

1 HB28
2 144673-1
3 By Representative DeMarco
4 RFD: Judiciary
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8 SYNOPSIS: Under existing law, a positive drug test in
9 the workplace shall be a conclusive presumption of
10 impairment resulting from the use of illegal drugs
11 when an accident occurs in the workplace. The
12 employer bears the burden of proving that the
13 illegal drugs or alcohol was a direct cause of the
14 workplace accident. If drugs or alcohol are the
15 cause of the accident, then the employer is not
16 responsible for providing indemnity benefits to the
17 employee, but is still required to provide lifetime
18 medical treatment.

19 This bill would provide that neither medical
20 nor indemnity benefits would be awarded to an
21 employee or his or her estate if the employee's
22 injury or death was a direct result of an
23 impairment or intoxication caused by the employee's
24 alcohol consumption or drug use. This bill would
25 further provide that once the injured worker has a
26 positive alcohol or drug screen according to U. S.
27 Department of Transportation Standards, the burden

1 of proof would then be on the employee to
2 demonstrate that the impairment from illegal drugs
3 or the consumption of alcoholic beverages was not a
4 direct cause of the accident.

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6 A BILL
7 TO BE ENTITLED
8 AN ACT
9

10 To amend Section 25-5-51, Code of Alabama 1975,
11 relating to workers' compensation, to provide that neither
12 compensation nor medical benefits would be awarded to an
13 employee or his or her estate if the employee's injury or
14 death was the result of an impairment or intoxication caused
15 by alcoholic consumption or drug use by an employee.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 25-5-51, Code of Alabama 1975, is
18 amended to read as follows:

19 "§25-5-51.

20 (a) If an employer is subject to this article,
21 compensation, according to the schedules hereinafter
22 contained, shall be paid by the employer, or those conducting
23 the business during bankruptcy or insolvency, in every case of
24 personal injury or death of his or her employee caused by an
25 accident arising out of and in the course of his or her
26 employment, without regard to any question of negligence.
27 Notwithstanding the foregoing, no compensation shall be

1 allowed for an injury or death caused by the willful
2 misconduct of the employee, by the employee's intention to
3 bring about the injury or death of himself or herself or of
4 another, his or her willful failure or willful refusal to use
5 safety appliances provided by the employer or by an accident
6 due to the injured employee being intoxicated from the use of
7 alcohol or being impaired by illegal drugs.

8 ~~"A positive drug test conducted and evaluated~~
9 ~~pursuant to standards adopted for drug testing by the U.S.~~
10 ~~Department of Transportation in 49 C.F.R. Part 40 shall be a~~
11 ~~conclusive presumption of impairment resulting from the use of~~
12 ~~illegal drugs. No compensation shall be allowed if the~~
13 ~~employee refuses to submit to or cooperate with a blood or~~
14 ~~urine test as set forth above after the accident after being~~
15 ~~warned in writing by the employer that such refusal would~~
16 ~~forfeit the employee's right to recover benefits under this~~
17 ~~chapter.~~

18 "(b) (1) A positive drug or alcohol test of an
19 employee involved in an accident resulting in the employee's
20 injury or death, conducted and evaluated pursuant to standards
21 adopted for testing by the U.S. Department of Transportation
22 as set forth in 49 C.F.R. Part 40, shall result in a
23 conclusive presumption that the employee was impaired from the
24 use of such drugs or alcohol at the time of the accident. A
25 positive drug or alcohol test of an employee involved in an
26 accident resulting in the employee's injury or death,
27 conducted and evaluated pursuant to procedures not necessarily

1 adopted or set forth in 49 C.F.R. Part 40 but consistent with
2 generally accepted scientific theory, principle, methodology,
3 or procedure for drug or alcohol testing, which (a) is based
4 on sufficient facts or data, and (b) is the product of
5 reliable principles and methods, applied reliably to such
6 facts or data ("non-49 C.F.R. Part 40 procedures"), shall
7 result in a rebuttable presumption that the employee was
8 impaired from the use of such drugs or alcohol at the time of
9 the accident.

