

ASSEMBLY, No. 674

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen BAGGER and DORIA

1 AN ACT concerning the reduction of workers' compensation premiums  
2 for employers who implement drug-free workplace programs and  
3 amending R.S.34:15-89.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. (New section) This act shall be known and may be cited as the  
9 "New Jersey Drug-Free Workplace Incentive Act."

10

11 2. (New section) This act provides for a reduction in an employer's  
12 workers' compensation premium if the employer has a drug-free  
13 workplace program and complies with the provisions of this act.

14

15 3. (New section) For purposes of this act:

16 "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, distilled  
17 spirits, wine, malt beverages, and intoxicating liquors, from whatever  
18 source or by whatever means produced.

19 "Chain of custody" means the methodology of tracking specified  
20 materials, specimens, or substances for the purpose of maintaining  
21 control and accountability from initial collection to final disposition for  
22 all such materials, specimens, or substances and providing  
23 accountability at each stage in handling, testing, and sorting materials,  
24 specimens or substances and reporting test results.

25 "Confirmation test," "confirmed test" or "confirmed drug test"  
26 means a second drug test used to identify the presence of a specific  
27 drug or metabolite in a specimen.

28 "Cut-off detention level" means the level at which the presence of  
29 a drug can be reasonably detected by an initial and confirmatory test  
30 performed by a laboratory meeting the standards specified in this act.

31 The threshold detection level indicates the level at which a valid  
32 conclusion can be drawn that the drug is present in the job applicant's

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 or employee's specimen.

2 "Department" means the Department of Health.

3 "Drug" means alcohol, amphetamines; cannabinoids; cocaine;  
4 phencyclidine (PC); hallucinogens; methaqualone; opiates;  
5 barbiturates; benzodiazepines; synthetic narcotics; designer drugs;  
6 controlled dangerous substances and controlled substance analogs or  
7 volatile substances which produce the psychological or physiological  
8 effects of a controlled dangerous substance through deliberate  
9 inhalation or a metabolite of any of these substances.

10 "Employee" means any person who works for salary, wages, or  
11 other remuneration for an employer.

12 "Employee assistance program" means a program provided by an  
13 employer offering assessment, short-term counseling, and referral  
14 services to employees, including drug, alcohol, and mental health  
15 programs.

16 "Employer" means a public or private employer which has one or  
17 more employees within this State, or which has offered or may offer  
18 employment to one or more individuals in this State.

19 "Illegal drug" means any substance, other than alcohol, that has  
20 psychological or physiological effects on human beings and that is not  
21 a prescription or non-prescription medication.

22 "Initial drug test" means an immunoassay procedure or an  
23 equivalent, approved by the federal Food and Drug Administration, to  
24 identify negative and presumptive positive specimens, or any other  
25 accepted procedure that is more accurate, cost effective and approved  
26 by the federal Food and Drug Administration and the department.

27 "Job applicant" means a person who has applied for a position with  
28 an employer.

29 "Medical review officer" means a physician knowledgeable in the  
30 effects of drugs on the human body and how drugs are detected by  
31 drug tests and who is familiar with drug test technology and how such  
32 tests should be administered.

33 "Neutral selection" means a mechanism for selecting employees for  
34 drug tests that (1) results in an equal probability that any employee  
35 from a group of employees subject to the selection mechanism will be  
36 selected, and (2) does not give an employer discretion to waive the  
37 selection of any employee selected under the mechanism.

38 "Nonprescription medication" means a drug or medication  
39 authorized pursuant to federal or State law for general distribution and  
40 use without a prescription in the treatment of human disease, ailments,  
41 or injuries.

42 "Prescription" means a drug prescribed for use by a duly licensed  
43 physician, dentist, nurse practitioner or other medical practitioner  
44 licensed to issue prescriptions that is authorized pursuant to federal or  
45 State law for the treatment of human diseases, ailments, or injuries.

