

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

SENATE BILL

4 **By: Senators Snyder and Jewell**

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7

For An Act To Be Entitled

8

"THE DRUG-FREE WORKPLACE ACT"

9

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11 WHEREAS, drug use has serious adverse effects upon a significant portion
12 of the work force, resulting in millions of dollars worth of lost productivity
13 each year and posing a threat to the workplace and to public safety and
14 security; and

15 WHEREAS, maintaining a healthy and productive work force, safe working
16 conditions free from the effects of drugs, and quality products and services
17 is important to employers, employees, and the general public in this state;
18 and

19 WHEREAS, the General Assembly further finds that drug use creates a
20 variety of workplace problems, including increased injury on the job, increase
21 absenteeism, increase financial burden on health and benefit programs,
22 increased workplace theft, decreased employee morale, decreased productivity,
23 and a decline in the quality of products and services; and

24 WHEREAS, certain drug testing standards are necessary to protect persons
25 participating in workplace drug testing programs; and

26 WHEREAS, in balancing the interests of employers, employees, and the
27 welfare of the general public, the establishment of standards to assure fair
28 and accurate testing for drugs in the workplace is in the best interests of
29 all.

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31 NOW THEREFORE,

32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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34 SECTION 1. TITLE. This act shall be known and may be cited as the
35 "Drug-Free Workplace Act".

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SECTION 2. PURPOSE. This act is intended to:

- (a) Promote the goal of drug-free workplaces through fair and reasonable drug testing methods for the protection of employees and employers.
- (b) Encourage employers to provide employees who have drug use problems with an opportunity to participate in an employee assistance program or an alcohol and drug rehabilitation program.
- (c) Provide for confidentiality of testing results.

SECTION 3. NO LEGAL DUTY TO TEST. All drug testing conducted by employers shall be in conformity with the standards established in this act and all applicable rules promulgated pursuant to this act. However, employers shall not have a legal duty under this act to request an employee or job applicant to undergo drug testing. No testing of employees shall take effect until local drug abuse assistance programs have been identified.

SECTION 4. DEFINITIONS. As used in this act unless the context otherwise requires:

- (1) "Drug" means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein or any substances listed in Schedules I - VI of the Arkansas Controlled Substances Act, A.C.A. §§5-64-101, et seq..
- (2) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.
- (3) "Illicit drugs" means any controlled substance as published by the Director of the Arkansas Department of Health pursuant to A.C.A. 5-64-101 et seq.
- (4) "Initial drug test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent, or shall use a more accurate scientifically accepted method approved by the Arkansas Department of Health as such more accurate technology becomes available in a

1 cost-effective form.

2 (5) "Confirmation test", "Confirmed test", or "confirmed drug test"
3 means a second analytical procedure used to identify the presence of a
4 specific drug or metabolite in a specimen. The confirmation test must be
5 different in scientific principle from that of the initial test procedure.
6 This confirmation method must be capable of providing requisite specificity,
7 sensitivity, and quantitative accuracy.

8 (6) "Chain of custody" refers to the methodology of tracking specified
9 materials or substances for the purpose of maintaining control and
10 accountability from initial collection to final disposition for all such
11 materials or substances and providing for accountability at each stage in
12 handling, testing, storing specimens, and reporting of test results.

13 (7) "Job applicant" means a person who has applied for a special risk
14 or safety-sensitive position with an employer and has been offered employment
15 conditioned upon successfully passing a drug test.

16 (8) "Employee" means any person who works for salary, wages, or other
17 remuneration for an employer.

18 (9) "Employer" means any person, partnership, company, or others that
19 employs individuals for salary, wages, or other remuneration.

20 (10) "Prescription or nonprescription medication" means a drug or
21 medication obtained pursuant to a prescription from a licensed physician or a
22 medication that is authorized pursuant to federal or state law for general
23 distribution and use without a prescription in the treatment of human
24 diseases, ailments, or injuries.

