

SECOND REGULAR SESSION

# HOUSE BILL NO. 1794

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TILLEY.

Read 1st time February 16, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

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### AN ACT

To repeal section 288.045, RSMo, and to enact in lieu thereof one new section relating to drug use by employees.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 288.045, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.045, to read as follows:

288.045. 1. If a claimant is at work with a detectible amount of alcohol or a controlled substance as defined in section 195.010, RSMo, in the claimant's system, in violation of the employer's alcohol and controlled substance workplace policy, the claimant shall have committed misconduct connected with the claimant's work.

2. For carboxy-tetrahydrocannabinol, a chemical test result of fifty nanograms per milliliter or more shall be considered a detectible amount. For alcohol, a blood alcohol content of eight-hundredths of one percent or more by weight of alcohol in the claimant's blood shall be considered a detectible amount. **If the result of such initial test is at or above the detectable amount listed in this subsection, a confirmation test, as defined in subsection 9 of this section, shall be conducted. A confirmation test result for carboxy-tetrahydrocannabinol of fifteen nanograms per milliliter or more shall be considered a positive detectable amount. A confirmation test of blood alcohol content of two-hundredths of one percent or more by weight of alcohol in the claimant's body shall be considered a positive detectable amount.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15           3. If the test is conducted by a laboratory certified by the United States Department of  
16 Transportation, the test results and the laboratory's trial packet shall be included in the  
17 administrative record and considered as evidence.

18           4. For this section to be applicable, the claimant must have previously been notified of  
19 the employer's alcohol and controlled substance workplace policy by conspicuously posting the  
20 policy in the workplace, by including the policy in a written personnel policy or handbook, or  
21 by statement of such policy in a collective bargaining agreement governing employment of the  
22 employee. The policy must state that a positive test result shall be deemed misconduct and may  
23 result in suspension or termination of employment.

24           5. For this section to be applicable, testing shall be conducted only if sufficient cause  
25 exists to suspect alcohol or controlled substance use by the claimant. If sufficient cause exists  
26 to suspect prior alcohol or controlled substance use by the claimant, or the employer's policy  
27 clearly states that there will be random testing, then testing of the claimant may be conducted  
28 randomly.

29           6. Notwithstanding any provision of this chapter to the contrary, any claimant found to  
30 be in violation of this section shall be subject to the cancellation of all or part of the claimants  
31 wage credits as provided by [subdivision (2) of] subsection 2 of section 288.050.

32           7. The application of the alcohol and controlled substance testing provisions of this  
33 section shall not apply in the event that the claimant is subject to the provisions of any applicable  
34 collective bargaining agreement, which contains methods for alcohol or controlled substance  
35 testing. Nothing in this chapter is intended to authorize any employer to test any applicant or  
36 employee for alcohol or drugs in any manner inconsistent with Missouri or United States  
37 constitution, law, statute or regulation, including those imposed by the Americans with  
38 Disabilities Act and the National Labor Relations Act.

39           8. All specimen collection and testing for drugs and alcohol under this chapter shall be  
40 performed in accordance with the procedures provided for by the United States Department of  
41 Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40. Any  
42 employer that performs drug testing or specimen collection shall use chain-of-custody procedures  
43 established by regulations of the United States Department of Transportation. "Specimen" means  
44 tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or  
45 drugs or their metabolites. "Chain of custody" refers to the methodology of tracking specified  
46 materials or substances for the purpose of maintaining control and accountability from initial  
47 collection to final disposition for all such materials or substances, and providing for  
48 accountability at each stage in handling, testing, and storing specimens and reporting test results.

49           9. [For this section to be applicable,] The employee may request that a confirmation test  
50 on the specimen **for a controlled substance not mentioned in subsection 2 of this section** be

51 conducted. "Confirmation test" means a second analytical procedure used to identify the  
52 presence of a specific drug or alcohol or metabolite in a specimen, which test must be different  
53 in scientific principle from that of the initial test procedure and must be capable of providing  
54 requisite specificity, sensitivity and quantitative accuracy. In the event that a confirmation test  
55 is requested, such shall be obtained from a separate, unrelated certified laboratory and shall be  
56 at the employee's expense only if said test confirms results as specified in subsection 2 of this  
57 section.

58 10. Use of a controlled substance as defined under section 195.010, RSMo, under and  
59 in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be  
60 misconduct connected with work for the purposes of this section.

61 11. This section shall have no effect on employers who do not avail themselves of the  
62 requirements and regulations for alcohol and controlled drug testing determinations that are  
63 required to affirm misconduct connected with work findings.

64 12. Any employer that initiates an alcohol and drug testing policy after January 1, 2005,  
65 shall ensure that at least sixty days elapse between a general one-time notice to all employees that  
66 an alcohol and drug testing workplace policy is being implemented and the effective date of the  
67 program.

68 13. (1) In applying provisions of this chapter, it is the intent of the legislature to reject  
69 and abrogate previous case law interpretations of "misconduct connected with work" requiring  
70 a finding of evidence of impairment of work performance, including, but not limited to, the  
71 holdings contained in Baldor Electric Company v. Raylene Reasoner and Missouri Division of  
72 Employment Security, 66 S.W.3d 130 (Mo.App. E.D. 2001).

73 (2) In determining whether or not misconduct connected with work has occurred, neither  
74 the state, any agency of the state, nor any court of the state of Missouri shall require a finding of  
75 evidence of impairment of work performance.

76 14. Notwithstanding any provision of this chapter to the contrary, any claimant found  
77 to be in violation of this section shall be subject to the cancellation of all or part of the claimants  
78 wage credits as provided by [subdivision (2) of] subsection 2 of section 288.050.

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