

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE SENATE BILL 5516**

Chapter 127, Laws of 1996

54th Legislature  
1996 Regular Session

DRUG-FREE WORKPLACES PROGRAMS--IMPLEMENTATION

EFFECTIVE DATE: 6/6/96

Passed by the Senate March 4, 1996  
YEAS 46 NAYS 0

JOEL PRITCHARD

**President of the Senate**

Passed by the House February 29, 1996  
YEAS 95 NAYS 0

CLYDE BALLARD

**Speaker of the  
House of Representatives**

Approved March 21, 1996

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5516** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

**Secretary**

FILED

March 21, 1996 - 10:55 a.m.

MIKE LOWRY

**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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SECOND SUBSTITUTE SENATE BILL 5516

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AS AMENDED BY THE HOUSE

Passed Legislature - 1996 Regular Session

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 specimens  
5 for the purpose of maintaining control and accountability from initial  
6 collection to final disposition for all specimens and providing for  
7 accountability at each stage in handling, testing, and storing  
8 specimens and reporting test results.

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

12 (5) "Confirmation test" or "confirmed test" means a second  
13 analytical procedure used to identify the presence of a specific drug  
14 or metabolic in a specimen. Drug tests must be confirmed as specified  
15 in section 6(5) of this act. Alcohol tests must be confirmed by a  
16 second breath test or as specified for drug tests.

17 (6) "Department" means the department of social and health  
18 services.

19 (7) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine  
20 (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines,  
21 propoxyphene, or a metabolite of any such substances.

22 (8) "Drug test" means a chemical, biological, or physical  
23 instrumental analysis administered on a specimen sample for the purpose  
24 of determining the presence or absence of a drug or its metabolites  
25 within the sample.

26 (9) "Employee" means a person who is employed for salary, wages, or  
27 other remuneration by an employer.

28 (10) "Employee assistance program" means a program designed to  
29 assist in the identification and resolution of job performance problems  
30 associated with employees impaired by personal concerns. A minimum  
31 level of core services must include: Consultation and professional,  
32 confidential, appropriate, and timely problem assessment services;  
33 short-term problem resolution; referrals for appropriate diagnosis,  
34 treatment, and assistance; follow-up and monitoring; employee  
35 education; and supervisory training.

36 (11) "Employer" means an employer subject to Title 51 RCW but does  
37 not include the state or any department, agency, or instrumentality of  
38 the state; any county; any city; any school district or educational  
39 service district; or any municipal corporation.

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

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

10 (14) "Job applicant" means a person who has applied for employment  
11 with an employer and has been offered employment conditioned upon  
12 successfully passing a drug test and may have begun work pending the  
13 results of the drug test.

14 (15) "Last-chance agreement" means a notice to an employee who is  
15 referred to the employee assistance program due to a verified positive  
16 alcohol or drug test or for violating an alcohol or drug-related  
17 employer rule that states the terms and conditions of continued  
18 employment with which the employee must comply.

19 (16) "Medical review officer" means a licensed physician trained in  
20 the field of drug testing who provides medical assessment of positive  
21 test results, requests reanalysis if necessary, and makes a  
22 determination whether or not drug misuse has occurred.

23 (17) "Nonprescription medication" means a drug or medication  
24 authorized under federal or state law for general distribution and use  
25 without a prescription in the treatment of human disease, ailments, or  
26 injuries.

27 (18) "Prescription medication" means a drug or medication lawfully  
28 prescribed by a physician, or other health care provider licensed to  
29 prescribe medication, for an individual and taken in accordance with  
30 the prescription.

31 (19) "Rehabilitation program" means a program approved by the  
32 department that is capable of providing expert identification,  
33 assessment, and resolution of employee drug or alcohol abuse in a  
34 confidential and timely service. Any rehabilitation program under this  
35 chapter must contain a two-year continuing care component.

36 (20) "Specimen" means breath or urine. "Specimen" may include  
37 other products of the human body capable of revealing the presence of  
38 drugs or their metabolites or of alcohol, if approved by the United

1 States department of health and human services and permitted by rules  
2 adopted under section 13 of this act.

3 (21) "Substance" means drugs or alcohol.

4 (22) "Substance abuse test" or "test" means a chemical, biological,  
5 or physical instrumental analysis administered on a specimen sample for  
6 the purpose of determining the presence or absence of a drug or its  
7 metabolites or of alcohol within the sample.

8 (23) "Threshold detection level" means the level at which the  
9 presence of a drug or alcohol can be reasonably expected to be detected  
10 by an initial and confirmation test performed by a laboratory meeting  
11 the standards specified in this chapter. The threshold detection level  
12 indicates the level at which a valid conclusion can be drawn that the  
13 drug or alcohol is present in the employee's specimen.

