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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS – STANDARDS FOR WORKPLACE
DRUG AND ALCOHOL TESTING ACT

Introduced By: Representatives DaSilva, and Pollard

Date Introduced: April 13, 2010

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 6.5.1

4 STANDARDS FOR WORKPLACE DRUG AND ALCOHOL TESTING ACT

5 **28-6.5.1-1. Short title.** -- This chapter shall be known and may be cited as the "Standards
6 for Workplace Drug and Alcohol Testing Act."

7 **28-6.5.1-2. Definitions.** – (a) When used in this chapter:

8 (1) "Alcohol" means ethyl alcohol or ethanol;

9 (2) "Applicant" means a person who has applied for a position with "employer" as
10 defined herein;

11 (3) "Confirmation test" means a drug or alcohol test on a sample to substantiate the
12 results of a prior drug or alcohol test on the same sample and which uses different chemical
13 principles and is of equal or greater accuracy than the prior drug or alcohol test;

14 (4) "Department" means the state department of health;

15 (5) "Drug" means any controlled substance subject to testing pursuant to drug testing
16 regulations adopted by the United States department of transportation;

17 (6) "Drug or alcohol test" means a chemical test administered for the purpose of
18 determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily

1 tissue, fluids or products;

2 (7) "Employee" means any person who supplies a service for remuneration or pursuant to
3 any contract for hire to a private or public employer in this state;

4 (8) "Employer" means any person, firm, corporation, partnership, association, nonprofit
5 organization or public employer, which has one or more employees within this state, or which has
6 offered or may offer employment to one or more individuals in this state;

7 (9) "Public employer" means the State of Rhode Island or any political subdivision
8 thereof, including any department, agency, board, commission, institution, authority, public trust,
9 municipality, county, district or instrumentalities thereof;

10 (10) "Peace officer" means a Rhode Island peace officer as defined by RIGL section 12-
11 7-21 and reserve peace officers. For purposes of this chapter, a reserve peace officer is an
12 individual who is an officer of a Rhode Island law enforcement agency who does not serve such
13 agency on a compensated or full-time basis but who, when called by the agency into active
14 service, is fully commissioned on the same basis as a Rhode Island peace officer to enforce the
15 criminal laws of the state;

16 (11) "Random selection basis" means a mechanism for selecting employees for drug or
17 alcohol testing that:

18 (i) Results in an equal probability that any employee from a group of employees subject
19 to the selection mechanism will be selected, and

20 (ii) Does not give an employer discretion to waive the selection of any employee selected
21 under the mechanism;

22 (iii) Would be conducted by a representative chosen by the employer and a representative
23 chosen by the collective bargaining unit or in absence of a collective bargaining unit a
24 representative selected by a majority of the employees to witness and oversee the selection
25 process;

26 (iv) Would prohibit an employee to be selected to submit to more than two random tests
27 in a twelve (12) month period.

28 (12) "Reasonable suspicion" means a belief that an employee is using or has used drugs
29 or alcohol in violation of the employer's written policy drawn from specific objective and
30 articulable facts and reasonable inferences drawn from those facts in light of experience, and may
31 be based upon, among other things:

32 (i) Observable phenomena, such as:

33 (A) The physical symptoms or manifestations of being under the influence of a drug or
34 alcohol while at work or on duty, or

- 1 (B) The direct observation of drug or alcohol use while at work or on duty,
2 (b) A report of drug or alcohol use while at work or on duty, provided by reliable and
3 credible sources and which has been independently corroborated,
4 (c) Evidence that an individual has tampered with a drug or alcohol test during his
5 employment with the current employer, or
6 (d) Evidence that an employee is involved in the use, possession, sale, solicitation or
7 transfer of drugs while on duty or while on the employer's premises or operating the employer's
8 vehicle, machinery or equipment;

9 (13) "Review officer" means a licensed physician, qualified by the state department of
10 health, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain
11 of custody collection procedures, and who is responsible for receiving results from a testing
12 facility which have been generated by an employer's drug or alcohol testing program, and who
13 has knowledge and training to interpret and evaluate an individual's test results in relation with
14 the individual's medical history and any other relevant biomedical information;

