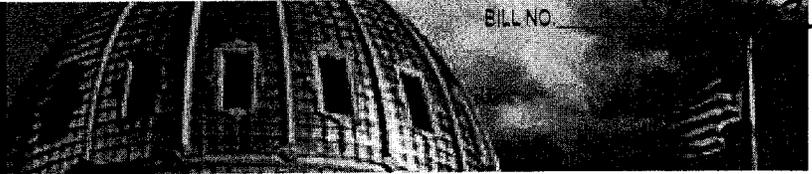




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Employment Charts

State Statute Chart on Drug Testing in the Workplace

State	Drug Free Workplace Policy	Drug Testing Regulations	Workers' Compensation	Unemployment Insurance
Alabama	No statutory provision	No statutory provision	<p>§25-5-330 (1995) Provides a 5 percent discount to employers who establish a drug-free workplace in compliance with the act.</p> <p>§25-5-51 (1993) An employer may deny benefits if the employee's injury was due to intoxication from the use of alcohol or impaired by illegal drugs.</p>	<p>§25-4-78(3)(a) (1995) An employee may be partially disqualified from receiving benefits if the employee is discharged for misconduct connected to work. Misconduct includes the use of illegal drugs or failing to cooperate with a drug test after a previous warning has been given.</p>
Alaska	No statutory provision	<p>§23.10600-23.10.699 (1997) Provides protection to employers who establish a drug and alcohol policy and testing program in compliance with the act. Collection, testing and confidentiality procedures are mandated.</p>	<p>§23.30.080 (1993) An employer may not be liable for an employee's injury or death when the injury arises from the employee's willful intoxication.</p>	No statutory provision

Arizona	§23-493 (1999) Department of Corrections employees and job applicants subject to testing.	§23-493 (1994) Private-Sector Drug Testing and Alcohol Impairment Act. A voluntary law that provides legal protection to employers for acting in good faith based on the results of a positive drug or alcohol test, provided the program meets the requirements of the act.	HB 2306 (2003) Removes restrictions on employer's ability to discipline or discharge an employee involved in a work-related injury who tested positive for drugs or alcohol during the time the injury occurred	§23-619.01 (1993) An individual may be disqualified from receiving benefits in the employee is discharged for willful or negligent misconduct associated with employment. Misconduct includes, repeated intoxication (alcohol or use of illegal drugs) on the employer's premises or when reporting to work.
Arkansas	§11-14-101 (1999) Establishes voluntary drug free workforce program.		§11-9-401(a), 11-9-707 An employer may use an employee's intoxication or being under the influence of drugs as a defense. Must prove the injury was substantially caused by the worker's intoxication at the time of the injury. §11-14-101 (1999) Employers with acceptable drug-free workplace programs drug-free workplace programs may qualify for a 5% discount on workers' compensation premiums.	§11-10-514(b) (1993) An employee may be denied benefits if he/she is discharged for using alcohol or controlled substances on the job, or reporting to work while intoxicated, including use of controlled substances.
California	Gov't Code §8350-8356 (1993) Requires all state contractors and grantees to implement a drug free workplace policy and establish an employee drug awareness education program.	No statutory provision	Labor Code §3600, §5705 Benefits may be denied if an employee's injury was caused by intoxication or the unlawful use of a controlled substance. Employer carries the burden of proof.	Unemp. Ins. Code §2626 An individual may be disqualified from receiving unemployment compensation benefits if discharged for being intoxicated while on work or for certain behavior related to intoxication.
Colorado			§8-42-112(1)(c) Benefits may be reduced when an injury results from the intoxication of an employee.	§ 8-73-108(5) (1993) An employee may be disqualified from receiving benefits if the employee engages in off the job use of alcohol or controlled substances to a degree that