14 (24) "Verified positive test result" means a confirmed positive  
15 test result obtained by a laboratory meeting the standards specified in  
16 this chapter that has been reviewed and verified by a medical review  
17 officer in accordance with medical review officer guidelines  
18 promulgated by the United States department of health and human  
19 services.

20 (25) "Workers' compensation premium" means the medical aid fund  
21 premium and the accident fund premium under Title 51 RCW.

22 NEW SECTION. **Sec. 3.** (1) An employer, except an employer that is  
23 self-insured for the purposes of Title 51 RCW, implementing a drug-free  
24 workplace program in accordance with section 4 of this act shall  
25 qualify for a five percent workers' compensation premium discount under  
26 Title 51 RCW if the employer:

27 (a) Is certified by the division of alcohol and substance abuse of  
28 the department as provided in section 13 of this act. The employer  
29 must maintain an alcohol and drug-free workplace program in accordance  
30 with the standards, procedures, and rules established in or under this  
31 chapter. If the employer fails to maintain the program as required,  
32 the employer shall not qualify for the premium discount provided under  
33 this section;

34 (b) Is in good standing and remains in good standing with the  
35 department of labor and industries with respect to the employer's  
36 workers' compensation premium obligations and any other premiums and  
37 assessments under Title 51 RCW; and

1 (c) Has medical insurance available to its full-time employees  
2 through an employer, union, or jointly sponsored medical plan.

3 (2) The premium discount must remain in effect as long as the  
4 employer is certified under section 13 of this act, up to a maximum of  
5 three years from the date of initial certification.

6 (3) A certified employer may discontinue operating a drug-free  
7 workplace program at any time. The qualification for a premium  
8 discount shall expire in accordance with decertification rules adopted  
9 by the department under section 13 of this act.

10 (4) An employer whose substance abuse testing program reasonably  
11 meets, as of July 1, 1996, the requirements for the premium discount  
12 provided in this section is not eligible for certification.

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

16 (6) An employer may not receive premium discounts from the  
17 department of labor and industries under more than one premium discount  
18 program. An employer participating in and meeting all of the  
19 requirements for the discount provided in this section and also  
20 participating in another premium discount program offered by the  
21 department of labor and industries is only entitled to the premium  
22 discount that is the highest.

23 (7) The department of labor and industries will notify self-insured  
24 employers of the value of drug-free workplace programs and encourage  
25 them to implement programs that are in accord with section 4 of this  
26 act.

27 NEW SECTION. **Sec. 4.** (1) A drug-free workplace program  
28 established under this chapter must contain all of the following  
29 elements:

30 (a) A written policy statement in compliance with section 5 of this  
31 act;

32 (b) Substance abuse testing in compliance with section 6 of this  
33 act;

34 (c) An employee assistance program in compliance with section 7 of  
35 this act;

36 (d) Employee education in compliance with section 9 of this act;  
37 and

38 (e) Supervisor training in compliance with section 10 of this act.

1 (2) In addition to the requirements of subsection (1) of this  
2 section, a drug-free workplace program established under this chapter  
3 must be implemented in compliance with the confidentiality standards  
4 provided in section 12 of this act.

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

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

11 (b) Notify employees that the use, purchase, possession, or  
12 transfer of drugs or having illegal drugs in their system is prohibited  
13 and that prescription or nonprescription medications are not prohibited  
14 when taken in accordance with a lawful prescription or consistent with  
15 standard dosage recommendations;

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

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

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

23 (f) Contain a general statement concerning confidentiality;

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

25 (h) Contain a statement advising an employee of the employee  
26 assistance program;

27 (i) Contain a statement that an employee or job applicant who  
28 receives a verified positive test result may contest or explain the  
29 result to the employer within five working days after receiving written  
30 notification of the positive test result;

31 (j) Contain a statement informing an employee of the provisions of  
32 the federal drug-free workplace act, if applicable to the employer; and

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

35 (2) An employer not having a substance abuse testing program in  
36 effect on July 1, 1996, shall ensure that at least sixty days elapse  
37 between a general one-time notice to all employees that a substance  
38 abuse testing program is being implemented and the beginning of the

1 actual testing. An employer having a substance abuse testing program  
2 in place before July 1, 1996, is not required to provide a sixty-day  
3 notice period.

4 (3) An employer shall include notice of substance abuse testing to  
5 all job applicants. A notice of the employer's substance abuse testing  
6 policy must also be posted in an appropriate and conspicuous location  
7 on the employer's premises, and copies of the policy must be made  
8 available for inspection by the employees or job applicants of the  
9 employer during regular business hours in the employer's personnel  
10 office or other suitable locations. An employer with employees or job  
11 applicants who have trouble communicating in English shall make  
12 reasonable efforts to help the employees understand the policy  
13 statement.

