

HOUSE BILL 525

Introduced by T. Nelson

1/31	Introduced
1/31	Referred to Labor & Employment Relations
2/01	First Reading
2/12	Hearing
2/18	Committee Report--Bill Passed as Amended
	Died in Process

1 HOUSE BILL NO. 525
2 INTRODUCED BY Jim Wilson

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE DRUG-FREE
5 WORKPLACE INSURANCE PREMIUM REDUCTION ACT; AND REQUIRING
6 MOTOR VEHICLE INSURANCE PREMIUM RATE REDUCTIONS FOR
7 COMMERCIAL MOTOR VEHICLE CARRIERS AND INDIVIDUALS WHO
8 PARTICIPATE IN QUALIFIED DRUG TESTING PROGRAMS."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Short title. [Sections 1
12 through 6] may be cited as the "Drug-Free Workplace
13 Insurance Premium Reduction Act".

14 NEW SECTION. Section 2. Definitions. As used in
15 [sections 1 through 6], the following definitions apply:

16 (1) (a) "Controlled substance" means a dangerous drug
17 as defined in 50-32-101 and as listed or to be listed in the
18 schedule in 50-32-222 or 50-32-224.

19 (b) Controlled substance does not mean a dangerous drug
20 used pursuant to a valid prescription or as authorized by
21 law.

22 (2) "Employee" means an individual engaged in the
23 performance of work for an employer but does not include an
24 individual having the status of an independent contractor.

25 (3) "Employer" means a person or entity that has one or

1 more employees and is located or doing business in the
2 state.

3 (4) "Prospective employee" means an individual who has
4 made application to an employer, whether written or oral, to
5 become an employee.

6 (5) "Qualified testing program" means a program to test
7 for the presence of controlled substances that meets the
8 criteria set forth in [sections 5 and 6].

9 (6) "Sample" means a urine or blood specimen.

10 NEW SECTION. Section 3. Drug-free workplace --
11 insurance premium reduction -- commercial motor vehicle
12 carriers. A schedule or rating plan for commercial motor
13 vehicle carriers must provide for a rate reduction in
14 premium charges that is double the rate reduction for
15 participation in a safe driver education course for an
16 insured that has adopted and implemented a qualified testing
17 program.

18 NEW SECTION. Section 4. Drug-free workplace --
19 insurance premium reduction -- individual motor vehicle
20 insurance. A schedule or rating plan for individual licensed
21 motor vehicle operators must provide for a rate reduction in
22 premium charges that is double the rate reduction for
23 participation in a safe driver education course when the
24 individual:

25 (1) is employed by an insured having a qualified

1 testing program; and

2 (2) has not tested positive for a controlled substance
3 within the past 12 months.

4 NEW SECTION. Section 5. Qualified testing program. A
5 qualified testing program must meet and be conducted
6 according to the following criteria:

7 (1) Testing must be conducted according to the terms of
8 a written plan that must be adopted by the employer and be
9 available for review by all employees and prospective
10 employees 60 days prior to implementation. The plan must set
11 forth, at a minimum:

12 (a) a description of the applicable legal sanctions
13 under federal, state, and local law for the unlawful
14 manufacture, distribution, possession, or use of a
15 controlled substance;

16 (b) the employer's proposal for educating or providing
17 information to employees on the health risks associated with
18 the use of controlled substances;

19 (c) the employer's standards of conduct that regulate
20 the use of controlled substances by employees;

21 (d) a description of drug counseling, treatment, or
22 rehabilitation programs that are available to employees;

23 (e) a description of the sanctions that the employer
24 will impose on an employee if the employee is found to have
25 violated the standards of conduct referred to in subsection

1 (1)(b) or if the employee is found to test positive for the
2 presence of a controlled substance;

3 (f) a statement that employees may be tested, including
4 a discussion of the circumstances that may trigger an
5 immediate test;

6 (g) a list of the controlled substances for which the
7 employer intends to test;

8 (h) a description of the employer's hiring policy with
9 respect to prospective employees who test positive;

10 (i) a detailed description of the procedures that will
11 be followed to conduct the testing program, including the
12 resolution of a dispute concerning test results;

13 (j) a provision that all information, interviews,
14 reports, statements, memoranda, and test results are
15 confidential communications that will not be disclosed to
16 anyone except:

17 (i) the tested employee;

18 (ii) specifically authorized employees or agents of the
19 employer; or

20 (iii) in a proceeding related to an action taken by an
21 employer under [sections 1 through 6] or in an action
22 relating to a workplace accident involving death, physical
23 injury, or property damage in excess of \$5,000 when there is
24 reason to believe that the tested employee may have caused
25 or contributed to the accident.

