70.02.030 and is signed voluntarily
13 by the person tested, unless the release is compelled by the division
14 of alcohol and substance abuse of the department or a court of
15 competent jurisdiction in accordance with state and federal
16 confidentiality laws, or unless required by a professional or
17 occupational licensing board in a related disciplinary proceeding. Any
18 disclosure by any agency approved by the department must be in
19 accordance with RCW 70.96A.150. The consent form must contain at a
20 minimum:

21 (a) The name of the person who is authorized to obtain the
22 information;

23 (b) The purpose of the disclosure;

24 (c) The precise information to be disclosed;

25 (d) The duration of the consent; and

26 (e) The signature of the person authorizing release of the
27 information.

28 (4) Information on test results may not be released or used in a
29 criminal proceeding against the employee or job applicant. Information
30 released contrary to this subsection is inadmissible as evidence in a
31 criminal proceeding.

32 (5) Nothing in this chapter prohibits:

33 (a) An employer from using information concerning an employee or
34 applicant's substance abuse test in a lawful manner with respect to
35 that employee or applicant; or

36 (b) An entity that obtains the information from disclosing or using
37 the information in a lawful manner as part of a matter relating to the
38 substance abuse test, the test result, or an employer action with
39 respect to the applicant or employee.

1 NEW SECTION. **Sec. 13.** The department shall adopt by rule
2 procedures and forms for the certification of employers who establish
3 and maintain a drug-free workplace that complies with this chapter.
4 The department shall adopt by rule procedures for the decertification
5 of employers formally certified for the discount provided under this
6 chapter. The department may charge a fee for the certification of a
7 drug-free workplace program in an amount that must approximate its
8 administrative costs related to the certification. Certification of an
9 employer is required for each year in which a premium discount is
10 granted. The department may adopt rules necessary for the
11 implementation of this chapter.

12 NEW SECTION. **Sec. 14.** (1) The department of labor and industries
13 may adopt rules necessary for the implementation of this chapter
14 including but not limited to provisions for penalties and repayment of
15 premium discounts by employers that are decertified by the department
16 of social and health services under section 13 of this act.

17 (2) The department of labor and industries shall conduct an
18 evaluation of the effect of the premium discount provided for under
19 section 3 of this act on workplace safety and the state of Washington
20 industrial insurance fund. The department of labor and industries
21 shall report its preliminary findings to the legislature on September
22 1 of 1996 and 1997 and shall issue a comprehensive final report on
23 December 1, 1998.

24 NEW SECTION. **Sec. 15.** The department shall conduct an evaluation
25 to determine the costs and benefits of the program under this chapter.
26 If the department contracts for the performance of any or all of the
27 evaluation, no more than ten percent of the contract amount may be used
28 to cover indirect expenses. The department shall report its
29 preliminary findings to the legislature on September 1 of 1996 and 1997
30 and shall issue a comprehensive final report on December 1, 1998.

31 NEW SECTION. **Sec. 16.** Notwithstanding any other provisions of
32 this chapter, the total premium discounts available under section 3 of
33 this act shall not exceed five million during any fiscal year.

34 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act shall
35 constitute a new chapter in Title 49 RCW.

1 NEW SECTION. **Sec. 18.** Sections 1 through 16 of this act shall
2 expire January 1, 2001.

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