

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas As Engrossed: S3/4/99 S3/9/99 S3/10/99 S3/18/99 S3/22/99 H3/26/99

2 82nd General Assembly

A Bill

Act 1552 of 1999

3 Regular Session, 1999

SENATE BILL 773

4

5 By: Senators Bisbee, *Hoofman*

6 By: Representatives Bledsoe, *Biggs, Dees, Files, Hausam, Hickinbotham, Hunt, Magnus, Rackley*

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For An Act To Be Entitled

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"AN ACT TO ESTABLISH A VOLUNTARY PROGRAM FOR DRUG
FREE WORKPLACES; AND FOR OTHER PURPOSES."

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Subtitle

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"TO ESTABLISH A VOLUNTARY PROGRAM FOR
DRUG FREE WORKPLACES."

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

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SECTION 1. Legislative intent.

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(a) It is the intent of the General Assembly to promote drug-free workplaces in order that employers in this state may be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the General Assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

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(b) If an employer implements a drug-free workplace program in accordance with this act which includes notice, education and procedural requirements for testing for drugs and alcohol pursuant to rules developed by the Workers' Health and Safety Division of the Workers' Compensation Commission, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol and, if a drug or alcohol is found to be

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1 present in the employee's system at a level prescribed by statute or by rule
2 adopted pursuant to this act, the employee may be terminated and forfeits
3 eligibility for workers' compensation medical and indemnity benefits.
4 However, a drug-free workplace program must require the covered employer to
5 notify all employees that it is a condition of employment for an employee to
6 refrain from reporting to work or working with the presence of drugs or
7 alcohol in the employee's body and, if an injured employee refuses to submit
8 to a test for drugs or alcohol, the employee forfeits eligibility for
9 workers' compensation medical and indemnity benefits. In the event of
10 termination, an employee shall be entitled to contest the test results before
11 the Department of Labor.

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13 SECTION 2. Applicability.

14 Section 3 through 11 inclusive, apply to a drug-free workplace program
15 implemented pursuant to rules adopted by the Director of the division. The
16 application of the provisions of this act is subject to the provisions of any
17 applicable collective bargaining agreement. Nothing in the program authorized
18 by this act is intended to authorize any employer to test any applicant or
19 employee for alcohol or drugs in any manner inconsistent with federal
20 constitutional or statutory requirements, including those imposed by the
21 Americans with Disabilities Act and the National Labor Relations Act.

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23 SECTION 3. Definitions.

24 As used in this act, unless the context otherwise requires:

25 (1) "Chain of custody" refers to the methodology of tracking specified
26 materials or substances for the purpose of maintaining control and
27 accountability from initial collection to final disposition for all such
28 materials or substances, and providing for accountability at each stage in
29 handling, testing and storing specimens and reporting test results;

30 (2) "Confirmation test," "confirmed test" or "confirmed drug or alcohol
31 test" means a second analytical procedure used to identify the presence of a
32 specific drug or alcohol or metabolite in a specimen, which test must be
33 different in scientific principle from that of the initial test procedure and
34 must be capable of providing requisite specificity, sensitivity and
35 quantitative accuracy;

36 (3) "Covered employer" means a person or entity that employs a person,

1 is covered by the Workers' Compensation Law, maintains a drug-free workplace
2 pursuant to this act and includes on the posting required by § 5 a specific
3 statement that the policy is being implemented pursuant to the provisions of
4 this act. This act shall have no effect on employers who do not meet this
5 definition;

6 (4) "Director" means the Director of the Workers' Health and Safety
7 Division of the Workers' Compensation Commission;

8 (5) "Division" means the Workers' Health and Safety Division of the
9 Workers' Compensation Commission;

10 (6) "Drug" means any controlled substance subject to testing pursuant
11 to drug testing regulations adopted by the United States Department of
12 Transportation. A covered employer shall test an individual for all such
13 drugs in accordance with the provisions of this act. The director may add
14 additional drugs by rule in accordance with § 11;

15 (7) "Drug or alcohol rehabilitation program" means a service provider
16 that provides confidential, timely and expert identification, assessment and
17 resolution of employee drug or alcohol abuse;