1 (2) In addition to imposing appropriate sanctions on
 2 employees for violations of the employer's standards of
 3 conduct referred to in subsection (1)(c), the employer may
 4 require an affected employee to participate in an
 5 appropriate drug rehabilitation program as a condition of
 6 continued employment. The employer may subject the employee
 7 to periodic retesting as a condition of the rehabilitation
 8 program.

9 (3) Testing must be at the employer's expense, and all
 10 employees must be compensated at their regular rate,
 11 including benefits, for time attributable to the testing
 12 program.

13 (4) Sample collection must be performed in a manner
 14 designed to protect the privacy of the employee, using where
 15 practicable screens or stalls, except that in cases in which
 16 an employer has reason to believe an employee may alter or
 17 substitute the required sample, the employer may require
 18 that the sample be provided under the direct supervision of
 19 testing personnel.

20 (5) Samples must be handled under strict forensic chain
 21 of custody procedures. These procedures should require that
 22 the sample be collected, stored, and transported in a manner
 23 that will document and preserve the identity of each sample
 24 and prevent the adulteration, contamination, or erroneous
 25 identification of test results.

1 (6) Sample testing must be performed according to
 2 scientifically accepted analytical procedures by a qualified
 3 laboratory certified by the national institute on drug
 4 abuse.

5 (7) Before taking any action based on a positive test
 6 result, the results must be reviewed and certified by a
 7 licensed physician trained in the field of substance abuse.
 8 An employee or prospective employee must be afforded the
 9 opportunity to provide notification to the licensed
 10 physician of any medical information that is relevant to
 11 interpreting test results, including currently or recently
 12 used prescription or nonprescription drugs.

13 NEW SECTION. **Section 6. Confidentiality of results.**

14 (1) Except as provided in subsection (2), all information,
 15 interviews, reports, statements, memoranda, or test results
 16 received by the employer through a qualified drug testing
 17 program are confidential communications and may not be used
 18 or received in evidence, obtained in discovery, or disclosed
 19 in any public or private proceeding.

20 (2) The material treated as confidential in subsection
 21 (1) may be used in a proceeding related to an action:

22 (a) taken by an employer in response to a positive test
 23 result; or

24 (b) relating to a workplace accident involving death,
 25 physical injury, or property damage in excess of \$10,000

1 when there is reason to believe that the tested employee may
2 have caused or contributed to the accident.

3 NEW SECTION. Section 7. Coordination instruction. If
4 ____ Bill No. ____ [LC 54] and [this act] are both passed
5 and approved, then [sections 1, 2, 5, and 6 of this act] are
6 void and [sections 3 and 4 of this act] must read as
7 follows:

8 NEW SECTION. Section 3. Drug-free workplace --
9 insurance premium reduction -- commercial motor vehicle
10 carriers. A schedule or rating plan for commercial motor
11 vehicle carriers must provide for a rate reduction in
12 premium charges that is double the rate reduction for
13 participation in a safe driver education course for an
14 insured that has adopted and implemented a qualified testing
15 program, as defined in [section 2 of ____ Bill No. ____ [LC
16 54]], to test employees for the presence of controlled
17 substances, as defined in [section 2 of ____ Bill No. ____
18 [LC 54]].

19 NEW SECTION. Section 4. Drug-free workplace --
20 insurance premium reduction -- individual motor vehicle
21 insurance. A schedule or rating plan for individual licensed
22 motor vehicle operators must provide for a rate reduction in
23 premium charges that is double the rate reduction for
24 participation in a safe driver education course when the
25 individual:

1 (1) is employed by an insured having a qualified
2 testing program, as defined in [section 2 of ____ Bill No.
3 ____ [LC 54]]; and

4 (2) has not tested positive for a controlled substance,
5 as defined in [section 2 of ____ Bill No. ____ [LC 54]],
6 within the past 12 months.

7 NEW SECTION. Section 8. Severability. If a part of
8 [this act] is invalid, all valid parts that are severable
9 from the invalid part remain in effect. If a part of [this
10 act] is invalid in one or more of its applications, the part
11 remains in effect in all valid applications that are
12 severable from the invalid applications.

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 525
INTRODUCED BY T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE DRUG-FREE
WORKPLACE INSURANCE PREMIUM REDUCTION ACT; AND REQUIRING
MOTOR VEHICLE INSURANCE PREMIUM RATE REDUCTIONS FOR
COMMERCIAL MOTOR VEHICLE CARRIERS AND INDIVIDUALS PERSONS
WHO PARTICIPATE VOLUNTARILY IN QUALIFIED DRUG TESTING
PROGRAMS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1
through 6] may be cited as the "Drug-Free Workplace
Insurance Premium Reduction Act".