25 (11) "Reasonable suspicion drug testing" means drug testing based on a
26 belief that an employee is using or has used drugs in violation of the
27 employer's policy drawn from specific objective and articulable facts and
28 reasonable inferences drawn from those facts in light of experience.
29 Reasonable suspicion drug testing shall not be performed except upon the
30 recommendation of a supervisor who is at least one level of supervision higher
31 than the immediate supervisor of the employee in question. Among other
32 things, such facts and inferences may be based upon:

33 (A) Observable phenomena while at work, such as direct
34 observation of drug use or of the physical symptoms or manifestations of being
35 under the influence of a drug.

1 (B) Abnormal conduct or erratic behavior while at work or a
2 significant deterioration in work performance.

3 (C) A report of drug use, provided by a reliable and credible
4 source, which has been independently corroborated.

5 (D) Evidence that an individual has tampered with a drug test
6 during his employment with the current employer.

7 (E) Evidence that an employee has caused, or contributed to, an
8 accident while at work.

9 (F) Evidence that an employee has used, possessed, sold,
10 solicited, or transferred drugs while working or while on the employer's
11 premises or while operating the employer's vehicle, machinery, or equipment.

12 (12) "Specimen" means a tissue or product of the human body capable of
13 revealing the presence of drugs or their metabolites.

14 (13) "Employee assistance program" means an established program for
15 employee assessment, counseling, and possible referral to an alcohol and drug
16 rehabilitation program.

17 (14) "Safety-sensitive position" means any position, including a
18 supervisory or management position, in which a drug impairment would
19 constitute an immediate and direct threat to public health or safety.

20 (15) "Special risk" means employees who are required as a condition of
21 employment to be certified for such employment under any existing Arkansas
22 law.

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24 SECTION 5. NOTICE TO EMPLOYEES. (a) Employers with no drug testing
25 program shall ensure that at least sixty (60) days elapse between a general
26 one-time notice to all employees that a drug testing program is being
27 implemented and the beginning of actual drug testing. Employers with drug
28 testing programs in place prior to the effective date of this act are not
29 required to provide a sixty (60) day notice period.

30 (b) Prior to testing, all employees and job applicants for employment
31 shall be given a written policy statement from the employer which contains:

32 (1) A general statement of the employer's policy on employee drug
33 use, which shall identify:

34 (A) The types of testing an employee or job applicant may
35 be required to submit to, including reasonable suspicion or other basis; and

1 (B) The actions the employer may take against an employee
2 or job applicant on the basis of a positive confirmed drug test result.

3 (2) A statement advising the employee or job applicant of the
4 existence of this act.

5 (3) A general statement concerning confidentiality.

6 (4) Procedures for employees and job applicants to confidentially
7 report the use of prescription or non-prescription medications both before and
8 after being tested. Additionally, employees and job applicants shall receive
9 notice of the most common medications by brand name or common name, as
10 applicable, as well as by chemical name, which may alter or affect a drug
11 test. A list of such applicable medications shall be developed by the
12 Arkansas Department of Health.

13 (5) The consequences of refusing to submit to a drug test.

14 (6) Names, addresses, and telephone numbers of employee
15 assistance programs and local alcohol and drug rehabilitation programs.

16 (7) A statement that an employee or job applicant who receives a
17 positive confirmed drug test result may contest or explain the result to the
18 employer within five (5) working days after written notification of the
19 positive test result. If an employee or job applicant's explanation or
20 challenge is unsatisfactory to the employer, the person may contest the drug
21 test result as provided by section 15.

22 (8) A statement informing the employee or job applicant of his
23 responsibility to notify the laboratory of any civil actions brought pursuant
24 to this act.

25 (9) A list of all drugs for which the employer will test,
26 described by brand names or common names, as applicable, as well as by
27 chemical names.

28 (10) A statement notifying employees and job applicants of their
29 right to consult the testing laboratory for technical information regarding
30 prescription and nonprescription medication.

31 (c) An employer shall include notice of drug testing on vacancy
32 announcements for those positions where drug testing is required. A notice of
33 the employer's drug testing policy shall also be posted in an appropriate and
34 conspicuous location on the employer's premises, and copies of the policy
35 shall be made available for inspection by the general public during regular

1 business hours in the employers' personnel office or other suitable locations.
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3 SECTION 6. TYPES OF TESTING. An employer is authorized, but not
4 required, to conduct the following types of drug tests:

5 (a) Job applicant testing. - An employer may require job applicants to
6 submit to a drug test and may use a refusal to submit to a drug test or a
7 positive confirmed drug test as a basis for refusal to hire the job applicant.