18 (8) "Drug test" or "test" means any chemical, biological or physical
19 instrumental analysis administered by a laboratory authorized to do so
20 pursuant to this act, for the purpose of determining the presence or absence
21 of a drug or its metabolites pursuant to regulations governing drug testing
22 adopted by the United States Department of Transportation or such other
23 recognized authority approved by rule by the director;

24 (9) "Employee" means any person who works for salary, wages or other
25 remuneration for a covered employer;

26 (10) "Employee assistance program" means an established program capable
27 of providing expert assessment of employee personal concerns; confidential
28 and timely identification services with regard to employee drug or alcohol
29 abuse; referrals of employees for appropriate diagnosis, treatment and
30 assistance; and follow-up services for employees who participate in the
31 program or require monitoring after returning to work. If, in addition to the
32 above activities, an employee assistance program provides diagnostic and
33 treatment services, these services shall in all cases be provided by the
34 program;

35 (11) "Employer" means a person or entity that employs a person and that
36 is covered by the Workers' Compensation Law;

1 (12) "Initial drug or alcohol test" means a procedure that qualifies as
2 a "screening test" or "initial test" pursuant to regulations governing drug
3 or alcohol testing adopted by the United States Department of Transportation
4 or such other recognized authority approved by rule by the director;

5 (13) "Job applicant" means a person who has applied for a position with
6 a covered employer and who has been offered employment conditioned upon
7 successfully passing a drug or alcohol test, and may have begun work pending
8 the results of the drug or alcohol test;

9 (14) "Drug Testing Review Officer" or "DRTTO" means a licensed
10 physician, pharmacist, pharmacologist or similarly qualified individual,
11 employed with or contracted with a covered employer, who has knowledge of
12 substance abuse disorders, laboratory testing procedures and chain of custody
13 collection procedures; who verifies positive, confirmed test results; and who
14 has the necessary medical training to interpret and evaluate an employee's
15 positive test result in relation to the employee's medical history or any
16 other relevant biomedical information;

17 (15) "Reasonable-suspicion drug testing" means drug or alcohol testing
18 based on a belief that an employee is using or has used drugs or alcohol in
19 violation of the covered employer's policy drawn from specific objective and
20 articulable facts and reasonable inferences drawn from those facts in light
21 of experience. Among other things, such facts and inferences may be based
22 upon:

23 (A) Observable phenomena while at work, such as direct
24 observation of drug or alcohol use or of the physical symptoms or
25 manifestations of being under the influence of a drug or alcohol;

26 (B) Abnormal conduct or erratic behavior while at work or a
27 significant deterioration in work performance;

28 (C) A report of drug or alcohol use, provided by a reliable and
29 credible source;

30 (D) Evidence that an individual has tampered with a drug or
31 alcohol test during employment with the current covered employer;

32 (E) Information that an employee has caused, contributed to or
33 been involved in an accident while at work; or

34 (F) Evidence that an employee has used, possessed, sold,
35 solicited or transferred drugs or used alcohol while working or while on the
36 covered employer's premises or while operating the covered employer's

1 vehicle, machinery or equipment;

2 (16) "Safety-sensitive position" means a position involving a safety-
3 sensitive function pursuant to regulations governing drug or alcohol testing
4 adopted by the United States Department of Transportation. For drug-free
5 workplaces, the director is authorized to promulgate rules expanding the
6 scope of safety-sensitive position to cases where impairment may present a
7 clear and present risk to co-workers or other persons. "Safety-sensitive
8 position" means, with respect to any employer, a position in which a drug or
9 alcohol impairment constitutes an immediate and direct threat to public
10 health or safety, such as a position that requires the employee to carry a
11 firearm, perform life-threatening procedures, work with confidential
12 information or documents pertaining to criminal investigations or work with
13 controlled substances; or a position in which a momentary lapse in attention
14 could result in injury or death to another person;

15 (17) "Specimen" means tissue, fluid or a product of the human body
16 capable of revealing the presence of alcohol or drugs or their metabolites;

17 (18) "Alcohol" has the same meaning in this act when used in the
18 federal regulations describing the procedures used for testing of alcohol by
19 programs operating pursuant to the authority of the United States Department
20 of Transportation, currently compiled at 49 C.F.R. part 40; and

21 (19) "Alcohol test" means an analysis of breath, or blood, or any other
22 analysis which determines the presence and level or absence of alcohol as
23 authorized by the United States Department of Transportation in its rules and
24 guidelines concerning alcohol testing and drug testing.

