



1997 ASSEMBLY BILL 934

March 19, 1998 – Introduced by Representatives WALKER and OWENS. Referred to Committee on Labor and Employment.

- 1 **AN ACT** *to create* 102.31 (1m) of the statutes; **relating to:** requiring contracts
2 of worker's compensation insurance to provide for a bonus premium dividend
3 for employers that maintain a drug-free workplace program.

Analysis by the Legislative Reference Bureau

Under current law, a contract of worker's compensation insurance, subject to certain exceptions, must grant full coverage of all liability of the assured under the worker's compensation law.

This bill requires every contract of worker's compensation insurance to provide that the insurer must declare a bonus premium dividend of up to 20% of the amount of any premium dividend earned by the employer if the insurer determines that the employer has earned a premium dividend on the contract and if the employer is maintaining a drug-free workplace program that has been approved by the insurer.

Under the bill, an insurer must approve an employer's drug-free workplace program if the program meets the minimum requirements specified in the bill. Those minimum requirements are as follows:

1. The drug-free workplace program must include a drug testing program under which all employes and prospective employes of the employer are subject to testing for the presence of marijuana; cocaine; narcotic drugs; amphetamine; methamphetamine; phencyclidine (PCP); all controlled substance analogs of those controlled substances, that is, all substances whose chemical structure and effect on the nervous system are similar to the chemical structure and effect on the nervous system of any of those controlled substances; and all other controlled substances and

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controlled substance analogs for which the insurer requires testing and for which the federal department of health and human services has established an approved testing protocol and a positive threshold. The drug testing program must require testing for the presence of all of those controlled substances and controlled substance analogs of all prospective employees; of all employees who are involved in an accident causing injury or death; of any employee whom the employer has reasonable cause to suspect is a probable user of any of those controlled substances or controlled substance analogs; of any employee randomly; of any employee who is suspended or terminated from employment as a result of a positive test result or a refusal to undergo testing prior to the employee's return to work and as follow-up testing; and of any employee who undergoes treatment or rehabilitation for the use of any of those controlled substances or controlled substance analogs on the completion of that treatment or rehabilitation and as follow-up testing.

2. The drug-free workplace program must include a written policy that explains the requirements of the program and the policies and procedures for meeting those requirements. The written policy must include, at a minimum, a statement of the conduct that is prohibited under the program; the circumstances under which testing is required; the procedures under which testing is conducted, including procedures to ensure the integrity of the test samples and the confidentiality of the test results; what constitutes a refusal to undergo testing, the consequences of testing positive or of refusing to undergo testing; the effects that the use of any of the controlled substances or controlled substance analogs tested under the program has on the health, work and personal life of the user and the signs and symptoms indicating that a person has a problem relating to the use of any of those controlled substances or controlled substance analogs; the methods used by the employer to encourage an employee who has a problem relating to the use of any of those controlled substances or controlled substance analogs to refer himself or herself voluntarily for treatment or rehabilitation; and the methods of intervention that the employer may use to assist an employee who tests positive, refuses to undergo a test or refers himself or herself voluntarily for treatment or rehabilitation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 102.31 (1m) of the statutes is created to read:
- 2 102.31 (1m) (a) Every contract under sub. (1) (a) shall provide that the insurer
- 3 shall declare a bonus premium dividend of up to 20% of the amount of any premium
- 4 dividend earned by the employer if all of the following conditions are met:

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1 1. The insurer determines that the employer has earned a premium dividend
2 on the contract.

3 2. The employer is maintaining a drug-free workplace program that has been
4 approved by the insurer under par. (b).

5 (b) An employer that wishes to be eligible for a bonus premium dividend under
6 par. (a) shall submit its drug-free workplace program to the insurer for approval
7 within 90 days after the date on which the contract under sub. (1) (a) is issued or is
8 extended, modified or renewed. An insurer shall approve an employer's drug-free
9 workplace program if the program meets the minimum requirements specified in
10 pars. (c) to (e).

11 (c) To be approved under par. (b), an employer's drug-free workplace program
12 shall include a drug testing program under which all employes and prospective
13 employes of the employer are subject to testing as described in par. (d) for the
14 presence of all of the following:

15 1. Marijuana, as defined in s. 961.01 (14), and synthetic
16 tetrahydrocannabinols, as described in s. 961.14 (4) (t).

17 2. Cocaine, cocaine base and all other salts, compounds, derivatives and
18 preparations of coca leaves.

19 3. Narcotic drugs, as defined in s. 961.01 (15).

20 4. Amphetamine, methamphetamine and all immediate precursors to
21 amphetamine and methamphetamine.

22 5. Phencyclidine and its analogs described in s. 961.14 (4) (u), (ud), (ug) and
23 (ur).