15 (14) "Sample" means tissue, fluid or product of the human body chemically capable of
16 revealing the presence of drugs or alcohol in the human body; and

17 (15) "Testing facility" means any person, including any laboratory, hospital, clinic or
18 facility, either off or on the premises of the employer, which provides laboratory services to test
19 for the presence of drugs or alcohol in the human body. The administration of on-site drug or
20 alcohol screening tests to applicants or employees to screen out negative test results are not
21 laboratory services under this paragraph, provided the on-site tests used are cleared by the federal
22 food and drug administration for commercial marketing or by the national highway traffic safety
23 administration for alcohol testing, and all positive results of such tests are confirmed by a testing
24 facility in accordance with the Standards for Workplace Drug and Alcohol

25 **28-6.5.1-3. Construction of act.** – (a) The standards for workplace drug and alcohol
26 testing act shall not be construed as requiring or encouraging employers to conduct drug or
27 alcohol testing.

28 (b) Except as provided in subsection (c) and (d) of this section, employers who choose to
29 conduct drug or alcohol testing of job applicants or persons employed in this state shall be
30 governed by the provisions of this act and the rules promulgated pursuant thereto.

31 (c) Drug or alcohol testing required by and conducted pursuant to federal law or
32 regulation shall be exempt from the provisions of the standards for workplace drug and alcohol
33 testing act and the rules promulgated pursuant thereto.

34 (d) Nothing in this chapter shall be construed to:

1 (1) Prohibit or apply to the testing of drivers regulated under 49 C.F.R. section 40.1 et seq
2 and 49 C.F.R. part 382 if that testing is performed pursuant to a policy mandated by the federal
3 government; or

4 (2) Prohibit an employer in the public utility or mass transportation industry from
5 requiring testing otherwise barred by this chapter if that testing is explicitly mandated by federal
6 regulation or statute as a condition for the continued receipt of federal funds.

7 (e) This act shall not be construed as preventing the negotiation of collective bargaining
8 agreements that provide greater protection to employees or applicants than is provided by this act.

9 **28-6.5.1-4. Drug or alcohol testing by employers -- Restrictions.** – (a) Employers who
10 choose to conduct drug or alcohol testing may only request or require an applicant or employee to
11 undergo testing under the following circumstances:

12 (1) Applicant testing. A public or private employer may request or require a job
13 applicant, upon a conditional offer of employment, to undergo drug or alcohol testing and may
14 use a refusal to undergo testing or a confirmed positive test result as a basis for refusal to hire,
15 provided that such testing does not violate the provisions of the Americans with disabilities act of
16 1990, 42 U.S.C., section 12101 et seq., and provided that such testing is required for all
17 applicants who have received a conditional offer of employment for a particular employment
18 classification;

19 (2) Reasonable suspicion testing. A public or private employer may request or require an
20 employee to undergo drug or alcohol testing if the employer has a reasonable suspicion that the
21 employee has violated the employer's written policy;

22 (3) Post-accident testing. A public or private employer may require an employee to
23 undergo drug or alcohol testing if the employee or another person has sustained a work-related
24 injury or the employer's property has been damaged, including damage to equipment, in an
25 amount reasonably estimated at the time of the accident to exceed one thousand five hundred
26 dollars (\$1,500).

27 (4) Random testing. A public or private employer may not request or require an employee
28 to undergo drug or alcohol testing on a random selection basis, except that a public employer or
29 private employer may adopt a policy and enter into agreement with their employees to require
30 random testing only of employees who:

31 (i) Are police or peace officers,

32 (ii) Have drug interdiction responsibilities,

33 (iii) Are authorized to carry firearms,

34 (iv) Are engaged in activities which directly affect the safety of others,

1 (v) Work in direct contact with inmates in the custody of the Department of corrections
2 or work in direct contact with juvenile delinquents or children in need of supervision in the
3 custody of the department of children, youth and families.