10 "(2) In the event of either positive test described
11 in this section, the employer may petition a court of
12 competent jurisdiction to enter a judgment terminating its
13 responsibility to pay compensation and medical and all other
14 benefits otherwise payable under this chapter, with the
15 exception of payment of pre-judgment medical treatment
16 (treatment incurred prior to entry of judgment, as hereinafter
17 described). Upon the employer's filing of such petition, the
18 court shall treat the matter as a preferred action in
19 accordance with Section 25-5-88 and set the matter for final
20 hearing or trial within forty-five (45) calendar days of
21 service of process and the petition upon the employee or, in
22 the event of the employee's death, his or her personal
23 representative, spouse, dependent, or next-of-kin
24 (collectively, "personal representative)."

25 "(3) At the hearing or trial on the petition, once
26 the employer presents evidence of a positive test pursuant to
27 the standards set forth in 49 C.F.R. Part 40, the burden of

1 proof shall shift to the employee, or his or her personal
2 representative, to prove by a preponderance of the evidence
3 that the employee, though conclusively presumed to have been
4 impaired due to his or her use of drugs or alcohol, did not
5 proximately cause or contribute to his or her accident.
6 Alternatively, once the employer presents evidence of a
7 positive test pursuant to non-49 C.F.R. Part 40 procedures,
8 the burden of proof shall shift to the employee, or his or her
9 personal representative, to prove by a preponderance of the
10 evidence that the employee, though rebuttably presumed to have
11 been impaired due to his or her use of drugs or alcohol,
12 either (a) was not, in fact, impaired at the time of the
13 accident, or (b) was impaired, though the impairment did not
14 proximately cause or contribute to his or her accident. In
15 either circumstance, whether conclusively or rebuttably
16 presumed to have been impaired, if the employee, or his or her
17 personal representative, fails to prove to the satisfaction of
18 the court by a preponderance of the evidence that the
19 employer's petition is due to be denied on one of the bases
20 provided herein, the court shall enter judgment in favor of
21 the employer and the employee's benefits under this chapter
22 shall be limited to payment for pre-judgment medical
23 treatment. The court in which the employer's petition was
24 filed, having conducted the hearing or trial within forty-five
25 (45) days, as required, shall, except in the case of a written
26 agreement to the contrary entered into by the parties, enter
27 its judgment within five (5) calendar days after the

1 conclusion of said hearing or trial. Upon entry of judgment in
2 favor of the employer, the employer's responsibility to pay
3 compensation and medical and all other benefits otherwise
4 payable under this chapter to or on behalf of the employee
5 shall immediately and forever be terminated. If either party
6 is dissatisfied with the court's judgment, such party may,
7 within fourteen (14) days after entry of such judgment, appeal
8 to the Court of Civil Appeals and review shall be in
9 accordance with and as provided by Section 25-5-81(e). In the
10 event the employer's petition is denied, and at such time as
11 its rights to appeal therefrom are exhausted, all compensation
12 then due and owing to the employee shall be payable within
13 fourteen (14) days from the date thereof.

14 "(4) Notwithstanding any other provision or
15 requirement of this section or chapter, an employer shall not
16 be required to pay temporary total disability, temporary
17 partial disability, or any other compensation for disability
18 of any kind, nor any penalty for non-payment thereof, to or on
19 behalf of an employee who tests positive for drugs or alcohol
20 as described herein, unless and until the court enters
21 judgment denying the employer's petition.

22 "(5) Notwithstanding any other provision or
23 requirement of this section or chapter, if, after being given
24 written warning that such refusal will result in forfeiture of
25 the right to recover benefits under this chapter, the employee
26 refuses to submit to or cooperate with the employer or its
27 designee with respect to testing for drugs or alcohol, the

1 employer's responsibility to pay compensation, medical and all
2 other benefits otherwise payable under this chapter shall be
3 immediately and forever terminated as of the date of such
4 refusal.

5 "(c) No compensation shall be allowed if, at the
6 time of or in the course of entering into employment or at the
7 time of receiving notice of the removal of conditions from a
8 conditional offer of employment, the employee knowingly and
9 falsely misrepresents in writing his or her physical or mental
10 condition and the condition is aggravated or reinjured in an
11 accident arising out of and in the course of his or her
12 employment.

13 "(d) At the time an employer makes an unconditional
14 offer of employment or removes conditions previously placed on
15 a conditional offer of employment, the employer shall provide
16 the employee with the following written warning in bold type
17 print, "Misrepresentations as to preexisting physical or
18 mental conditions may void your workers' compensation
19 benefits." If the employer defends on the ground that the
20 injury arose in any or all of the last above stated ways, the
21 burden of proof shall be on the employer to establish the
22 defense."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.