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26 SECTION 4. Testing for drugs or alcohol authorized - Conditions for
27 testing - Effect of failure to comply.

28 (a) A covered employer may test a job applicant for alcohol or for any
29 drug described in § 3; provided, that for public employees such testing shall
30 be limited to the extent permitted by the Arkansas and federal constitutions.
31 A covered employer may test an employee for any drug and at any time set out
32 in §6. An employee who is not in a safety-sensitive position may be tested
33 for alcohol only when the test is based upon reasonable suspicion. An
34 employee in a safety-sensitive position may be tested for alcohol use at any
35 occasion described in § 6(a)(2) - (5) inclusive. In order to qualify as
36 having established a drug-free workplace program which affords a covered

1 employer the ability to qualify for the discounts provided under § 14, all
2 drug or alcohol testing conducted by covered employers shall be in conformity
3 with the standards and procedures established in this act and all applicable
4 rules adopted pursuant to this act. If a covered employer fails to maintain a
5 drug-free workplace program in accordance with the standards and procedures
6 established in this section and in applicable rules, the covered employers
7 shall not be eligible for discounts under § 12. All covered employers
8 qualifying for and receiving discounts provided under § 12 must be reported
9 annually by the insurer to the director.

10 (b) The director shall adopt a form pursuant to rulemaking authority,
11 which form shall be used by the employer to certify compliance with the
12 provisions of this act. Substantial compliance in completing and filing the
13 form with the director shall create a rebuttable presumption that the
14 employer has established a drug-free workplace program and is entitled to the
15 protection and benefit of this act. Prior to granting any premium credit to
16 an employer pursuant to § 12, all insurers shall obtain such form from the
17 employer.

18 (c) It is intended that any employer required to test its employees
19 pursuant to the requirements of any federal statute or regulation shall be
20 deemed to be in conformity with this section as to the employees it is
21 required to test by those standards and procedures designated in that federal
22 statute or regulation. All other employees of such employer shall be subject
23 to testing as provided in this act in order for such employer to qualify as
24 having a drug-free workplace program.

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26 SECTION 5. Written policy statement.

27 (a) One (1) time only, prior to testing, a covered employer shall give
28 all employees and job applicants for employment a written policy statement
29 which contains:

30 (1) A general statement of the covered employer's policy on
31 employee drug or alcohol use, which must identify:

32 (A) The types of drug or alcohol testing an employee or job
33 applicant may be required to submit to, including reasonable-suspicion drug
34 or alcohol testing or drug or alcohol testing conducted on any other basis;
35 and

36 (B) The actions the covered employer may take against an

1 employee or job applicant on the basis of a positive confirmed drug or
2 alcohol test result;

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

5 (3) A general statement concerning confidentiality;

6 (4) Procedures for employees and job applicants to confidentially
7 report to a drug testing officer the use of prescription or nonprescription
8 medications to a drug testing review officer after being tested, but only if
9 the testing process has revealed a positive result for the presence of
10 alcohol or drug use;

11 (5) The consequences of refusing to submit to a drug or alcohol
12 test;

13 (6) A representative sampling of names, addresses and telephone
14 numbers of employee assistance programs and local drug or alcohol
15 rehabilitation programs;

16 (7) A statement that an employee or job applicant who receives a
17 positive confirmed test result may contest or explain the result to the drug
18 testing review officer within five (5) working days after receiving written
19 notification of the test result; that if an employee's or job applicant's
20 explanation or challenge is unsatisfactory to the drug testing review
21 officer, the drug testing review officer shall report a positive test result
22 back to the covered employer; and that a person may contest the drug or
23 alcohol test result pursuant to rules adopted by the division;

24 (8) A statement informing the employee or job applicant of the
25 employee's responsibility to notify the laboratory of any administrative or
26 civil action brought pursuant to this section;

27 (9) A list of all drug classes for which the employer may test;

28 (10) A statement regarding any applicable collective bargaining
29 agreement or contract and any right to appeal to the applicable court;

30 (11) A statement notifying employees and job applicants of their
31 right to consult with a drug testing review officer for technical information
32 regarding prescription or nonprescription medication; and

33 (12) A statement complying with the requirements for notice under
34 § 1.