4 (b) Employers may adopt a random drug test policy that complies with this chapter and
5 may implement that policy only after approval of the policy by the collective bargaining unit
6 representing the affected employees.

7 (c) Positive Test Results. Employees testing positive are not terminated on that basis, but
8 are instead referred to a substance abuse professional (licensed physician with knowledge and
9 clinical experience in the diagnosis and treatment of drug related disorders, a licensed or certified
10 psychologist, social worker, or EAP professional with like knowledge, or a substance abuse
11 counselor certified by the national association of alcohol and drug abuse counselors (all of whom
12 shall be licensed in Rhode Island)) for assistance; provided, that additional testing may be
13 required by the employer in accordance with this referral, and an employee whose testing
14 indicates any continued use of controlled substances despite treatment may be terminated;

15 (d) Rebuttal. The employer shall provide the employee with a reasonable opportunity to
16 rebut or explain any positive results;

17 (e) Post-rehabilitation testing: A public or private employer may request or require an
18 employee to undergo drug or alcohol testing without prior notice for a period of up to two (2)
19 years commencing with the employee's return to work, following a confirmed positive test or
20 following participation in a drug or alcohol dependency treatment program under an employee
21 benefit plan or at the request of the employer.

22 **28-6.5.1-5. Written policy required – Notice of policy changes -- Distribution.** – (a)
23 No employer may request or require an applicant or employee to undergo drug or alcohol testing
24 unless the employer has first adopted a written, detailed policy setting forth the specifics of its
25 drug or alcohol testing program. The written policy shall be uniformly applied to those covered
26 by the policy and shall include, but not be limited to, the following information:

- 27 (1) A statement of the employer's policy respecting drug or alcohol use by employees;
28 (2) Which applicants and employees are subject to testing;
29 (3) Circumstances under which testing may be requested or required;
30 (4) Substances which may be tested. To comply with the provisions of this paragraph, it
31 shall be sufficient for an employer to state in the written policy that the substances tested shall be
32 for drugs and alcohol as defined in the standards for workplace drug and alcohol testing act,
33 including controlled substances approved for testing by rule by the state commissioner of health;
34 (5) Testing methods and collection procedures to be used;

- 1 (6) Consequences of refusing to undergo testing;
- 2 (7) Potential adverse personnel action which may be taken as a result of a positive test
- 3 result;
- 4 (8) The rights of an applicant and employee to explain, in confidence, the test results;
- 5 (9) The rights of an applicant and employee to obtain all information and records related
- 6 to that individual's testing;
- 7 (10) Confidentiality requirements; and
- 8 (11) The available appeal procedures, remedies and sanctions.

9 (b) An employer who is implementing a drug or alcohol testing policy for the first time,
10 or is implementing changes to its policy, shall provide at least thirty (30) days' notice to its
11 employees prior to implementation of the policy or changes to the policy.

12 (c) An employer shall post a copy of the drug or alcohol testing policy, and any changes
13 to the policy, in a prominent employee access area in the place of employment and shall deliver a
14 copy of the policy, and any changes to the policy, to each employee and to each applicant upon
15 his or her receipt of a conditional offer of employment. Delivery to employees and persons who
16 are offered employment may be accomplished by:

- 17 (1) Hand-delivery of a paper copy of the policy or changes to the policy;
- 18 (2) Mailing a paper copy of the policy or changes to the policy through the U.S. postal
- 19 service or a parcel delivery service to the last address given by the employee or prospective
- 20 employee to the employer; or
- 21 (3) Electronically transmitting a copy of the policy through an email server or the Internet
- 22 to an electronic mail address assigned by the employer to the employee or prospective employee
- 23 with documented receipt capability, or to an electronic mail address provided by the employee or
- 24 prospective employee to the employer for the purpose of receiving employment-related e-mails
- 25 with documented receipt capability.

