

**2013 -- S 0843 SUBSTITUTE A**

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LC02170/SUB A  
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**STATE OF RHODE ISLAND**

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - DRUG TESTING

Introduced By: Senators Lombardo, Lombardi, and Conley

Date Introduced: April 04, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 28-6.5-1 of the General Laws in Chapter 28-6.5 entitled "Urine and  
2 Blood Tests as a Condition of Employment" is hereby amended to read as follows:

3           **28-6.5-1. Testing permitted only in accordance with this section.** -- (a) No employer  
4 or agent of any employer shall, either orally or in writing, request, require, or subject any  
5 employee to submit a sample of his or her urine, blood, or other bodily fluid or tissue for testing  
6 as a condition of continued employment unless that test is administered in accordance with the  
7 provisions of this section. Employers may require that an employee submit to a drug test if:

8           (1) The employer has reasonable grounds to believe based on specific aspects of the  
9 employee's job performance and specific contemporaneous documented observations, ~~capable of~~  
10 ~~being articulated~~, concerning the employee's appearance, behavior or speech that the ~~employee's~~  
11 employee may be under the influence of a use-of controlled ~~substances~~ substance which shall not  
12 include medical marijuana, which may be ~~is~~ impairing his or her ability to perform his or her job;

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

14           (3) Employees testing positive are not terminated on that basis, but are instead referred to  
15 a substance abuse professional (a licensed physician with knowledge and clinical experience in  
16 the diagnosis and treatment of drug related disorders, a licensed or certified psychologist, social  
17 worker, or EAP professional with like knowledge, or a substance abuse counselor certified by the  
18 National Association of Alcohol and Drug Abuse Counselors (all of whom shall be licensed in  
19 Rhode Island)) for assistance; provided, that additional testing may be required by the employer

1 in accordance with this referral, and an employee whose testing indicates any continued use of  
2 controlled substances despite treatment may be terminated;

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

6 (5) The employer provides [the test to](#) the employee, at the employer's expense, the  
7 opportunity to have the sample tested or evaluated by an independent testing facility and so  
8 advises the employee;

9 (6) The employer provides [the test to](#) the employee with a reasonable opportunity to  
10 rebut or explain the results;

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

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

16 (b) Any employer who subjects any person employed by him or her to this test, or  
17 causes, directly or indirectly, any employee to take the test, except as provided for by this chapter,  
18 shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars  
19 (\$1,000) or not more than one year in jail, or both.

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

21 (1) Award punitive damages to a prevailing employee in addition to any award of actual  
22 damages;

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

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

26 (d) Nothing in this chapter shall be construed to impair or affect the rights of individuals  
27 under chapter 5 of this title.

28 (e) Nothing in this chapter shall be construed to:

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

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

1           (3) Prohibit an employer in the highway maintenance industry, which shall include the  
2 construction, upkeep, maintenance and repair of the state's highways, roads and bridges including  
3 the repaving or resurfacing the same from requiring testing otherwise barred by this chapter,  
4 provided the testing is performed as regulated under 49 C.F.R. part 40.

5           (f) Notwithstanding the foregoing, this chapter shall not apply to members of the  
6 International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and its  
7 signatory contractors jointly participating in the IMPACT National Substance Abuse Program for  
8 purposes of pre-qualifying workers for employment on and ensuring the maintenance of  
9 designated drug free work sites; provided, however, that:

10           (1) Participation by each worker is voluntary; and

11           (2) Workers who refuse to participate shall not be subjected to any adverse employment  
12 action other than an inability to work on a designated drug free work site; and

13           (3) The penalty for a first "positive" test shall not exceed a thirty (30) day suspension  
14 from work on designated drug free work sites.

15           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO LABOR AND LABOR RELATIONS - DRUG TESTING

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- 1           This act would expand the regulation of employer mandated drug testing to include the
- 2 highway construction and repair industry.
- 3           This act would take effect upon passage.

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