8 (b) Reasonable suspicion. - An employer may require an employee to
9 submit to reasonable suspicion drug testing.

10 (c) Followup testing. - If the employee in the course of employment
11 enters an employee assistance program for drug-related problems, or an alcohol
12 and drug rehabilitation program, the employer may require said employee to
13 submit to a drug test as a followup to such program, and on a quarterly,
14 semiannual, or annual basis for up to two (2) years thereafter.

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16 SECTION 7. COLLECTION PROCEDURES. All specimen collection and testing
17 for drugs under this act shall be performed in accordance with the following
18 procedures:

19 (a) A sample shall be collected with due regard to the privacy of the
20 individual providing the sample, and in a manner reasonably calculated to
21 prevent substitution or contamination of the sample.

22 (b) Specimen collection shall be documented, and the documentation
23 procedures shall include:

24 (1) Labeling of specimen containers so as to reasonably preclude
25 the likelihood of erroneous identification of test results.

26 (2) A form for the employee or job applicant to provide any
27 information he considers relevant to the test, including identification of
28 currently or recently used prescription or nonprescription medication, or
29 other relevant medical information. Such form shall provide notice of the
30 most common medications by brand name or common name, as applicable, as well
31 as by chemical name, which may alter or affect a drug test. The providing of
32 information shall not preclude the administration of the drug test, but shall
33 be taken into account in interpreting any positive confirmed results.

34 (c) Specimen collection, storage, and transportation to the testing
35 site shall be performed in a manner which will reasonably preclude specimen

1 contamination or adulteration.

2 (d) Each initial and confirmation test conducted under this act, not
3 including the taking or collecting of a specimen to be tested, shall be
4 conducted by a licensed laboratory as described in section 12.

5 (e) A specimen for a drug test may be taken or collected by any of the
6 following persons:

7 (1) A physician, a physician's assistant, a registered
8 professional nurse, a licensed practical nurse, a nurse practitioner, or a
9 certified paramedic who is present at the scene of an accident for the purpose
10 of rendering emergency medical service or treatment.

11 (2) A qualified person employed by a licensed laboratory.

12 (f) A person who collects or takes a specimen for a drug test conducted
13 pursuant to this act shall collect an amount sufficient for two (2) drug tests
14 as determined by the Department of Health.

15 (g) Any drug test conducted or requested by an employer may occur
16 before, during, or immediately after the regular work period of the employee,
17 and shall be deemed to be performed during work time for the purposes of
18 determining compensation and benefits for the employee.

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20 SECTION 8. PROCEDURE FOR POSITIVE TEST RESULT. (a) Every specimen
21 that produces a positive confirmed result shall be preserved by the licensed
22 laboratory that conducts the confirmation test for a period of at least two
23 hundred ten (210) days from the time the results of the positive confirmation
24 test are mailed or otherwise delivered to the employer.

25 (b) If an employee or job applicant undertakes a legal challenge to the
26 test result, the employee or job applicant shall notify the laboratory and the
27 sample shall be retained by the laboratory until the case is settled.

28 (c) During the one hundred eighty (180) day period after written
29 notification of a positive test result, the employee or job applicant who has
30 provided the specimen shall be permitted by the employer to have a portion of
31 the specimen retested, at the employee or job applicant's expense, at another
32 laboratory, licensed and approved by the Department of Health, chosen by the
33 employee or job applicant.

34 (d) The second laboratory must test at equal or greater sensitivity
35 for the drug in question as the first laboratory.

1 (e) The first laboratory which performed the test for the employer
2 shall be responsible for the transfer of the portion of the specimen to be
3 retested, and for the integrity of the chain of custody during such transfer.

4 (f) An employer who performs drug testing or specimen collection shall
5 use chain-of-custody procedures as established by the Department of Health to
6 ensure proper recordkeeping, handling, labeling and identification of all
7 specimens to be tested.

8 (g) An employer shall pay the cost of all drug tests, initial and
9 confirmation, which he requires of his employees.