35 (b) A covered employer shall ensure that at least sixty (60) days
36 elapse between a general one-time notice to all employees that a drug-free

1 workplace program is being implemented and the effective date of the program.

2 (c) A covered employer shall include notice of drug and alcohol testing
3 on vacancy announcements for positions for which drug or alcohol testing is
4 required. A notice of the covered employer's drug and alcohol testing policy
5 must also be posted in an appropriate and conspicuous location on the covered
6 employer's premises, and copies of the policy must be made available for
7 inspection by the employees or job applicants of the covered employer during
8 regular business hours in the covered employer's personnel office or other
9 suitable locations.

10 (d) Subject to any applicable provisions of a collective bargaining
11 agreement or any applicable labor law, a covered employer may rescind its
12 coverage under this act by posting a written and dated notice in an
13 appropriate and conspicuous location on its premises. The notice shall state
14 that the policy will no longer be conducted pursuant to this act. The
15 employer shall also provide sixty (60) days' written notice to the employer's
16 workers' compensation insurer of the rescission. As to employees and job
17 applicants, the rescission shall become effective no earlier than sixty (60)
18 days after the date of the posted notice.

19 (e) The director shall develop a model notice and policy for drug-free
20 workplace programs.

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22 SECTION 6. Required drug or alcohol tests.

23 (a) To the extent permitted by law, a covered employer who voluntarily
24 establishes a drug-free workplace is required to conduct the following types
25 of drug or alcohol tests:

26 (1) Job Applicant Drug and Alcohol Testing. A covered employer
27 must, after a conditional offer of employment, require job applicants to
28 submit to a drug test and may use a refusal to submit to a drug test or a
29 positive confirmed drug test as a basis for refusing to hire a job applicant.
30 An employer may, but is not required to, test job applicants, after a
31 conditional offer of employment, for alcohol. Limited testing of applicants,
32 only if it is based on a reasonable classification basis, is permissible in
33 accordance with division rule;

34 (2) Reasonable-Suspicion Drug and Alcohol Testing. A covered
35 employer must require an employee to submit to reasonable-suspicion drug or
36 alcohol testing. A written record shall be made of the observations leading

1 to a controlled substances reasonable suspicion test within twenty-four (24)
2 hours of the observed behavior or before the results of the test are
3 released, whichever is earlier. A copy of this documentation shall be given
4 to the employee upon request, and the original documentation shall be kept
5 confidential by the covered employer pursuant to § 9 and shall be retained by
6 the covered employer for at least one (1) year;

7 (3)(A) Routine Fitness-For-Duty Drug Testing. A covered employer
8 shall require an employee to undergo drug or alcohol testing if, as a part of
9 the employer's written policy, the test is conducted as a routine part of a
10 routinely scheduled employee fitness-for-duty medical examination, or is
11 scheduled routinely for all members of an employment classification or group;
12 provided, that a public employer may require scheduled, periodic testing only
13 of employees who:

14 (i) Are police or peace officers;

15 (ii) Have drug interdiction responsibilities;

16 (iii) Are authorized to carry firearms;

17 (iv) Are engaged in activities which directly affect
18 the safety of others;

19 (v) Work in direct contact with inmates in the
20 custody of the Department of Correction; or

21 (vi) Work in direct contact with minors who have been
22 adjudicated delinquent or who are in need of supervision in the custody of
23 the Department of Human Services.

24 (B) This subdivision does not require a drug or alcohol
25 test if a covered employer's personnel policy on July 1, 2000, does not
26 include drug or alcohol testing as part of a routine fitness-for-duty medical
27 examination. The test shall be conducted in a nondiscriminatory manner.
28 Routine fitness-for-duty drug or alcohol testing of employees does not apply
29 to volunteer employee health screenings, employee wellness programs, programs
30 mandated by governmental agencies, or medical surveillance procedures that
31 involve limited examinations targeted to a particular body part or function.

