

1 HB104
2 135822-1
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
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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 of 1975,
18 is 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 "(b) A positive alcohol or drug test conducted and
9 evaluated pursuant to standards adopted for drug testing by
10 the U.S. Department of Transportation in 49 C.F.R. Part 40
11 shall be a conclusive presumption of impairment resulting from
12 the use of illegal drugs or alcohol. In such case, no
13 compensation or medical benefits other than initial emergency
14 medical treatment, shall be allowed to an employee or his or
15 her estate unless the employee, or his or her estate, proves
16 that the employee's injury or death was not due to an
17 impairment or intoxication by alcohol consumption or drug use
18 by the employee. No compensation or medical benefits other
19 than initial emergency medical treatment shall be provided to
20 an employee or his or her estate, if the employee refuses to
21 submit to or cooperate with a blood or urine test ~~as set forth~~
22 ~~above~~ after the accident after being warned in writing by the
23 employer that ~~such~~ the refusal would forfeit the employee's
24 right to recover benefits under this chapter.

25 "(c) No compensation shall be allowed if, at the
26 time of or in the course of entering into employment or at the
27 time of receiving notice of the removal of conditions from a

1 conditional offer of employment, the employee knowingly and
2 falsely misrepresents in writing his or her physical or mental
3 condition and the condition is aggravated or reinjured in an
4 accident arising out of and in the course of his or her
5 employment.

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

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