				it interferes with job performance or on the job use of alcohol or controlled substance.
Connecticut		§31-51t (1992) Prohibits certain types and testing. In general, testing is limited to employee's in high risk positions or where reasonable suspicion exists.	§31-275(1)(c) (1993) Provides that disability or death due to use of alcohol or drugs is not a compensable injury.	§31-236 (1992) An employee is ineligible for benefits if the employee was discharged for "just cause" or repeated willful misconduct.
Delaware				
District of Columbia				
Florida	<p>§112.0455 (1996) The Drug Free Workplace Act provides that any state agency may test certain employees and job applicants for the use of drugs. Does not require testing but mandates that any agency choosing to do so must comply with methods and procedures outlined.</p> <p>§287.087 Provides that in situations where two or more bids of equal merit are submitted the business certifying it has implemented a Drug-Free Workplace program will be given preference in being awarded the contract.</p>	SB 50A (2003) Revises provisions regarding drug testing.	<p>§440.102 (1996) Voluntary law that provides a 5 percent reduction in premiums to employers who implement and maintain a certified drug-free workplace program in accordance with the standards set forth in the Act.</p> <p>Positive drug test results disqualifies an employee from receiving benefits.</p>	<p>§440.102 (1993) An employee may be denied benefits if tested positive for drugs on a test conducted in accordance with the standards set forth under worker's compensation laws. A positive drug test constitutes misconduct.</p> <p>§38B-2.017(5)(b) (1993) Consideration is given to the illnesses of alcoholism and drug addiction in determining eligibility.</p>

Georgia	<p>§50-24-1 (1993) Contractors who receive state contracts in the amount of \$25,000 or more must certify they have implemented a substance abuse prevention program.</p> <p>§45-20-90 Public employees in high-risk jobs may be subject to random drug testing. Refusal to submit to a random test or testing positive results in termination from employment.</p>		<p>§33-9-40.2 & §34-9-410 Voluntary law that provides a 7.5 percent discount on workers' compensation premiums to employers who have implemented a drug-free workplace program that is certified by the state Board of Workers' Compensation.</p> <p>§ 34-9-17 (1993) Provides an employee may be disqualified from receiving benefits if his or her injury or death is due to intoxication or the use of controlled substances.</p> <p>Act No. 378 (2005) Removes the existing eight-year limitation on the application of the insurance premium discount for the insured with the drug-free workplace program.</p>	
Guam				
Hawaii		<p>§329B-1 (1993) Procedural guidelines regarding workplace substance abuse testing. Most regulations apply to the laboratory but the employer is required to use a laboratory that is certified by the Hawaii Dept. of Health or the Substance Abuse and Mental Services Admin. Of the USDHHS.</p>	<p>§431:14-103 (1997) Provides a discounts of at least 5 percent on premiums to employers who maintain an effective safety and health program. Does not specifically mention drug-free workplace but does direct the DOL to issue standards and rules.</p> <p>§386-3 Denies compensation if an employee's injury was incurred as a result of intoxication. Employer has burden to prove intoxication.</p>	
Idaho	<p>§72-1701-1715 (1997) "Private Employer Alcohol and Drug-Free Workplace Act" Voluntary law</p>	<p>Chapter No. 224 (2004) Adds to existing law relating to the Idaho Employer Alcohol and Drug-free Workplace Act to</p>	<p>§72-208 Payments may be reduced by 50% when the proximate cause of the injury is the employee's use of intoxicants.</p>	

	<p>that permits employers to test employees and applicants for drugs and alcohol. Provides requirements for collection and testing. Limits employer liability for establishing a testing program in compliance with the act. Establishes that an employee who is discharged for a confirmed positive drug or alcohol test, refusing to be tested, adulterated or attempting to adulterate a test sample would be discharged for misconduct for purposes of unemployment insurance.</p>	<p>provide certain eligibility requirements for contractors relating to state construction contracts</p>	<p>SB 1119 (2003) Provides that public employers who conduct drug and alcohol testing of all current and prospective employees shall qualify for and may be granted an employer Workers' Compensation premium reduction.</p>	
Illinois	<p>§132.211 (1993) Drug-Free Workplace Act Provides that employers who are awarded a state contract or grant must adopt an anti-drug policy and program, and provide a copy of its policy. Does not specifically address drug testing.</p>			
Indiana			<p>§22-3-2-8, 22-3-7-21 (1993) Denies workers' compensation benefits to employees whose injury or death was caused by intoxication.</p>	<p>§22-4-15-1(d) An employee who is discharged for "just cause" is disqualified from receiving benefits. "Just cause" includes reporting to work under the influence of alcohol or drugs, consuming alcohol or rugs on the employer's premises during work hours.</p>