32 (4) Follow-Up Drug Testing. If the employee in the course of
33 employment enters an employee assistance program for drug-related or alcohol-
34 related problems, or a drug or alcohol rehabilitation program, the covered
35 employer must require the employee to submit to a drug and alcohol test, as
36 appropriate, as a follow-up to such program, unless the employee voluntarily

1 entered the program. In those cases, the covered employer has the option to
2 not require follow-up testing. If follow-up testing is required, it must be
3 conducted at least once a year for a two-year period after completion of the
4 program. Advance notice of a follow-up testing date must not be given to the
5 employee to be tested; and

6 (5) Post-Accident Testing. After an accident which results in an
7 injury, the covered employer shall require the employee to submit to a drug
8 or alcohol test in accordance with the provisions of this act.

9 (b) This act does not preclude an employer from conducting any lawful
10 testing of employees for drugs or alcohol that is in addition to the minimum
11 testing required under this act.

12
13 SECTION 7. Testing subject to Department of Transportation procedures
14 - Verification - Chain of custody procedures - Costs - Discrimination on
15 grounds of voluntary treatment prohibited.

16 (a) All specimen collection and testing for drugs and alcohol under
17 this act shall be performed in accordance with the procedures provided for by
18 the United States Department of Transportation rules for workplace drug and
19 alcohol testing compiled at 49 C.F.R., Part 40.

20 (b) A covered employer may not discharge, discipline, refuse to hire,
21 discriminate against or request or require rehabilitation of an employee or
22 job applicant on the sole basis of a positive test result that has not been
23 verified by a confirmation test and by a drug testing review officer.

24 (c) A covered employer that performs drug testing or specimen
25 collection shall use chain-of-custody procedures established by regulations
26 of the United States Department of Transportation or such other recognized
27 authority approved by rule by the director governing drug testing.

28 (d) A covered employer shall pay the cost of all drug and alcohol
29 tests, initial and confirmation, which the covered employer requires of
30 employees. An employee or job applicant shall pay the costs of any additional
31 drug or alcohol tests not required by the covered employer.

32 (e) A covered employer shall not discharge, discipline or discriminate
33 against an employee solely upon the employee's voluntarily seeking treatment,
34 while under the employ of the covered employer, for a drug-related or
35 alcohol-related problem if the employee has not previously tested positive
36 for drug or alcohol use, entered an employee assistance program for drug-

1 related or alcohol-related problems or entered a drug or alcohol
2 rehabilitation program. Unless otherwise provided by a collective bargaining
3 agreement, a covered employer may select the employee assistance program or
4 drug or alcohol rehabilitation program if the covered employer pays the cost
5 of the employee's participation in the program. However, nothing in this act
6 is intended to require any employer to permit or provide such a
7 rehabilitation program.

8 (f) If drug or alcohol testing is conducted based on reasonable
9 suspicion, the covered employer shall promptly detail in writing the
10 circumstances which formed the basis of the determination that reasonable
11 suspicion existed to warrant the testing. A copy of this documentation shall
12 be given to the employee upon request and the original documentation shall be
13 kept confidential by the covered employer pursuant to § 9, and shall be
14 retained by the covered employer for at least one (1) year.

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16 SECTION 8. Drug or alcohol use not "handicap" or "disability" - Drug
17 or alcohol use "cause" for firing or failure to hire - Miscellaneous
18 provisions.

19 (a) An employee or job applicant whose drug or alcohol test result is
20 confirmed as positive in accordance with this section shall not, by virtue of
21 the result alone, be deemed to have a "handicap" or "disability" as defined
22 under federal, state or local handicap and disability discrimination laws.

23 (b) A covered employer who discharges or disciplines an employee or
24 refuses to hire a job applicant in compliance with this section is considered
25 to have discharged, disciplined or refused to hire for cause. Nothing in
26 this act shall be construed to amend or affect the employment-at-will
27 doctrine.

28 (c) No physician-patient relationship is created between an employee or
29 job applicant and a covered employer or any person performing or evaluating a
30 drug or alcohol test, solely by the establishment, implementation or
31 administration of a drug or alcohol testing program. This section in no way
32 relieves the person performing the test from responsibility for acts of
33 negligence in performing the tests.

