

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

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*

7

8

For An Act To Be Entitled

9

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

11

12

Subtitle

13

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

15

16

17

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

18

19

20

SECTION 1. Legislative intent.

21

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

31

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

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

11
12 SECTION 2. Applicability.

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

21
22 SECTION 3. Definitions.

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

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

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

35 (3) "Covered employer" means a person or entity that employs a person,
36 is covered by the Workers' Compensation Law, maintains a drug-free workplace

1 pursuant to this act and includes on the posting required by § 5 a specific
2 statement that the policy is being implemented pursuant to the provisions of
3 this act. This act shall have no effect on employers who do not meet this
4 definition;

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

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

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

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

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

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

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

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

35 (12) "Initial drug or alcohol test" means a procedure that qualifies as
36 a "screening test" or "initial test" pursuant to regulations governing drug or

1 alcohol testing adopted by the United States Department of Transportation or
2 such other recognized authority approved by rule by the director;

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

7 (14) "Drug Testing Review Officer" or "DRT0" means a licensed
8 physician, pharmacist, pharmacologist or similarly qualified individual,
9 employed with or contracted with a covered employer, who has knowledge of
10 substance abuse disorders, laboratory testing procedures and chain of custody
11 collection procedures; who verifies positive, confirmed test results; and who
12 has the necessary medical training to interpret and evaluate an employee's
13 positive test result in relation to the employee's medical history or any
14 other relevant biomedical information;

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

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

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

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

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

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

31 (F) Evidence that an employee has used, possessed, sold, solicited
32 or transferred drugs or used alcohol while working or while on the covered
33 employer's premises or while operating the covered employer's vehicle,
34 machinery or equipment;

35 (16) "Safety-sensitive position" means a position involving a safety-
36 sensitive function pursuant to regulations governing drug or alcohol testing

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

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

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

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

22
23 SECTION 4. Testing for drugs or alcohol authorized - Conditions for
24 testing - Effect of failure to comply.

25 (a) A covered employer may test a job applicant for alcohol or for any
26 drug described in § 3; provided, that for public employees such testing shall
27 be limited to the extent permitted by the Arkansas and federal constitutions.
28 A covered employer may test an employee for any drug and at any time set out
29 in §6. An employee who is not in a safety-sensitive position may be tested
30 for alcohol only when the test is based upon reasonable suspicion. An
31 employee in a safety-sensitive position may be tested for alcohol use at any
32 occasion described in § 6(a)(2) - (5) inclusive. In order to qualify as having
33 established a drug-free workplace program which affords a covered employer the
34 ability to qualify for the discounts provided under § 14, all drug or alcohol
35 testing conducted by covered employers shall be in conformity with the
36 standards and procedures established in this act and all applicable rules

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

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

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

22
23 SECTION 5. Written policy statement.

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

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

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

32 (B) The actions the covered employer may take against an
33 employee or job applicant on the basis of a positive confirmed drug or alcohol
34 test result;

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

1 (3) A general statement concerning confidentiality;

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

7 (5) The consequences of refusing to submit to a drug or alcohol
8 test;

9 (6) A representative sampling of names, addresses and telephone
10 numbers of employee assistance programs and local drug or alcohol
11 rehabilitation programs;

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

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

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

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

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

29 (12) A statement complying with the requirements for notice under
30 § 1.

31 (b) A covered employer shall ensure that at least sixty (60) days elapse
32 between a general one-time notice to all employees that a drug-free workplace
33 program is being implemented and the effective date of the program.

34 (c) A covered employer shall include notice of drug and alcohol testing
35 on vacancy announcements for positions for which drug or alcohol testing is
36 required. A notice of the covered employer's drug and alcohol testing policy

1 must also be posted in an appropriate and conspicuous location on the covered
2 employer's premises, and copies of the policy must be made available for
3 inspection by the employees or job applicants of the covered employer during
4 regular business hours in the covered employer's personnel office or other
5 suitable locations.

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

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

17
18 SECTION 6. Required drug or alcohol tests.

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

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

30 (2) Reasonable-Suspicion Drug and Alcohol Testing. A covered
31 employer must require an employee to submit to reasonable-suspicion drug or
32 alcohol testing. A written record shall be made of the observations leading to
33 a controlled substances reasonable suspicion test within twenty-four (24)
34 hours of the observed behavior or before the results of the test are released,
35 whichever is earlier. A copy of this documentation shall be given to the
36 employee upon request, and the original documentation shall be kept

1 confidential by the covered employer pursuant to § 9 and shall be retained by
2 the covered employer for at least one (1) year;

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

10 (i) Are police or peace officers;

11 (ii) Have drug interdiction responsibilities;

12 (iii) Are authorized to carry firearms;

13 (iv) Are engaged in activities which directly affect
14 the safety of others;

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

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

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

28 (4) Follow-Up Drug Testing. If the employee in the course of
29 employment enters an employee assistance program for drug-related or alcohol-
30 related problems, or a drug or alcohol rehabilitation program, the covered
31 employer must require the employee to submit to a drug and alcohol test, as
32 appropriate, as a follow-up to such program, unless the employee voluntarily
33 entered the program. In those cases, the covered employer has the option to
34 not require follow-up testing. If follow-up testing is required, it must be
35 conducted at least once a year for a two-year period after completion of the
36 program. Advance notice of a follow-up testing date must not be given to the

1 employee to be tested; and

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

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

8
9 SECTION 7. Testing subject to Department of Transportation procedures -
10 Verification - Chain of custody procedures - Costs - Discrimination on grounds
11 of voluntary treatment prohibited.