10 (h) An employee or job applicant shall pay the costs of any additional
11 drug tests not required by the employer.

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13 SECTION 9. (a) Within five (5) working days after receipt of a
14 positive confirmed test result from the testing laboratory, an employer shall
15 inform an employee or job applicant in writing of such positive test result,
16 the consequences of such results, and the options available to the employee or
17 job applicant.

18 (b) The employer shall provide to the employee or job applicant, upon
19 request, a copy of the test results.

20 (c) Within five (5) working days after receiving notice of a positive
21 confirmed test result, the employee or job applicant may submit information to
22 an employer explaining or contesting the test results, and why the results do
23 not constitute a violation of the employer's policy.

24 (d) If an employee or job applicant's explanation or challenge of the
25 positive test results is unsatisfactory to the employer, a written explanation
26 as to why the employee or job applicant's explanation is unsatisfactory, along
27 with the report of positive results, shall be provided by the employer to the
28 employee or job applicant. All such documentation shall be kept confidential
29 and, if the employer is a public official or governmental agency subject to
30 the provisions of A.C.A. §25-19-101 et seq., such documentation shall be
31 exempt from the provisions of A.C.A. §25-19-101 et seq., pursuant to section
32 (11) and shall be retained by the employer for at least one (1) year.

33 (e) No employer may discharge, discipline, refuse to hire, discriminate
34 against, or request or require rehabilitation of an employee or job applicant
35 on the sole basis of a positive test result that has not been verified by a

1 confirmation test.

2 (f) In addition to the limitation under subsection (e):

3 (1) Except as provided in paragraph (3), no employer may
4 discharge, discipline, or discriminate against an employee on the sole basis
5 of the employee's first positive confirmed drug test, unless the employer has
6 first given the employee an opportunity to participate in, at the employee's
7 own expense or pursuant to coverage under a health insurance plan, an employee
8 assistance program or an alcohol and drug rehabilitation program, and:

9 (A) The employee has either refused to participate in the
10 employee assistance program or the alcohol and drug rehabilitation program or
11 has failed to successfully complete such program, as evidenced by withdrawal
12 from the program before its completion or a report from the program indicating
13 unsatisfactory compliance, or by a positive test result on a confirmation test
14 after completion of the program; or

15 (B) The employee has failed or refused to sign a written
16 consent form allowing the employer to obtain information regarding the
17 progress and successful completion of an employee assistance program or an
18 alcohol and drug rehabilitation program.

19 (2) An employee in a safety-sensitive position shall be placed by
20 the employer in a non-safety-sensitive position, or if such position is
21 unavailable, on leave status while participating in an employee assistance
22 program or an alcohol and drug rehabilitation program. If placed on leave
23 status without pay, the employee shall be permitted to use any accumulated
24 leave credits prior to being placed on leave without pay.

25 (3) A special risk employee may be discharged or disciplined for
26 the first positive confirmed drug test result when illicit drugs are
27 confirmed. No special risk employee shall be permitted to continue work in a
28 safety-sensitive position, but may be placed either in a non-safety-sensitive
29 position or on leave status while participating in an employee assistance
30 program or an alcohol and drug rehabilitation program.

31 (g) Upon successful completion of an employee assistance program or an
32 alcohol and drug rehabilitation program, the employee shall be reinstated to
33 the same or equivalent position that was held prior to such rehabilitation.

34 (h) No employer may discharge, discipline, or discriminate against an
35 employee, or refuse to hire a job applicant, on the basis of any prior medical

1 history revealed to the employer pursuant to this act.

2 (i) No employer shall discharge, discipline, or discriminate against an
3 employee solely upon voluntarily seeking treatment, while under the employ of
4 the employer, for a drug-related problem if the employee has not previously
5 tested positive for drug use, entered an employee assistance program for drug-
6 related problems, or entered an alcohol and drug rehabilitation program.
7 However, special risk employees may be subject to discharge or disciplinary
8 action when the presence of illicit drugs is confirmed.