14 NEW SECTION. **Sec. 6.** (1) In conducting substance abuse testing  
15 under this chapter, the employer must comply with the standards and  
16 procedures established in this chapter and all applicable rules adopted  
17 by the department under this chapter and must:

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

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

36 (c) If the employee in the course of employment is referred to the  
37 employee assistance program by the employer as a result of a verified  
38 positive drug or alcohol test or an alcohol or drug-related incident in



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

14 (2) This section does not prohibit an employer from conducting  
15 other drug or alcohol testing, such as upon reasonable suspicion or a  
16 random basis.

17 (3) Specimen collection and substance abuse testing under this  
18 section must be performed in accordance with regulations and procedures  
19 approved by the United States department of health and human services  
20 and the United States department of transportation regulations for  
21 alcohol and drug testing and must include testing for marijuana,  
22 cocaine, amphetamines, opiates, and phencyclidine. Employers may test  
23 for any drug listed in section 2(7) of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (4)(a) A laboratory may not analyze initial or confirmation drug  
35 specimens unless:

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

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

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

3 (A) The use of internal quality controls including the use of  
4 samples of known concentrations that are used to check the performance  
5 and calibration of testing equipment, and periodic use of blind samples  
6 for overall accuracy;

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

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

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

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

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

20 (ii) Positive results on confirmation tests only, or negative  
21 results, as applicable;

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

24 (iv) The type of tests conducted for both initial and confirmation  
25 tests and the threshold detection levels of the tests.

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

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

38 (5) A positive initial drug test must be confirmed using the gas  
39 chromatography/mass spectrometry method or an equivalent or more

1 accurate scientifically accepted method approved by the substance abuse  
2 and mental health administration as the technology becomes available in  
3 a cost-effective form.

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

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

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

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

15 (c) The employer shall provide the employee with notice of the  
16 policies and procedures regarding access to and use of the employee  
17 assistance program.

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

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

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

29 (i) Submit to an employee assistance program evaluation for  
30 chemical dependency;

31 (ii) Comply with any treatment recommendations;

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

34 (iv) Meet the same standards of performance and conduct that are  
35 set for other employees; and

36 (v) Authorize the employer to receive all relevant information  
37 regarding the employee's progress in treatment, if applicable.

1 Failure to comply with all the terms of this agreement normally  
2 will result in termination of employment.

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

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

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

12 (3) An employer may terminate an employee for the following  
13 reasons:

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

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

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

18 (d) After the first verified positive drug or alcohol test, any  
19 violation of employer rules pertaining to alcohol and drugs.

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

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

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

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

35 (3) The employer's policies and procedures regarding substance  
36 abuse in the workplace and how employees who wish to obtain substance  
37 abuse 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 or alcohol  
15 test solely by the establishment, implementation, or administration of  
16 a drug or alcohol testing 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 drug or alcohol tests or implement employee drug  
25 or alcohol testing programs. However, only those programs that meet  
26 the criteria outlined in this chapter qualify for workers' compensation  
27 insurance premiums discounts.

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

36           (5) This chapter does not establish a legal duty for employers to  
37 conduct alcohol or drug tests of employees or job applicants. A cause  
38 of action may not arise in favor of a person based upon the failure of

1 an employer to establish or conduct a program or policy for substance  
2 abuse testing or to conduct a program or policy in conformance with the  
3 standards and procedures established in this chapter. This chapter  
4 does not create individual rights of action and may be enforced only by  
5 the department by denial of the workers' compensation premium discount  
6 provided in section 3 of this act.

7 NEW SECTION. **Sec. 12.** Confidentiality standards that apply to  
8 substance abuse testing programs implemented under this chapter include  
9 the following:

10 (1) Information, interviews, reports, statements, memoranda, and  
11 test results, written or otherwise, received through a substance abuse  
12 testing program are confidential communications, and may not be used or  
13 received in evidence, obtained in discovery, or disclosed in a civil or  
14 administrative proceeding, except as provided in subsection (5) of this  
15 section.

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

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

31 (a) The name of the person who is authorized to obtain the  
32 information;

33 (b) The purpose of the disclosure;

34 (c) The precise information to be disclosed;

35 (d) The duration of the consent; and

36 (e) The signature of the person authorizing release of the  
37 information.

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

5 (5) Nothing in this chapter prohibits:

6 (a) An employer from using information concerning an employee or  
7 job applicant's substance abuse test results in a lawful manner with  
8 respect to that employee or applicant; or

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

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

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

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



1        NEW SECTION.    **Sec. 15.**    The department shall conduct an evaluation  
2 to determine the costs and benefits of the program under this chapter.  
3 If the department contracts for the performance of any or all of the  
4 evaluation, no more than ten percent of the contract amount may be used  
5 to cover indirect expenses.    The department shall report its  
6 preliminary findings to the legislature on September 1 of 1997 and 1998  
7 and shall issue a comprehensive final report on December 1, 1999.

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

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

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

Passed the Senate March 4, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.