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

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

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

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

28 (e) A covered employer shall not discharge, discipline or discriminate
29 against an employee solely upon the employee's voluntarily seeking treatment,
30 while under the employ of the covered employer, for a drug-related or alcohol-
31 related problem if the employee has not previously tested positive for drug or
32 alcohol use, entered an employee assistance program for drug-related or
33 alcohol-related problems or entered a drug or alcohol rehabilitation program.
34 Unless otherwise provided by a collective bargaining agreement, a covered
35 employer may select the employee assistance program or drug or alcohol
36 rehabilitation program if the covered employer pays the cost of the employee's

1 participation in the program. However, nothing in this act is intended to
2 require any employer to permit or provide such a rehabilitation program.

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

10
11 SECTION 8. Drug or alcohol use not "handicap" or "disability" - Drug or
12 alcohol use "cause" for firing or failure to hire - Miscellaneous provisions.

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

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

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

27 (d) Nothing in this section shall be construed to prevent a covered
28 employer from establishing reasonable work rules related to employee
29 possession, use, sale or solicitation of drugs or alcohol, including
30 convictions for offenses relating to drugs or alcohol, and taking action based
31 upon a violation of any of those rules.

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

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

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

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

20
21 SECTION 9. Confidentiality of records.

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

29 (b) Covered employers, laboratories, drug testing review officers,
30 employee assistance programs, drug or alcohol rehabilitation programs and
31 their agents who receive or have access to information concerning drug or
32 alcohol test results shall keep all information confidential. Release of such
33 information under any other circumstance is authorized solely pursuant to a
34 written consent form signed voluntarily by the person tested, unless such
35 release is compelled by a hearing officer or a court of competent jurisdiction
36 pursuant to an appeal taken under this section, relevant to a legal claim

1 asserted by the employee or is deemed appropriate by a professional or
2 occupational licensing board in a related disciplinary proceeding. The consent
3 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; and

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

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

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

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

27
28 SECTION 10. Licensure of testing laboratory.

29 (a) A laboratory may not analyze initial or confirmation test specimens
30 unless:

31 (1) The laboratory is licensed and approved by the Department of
32 Health, using criteria established by the United States Department of Health
33 and Human Services as guidelines for modeling the state drug free testing
34 program pursuant to this section, or the laboratory is certified by the United
35 States Department of Health and Human Services, the College of American
36 Pathologists or such other recognized authority approved by rule by the

1 director. The Department of Health may license and approve any new laboratory
2 to analyze initial or confirmation test specimens under the provisions of this
3 Act and may charge a fee, not to exceed two thousand dollars (\$2,000), for the
4 license and approval of the new laboratory; and

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

8 (3) The fees set forth in this section shall be cash funds of the
9 Department of Health and shall be deposited as provided in § 19-4-801 through
10 § 19-4-816.

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

15
16 SECTION 11. Rules and regulations. (a) The director is authorized to
17 adopt rules, using criteria established by the United States Department of
18 Health and Human Services and the United States Department of Transportation
19 as guidelines for modeling the state drug and alcohol testing program,
20 concerning, but not limited to:

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

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

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

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

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

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

35 (b) The director is authorized to adopt relevant federal rules
36 concerning drug and alcohol testing as a minimum standard for testing

1 procedures and protections. All such rules shall be promulgated in accordance
2 with the Arkansas Administrative Procedure Act.

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

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

12
13 SECTION 12. Rating plans based on drug-free workplace program
14 participation.

15 The Insurance Commissioner shall approve rating plans for workers'
16 compensation insurance that give specific identifiable consideration in the
17 setting of rates to employers that implement a drug-free workplace program
18 pursuant to rules adopted by the *division*. The plans must take effect January
19 1, 2000, must be actuarially sound, and must state the savings anticipated to
20 result from such drug testing. The credit shall be at least five percent (5%)
21 unless the Insurance Commissioner determines that five percent (5%) is
22 actuarially unsound. The *Insurance Commissioner* is also authorized to develop
23 a schedule of premium credits for workers' compensation insurance for
24 employers who have safety programs that attain certain criteria for safety
25 programs. The *Insurance Commissioner* shall consult with the *Director of the*
26 *Arkansas Department of Labor* in setting such criteria.

27
28 SECTION 13. All provisions of this act of a general and permanent
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

31
32 SECTION 14. If any provision of this act or the application thereof to
33 any person or circumstance is held invalid, such invalidity shall not affect
34 other provisions or applications of the act which can be given effect without
35 the invalid provision or application, and to this end the provisions of this
36 act are declared to be severable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

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

/s/ Bisbee, et al