26 **28-6.5.1-6. Time of employer testing – Payment of costs.** – (a) Any drug or alcohol
27 testing by an employer shall occur during or immediately after the regular work period of current
28 employees and shall be deemed work time for purposes of compensation and benefits for current
29 employees.

30 (b) An employer shall pay all costs of testing for drugs or alcohol required by the
31 employer, including confirmation tests required by this act and the cost of transportation if the
32 testing of a current employee is conducted at a place other than the workplace. If an individual
33 requests a retest of a sample in order to challenge the results of a positive test, the employer shall
34 pay all costs of the retest.

1 **28-6.5.1-7. Testing standards and procedures – Implementation and enforcement --**

2 **Rules.** – (a) The state department of health shall implement and enforce the provisions of the
3 standards for workplace drug and alcohol testing act. The department shall have the power and
4 duty to promulgate, prescribe, amend and repeal rules for the licensure and regulation of testing
5 facilities and for the establishment and regulation of minimum testing standards and procedures,
6 which shall include, but not be limited to, the following:

7 (1) Qualifications of testing facilities which shall include the requirement that facilities
8 doing urine analysis for initial or confirmation tests either be certified for forensic urine drug
9 testing pursuant to guidelines or regulations of the federal department of health and human
10 services or be accredited for forensic urine drug testing by the college of American pathologists
11 or other organizations recognized by the state department of health;

12 (2) Qualifications of testing facility personnel;

13 (3) Body component samples that are appropriate for drug and alcohol testing, to include
14 saliva, urine and hair;

15 (4) The drugs in addition to marihuana, cocaine, opiates, amphetamines and
16 phencyclidine, and their metabolites, for which testing may be conducted;

17 (5) Methods of analysis and internal quality control procedures to ensure reliable test
18 results;

19 (6) Internal review and certification process for test results;

20 (7) Security measures to preclude adulteration;

21 (8) Chain-of-custody procedures;

22 (9) Retention and storage procedures and durations to ensure availability of samples for
23 retesting;

24 (10) Procedures for ensuring confidentiality of test results;

25 (11) Proficiency testing;

26 (12) Training and qualifications of review officers which shall include, but not be limited
27 to, licensure to practice medicine and surgery or osteopathic medicine or holding a doctorate in
28 clinical chemistry, forensic toxicology, or a similar biomedical science;

29 (13) Training and qualifications of collection site personnel;

30 (14) Sample collection procedures that ensure the privacy of the individual and prevent
31 and detect tampering with the sample;

32 (15) Sample documentation, storage and transportation to the testing facility; and

33 (16) Procedures for the testing facility to provide the necessary documentation of testing
34 procedures and test results to the employer requesting testing services as may be required by a

1 court or administrative proceeding.

2 (b) The rules promulgated by the state department of health pursuant to the provisions of
3 this act shall in all applicable respects be consistent with any federal laws and regulations for drug
4 and alcohol testing in the workplace and shall include safeguards, standards and procedures not
5 less stringent than those applicable to federally regulated drug and alcohol testing in the
6 workplace, except where to do so would create a conflict with a provision of this act.

7 **28-6.5.1-8. Licensing of testing facilities – Fees – Administrative fines. – (a) No**
8 testing facility shall provide laboratory services to an employer to test for the presence or absence
9 of drugs or alcohol unless it meets the qualifications established for testing facilities pursuant to
10 section 28-6.5.1-7 and is licensed by the state department of health to perform such tests. The
11 state department of health shall promulgate rules relating to the issuance of such license,
12 including rules governing license revocation, suspension and nonrenewal.

13 (b) The fees for licensure of testing facilities shall be set by the state department of
14 health.

15 (c) Any testing facility providing laboratory services to an employer to test for the
16 evidence of drugs or alcohol which is not licensed by the state department of health pursuant to
17 this section shall be subject to an administrative fine of not more than five hundred dollars (\$500)
18 for each offense. Each test performed by the unlicensed testing facility in violation of this section
19 shall constitute a separate offense.