Iowa		<p>§730.5 (1998) Authorizes most types of drug and alcohol testing provided that specific procedural and policy requirements are met. Employers who develop, implement and maintain programs in accordance with the provisions of the act are provided with immunity against any causes of action arising against the employer for actions taken pursuant to the program.</p>	<p>§85.16 (1993) Provides that an employee may be disqualified from benefits coverage if the employee's injuries are caused by the employee's intoxication or use of drugs, or if the intoxication was a substantial factor in causing the injury.</p>	<p>§96.5(2) Employee may be disqualified for benefits if discharged for misconduct in connection with work.</p>
Kansas		<p>Chapter No. 54 (2005) Changes the burden of proof to the claimant for admission of chemical drug and alcohol test results into evidence.</p> <p>Chapter No. 105 (2004) Relates to failing a pre-employment drug screen.</p>	<p>§44-501(d)(2) Denies benefits when an injury, disability or death was contributed to by the employee's use or consumption of alcohol or drugs. It is conclusively presumed that the employee was impaired due to alcohol if it is shown that at the time of the injury the employee's alcohol concentration was .04 or more.</p>	<p>§44-706(b)(2) (1993) Denies unemployment benefits to employees who are discharged for misconduct related to drug or alcohol impairment. Chapter No. 33 (2005) Regards disqualification from receipt of benefits relating to dismissal, failure of pre-employment drug screen.</p>
Kentucky			<p>§342.610 (1993) Denies workers' compensation benefits when the employee's injury was proximately caused by the employee's intoxication.</p>	<p>§341.370 (1993) Denies unemployment compensation benefits to any employee who is discharged for misconduct connected with work. Misconduct includes reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on the employer's premises during work hours.</p>

Louisiana	Executive Order 9838 (1998) Provides for mandatory testing of all prospective state employees.	<p>§49:1001(1993) Restricts the types of testing but does not place specific requirements on drug testing procedures. Provides protection to employers who establish and maintain a drug and alcohol testing program in compliance with the law.</p> <p>§23:879 (1997) Prohibits an employer from requiring an employee or applicant to pay for a drug test. Payment may be withheld if an applicant resigns within 90 days.</p> <p>§47:6010 Employers may be eligible for a tax credit against their state income tax in the amount of 5 percent of the "qualified treatment expenses" incurred by the employer for substance abuse treatment services.</p>	<p>§23:1081 (1993) An employer may deny benefits to an employee whose injury is caused by his or her intoxication. A positive drug test conducted in accordance with the law or a positive alcohol test at .10 or higher is needed to presume intoxication.</p>	<p>§23:1601(10)(1)-(f) (1993) Benefits may be denied to an employee who is discharged for misconduct. On or off the job drug, as evidenced by a positive drug test, conduct in accordance with the law.</p>
Maine		<p>Title 26 §681 (1993) Places restriction on types of testing and places specific requirements that must be met for drug testing procedures. Maine Department of Labor must approve all programs.</p>	<p>Title 39-A §202 (1993) Denies benefits to an employee whose injury was the result of his or her intoxication unless the employer knew at the time of the injury that the employee was intoxicated.</p>	
Maryland		<p>§17-214 (1997) Requires specific technical procedures must be followed with</p>	<p>§9-506(c) (1993) Denies benefits to an employee whose injury is caused primarily by the use</p>	

		regard to drug testing. The laboratory must be certified by the MD Dept. of Health & Mental Hygiene. Hair testing is permitted for pre-employment testing only.	of controlled substances not prescribed by a physician.	
Massachusetts				
Michigan				§421.29 (1993) Provides an employee may be disqualified from receiving benefits if discharged for misconduct connected with work, including intoxication while at work.
Minnesota		§181.950 (1997) Places restrictions on the types of testing that may be conducted and places requirements on drug testing procedures. An employee may not be discharged solely on the basis of a first-time positive drug test. Rehabilitation must be offered. Employers may only inquire about prescription medications after a positive drug test.	§176.021 (1993) Benefits may be denied if the employee's intoxication is the proximate cause of the injury. Burden of proof on employer.	§268.09(c)(2) (1994) May deny benefits to an employee who is unemployed because of a chemical dependency that has been professionally diagnosed; or participating in a treatment program and who is unable to successfully complete treatment as advised. This action indicates an employee has not made a reasonable effort to retain employment.