34 (d) Nothing in this section shall be construed to prevent a covered
35 employer from establishing reasonable work rules related to employee
36 possession, use, sale or solicitation of drugs or alcohol, including

1 convictions for offenses relating to drugs or alcohol, and taking action
2 based upon a violation of any of those rules.

3 (e) This section does not operate retroactively, and does not abrogate
4 the right of an employer under state law to lawfully conduct drug or alcohol
5 tests, or implement lawful employee drug-testing programs. The provisions of
6 this act shall not prohibit an employer from conducting any drug or alcohol
7 testing of employees which is otherwise permitted by law.

8 (f) If an employee or job applicant refuses to submit to a drug or
9 alcohol test, the covered employer is not barred from discharging or
10 disciplining the employee or from refusing to hire the job applicant.
11 However, this subsection does not abrogate the rights and remedies of the
12 employee or job applicant as otherwise provided in this section.

13 (g) This section does not prohibit an employer from conducting medical
14 screening or other tests required, permitted or not disallowed by any
15 statute, rule or regulation for the purpose of monitoring exposure of
16 employees to toxic or other unhealthy substances in the workplace or in the
17 performance of job responsibilities. Such screening or testing is limited to
18 the specific substances expressly identified in the applicable statute, rule
19 or regulation, unless prior written consent of the employee is obtained for
20 other tests. Such screening or testing need not be in compliance with the
21 rules adopted by the *division* and Department of Health. If applicable, such
22 drug or alcohol testing must be specified in a collective bargaining
23 agreement as negotiated by the appropriate certified bargaining agent before
24 such testing is implemented.

25 (h) No cause of action shall arise in favor of any person based upon
26 the failure of an employer to establish a program or policy for drug or
27 alcohol testing.

28
29 SECTION 9. Confidentiality of records.

30 (a) All information, interviews, reports, statements, memoranda and
31 drug or alcohol test results, written or otherwise, received by the covered
32 employer through a drug or alcohol testing program are confidential
33 communications and may not be used or received in evidence, obtained in
34 discovery or disclosed in any public or private proceedings, except in
35 accordance with this section or in determining compensability under this act
36 or Act 796 of 1993.

1 (b) Covered employers, laboratories, drug testing review officers,
2 employee assistance programs, drug or alcohol rehabilitation programs and
3 their agents who receive or have access to information concerning drug or
4 alcohol test results shall keep all information confidential. Release of such
5 information under any other circumstance is authorized solely pursuant to a
6 written consent form signed voluntarily by the person tested, unless such
7 release is compelled by a hearing officer or a court of competent
8 jurisdiction pursuant to an appeal taken under this section, relevant to a
9 legal claim asserted by the employee or is deemed appropriate by a
10 professional or occupational licensing board in a related disciplinary
11 proceeding. The consent form must contain, at a minimum:

12 (1) The name of the person who is authorized to obtain the
13 information;

14 (2) The purpose of the disclosure;

15 (3) The precise information to be disclosed;

16 (4) The duration of the consent; and

17 (5) The signature of the person authorizing release of the
18 information.

19 (c) Information on drug or alcohol test results for tests administered
20 pursuant to this act shall not be released or used in any criminal proceeding
21 against the employee or job applicant. Information released contrary to this
22 section is inadmissible as evidence in any such criminal proceeding.

23 (d) This section does not prohibit a covered employer, agent of such
24 employer or laboratory conducting a drug or alcohol test from having access
25 to employee drug or alcohol test information or using such information when
26 consulting with legal counsel in connection with actions brought under or
27 related to this section, or when the information is relevant to its defense
28 in a civil or administrative matter. Neither is this section intended to
29 prohibit disclosure among management as is reasonably necessary for making
30 disciplinary decisions relating to violations of drug or alcohol standards of
31 conduct adopted by an employer.

32 (e) A person who discloses confidential medical records of an
33 employee, except as provided in this act, shall be deemed guilty of a Class C
34 misdemeanor.

35
36 SECTION 10. Licensure of testing laboratory.