46 "Reasonable suspicion drug testing" means drug testing based on a

1 belief that an employee is using or has used drugs in violation of the  
2 employer's policy. The belief shall be drawn from specific objective  
3 and articulated facts and reasonable inferences drawn from those facts  
4 in light of experience, and may be based upon, among other things:

5 (1) Observable phenomena, such as direct observation of drug use  
6 or the physical symptoms or manifestations of being under the  
7 influence of a drug;

8 (2) Abnormal conduct or erratic behavior while at work,  
9 absenteeism, tardiness, or deterioration in work performance;

10 (3) A report of drug use provided by reliable and credible sources;

11 (4) Evidence that an individual has tampered with a drug test,  
12 during his employment with the current employer;

13 (5) Information that an employee has caused, or contributed to an  
14 accident while at work;

15 (6) Evidence that an employee is involved in the use, possession,  
16 sale, solicitation or transfer of drugs while working on the employer's  
17 premises or operating the employer's vehicle, machinery, or equipment.

18 "Specimen" means tissue, blood, breath, urine, saliva or other  
19 product of the human body capable of revealing the presence of drugs  
20 or their metabolites.

21

22 4. (New section) If an employer implements a drug-free workplace  
23 program in accordance with this act, the employer shall qualify for a  
24 reduced premium for workers' compensation insurance as provided in  
25 R.S.34:15-89.

26

27 5. (New section) A drug-free workplace program shall contain the  
28 following:

29 a. Written notice and a policy statement as provided in section 6 of  
30 this act.

31 b. Drug testing in compliance with sections 10 and 11 of this act.

32 c. Resources of employee assistance providers maintained in  
33 accordance with section 7 of this act.

34 d. Employee education as provided in section 17 of this act.

35 e. Supervisor training in accordance with section 18 of this act.

36 f. Confidentiality standards as provided in section 21 of this act.

37

38 6. (New section) a. Any employee who is required by an employer  
39 implementing a drug-free workplace program in accordance with this  
40 act to submit to a drug test shall be provided, at least 30 days prior to  
41 the implementation of a drug testing program, a written policy  
42 statement from the employer which contains:

43 (1) A general statement of the employer's policy on employee drug  
44 use which will include identifying both the grounds on which an  
45 employee may be required to submit to a drug test and the actions the  
46 employer may take against an employee on the basis of a confirmed

- 1 positive drug test result, or other violation of the employer's drug use  
2 policy;
- 3 (2) A statement advising the employee of the existence of this act;
- 4 (3) A general statement concerning confidentiality;
- 5 (4) Procedures for employees to report confidentially the use of  
6 prescription or non-prescription medications prior to being tested;
- 7 (5) Circumstances under which drug testing may occur, and a  
8 description of which positions will be subject to testing on a  
9 reasonable suspicion, neutral selection or other basis;
- 10 (6) The consequences of refusing to submit to a drug test;
- 11 (7) Information on available resources for assessment and  
12 rehabilitation if an employee receives a confirmed positive test result.  
13 If the employer offers an employee assistance program, the statement  
14 shall include information on that program;
- 15 (8) A list of all drugs for which the employer might test. Each  
16 drug shall be described by its brand name or common name, as  
17 applicable, as well as its chemical name. Employees and job applicants  
18 shall receive notice of the most common medications by brand name  
19 or common name, as applicable, as well as by chemical name, which  
20 may alter or affect a drug test. A list of such medications prepared by  
21 the department shall be available to employers through the department;
- 22 (9) A statement regarding any applicable collective bargaining  
23 agreement or contract;
- 24 (10) A statement that an employee or job applicant who receives  
25 a confirmed positive test result may contest or explain the results to  
26 the employer within five working days after written notification of the  
27 positive test result;
- 28 (11) A statement informing an employee of the provisions of the  
29 federal "Drug-Free Workplace Act of 1988," 41 U.S.C. §701 et seq.,  
30 if applicable to the employer;
- 31 (12) A statement notifying employees and job applicants of their  
32 right to consult the testing laboratory or medical review officer for  
33 technical information regarding prescription and nonprescription  
34 medication; and
- 35 (13) A warning of the lingering effect of illegal drugs in the body.
- 36 b. An employer implementing a drug-free workplace program in  
37 accordance with this act shall post the written notice in an appropriate  
38 and conspicuous location on the employer's premises and copies of the  
39 policy shall be available for inspection during regular business hours  
40 by employees in the employer's personnel office or other suitable  
41 locations.
- 42 c. An employer implementing a drug-free workplace program in  
43 accordance with this act that does not have a drug testing program in  
44 effect on the effective date of this act, shall give 30 days' notice to all  
45 employees that a drug testing program is being implemented before  
46 beginning any actual testing.