Mississippi		<p>§71-7-1 (1993) Compliance with state drug testing law is voluntary. Employers are protected from civil liability with regard to their drug and alcohol program and testing. Permits all types of testing and includes specific requirements with regard to testing procedures.</p>	<p>§71-3-201 (1997) Provides for a 5 percent reduction in workers' compensation premiums to employers who establish a drug free workplace program. Employers must have a written policy statement, conduct drug and alcohol testing, maintain a resource list of EAP provides, provide education and supervisor training and maintain confidentiality standards.</p> <p>§71-3-7 (1993) Benefits are denied if the employee's intoxication is the proximate cause of injury.</p>	<p>§75-5-513 Provides that discharge for drug use constitutes willful misconduct and disqualifies an employee from receiving unemployment compensation.</p>
Missouri			<p>§287.120 (1993) Provides benefits may be reduced 15 percent if employee was injured in connection with drug or alcohol use or failure to obey company rules, provided the drug policy was conspicuously posted, employee had actual knowledge of the rule, and the employer shows that prior to the injury it made a diligent effort to inform the employee of the rule. Benefits may be denied if alcohol or drug use was the proximate cause of the injury.</p>	
Montana		<p>§39-2-304 (1997) Drug testing with restriction, is permitted of employees "engaged in the performance, supervision, or management of work in a hazardous work environment,</p>		

		security position, position affecting public safety, or fiduciary position." Testing must be in accordance with 49 CFR, Part 40 of the DOT's regulations.		
Nebraska		§48-1901 (1993) Permits drug and alcohol testing provided certain technical procedures are followed. Positive test, refusal to be testing, tampering with specimen are all grounds for dismissal.	§48-127, 48-102 (1993) Benefits may be denied to any employee whose injuries were due to intoxication - including controlled substances not prescribed by a physician.	
Nevada			§616.565 (1)(c) (1993) Benefits may be denied when an injury is proximately caused by employee's intoxication - alcohol or controlled substances. If intoxicated at the time of the injury it is presumed the intoxication is the proximate cause unless rebutted by evidence to the contrary.	§612.485 Employee is ineligible for unemployment compensation benefits if discharged for misconduct.
New Hampshire			§281-A:14 (1993) Employer not liable for injuries sustained by an employee which were caused in whole or in part by employee's intoxication - drug or alcohol. This does not apply if the employer knew the employee was intoxicated at the time of the accident.	§282-A:34 (1993) Benefits are denied if an employee has been discharged for intoxication or for use of controlled substances, to the degree that it seriously hampered or interfered with their work.
New Jersey			§34:15-7 (1994) Denies benefits if the proximate cause of the injury is intoxication or the unlawful use of controlled dangerous substances. Employer must establish intoxication.	§43:21-5 (1994) Benefits may be denied if the suspension or discharge was for misconduct related to work.

New Mexico			§52-1-11 (1993) Benefits may be denied if the injury was occasioned by the employee's intoxication.	
New York			Workers' Compensation §10 (1992) Benefits may be denied when the injury is occasioned solely by the employee's intoxication from alcohol or controlled substance. There is a presumption that the injury did not occur solely from intoxication.	Labor §593 (1993) An employee may be disqualified from receiving benefits if the employee tests positive on a drug test or for using alcohol or drugs in violation of work rules.
North Carolina		§95-230 (1993) Does not restrict the types of testing that may be conducted but requires certain procedures be followed as to the process.	§97-12 (1993) Denies benefits if the employee's injury is proximately caused by intoxication, provided the intoxicant was not provided by the employer. Session Law 448 (2005) Relates to ineligibility for benefits when a worker is injured while intoxicated or under the influence of a controlled substance.	§96-14(2) (1993) Employee discharged from work for misconduct may be denied benefits. Misconduct includes reporting to work significantly impaired by alcohol or illegal drugs, consuming either on the employee's premises or being convicted for manufacturing, selling or distributing controlled substances.
North Dakota		§34-01-15 (1999) Requires employers pay for applicant and employee drug or alcohol screening.	§65-01-02 (1993) Benefits are denied if the injury was caused by the use of intoxicants or controlled substances. Employer has burden of proof. A refusal to submit to a drug test results in forfeiture of all benefits. If an employee can prove he or she has successfully completed substance abuse treatment within one year of the benefits denial, the employee's benefits must be reinstated.	
Ohio		Session Law 115 (2004) Specifies conditions under which chemical testing of an employee may	Rule 4123-17-58 Premium Reduction Rule State Bureau of Workers' Comp. has issued a rule that	