9 (j) Where testing is conducted based on reasonable suspicion, each
10 employer shall promptly detail in writing the circumstances which formed the
11 basis of the determination that reasonable suspicion existed to warrant the
12 testing. A copy of this documentation shall be given to the employee upon
13 request and the original documentation shall be kept confidential and, if the
14 employer is a public official or governmental agency subject to the provisions
15 of A.C.A. §25-19-101 et seq., such documentation shall be exempt from the
16 provisions of A.C.A. §25-19-101 et seq. pursuant to section 12 and retained by
17 the employer for at least one (1) year.

18 (k) If an employee is unable to participate in outpatient
19 rehabilitation, the employee may be placed on leave status while participating
20 in an employee assistance program or an alcohol and drug rehabilitation
21 program. If placed on leave-without-pay status, the employee shall be
22 permitted to use any accumulated leave credits prior to being placed on leave-
23 without-pay. Upon successful completion of an employee assistance program or
24 an alcohol and drug rehabilitation program, the employee shall be reinstated
25 to the same or equivalent position that was held prior to such rehabilitation.

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27 SECTION 10. CONFIRMATION TESTING. (a) If an initial drug test is
28 negative, the employer may in its sole discretion and at the employer's
29 expense seek a confirmation test.

30 (b) Only licensed laboratories as described in section 13 shall conduct
31 confirmation drug tests.

32 (c) All positive initial tests shall be confirmed using gas
33 chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate
34 scientifically accepted method approved by the Department of Health as such
35 technology becomes available in a cost effective form.

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2 SECTION 11. EMPLOYER PROTECTION. (a) An employer who discharges or
3 disciplines an employee or refuses to hire a job applicant in compliance with
4 this act shall be considered to have discharged, disciplined, or refused to
5 hire for cause.

6 (b) No physician-patient relationship is created between an employee or
7 job applicant and an employer or any person performing or evaluating a drug
8 test solely by the establishment, implementation, or administration of a drug
9 testing program.

10 (c) Nothing in this act shall be construed to prevent an employer from
11 establishing reasonable work rules related to employee possession, use, sale,
12 or solicitation of drugs, including convictions for drug-related offenses, and
13 taking action based upon a violation of any of those rules.

14 (d) Nothing in this act shall be construed to operate retroactively,
15 and nothing in this act shall abrogate the right of an employer under state
16 law to conduct drug tests prior to July 1, 1991. A drug test conducted by an
17 employer prior to July 1, 1991, is not subject to this act.

18 (e) If an employee or job applicant refuses to submit to a drug test,
19 the employer shall not be barred from discharging or disciplining the
20 employee, or from refusing to hire the job applicant. However, nothing in
21 this paragraph shall abrogate the rights and remedies of the employee or job
22 applicant as otherwise provided in this act.

23 (f) An employer who refuses to hire a job applicant based on a positive
24 confirmed drug test result shall not be required to hold the employment
25 position vacant while the job applicant pursues any remedies under this act.
26 However, should the job applicant prevail in his actions, the employer shall
27 provide him the opportunity of employment in the next available comparable
28 position.

29 (g) An employer shall refer an employee with a first-time positive
30 confirmed drug test result to an employee assistance program or an alcohol and
31 drug rehabilitation program, unless such employee is discharged as provided in
32 section 9(f)(3) the results of a subsequent confirmed drug test are positive,
33 the employer may discharge or discipline the employee.

34 (h) Nothing in this act shall be construed to prohibit an employer from
35 conducting medical screening or other tests required by any statute, rule, or

1 regulation for the purpose of monitoring exposure of employees to toxic or
2 other unhealthy substances in the workplace or in the performance of job
3 responsibilities. Such screening or tests shall be limited to the specific
4 substances expressly identified in the applicable statute, rule, or
5 regulation, unless prior written consent of the employee is obtained for other
6 tests.

7 (i) An employer shall place a safety-sensitive position employee whose
8 drug test result is confirmed positive in a non-safety-sensitive position, or
9 if such a position is unavailable on leave status while the employee
10 participates in an employee assistance program or an alcohol and drug
11 rehabilitation program. If placed on leave status without pay, the employee
12 shall be permitted to use any accumulated leave credits prior to being placed
13 on leave-without-pay.