20 **28-6.5.1-9. Sample collection and testing -- Conditions. -- (a) All sample collection**
21 and testing for drugs and alcohol pursuant to the provisions of this act shall be conducted in
22 accordance with the following conditions:

23 (1) Samples shall be collected and tested only by individuals deemed qualified by the
24 State Department of Health and may be collected on the premises of the employer;

25 (2) Only samples deemed appropriate by the state department of health for drug and
26 alcohol testing shall be collected;

27 (3) The collection of samples shall be performed under reasonable and sanitary
28 conditions;

29 (4) A sample shall be collected in sufficient quantity for splitting into two separate
30 specimens, pursuant to rules of the state department of health, to provide for any subsequent
31 independent analysis in the event of challenge of the test results of the main specimen;

32 (5) Samples shall be collected and tested with due regard to the privacy of the individual
33 being tested. In the instances of urinalysis, no employer or representative, agent or designee of the
34 employer shall directly observe an applicant or employee in the process of producing a urine

1 sample; provided, however, collection shall be in a manner reasonably calculated to prevent
2 substitutions or interference with the collection or testing of reliable samples;

3 (6) Sample collection shall be documented, and the documentation procedures shall
4 include:

5 (i) Labeling of samples so as reasonably to preclude the probability of erroneous
6 identification of test results, and

7 (ii) An opportunity for the applicant or employee to provide notification of any
8 information which the applicant or employee considers relevant to the test, including
9 identification of currently or recently used prescription or nonprescription drugs, or other relevant
10 information;

11 (7) Sample collection, storage, and transportation to the testing facility shall be performed
12 so as reasonably to preclude the probability of sample contamination or adulteration;

13 (8) Sample testing shall conform to scientifically accepted analytical methods and
14 procedures. Testing shall include confirmation of any positive test result by gas chromatography,
15 gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal
16 or greater accuracy as approved by department rule, at the cutoff levels as determined by
17 department rule, before the result of any test may be used as a basis for refusal to hire a job
18 applicant or any action by an employer pursuant to subdivision (12) of this act; and

19 (9) A written record of the chain of custody of the sample shall be maintained from the
20 time of the collection of the sample until the sample is no longer required.

21 **28-6.5.1-10. Confidentiality of testing results and records – Disclosure of general**
22 **health information prohibited.** – (a) Employers shall maintain all drug and alcohol test results
23 and related information, including, but not limited to, interviews, reports, statements and
24 memoranda, as confidential records, separate from other personnel records. Such records,
25 including the records of the testing facility, shall not be used in any criminal proceeding, or any
26 civil or administrative proceeding, except in those actions taken by the employer or in any action
27 involving the individual tested and the employer.

28 (b) The records described in subsection (a) of this section and maintained by the
29 employer shall be the property of the employer and, upon the request of the applicant or
30 employee tested, shall be made available for inspection and copying to the applicant or employee.
31 An employer shall not release such records to any person other than the applicant, employee or
32 the employer's review officer, unless the applicant or employee, in writing following receipt of
33 the test results, has expressly granted permission for the employer to release such records.

34 (c) A testing facility, or any agent, representative or designee of the facility, or any

1 review officer, shall not disclose to any employer, based on the analysis of a sample collected
2 from an applicant or employee for the purpose of testing for the presence of drugs or alcohol, any
3 information relating to:

4 (1) The general health, pregnancy or other physical or mental condition of the applicant
5 or employee; or

6 (2) The presence of any drug other than the drug or its metabolites that the employer
7 requested be identified and for which a medically acceptable explanation of the positive result,
8 other than the use of drugs, has not been forthcoming from the applicant or employee. Provided,
9 however, a testing facility shall release the results of the drug or alcohol test, and any analysis and
10 information related thereto, to the individual tested upon his request.

11 **28-6.5.1-11. Employee assistance program. --** Drug or alcohol testing governed by the
12 standards for workplace Drug and alcohol testing act shall not be requested or required of an
13 employee by an employer unless the employer provides an employee assistance program. For the
14 purposes of this section, "employee assistance program" means an in-house or contracted
15 program which at a minimum provides drug and alcohol dependency evaluation and referral
16 services for substance abuse counseling, treatment or rehabilitation.