NEW SECTION. Section 2. Definitions. As used in
[sections 1 through 6], the following definitions apply:

(1) (a) "Controlled substance" means a dangerous drug
as defined in 50-32-101 and as listed or to be listed in the
schedule in 50-32-222 or 50-32-224.

(b) Controlled substance does not mean a dangerous drug
used pursuant to a valid prescription or as authorized by
law.

~~{2}--"Employee"--means--an--individual--engaged--in--the
performance--of--work--for--an--employer--but--does--not--include--an
individual--having--the--status--of--an--independent--contractor.~~

~~{3}--"Employer"--means--a--person--or--entity--that--has--one--or
more--employees--and--is--located--or--doing--business--in--the
state.~~

~~{4}--"Prospective--employee"--means--an--individual--who--has
made--application--to--an--employer,--whether--written--or--oral,--to
become--an--employee.~~

{5}{2} "Qualified testing program" means a program to
test for the presence of controlled substances that meets
the criteria set forth in [sections 5 and 6].

{6}{3} "Sample" means a urine or blood specimen.

NEW SECTION. Section 3. Drug-free workplace-----
insurance premium reduction -- commercial motor vehicle
carriers. A schedule or rating plan for commercial motor
vehicle carriers must provide for a rate reduction in
premium charges that is double the rate reduction for
participation in a safe driver education course for an
insured ~~that-has-adopted~~ CARRIER WHO VOLUNTARILY ADOPTS and
implemented IMPLEMENTS a qualified testing program.

NEW SECTION. Section 4. Drug-free workplace-----
insurance premium reduction -- individual motor vehicle
insurance. A schedule or rating plan for individual licensed
motor vehicle operators must provide for a rate reduction in
premium charges that is double the rate reduction for
participation A PERSON WHO PARTICIPATES in a safe driver
education course ~~when-the-individual:~~

SECOND READING



1 {1}--is--employed--by--an--insured--having--a--qualified
2 testing-program;-and

3 {2} AND WHO VOLUNTARILY, THROUGH A QUALIFIED TESTING
4 PROGRAM, has not tested positive for a controlled substance
5 within the past 12 months.

6 NEW SECTION. Section 5. Qualified testing program. A
7 qualified testing program must meet and be conducted
8 according to the following criteria:

9 (1) Testing must be conducted according to the terms of
10 a written plan that must be-adopted-by-the-employer-and be
11 available for review by--all--employees--and--prospective
12 employees-60-days-prior-to-implementation. The plan must set
13 forth, at a minimum:

14 (a) a description of the applicable legal sanctions
15 under federal, state, and local law for the unlawful
16 manufacture, distribution, possession, or use of a
17 controlled substance;

18 (b) the employer's proposal for educating or providing
19 information to employees A PERSON on the health risks
20 associated with the use of controlled substances;

21 {c}--the-employer's-standards-of-conduct--that--regulate
22 the-use-of-controlled-substances-by-employees;

23 {d}{C} a description of drug counseling, treatment, or
24 rehabilitation programs that are available to employees A
25 PERSON;

1 {e}--a--description--of--the-sanctions-that-the-employer
2 will-impose-on-an-employee-if-the-employee-is-found-to--have
3 violated--the-standards-of-conduct-referred-to-in-subsection
4 {1}{b}-or-if-the-employee-is-found-to-test-positive-for--the
5 presence-of-a-controlled-substance;

6 {f}--a--statement--that--employees--may--be--tested;-including
7 a--discussion--of--the--circumstances--that--may--trigger-an
8 immediate-test;

9 {g}{D} a list of the controlled substances for which
10 the employer-intends-to-test PERSON WILL BE TESTED;

11 {h}--a--description-of-the-employer's-hiring-policy-with
12 respect-to-prospective-employees-who-test-positive;

13 {1}{E} a detailed description of the procedures that
14 will be followed to conduct the testing program, including
15 the resolution of a dispute concerning test results;

16 {1}{F} a provision that all information, interviews,
17 reports, statements, memoranda, and test results are
18 confidential communications that will not be disclosed to
19 anyone except:

20 {1} the tested employee PERSON;

21 {2} specifically--authorized-employees-or-agents-of-the
22 employer;-or

23 {3} in-a-proceeding-related-to-an-action-taken--by--an
24 employer--under--{sections--1--through--6}-or--in-an-action
25 relating-to-a-workplace-accident-involving--death;-physical

1 injury, or property damage in excess of \$5,000 when there is
2 reason to believe that the tested employee may have caused
3 or contributed to the accident.