24 6. All controlled substances analogs, as defined in s. 961.01 (4m), of the
25 controlled substances, as defined in s. 961.01 (4), listed in subs. 1. to 5.

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1 7. All other controlled substances and controlled substance analogs for which
2 the insurer requires testing and for which the federal department of health and
3 human services has established an approved testing protocol and a positive
4 threshold.

5 (d) An employer's drug testing program under par. (c) shall require testing for
6 the presence of all of the controlled substances and controlled substance analogs
7 specified in par. (c) 1. to 7. as follows:

8 1. Of a prospective employe, after the prospective employe receives an offer of
9 employment from the employer, but before commencing employment.

10 2. Of all employes who are directly involved in an accident causing an injury
11 or death for which compensation is payable, unless the employer can immediately
12 determine that the employe had no role in causing the accident, within 32 hours after
13 the accident.

14 3. Of any employe whom the employer has reasonable cause to suspect is a
15 probable user of a controlled substance or a controlled substance analog specified in
16 par. (c) 1. to 7., based on the reasonable belief of a supervisor who has been trained
17 in identifying employes who use controlled substances or controlled substance
18 analogs that the employe is a probable user of a controlled substance or a controlled
19 substance analog specified in par. (c) 1. to 7. The supervisor's reasonable belief shall
20 be based on specific and current physical, behavioral or performance indicators of
21 probable use, including chronic use and withdrawal from use, of a controlled
22 substance or a controlled substance analog specified in par. (c) 1. to 7. observed while
23 the employe is on duty.

24 4. Of any employe who is selected to undergo testing randomly. Each year an
25 employer shall randomly test a percentage of the employer's employes that is

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1 determined by the insurer based on the percentage of positive test results for the
2 employer's industry during the previous year. The employer shall select employes
3 for random testing according to objective, neutral and nondiscretionary criteria and
4 shall spread out the testing throughout the year so that on any given day any given
5 employe has an equal chance of being tested. Testing under this subdivision shall
6 be conducted without prior warning.

7 5. Of any employe who is suspended or terminated from employment as a result
8 of a test result under this paragraph that indicates the presence of a controlled
9 substance or a controlled substance analog specified in par. (c) 1. to 7. in the employe's
10 system or as a result of the employe's refusal to undergo a test under this paragraph,
11 prior to the employe's return to work and as follow-up testing for no more than 60
12 months after the employe's return to work.

13 6. Of any employe who undergoes treatment or rehabilitation for the use of a
14 controlled substance or a controlled substance analog specified in par. (c) 1. to 7., on
15 the completion of that treatment or rehabilitation and as follow-up testing for no
16 more than 60 months after the completion of that rehabilitation or treatment.

17 (e) To be approved under par. (b), an employer's drug-free workplace program
18 shall include a written policy that explains the requirements of the program and the
19 policies and procedures for meeting those requirements. The employer shall provide
20 a copy of the policy to every employe of the employer and to every prospective employe
21 who is offered employment with the employer prior to conducting any testing under
22 par. (d). The written policy shall include, at a minimum, a statement of all of the
23 following:

- 24 1. The conduct that is prohibited under the drug-free workplace program.
- 25 2. The circumstances under which testing under par. (d) is required.

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1 3. The procedures under which the testing under par. (d) is conducted,
2 including procedures relating to the labeling and handling of test samples to ensure
3 the integrity of the testing process and procedures relating to the use of the test
4 results to ensure the confidentiality of those results.

5 4. What constitutes a refusal to undergo a test under par. (d).

6 5. The consequences of testing positive for the presence of a controlled
7 substance or a controlled substance analog specified in par. (c) 1. to 7. or of refusing
8 to undergo a test under par. (d).

9 6. The effects that the use of a controlled substance or a controlled substance
10 analog specified in par. (c) 1. to 7. has on the health, work and personal life of the user
11 and the signs and symptoms indicating that a person has a problem relating to the
12 use of any of those controlled substances or controlled substance analogs.

13 7. The methods used by the employer to encourage an employe who has a
14 problem relating to the use of a controlled substance or a controlled substance analog
15 specified in par. (c) 1. to 7. to refer himself or herself voluntarily for treatment or
16 rehabilitation before an accident or a work rule violation occurs.

17 8. The methods of intervention, such as confrontation, referral to management
18 or referral to an employe assistance program or other rehabilitation or treatment,
19 that the employer may use to assist an employe who tests positive for the presence
20 of a controlled substance or a controlled substance analog specified in par. (c) 1. to
21 7. in the employe's system, who refuses to undergo a test under par. (d) or who refers
22 himself or herself voluntarily for treatment or rehabilitation of a problem relating
23 to the use of any of those controlled substances or controlled substance analogs.

24 **SECTION 2. Initial applicability.**

