

SECOND REGULAR SESSION

HOUSE BILL NO. 1284

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SMITH (118) (Sponsor), PORTWOOD, SATER, BIVINS,
YATES, STEVENSON, MCGHEE AND MOORE (Co-sponsors).

Read 1st time January 10, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4187L.02I

AN ACT

To repeal section 288.045, RSMo, and to enact in lieu thereof two new sections relating to employee misconduct.

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

Section A. Section 288.045, RSMo, is repealed and two new sections enacted in lieu
2 thereof, to be known as sections 288.045 and 288.047, to read as follows:

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

5 2. [For carboxy-tetrahydrocannabinol, a chemical test result of fifty nannograms per
6 milliliter or more shall be considered a detectible amount. For alcohol, a blood alcohol content
7 of eight-hundredths of one percent or more by weight of alcohol in the claimant's blood shall be
8 considered a detectible amount.

9 3.] If the test is conducted by a laboratory certified by the United States Department of
10 [Transportation] **Health and Human Services, or another accrediting organization,**
11 **certifying organization, or professional society, and approved by the division,** the
12 **laboratory's** test results and the [laboratory's trial packet] **medical review officer's report** shall
13 be included in the administrative record and considered as evidence.

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.

14 [4.] **3.** For this section to be applicable, the claimant must have previously been notified
15 of the employer's alcohol and controlled substance workplace policy by conspicuously posting
16 the policy in the workplace, by including the policy in a written personnel policy or handbook,
17 or by statement of such policy in a collective bargaining agreement governing employment of
18 the employee. The policy, **public posting, collective bargaining agreement, or other written**
19 **notice provided to the employee** must state that a positive test result [shall be deemed
20 misconduct and] may result in suspension or termination of employment.

21 [5.] **4.** For this section to be applicable, testing shall be conducted only if sufficient cause
22 exists to suspect alcohol or controlled substance use by the claimant. If sufficient cause exists
23 to suspect prior alcohol or controlled substance use by the claimant, or the employer's policy
24 clearly states that there will be random testing, then testing of the claimant may be conducted
25 randomly.

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

29 [7.] **5.** The application of the alcohol and controlled substance testing provisions of this
30 section shall not apply in the event that the claimant is subject to the provisions of any applicable
31 collective bargaining agreement, which contains methods for alcohol or controlled substance
32 testing. Nothing in this chapter is intended to authorize any employer to test any applicant or
33 employee for alcohol or drugs in any manner inconsistent with Missouri or United States
34 constitution, law, statute or regulation, including those imposed by the Americans with
35 Disabilities Act and the National Labor Relations Act.

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

46 [9.] **6. Test results from a certified laboratory create a rebuttable presumption that**
47 **all specimen collection, handling, and testing for alcohol or controlled substance as defined**
48 **in section 195.010, RSMo, were performed in accordance with the procedures provided for**

49 **by the accrediting entity's rules and regulations relating to collection, chain of custody,**
50 **handling, and specimen testing.**

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

59 [10.] **8.** Use of a controlled substance as defined under section 195.010, RSMo, under
60 and in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be
61 misconduct connected with work for the purposes of this section.

62 [11.] **9.** This section shall have no effect on employers who do not avail themselves of
63 the requirements and regulations for alcohol and controlled drug testing determinations that are
64 required to affirm misconduct connected with work findings.

65 [12.] **10.** Any employer that initiates an alcohol and drug testing policy after January 1,
66 2005, shall ensure that at least sixty days elapse between a general one-time notice to all
67 employees that an alcohol and drug testing workplace policy is being implemented and the
68 effective date of the program.

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

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

77 14.] **11. A discharge because of a claimant's refusal to take, or to attempt to**
78 **invalidate or impede accurate results of, any test for alcohol or controlled substances, as**
79 **defined by section 195.010, RSMo, administered by or at the request of the employer shall**
80 **be considered misconduct connected with the claimant's work. If a deputy finds that a**
81 **claimant has been discharged under this subsection, such claimant shall be disqualified for**
82 **waiting week credit and benefits under the provisions of section 288.050.**

83 **12. A discharge because of a claimant's admission that the results would be positive**
84 **if given a test for alcohol or controlled substances, as defined by section 195.010, RSMo,**

85 administered by or at the request of the employer shall be considered misconduct
86 connected with the claimant's work. If a deputy finds that a claimant has been discharged
87 under this subsection, such claimant shall be disqualified for waiting week credit and
88 benefits under the provisions of section 288.050.

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

92 14. This section shall become effective October 1, 2006.

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

6 2. In determining whether or not misconduct connected with work has occurred,
7 neither the state, any agency of the state, nor any court of the state of Missouri shall
8 require a finding of evidence of impairment of work performance.

9 3. This section shall become effective October 1, 2006.

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