14 (j) A special risk employee may be discharged or disciplined on the
15 first positive confirmed drug test result when illicit drugs are confirmed.
16 No special risk employee shall be permitted to continue work in a safety-
17 sensitive position, but may be placed either in a non-safety sensitive
18 position, or on leave status while participating in an employee assistance
19 program or an alcohol and drug rehabilitation program.

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21 SECTION 12. CONFIDENTIALITY. (a) All information, interviews,
22 reports, statements, memoranda, and drug test results, written or otherwise,
23 received by the employer through a drug testing program are confidential
24 communications and, if the employer is a public official or governmental
25 agency subject to the provisions of A.C.A. §25-19-101 et seq., such
26 documentation shall be exempt from the provisions of A.C.A. §25-19-101 et seq.
27 and may not be used or received in evidence, obtained in discovery, or
28 disclosed in any public or private proceedings, except in accordance with this
29 act.

30 (b) Employers, laboratories, employee assistance programs, drug and
31 alcohol rehabilitation programs, and their agents who receive or have access
32 to information concerning drug test results shall keep all information
33 confidential. Release of such information under any other circumstance shall
34 be solely pursuant to a written consent form signed voluntarily by the person
35 tested, except where such release is compelled by a hearing officer or a court

1 of competent jurisdiction pursuant to an appeal taken under this act or where
2 deemed appropriate by a professional or occupational licensing board in a
3 related disciplinary proceeding. The consent form must contain, at a minimum:

4 (1) The name of the person who is authorized to obtain the
5 information.

6 (2) The purpose of the disclosure.

7 (3) The precise information to be disclosed.

8 (4) The duration of the consent.

9 (5) The signature of the person authorizing release of the
10 information.

11 (c) Information on drug test results shall not be released or used in
12 any criminal proceeding against the employee or job applicant. Information
13 released contrary to this act shall be inadmissible as evidence in any such
14 criminal proceeding.

15 (d) Nothing herein shall be construed to prohibit certifying bodies of
16 special risk employees from receiving information on positive confirmed drug
17 test results for the purpose of reviewing certification.

18 (e) Nothing herein shall be construed to prohibit the employer, agent
19 of the employer or laboratory conducting a drug test from having access to
20 employee drug test information when consulting with legal counsel in
21 connection with actions brought under or related to this act or where the
22 information is relevant to its defense in a civil or administrative matter.

23

24 SECTION 13. DRUG TESTING STANDARDS; LABORATORIES. (a) No laboratory
25 may analyze initial or confirmation drug specimens unless:

26 (1) The laboratory is licensed and approved by the Department of
27 Health using criteria established by the State Board of Health provided any
28 laboratory certified by the National Institute on Drug Abuse shall be deemed
29 to meet State Board of Health requirements and shall be licensed.

30 (2) The laboratory has written procedures to ensure chain of
31 custody.

32 (3) The laboratory follows proper quality control procedure,
33 including, but not limited to:

34 (A) The use of internal quality controls including the use
35 of samples of known concentrations which are used to check the performance and

1 calibration of testing equipment, and periodic use of blind samples for
2 overall accuracy.

3 (B) An internal review and certification process for drug
4 test results, conducted by a person qualified to perform that function in the
5 testing laboratory.

6 (C) Security measures implemented by the testing laboratory
7 to preclude adulteration of specimens and drug test results.

8 (D) Other necessary and proper actions taken to ensure
9 reliable and accurate drug test results.

10 (b) A laboratory shall disclose to the employer a written test result
11 report within seven (7) working days after receipt of the sample. All
12 laboratory reports of a drug test result shall, at a minimum, state:

13 (1) The name and address of the laboratory which performed the
14 test and the positive identification of the person tested.

15 (2) Positive results on confirmation tests only, or negative
16 results, as applicable.

17 (3) A list of the drugs for which the drug analyses were
18 conducted.

19 (4) The type of tests conducted for both initial and confirmation
20 tests and the minimum cut-off levels of the tests.

21 (5) Any correlation between medication reported by the employee
22 or job applicant pursuant to section 7(b)(2) and a positive confirmed drug
23 test result. No report shall disclose the presence or absence of any drug
24 other than a specific drug and its metabolites listed pursuant to this act.