		<p>establish a rebuttable presumption that the employee's injury was proximately caused by use of alcohol or an unprescribed controlled substance</p>	<p>provides a five year phased in workers' compensation premium reduction that can rise as high as twenty percent. Discounts are offered based on types of drug-free workplace program implemented. At the lowest level (6 percent) employers must establish a written policy, conduct annual employee education and supervisor training and conduct drug and alcohol testing. As the discount rises, random testing must be introduced as well as health care coverage for chemical dependencies. §4123.54 (1993) Denies benefits to employees who are injured while under the influence of illicit drugs or alcohol where the intoxication was the proximate cause of the injury.</p>	
Oklahoma		<p>40 §551-565 (1994) Permits most types of drug testing provided certain conditions are met. An employee assistance program must be made available to employees prior to conducting a test. The employer must establish a comprehensive policy that explains all aspects of the program as well testing procedures that must be followed. SB 1A (2005) Modifies circumstances under which certain drug</p>	<p>85 § 11 (1994) Benefits may be denied if the injury results directly from intoxication or drug use of the injured employee while on duty.</p>	<p>40§2-406A (1994) Benefits denied when an employee is discharged on the basis of a refusal to undergo a drug or alcohol test or confirmed positive drug or alcohol test conducted in accordance with the state's drug testing law.</p>

		testing may occur.		
Oregon	§279.312(1999) Requires that all public contracts include a condition that the contractor demonstrate an employee drug-testing program.	§438.435 (1993) Permits all types of drug testing but does request all tests be analyzed at state approved laboratories. Alcohol testing is only allowed if there is reasonable suspicion the employee is under the influence or if the employee consents. §802.200 (1999), §803.370 (1999), §825.955 (1999) Requires motor carriers have drug testing programs, specifies penalties for failure to establish program. Specifies that positive test results be entered into employee driving record.	§656.005(7)(b)(C) (1993) Benefits denied when an employer shows by clear and convincing evidence that a major contributing factor of an employee's injury was the use of controlled substances unless employer permitted, encouraged or had knowledge of such consumption. Chapter No. 792 (2003) Disqualifies an individual from receipt of unemployment benefits for acts involving alcohol, marijuana or unlawful drugs or violation of last chance agreement.	
Pennsylvania			77 §431 (1994) Benefits denied if injury caused by a violation of the law, including use of illegal drugs. Employer must prove the injury was due to drugs or alcohol. No compensation may be paid if the injury would not have occurred had the employee not been intoxicated.	
Puerto Rico				
Rhode Island		§28-6.5-2 (1996) Permits pre-employment testing, for cause testing, post accident testing, post rehabilitation	§28-33-2 (1993) Denies benefits to an employee whose injury or death is the result of intoxication or the use of controlled substances.	

		testing and safety sensitive random testing if the employer has an employee assistance program available. Employer must adopt a comprehensive drug abuse prevention policy and adhere to testing procedures.		
South Carolina	§44-107-10 (1991) Drug Free Workplace Act. Requires every individual or business receiving a state grant or contract for \$50,000 or more must implement a drug free workplace program in accordance with the Act. Requirements include establishing distributing a written substance abuse policy and establishing an employee drug education awareness program.	Act No. 50 (2005) Provides a worker is ineligible for benefits if he or she refuses to take a drug test or tests positive during a drug test.	§38-73-500 (1997) Provides 5 percent discount on workers' compensation premiums to employers who voluntarily establish a drug free workplace program. Requires at a minimum an employer provide a written substance abuse policy, employee notification of program, confidentiality procedures and random sampling of all employees. §42-90-60, 42-11-100 (1993) Benefits may be denied if injury or death was occasioned by intoxication.	
South Dakota			§62-4-37 (1993) Employee may be disqualified from receiving benefits in injury due to willful misconduct, including intoxication or use of illicit drugs.	