17 **28-6.5.1-12. Disciplinary actions permitted. –** (a) No disciplinary action, except for a
18 temporary suspension or a temporary transfer to another position, may be taken by an employer
19 against an employee based on a positive test result unless the test result has been confirmed by a
20 second test using gas chromatography, gas chromatography-mass spectroscopy, or an equivalent
21 scientifically accepted method of equal or greater accuracy as approved by rule of the state board
22 of health, at the cutoff levels determined by board rule.

23 (b) Employees testing positive are not terminated on that basis, but are instead referred to
24 a substance abuse professional (a licensed physician with knowledge and clinical experience in
25 the diagnosis and treatment of drug related disorders, a licensed or certified psychologist, social
26 worker, or EAP professional with like knowledge, or a substance abuse counselor certified by the
27 national association of alcohol and drug abuse counselors (all of whom shall be licensed in Rhode
28 Island)) for assistance; provided, that additional testing may be required by the employer in
29 accordance with this referral, and an employee whose testing indicates any continued use of
30 controlled substances despite treatment may be terminated;

31 (c) An employer may take disciplinary action against an employee who refuses to
32 undergo drug or alcohol testing conducted in accordance with the provisions of this act.

33 (d) An employee discharged on the basis of a refusal to undergo drug or alcohol testing or
34 a confirmed positive drug or alcohol test conducted in accordance with the provisions of this act

1 shall be considered to have been discharged for misconduct for purposes of unemployment
2 compensation benefits.

3 **28-6.5.1-13. Willful violation of act -- Civil actions -- Remedies.** -- (a) Any person
4 aggrieved by a willful violation of the standards for workplace drug and alcohol testing act may
5 institute a civil action in a court of competent jurisdiction within two (2) years of the person's
6 discovery of the alleged willful violation or of the exhaustion of any internal administrative
7 remedies available to the person, or be barred from obtaining the relief provided for in subsection
8 (b) of this section.

9 (b) A prevailing party may be awarded declaratory or injunctive relief and compensatory
10 damages which may include, but not be limited to, employment, reinstatement, promotion, the
11 payment of lost wages and other remuneration to which the person would have been entitled and
12 payment of and reinstatement to full benefits and seniority rights. Reasonable costs and attorney
13 fees may be awarded to the prevailing party.

14 **28-6.5.1-14. Time for compliance with act.** -- On and after the effective date of this act
15 no employer shall implement a drug or alcohol testing program subject to the provisions of this
16 act unless the program is in compliance with the provisions of this act and the rules promulgated
17 pursuant thereto. Provided, a drug or alcohol testing program subject to the provisions of this act
18 which is in effect prior to the effective date of this act shall be in compliance with the provisions
19 of this act and the rules promulgated pursuant thereto.

20 **28-6.5.1-15. Violations -- Penalties.** -- Any person who willfully and knowingly violates
21 the provisions of the standards for workplace drug and alcohol testing act shall be guilty of a
22 misdemeanor and, upon conviction, punishable by a fine of not less than one thousand dollars
23 (\$1,000) or imprisonment for not more than one year, or by both such fine and imprisonment.

24 **28-6.5.1-16. Conflicts of law.** -- Any conflicts of law between this chapter and chapter
25 28-6.5 shall be resolved so that the provisions of this chapter shall take precedence in application.

26 SECTION 2. Section 28-6.5-1 of the General Laws in Chapter 28-6.5 entitled "Urine and
27 Blood Tests as a Condition of Employment" is hereby repealed.