25 (c) The laboratory shall submit to the Department of Health a monthly
26 report with statistical information regarding the testing of employees and job
27 applicants. The reports shall include information on the methods of analyses
28 conducted, the drugs tested for, the number of positive and negative results
29 for both initial and confirmation tests, and any other information deemed
30 appropriate by the Department of Health. No monthly report shall identify
31 specific employees or job applicants.

32 (d) Laboratories shall provide technical assistance to the employer,
33 employee, or job applicant for the purpose of interpreting any positive
34 confirmed test results which could have been caused by prescription or
35 nonprescription medication taken by the employee or job applicant.

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SECTION 14. RULES. The State Board of Health is hereby authorized to promulgate rules for modeling the state drug testing program, concerning, but not limited to:

(1) Standards for drug testing laboratory licensing, suspension, and revocation of a license.

(2) Body specimens and minimum specimen amounts which are appropriate for drug testing.

(3) Methods of analysis and procedures to ensure reliable drug testing results, including standards for initial tests and confirmation tests.

(4) Minimum cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result.

(5) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens being tested.

(6) Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

(7) A list of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test.

SECTION 15. REMEDIES. (a) Any person alleging a violation of the provisions of this act shall institute a civil action for injunctive relief or damages, or both, in a court of competent jurisdiction within one hundred eighty (180) days of the alleged violation or be barred from obtaining the following relief.

(b) Relief shall be limited to:

1. An order restraining the continued violation of this act.

2. An award of the costs of litigation, expert witness fees, reasonable attorney's fees, and noneconomic damages provided that damages shall be limited to the recovery of damages directly resulting from injury or loss caused by each violation of this act.

(c) Any employer who complies with the provisions of this act shall be without liability for all civil actions arising from any drug testing program or procedure performed in compliance with this act.

(d) Pursuant to any claim alleging a violation of this act, including a

1 claim under this act where it is alleged that an employer's action with
2 respect to a person was based on an incorrect test result, there shall be a
3 rebuttable presumption that the test was valid if the employer complied with
4 the provisions of this act.

5 (e) No cause of action shall arise in favor of any person based upon
6 the failure of an employer to establish a program or policy for drug testing.
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8 SECTION 16. FEDERAL COMPLIANCE. The drug testing procedures provided
9 in this act do not apply where the specific work performed requires employees
10 or job applicants to be subject to drug testing pursuant to:

11 (1) Federal regulations that specifically preempt state and local
12 regulation of drug testing with respect to such employees and job applicants;

13 (2) Federal regulations or requirements enacted or implemented in
14 connection with the operation of federally regulated facilities;

15 (3) Federal contracts where the drug testing is conducted for safety,
16 or protection of sensitive or proprietary data or national security; or

17 (4) State agency rules that adopt federal regulations applicable to the
18 interstate component of a federally regulated activity.
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20 SECTION 17. LICENSE FEE. (a) Fees from licensure of drug testing
21 laboratories shall be sufficient to carry out the responsibilities of the
22 department for the regulation of drug testing laboratories.

23 (b) The Department of Health shall collect fees for all licenses issued
24 under this part.

25 (c) The fee schedule for fiscal year 1991-92 shall not exceed the
26 maximum fees provided herein and such schedule adopted by rule by the
27 department pursuant to this part.

28 (d) Each nonrefundable fee shall be due at the time of application and
29 shall be payable to the department to be deposited in a trust fund
30 administered by the department and used only for the purposes of this act.

31 (e) The fee for licensure as a drug testing laboratory, an annual fee
32 of not less than five thousand dollars (\$5,000) or more than seven thousand
33 dollars (\$7,000) per fiscal year; for licensure as a drug testing laboratory
34 which meets National Institute on Drug Abuse requirements, the annual fee
35 shall be no more than two thousand dollars (\$2,000); for late filing of an

1 application for renewal, an additional fee of five hundred dollars (\$500) per
2 day shall be charged.

3

4 SECTION 18. All provisions of this act of a general and permanent
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
6 Code Revision Commission shall incorporate the same in the Code.

7

8 SECTION 19. If any provision of this act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 act are declared to be severable.

13

14 SECTION 20. All laws and parts of laws in conflict with this act are
15 hereby repealed.