Tennessee	SB 2255 (2002) Requires that all public contracts include a condition that the contractor demonstrate an employee drug-testing program.	Chapter No. 390 (2005) Applies the drug-free workplace program credit separately to each individual company for an employer having more than one company under one workers' compensation insurance policy.	§50-9-101 (1997) Provides 5 percent discount on premiums to employers who establish a drug free workplace program. Requires the employer have a written policy statement, a resource list of EAP's and other rehab programs, and drug and alcohol testing. §50-6-110 (1994) Denies benefits to an employee whose injury is due to intoxication or the use of illegal drugs.	§31-236(a)(9) (1999), §50-7-303(a)(2) (1999) Establishes that employees discharged for refusal to take a drug or alcohol test, or for testing positive on such test, are disqualified for unemployment benefits.
Texas		§481.133 (1994) It is illegal to manufacture, deliver, own or use a substance or device designed to falsify drug test results.	§411.091 (1993) Requires employers with 15 or more employee adopt a policy designed to eliminate drug abuse in the workplace. Written policy must be distributed to each employee. Does not require drug testing or rehabilitation program be implemented. §406.032 (1993) Benefits are denied if the injury occurred while the employee was in a state of intoxication.	
Utah		§34-38-1 (1993) No cause of action may be brought against any employer who establishes a drug and alcohol testing program in compliance with the act. Employers may conduct any type of testing in order to maintain the safety of employees and the public or to maintain productivity and quality of services and products. All management	§35-1-14 (1993) Benefits are denied when the major contributing factor of an employee's injury is the use of illegal substances, intention abuse of prescribed substances or intoxication from alcohol at a level of .08 or higher, provided the employer did not permit or have knowledge of the substances.	

		<p>personnel must also be subject to testing if a program is implemented. Specific requirements must be met with regard to testing procedures.</p>		
Vermont		<p>§511-520 (1993) Pre-employment testing is permitted if 10 days notice is given and is conducted with a physical examination. For cause testing is permitted if the employer has probable cause to believe an employee is under the influence of drugs while on the job. An employee testing positive must be given the opportunity to participate in an EAP.</p>		
Virginia			<p>§65.2-813.2 (1997) Workers' Compensation Premium Reduction Program. Provides a 5 percent premium discount for employers who institute a drug free workplace program that meets the criteria established by the insurer.</p> <p>§65.2-306(A)(B) (1994) Denies benefits to an employee whose injury is caused by intoxication or use of controlled substance. A positive drug test from an HHS certified laboratory or a positive alcohol test above .08 bac creates a rebuttable presumption the employee was intoxicated or using drugs at the time of</p>	<p>§60.2-618 (3)(d) (1998) Benefits are denied during any week that an individual tests positive for drugs in connection with a suitable offer of work.</p>

			<p>injury.</p> <p>HB 568 (2002) Provides that clear and convincing evidence is required to overcome the presumption that an employee who either had a blood alcohol level equal to or greater than 0.08% or yields a positive test result for use of a nonprescribed controlled substance from a certified laboratory was intoxicated due to consuming alcohol or using a nonprescribed controlled substance at the time of his injury or death</p>	
Virgin Islands				
Washington			<p>§49.82.010-.901 (1996) Workers' Compensation Premium Reduction Program. Provides a 5 percent premium discount for employers who implement a drug free workplace program. Program must include a written substance abuse policy, substance abuse testing, provide employee assistance services, comply with confidentiality standards and conduct employee education and supervisory training programs.</p>	<p>§50.20.060(1) (1993) Benefits may be denied if employee is discharged for misconduct which may include drug use.</p>
West Virginia	<p>25-1-11 (1999) Department of Corrections employees and job applicants subject to testing.</p>		<p>§23-4-2(a) (1993) Benefits may be denied to an employee whose injury was due to intoxication.</p>	<p>§21A-6-3(2) (1993) Benefits may be denied if discharged for misconduct for reporting to work intoxicated, being intoxicated at work, reporting to work under the influence of controlled substances or being under the influence of controlled substances while at work.</p>
Wisconsin			<p>§102.58 (1993) Benefits may be reduced by 15 percent if an</p>	

			employee's injuries are a result of being intoxicated or from the use of a controlled substance. Total reduction may not exceed \$15,000.	
Wyoming			<p>§27-14-102(a)(xi)(B) (1993) For purposes of workers' compensation benefits an "injury" does not include those injuries caused by the employee's intoxication or by being under the influence of a controlled substance.</p> <p>Chapter No. 185 (2005) Authorizes the workers' safety and compensation division to define intoxicated or under the influence of a controlled substance for purposes of the exclusion from covered injury</p>	

Source: NCSL

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