4 {2} In addition to imposing appropriate sanctions on
5 employees for violations of the employer's standards of
6 conduct referred to in subsection (1)(c), the employer may
7 require an affected employee to participate in an
8 appropriate drug rehabilitation program as a condition of
9 continued employment. The employer may subject the employee
10 to periodic retesting as a condition of the rehabilitation
11 program.

12 {3} Testing must be at the employer's expense, and all
13 employees must be compensated at their regular rate,
14 including benefits, for time attributable to the testing
15 program.

16 {4}(2) Sample collection must be performed in a manner
17 designed to protect the privacy of the employee PERSON,
18 using where practicable screens or stalls, except that in
19 cases in which an employer has THERE IS reason to believe an
20 employee A PERSON may alter or substitute the required
21 sample, the employer may require that the sample MAY BE
22 REQUIRED TO be provided under the direct supervision of
23 testing personnel.

24 {5}(3) Samples must be handled under strict forensic
25 chain of custody procedures. These procedures should require

1 that the sample be collected, stored, and transported in a
2 manner that will document and preserve the identity of each
3 sample and prevent the adulteration, contamination, or
4 erroneous identification of test results.

5 {6}(4) Sample testing must be performed according to
6 scientifically accepted analytical procedures by a qualified
7 laboratory certified by the national institute on drug
8 abuse.

9 {7}(5) Before taking any action based on a positive
10 test result, the results must be reviewed and certified by a
11 licensed physician trained in the field of substance abuse.
12 An employee or prospective employee A PERSON must be
13 afforded the opportunity to provide notification to the
14 licensed physician of any medical information that is
15 relevant to interpreting test results, including currently
16 or recently used prescription or nonprescription drugs.

17 NEW SECTION. Section 6. Confidentiality of results.

18 (1) Except as provided in subsection (2), all information,
19 interviews, reports, statements, memoranda, or test results
20 received by the employer A PERSON through a qualified drug
21 testing program are confidential communications and may not
22 be used or received in evidence, obtained in discovery, or
23 disclosed in any public or private proceeding.

24 (2) The material treated as confidential in subsection
25 (1) may be used in a proceeding related to an action.

1 ~~(a)--taken-by-an-employer-in-response-to-a-positive-test~~
2 ~~result;-or~~

3 ~~(b)~~ relating to a--workplace AN accident involving
4 death, physical injury, or property damage in excess of
5 \$10,000 when there is reason to believe that the tested
6 employee PERSON may have caused or contributed to the
7 accident.

8 NEW SECTION. Section 7. Coordination instruction. If
9 Senate Bill No. 138 [LC 54] and [this act] are both passed
10 and approved, then [sections 1, 2, 5, and 6 of this act] are
11 void and [sections 3 and 4 of this act] must read as
12 follows:

13 NEW SECTION. Section 3. Drug-free ~~WORKPLACE-----~~
14 insurance premium reduction -- commercial motor vehicle
15 carriers. A schedule or rating plan for commercial motor
16 vehicle carriers must provide for a rate reduction in
17 premium charges that is double the rate reduction for
18 participation in a safe driver education course for an
19 insured ~~that-has-adopted~~ CARRIER WHO VOLUNTARILY ADOPTS and
20 implemented IMPLEMENTS a qualified testing program, as
21 defined in [section 2 of Senate Bill No. 138 [LC 54]], to
22 VOLUNTARILY test employees A PERSON for the presence of
23 controlled substances, as defined in [section 2 of Senate
24 Bill No. 138 [LC 54]].

25 NEW SECTION. Section 4. Drug-free ~~WORKPLACE-----~~

1 insurance premium reduction -- individual motor vehicle
2 insurance. A schedule or rating plan for individual licensed
3 motor vehicle operators must provide for a rate reduction in
4 premium charges that is double the rate reduction for
5 participation A PERSON WHO PARTICIPATES in a safe driver
6 education course ~~when-the-individual:~~

7 ~~(1)--is--employed--by--an--insured--having--a--qualified~~
8 ~~testing--program~~ AND WHO VOLUNTARILY, THROUGH A QUALIFIED
9 TESTING PROGRAM, as defined in [section 2 of Senate Bill No.
10 138 [LC 54]] ~~and~~

11 ~~(2)~~ has not tested positive for a controlled substance,
12 as defined in [section 2 of Senate Bill No. 138 [LC 54]],
13 within the past 12 months.

14 NEW SECTION. Section 8. Severability. If a part of
15 [this act] is invalid, all valid parts that are severable
16 from the invalid part remain in effect. If a part of [this
17 act] is invalid in one or more of its applications, the part
18 remains in effect in all valid applications that are
19 severable from the invalid applications.

-End-