

State of Arkansas

77th General Assembly

A Bill

SENATE BILL

Third Extraordinary Session, 1989

CALL ITEM 57

By: Senator Yates

For An Act To Be Entitled

"THE WORKPLACE DRUG TESTING ACT."

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

SECTION 1. This act may be cited as the Workplace Drug Testing Act.

SECTION 2. (a) The Arkansas General Assembly finds that a healthy and productive workforce, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of products produced and services rendered in this State, are important to employers, employees, and the general public. The General Assembly further finds that the abuse of drugs and alcohol creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services. Therefore, in balancing the interests of employers, employees, and the welfare of the general public, the General Assembly finds that fair and equitable testing for drugs and alcohol in the workplace, in accordance with this act, is in the best interest of all parties.

(b) The General Assembly does not intend to prohibit any employee from seeking damages or job reinstatement, if action was taken by the employer based on a false drug or alcohol test result.

SECTION 3. For the purpose of this act:

(1) "Alcohol" means ethyl alcohol or ethanol.

(2) "Drugs" means any substance recognized as a drug in the United States Pharmacopeia, the National Formulary, the Homeopathic Pharmacopeia, or other drug compendia, or supplement to any of those compendia.

(3) "Employer" means any person, firm, or corporation, including any

public utility, which has one or more workers or operators employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.

(4) "Employee" means any person in the service of an employer as defined in subsection (3) of this section.

(5) "Prospective employee" means any person who has made application to an employer, whether written or oral, to become an employee.

SECTION 4. It is lawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this act, as a condition of hiring or continued employment. However, employers and management must submit to the testing themselves on a periodic basis and with the same frequency as the testing of employees, if employees are tested for the presence of drugs or alcohol.

SECTION 5. (a) Such testing by the employer shall be deemed work time for the purposes of compensation and benefits for current employees.

(b) An employer shall pay all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a location other than the workplace.

SECTION 6. (a) Testing for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy which has been distributed to every employee and is available for review by prospective employees.

(b) Within the terms of the written policy, an employer may require the collection and testing of samples for the following purpose:

- (1) Investigation of possible individual employee impairment;
- (2) Investigation of accidents in the workplace or incidents of workplace theft;
- (3) Maintenance of safety for employees or the general public; or
- (4) Maintenance of productivity, quality of products or services, or security of property or information.

(c) The collection and testing of samples shall be conducted in accordance with the requirements of Section 11 and need not be limited to circumstances where there are indications of individual, job-related

impairment of an employee or prospective employee.

(d) The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this act.

SECTION 7. Upon receipt of a verified or confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a sample, an employer may use the test or refusal as the basis for disciplinary or rehabilitative actions, which may include the following:

- (1) A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;
- (2) Suspension of the employee with or without pay for a period of time;
- (3) Termination of employment;
- (4) Refusal to hire a prospective employee; or
- (5) Other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement.

SECTION 8. No cause of action arises in favor of any person against an employer who has established a policy and initiated a testing program in accordance with this act, for any of the following:

- (1) Failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;
- (2) Failure to test for, or if tested for, failure to detect, any specific drug or other substance, disease, infectious agent, virus, or other physical abnormality, problem, or defect of any kind; or
- (3) Termination or suspension of any drug or testing program or policy.

SECTION 9. (a) No cause of action arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this act, unless the employer's action was based on a false test result.

(b) In any claim, including a claim under this act, where it is alleged that an employer's action was based on a false test result:

- (1) There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of this act; and

(2) The employer is not liable for monetary damages if his reliance on a false test result was reasonable and in good faith.

SECTION 10. No cause of action for defamation of character, libel, employer who has established a program of drug or alcohol testing in accordance with this act, unless:

(1) The results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee;

(2) The information disclosed was a false test result;

(3) The false test result was disclosed with malice; and

(4) All elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law, are satisfied.

SECTION 11. (a) The Arkansas Department of Health is hereby authorized to promulgate rules and regulations regarding:

(1) Standards for drug testing laboratories;

(2) Specimens and samples that are appropriate for drug testing;

(3) Methods of analysis and procedures to ensure reliable drug testing results;

(4) Guidelines on how to establish cutoff 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; and

(6) Retention and storage procedures to ensure reliable results.

(b) The Arkansas Department of Health shall adopt the "Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Guidelines Notice," Federal\_Register, Vol. 53, Number 69, April 11, 1988.

SECTION 12. (a) No cause of action arises in favor of any person based upon the failure of an employer to establish a program or policy of drug or alcohol testing.

(b) All collective bargaining agreements shall be exempt from the

requirements of this act.

SECTION 13. All information, interviews, reports, statements, memoranda, or test results received by the employer through his drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer under this act.

SECTION 14. All state agencies shall implement a policy of pre-employment drug testing in accordance with the provisions of this act as a condition of hiring prospective employees effective July 1, 1991, and no person shall be employed by any state agency who fails a drug test implemented and conducted in accordance with the provisions of this act. Furthermore, state agencies are authorized to institute other types of drug testing programs in accordance with the provisions of this act.

SECTION 15. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 16. All laws and parts of laws in conflict with this act are hereby repealed.

