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SECOND SUBSTITUTE SENATE BILL 5516

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State of Washington

54th Legislature

1996 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 02/02/96.

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

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

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

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

15 (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or  
16 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. The  
32 department of labor and industries will notify self-insured employers  
33 of the value of drug-free workplace programs and encourage them to  
34 implement programs that are in accord with section 4 of this act.

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

37 (3) A certified employer may stop operating a drug-free workplace  
38 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, 1996, 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, 1996, 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, 1996, 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, 1996, 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, and have medical insurance  
20 available to its full-time employees through an employer, union, or  
21 jointly sponsored medical plan;

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

26 (c) Investigate each injury that results in a worker needing off-  
27 site medical attention and require an employee to submit to drug and  
28 alcohol tests if the employer reasonably believes the employee has  
29 caused or contributed to an injury which resulted in the need for off-  
30 site medical attention. An employer need not require that an employee  
31 submit to drug and alcohol tests if a supervisor, trained in accordance  
32 with section 10 of this act, reasonably believes that the injury was  
33 due to the inexperience of the employee or due to a defective or unsafe  
34 product or working condition, or other circumstances beyond the control  
35 of the employee. Under this chapter, a first-time verified test result  
36 cannot be used as a basis to terminate an employee's employment.  
37 However, nothing in this section prohibits an employee from being  
38 terminated for reasons other than the positive test result;

1 (d) If the employee in the course of employment is referred to the  
2 employee assistance program by the employer as a result of a positive  
3 drug or alcohol test or an alcohol or drug-related incident in  
4 violation of company rules, require the employee to submit to drug and  
5 alcohol testing in conjunction with any recommended rehabilitation  
6 program. If the employee assistance program determines that the  
7 employee does not require treatment services, the employee is still  
8 required to participate in follow-up testing. However, if an employee  
9 voluntarily enters an employee assistance program, without a verified  
10 positive drug or alcohol test or a violation of any drug or alcohol  
11 related company rule, follow-up testing is not required. If follow-up  
12 testing is conducted, the frequency of the testing shall be at least  
13 four times a year for a two-year period after completion of the  
14 rehabilitation program and advance notice of the testing date may not  
15 be given. A positive follow-up test result shall normally require  
16 termination of employment.

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

20 (4) Specimen collection and substance abuse testing under this  
21 section must be performed in accordance with regulations and procedures  
22 approved by the United States department of health and human services  
23 and the United States department of transportation regulations for  
24 alcohol and drug testing and must include testing for marijuana,  
25 cocaine, amphetamines, opiates, and phencyclidine. Employers may test  
26 for any drug listed in section 2(8) of this act.

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

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

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

34 (ii) An opportunity for the employee or job applicant to provide to  
35 a medical review officer information the employee or applicant  
36 considers relevant to the drug test, including identification of  
37 currently or recently used prescription or nonprescription medication  
38 or other relevant medical information.

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

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

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

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

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

17 (iii) A qualified person certified or employed by a collection  
18 company using collection procedures adopted by the United States  
19 department of health and human services and the United States  
20 department of transportation for alcohol collection.

21 (f) Within five working days after receipt of a verified positive  
22 confirmed test result from the laboratory, an employer shall inform an  
23 employee or job applicant in writing of the positive test result, the  
24 consequences of the result, and the options available to the employee  
25 or job applicant.

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

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

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

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

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

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

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

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

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

7 (A) The use of internal quality controls including the use of  
8 samples of known concentrations that are used to check the performance  
9 and calibration of testing equipment, and periodic use of blind samples  
10 for overall accuracy;

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

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

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

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

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

24 (ii) Positive results on confirmation tests only, or negative  
25 results, as applicable;

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

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

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

32 (c) A laboratory shall provide technical assistance through the use  
33 of a medical review officer to the employer, employee, or job applicant  
34 for the purpose of interpreting a positive confirmed drug test result  
35 that could have been caused by prescription or nonprescription  
36 medication taken by the employee or job applicant. The medical review  
37 officer shall interpret and evaluate the laboratory's positive drug  
38 test result and eliminates test results that could have been caused by  
39 prescription medication or other medically documented sources in

1 accordance with the United States department of health and human  
2 services medical review officer manual.

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

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

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

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

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

19 (c) The employer shall provide the employee with notice of the  
20 policies and procedures regarding access to and utilization of the  
21 employee assistance program.

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

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

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

33 (i) Submit to an employee assistance program evaluation for  
34 chemical dependency;

35 (ii) Comply with any treatment recommendations;

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

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

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

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

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

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

14 (3) An employer may terminate an employee for the following  
15 reasons:

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

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

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

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

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

25 NEW SECTION. **Sec. 9.** An employer shall provide all employees with  
26 an annual education program on substance abuse, in general, and its  
27 effects on the workplace, specifically. An employer with employees who  
28 have trouble communicating in English shall make reasonable efforts to  
29 help the employees understand the substance of the education program.  
30 An education program for a minimum of one hour should include but is  
31 not limited to the following information:

32 (1) The explanation of the disease model of addiction for alcohol  
33 and drugs;

34 (2) The effects and dangers of the commonly abused substances in  
35 the workplace; and

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

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

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

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

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

11           (4) Circumstances and procedures for postinjury testing.

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

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

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

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

35           (5) A cause of action may not arise in favor of a person based upon  
36 the failure of an employer to establish or conduct a program or policy  
37 for substance abuse testing or to conduct a program or policy in  
38 conformance with the standards and procedures established in this

1 chapter. This chapter does not create individual rights of action and  
2 may be enforced only by the department by denial of the workers'  
3 compensation discount benefit identified in section 3 of this act.

4 NEW SECTION. **Sec. 12.** (1) Information, interviews, reports,  
5 statements, memoranda, and test results, written or otherwise, received  
6 by the employer through a substance abuse testing program are  
7 confidential communications, and may not be used or received in  
8 evidence, obtained in discovery, or disclosed in a civil or  
9 administrative proceeding, except as provided in subsection (5) of this  
10 section.

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

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

26 (a) The name of the person who is authorized to obtain the  
27 information;

28 (b) The purpose of the disclosure;

29 (c) The precise information to be disclosed;

30 (d) The duration of the consent; and

31 (e) The signature of the person authorizing release of the  
32 information.

33 (4) Information on test results may not be released or used in a  
34 criminal proceeding against the employee or job applicant. Information  
35 released contrary to this subsection is inadmissible as evidence in a  
36 criminal proceeding.

37 (5) Nothing in this chapter prohibits:

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

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

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

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

24 (2) The department of labor and industries shall conduct an  
25 evaluation of the effect of the premium discount provided for under  
26 section 3 of this act on workplace safety and the state of Washington  
27 industrial insurance fund. The department of labor and industries  
28 shall report its preliminary findings to the legislature on September  
29 1 of 1997 and 1998 and shall issue a comprehensive final report on  
30 December 1, 1999.

31 NEW SECTION. **Sec. 15.** The department shall conduct an evaluation  
32 to determine the costs and benefits of the program under this chapter.  
33 If the department contracts for the performance of any or all of the  
34 evaluation, no more than ten percent of the contract amount may be used  
35 to cover indirect expenses. The department shall report its

1 preliminary findings to the legislature on September 1 of 1997 and 1998  
2 and shall issue a comprehensive final report on December 1, 1999.

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

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

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

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