

By the Committee on Financial Services and Representatives  
Safley, Lippman, Effman, Rayson, Flanagan, Dennis, Lawson and  
Bainter

1                                   A bill to be entitled  
2           An act relating to drug-free workplace program  
3           requirements; amending s. 440.09, F.S.;  
4           providing a standard for rebutting a  
5           presumption that an employee's injury was  
6           caused by intoxication or the influence of  
7           drugs; providing an effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

11           Section 1. Paragraph (b) of subsection (7) of section  
12 440.09, Florida Statutes, is amended to read:

13

440.09 Coverage.--

14

(7)

15

(b) If the employee has, at the time of the injury, a

16

blood alcohol level equal to or greater than the level

17

specified in s. 316.193, or if the employee has a positive

18

confirmation of a drug as defined in this act, it is presumed

19

that the injury was occasioned primarily by the intoxication

20

of, or by the influence of the drug upon, the employee. If the

21

employer has implemented a drug-free workplace, this

22

presumption may be rebutted only by evidence that there is no

23

reasonable hypothesis supporting the possibility that the

24

intoxication or drug influence contributed to the injury.In

25

the absence of a drug-free workplace program, this presumption

26

may be rebutted by clear and convincing evidence that the

27

intoxication or influence of the drug did not contribute to

28

the injury. Percent by weight of alcohol in the blood must be

29

based upon grams of alcohol per 100 milliliters of blood. If

30

the results are positive, the testing facility must maintain

31

the specimen for a minimum of 90 days. Blood serum may be used

1 for testing purposes under this chapter; however, if this test  
2 is used, the presumptions under this section do not arise  
3 unless the blood alcohol level is proved to be medically and  
4 scientifically equivalent to or greater than the comparable  
5 blood alcohol level that would have been obtained if the test  
6 were based on percent by weight of alcohol in the blood.  
7 However, if, before the accident, the employer had actual  
8 knowledge of and expressly acquiesced in the employee's  
9 presence at the workplace while under the influence of such  
10 alcohol or drug, the presumptions specified in this subsection  
11 do not apply.

12 Section 2. This act shall take effect July 1, 1998 and  
13 shall apply to any cause of action or petition for benefits  
14 filed on or after that date.

15 \*\*\*\*\*

16  
17 HOUSE SUMMARY

18 Provides for rebutting a presumption that an injury in a  
19 drug-free workplace is occasioned by intoxication or the  
20 influence of drugs.  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31