28 ~~**28-6.5-1. Testing permitted only in accordance with this section.** -- (a) No employer~~
29 ~~or agent of any employer shall, either orally or in writing, request, require, or subject any~~
30 ~~employee to submit a sample of his or her urine, blood, or other bodily fluid or tissue for testing~~
31 ~~as a condition of continued employment unless that test is administered in accordance with the~~
32 ~~provisions of this section. Employers may require that an employee submit to a drug test if:~~

33 ~~-(1) The employer has reasonable grounds to believe based on specific aspects of the~~
34 ~~employee's job performance and specific contemporaneous observations, capable of being~~

1 articulated, concerning the employee's appearance, behavior or speech that the employee's use of
2 controlled substances is impairing his or her ability to perform his or her job;

3 ~~(2) The employee provides the test sample in private, outside the presence of any person;~~

4 ~~(3) Employees testing positive are not terminated on that basis, but are instead referred to~~
5 ~~a substance abuse professional (a licensed physician with knowledge and clinical experience in~~
6 ~~the diagnosis and treatment of drug related disorders, a licensed or certified psychologist, social~~
7 ~~worker, or EAP professional with like knowledge, or a substance abuse counselor certified by the~~
8 ~~National Association of Alcohol and Drug Abuse Counselors (all of whom shall be licensed in~~
9 ~~Rhode Island)) for assistance; provided, that additional testing may be required by the employer~~
10 ~~in accordance with this referral, and an employee whose testing indicates any continued use of~~
11 ~~controlled substances despite treatment may be terminated;~~

12 ~~(4) Positive tests of urine, blood or any other bodily fluid or tissue are confirmed by a~~
13 ~~federally certified laboratory by means of gas chromatography/mass spectrometry or technology~~
14 ~~recognized as being at least as scientifically accurate;~~

15 ~~(5) The employer provides the employee, at the employer's expense, the opportunity to~~
16 ~~have the sample tested or evaluated by an independent testing facility and so advises the~~
17 ~~employee;~~

18 ~~(6) The employer provides the employee with a reasonable opportunity to rebut or~~
19 ~~explain the results;~~

20 ~~(7) The employer has promulgated a drug abuse prevention policy which complies with~~
21 ~~requirements of this chapter; and~~

22 ~~(8) The employer keeps the results of any test confidential, except for disclosing the~~
23 ~~results of a "positive" test only to other employees with a job related need to know, and to defend~~
24 ~~against any legal action brought by the employee against the employer.~~

25 ~~(b) Any employer who subjects any person employed by him or her to this test, or~~
26 ~~causes, directly or indirectly, any employee to take the test, except as provided for by this chapter,~~
27 ~~shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars~~
28 ~~(\$1,000) or not more than one year in jail, or both.~~

29 ~~(c) In any civil action alleging a violation of this section, the court may:~~

30 ~~(1) Award punitive damages to a prevailing employee in addition to any award of actual~~
31 ~~damages;~~

32 ~~(2) Award reasonable attorneys' fees and costs to a prevailing employee; and~~

33 ~~(3) Afford injunctive relief against any employer who commits or proposes to commit a~~
34 ~~violation of this section.~~

1 ~~-(d) Nothing in this chapter shall be construed to impair or affect the rights of individuals~~
2 ~~under chapter 5 of this title.~~

3 ~~-(e) Nothing in this chapter shall be construed to:~~

4 ~~-(1) Prohibit or apply to the testing of drivers regulated under 49 C.F.R. section 40.1 et~~
5 ~~seq and 49 C.F.R. part 382 if that testing is performed pursuant to a policy mandated by the~~
6 ~~federal government; or~~

7 ~~-(2) Prohibit an employer in the public utility or mass transportation industry from~~
8 ~~requiring testing otherwise barred by this chapter if that testing is explicitly mandated by federal~~
9 ~~regulation or statute as a condition for the continued receipt of federal funds.~~

10 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS – STANDARDS FOR WORKPLACE
DRUG AND ALCOHOL TESTING ACT

1 This act would create standards for workplace drug and alcohol testing of law
2 enforcement officials by requiring written notice, establishing testing standards and procedures,
3 as well as confidentiality requirements. This act would also impose a fine of not less than one
4 thousand dollars (\$1,000) or imprisonment for not more than one year, or both for any violations
5 thereof.

6 This act would take effect upon passage.

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