1 (a) A laboratory may not analyze initial or confirmation test
2 specimens unless:

3 (1) The laboratory is licensed and approved by the Department of
4 Health, using criteria established by the United States Department of Health
5 and Human Services as guidelines for modeling the state drug free testing
6 program pursuant to this section, or the laboratory is certified by the
7 United States Department of Health and Human Services, the College of
8 American Pathologists or such other recognized authority approved by rule by
9 the
10 director. The Department of Health may license and approve any new
11 laboratory to analyze initial or confirmation test specimens under the
12 provisions of this Act and may charge a fee, not to exceed two thousand
13 dollars (\$2,000), for the license and approval of the new laboratory; and

14 (2) The laboratory complies with the procedures established by
15 the United States Department of Transportation for a workplace drug test
16 program or such other recognized authority approved by the director.

17 (3) The fees set forth in this section shall be cash funds of
18 the Department of Health and shall be deposited as provided in § 19-4-801
19 through § 19-4-816.

20 (b) Confirmation tests may only be conducted by a laboratory that
21 meets the requirements of subsection (a) and is certified by either the
22 Substance Abuse and Mental Health Services Administration or the College of
23 American Pathologists - forensic urine testing programs.

24
25 SECTION 11. Rules and regulations. (a) The director is authorized to
26 adopt rules, using criteria established by the United States Department of
27 Health and Human Services and the United States Department of Transportation
28 as guidelines for modeling the state drug and alcohol testing program,
29 concerning, but not limited to:

30 (1) Standards for licensing drug and alcohol testing laboratories
31 and suspension and revocation of such licenses;

32 (2) Body specimens and minimum specimen amounts that are
33 appropriate for drug or alcohol testing;

34 (3) Methods of analysis and procedures to ensure reliable drug or
35 alcohol testing results, including the use of breathalyzers and standards for
36 initial tests and confirmation tests;

1 (4) Minimum cut-off detection levels for alcohol, each drug or
2 metabolites of such drug for the purposes of determining a positive test
3 result;

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

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

8 (b) The director is authorized to adopt relevant federal rules
9 concerning drug and alcohol testing as a minimum standard for testing
10 procedures and protections. All such rules shall be promulgated in accordance
11 with the Arkansas Administrative Procedure Act.

12 (c) The director shall consider drug testing programs and laboratories
13 operating as a part of the College of American Pathologists - Forensic Urine
14 Drug Testing Programs in issuing guidelines or promulgating rules relative to
15 recognized authorities in drug testing.

16 (d) The director is authorized to set education program requirements
17 for drug-free workplaces by rules promulgated in accordance with the
18 requirements of the Arkansas Administrative Procedure Act. Such requirements
19 shall not be more stringent than the federal requirements for workplaces
20 regulated by United States Department of Transportation rules.

21
22 SECTION 12. Rating plans based on drug-free workplace program
23 participation.

24 The Insurance Commissioner shall approve rating plans for workers'
25 compensation insurance that give specific identifiable consideration in the
26 setting of rates to employers that implement a drug-free workplace program
27 pursuant to rules adopted by the division. The plans must take effect January
28 1, 2000, must be actuarially sound, and must state the savings anticipated to
29 result from such drug testing. The credit shall be at least five percent (5%)
30 unless the Insurance Commissioner determines that five percent (5%) is
31 actuarially unsound. The Insurance Commissioner is also authorized to develop
32 a schedule of premium credits for workers' compensation insurance for
33 employers who have safety programs that attain certain criteria for safety
34 programs. The Insurance Commissioner shall consult with the Director of the
35 Arkansas Department of Labor in setting such criteria.

36

1 SECTION 13. All provisions of this act of a general and permanent
2 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
3 Code Revision Commission shall incorporate the same in the Code.

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5 SECTION 14. If any provision of this act or the application thereof to
6 any person or circumstance is held invalid, such invalidity shall not affect
7 other provisions or applications of the act which can be given effect without
8 the invalid provision or application, and to this end the provisions of this
9 act are declared to be severable.

10
11 SECTION 15. All laws and parts of laws in conflict with this act are
12 hereby repealed.

13 /s/ Bisbee, et al

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16 APPROVED: 4/15/1999
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