1 d. An employer implementing a drug-free workplace program in  
2 accordance with this act shall include notice of drug testing on all  
3 announcements for those positions for which testing is required.

4  
5 7. (New section) a. An employer implementing a drug-free  
6 workplace program in accordance with this act shall maintain a  
7 resource file of providers of employee assistance including drug and  
8 alcohol abuse programs, mental health providers, and other persons,  
9 entities, or organizations available to assist employees with personal  
10 or behavioral problems. In addition, the employer shall post in a  
11 conspicuous place a listing of providers of employee assistance in the  
12 area. If an employee has a confirmed positive test result, an employer  
13 shall provide information on the resource file of employee assistance  
14 to the employee.

15 b. If an employer implementing a drug-free workplace program in  
16 accordance with this act has more than 200 full-time employees, the  
17 employer shall maintain an employee assistance program to help  
18 employees with drug and alcohol abuse, mental health, and other  
19 personal or behavioral problems.

20  
21 8. (New section) An employer implementing a drug-free  
22 workplace program in accordance with this act shall conduct the  
23 following types of drug tests:

24 a. If an employee has caused or contributed to an accident arising  
25 out of and in the course of employment which results in an injury or  
26 death, the employer shall require the employee to submit to a drug  
27 test.

28 b. If the employee in the course of employment and at the request  
29 of the employer enters an employee assistance program or a  
30 rehabilitation program as a result of a confirmed positive test, the  
31 employer shall require the employee to submit to drug testing as a  
32 follow-up to such program. The frequency of such testing shall be at  
33 least four times a year for a two-year period after completion of the  
34 program and advance notice of the testing dates shall not be given to  
35 the employee.

36 c. An employer shall require an employee to submit to neutral  
37 selection or routine drug tests if the employee in the course of his  
38 employment receives a confirmed positive test result, and if there is no  
39 collective bargaining agreement or contract or if the collective  
40 bargaining agreement or contract does not prohibit such testing or  
41 allows such testing.

42  
43 9. (New section) An employer is authorized to conduct the  
44 following types of drug tests:

45 a. Employers may require job applicants to submit to a drug test as  
46 a condition of the employment application and may use a refusal to

1 submit to a test or initial positive test result as a basis for refusal to  
2 hire. An employer who conducts job application drug testing shall  
3 notify the applicant in writing upon application, and prior to the  
4 collection of the specimen for the drug test, that the applicant may be  
5 tested for the presence of drugs.

6 b. (1) An employer may require all employees to submit to  
7 reasonable suspicion drug testing.

8 (2) There is created a rebuttable presumption that the employer  
9 had reasonable suspicion to test for drugs if the specimen provided by  
10 the employee tested positive for drugs in a confirmatory drug test.

11 (3) If testing is conducted based on reasonable suspicion, the  
12 employer shall promptly detail in writing the circumstances which  
13 formed the basis of the determination that reasonable suspicion existed  
14 to warrant the testing. A copy of this documentation shall be given to  
15 the employee upon request and the original documentation shall be  
16 kept confidential by the employer pursuant to section 21 of this act  
17 and retained by the employer for at least one year.

18 c. An employer may require an employee to submit to a drug test  
19 if the test is conducted as part of a routinely scheduled employee  
20 fitness for duty medical examination that is part of the employer's  
21 established policy or which is scheduled routinely for all members of  
22 an employment classification or group.

23 d. An employer may require as a condition of employment or as a  
24 condition of continued employment that employees submit to neutral  
25 selection drug testing.

26

27 10. (New section) a. All drug testing conducted by an employer  
28 in accordance with the provisions of this act shall be in conformity  
29 with the standards and procedures established in this act.

30 b. All specimen collection and testing for drugs under this act shall  
31 be performed in accordance with the following procedures:

32 (1) The collection of specimens shall be performed under  
33 reasonable and sanitary conditions. Individual dignity shall be  
34 preserved to the extent practicable;

35 (2) Specimens shall be collected in a manner reasonably calculated  
36 to prevent substitution of specimens and interference with the  
37 collection or testing of specimens;

38 (3) Specimen collection shall be documented, and the  
39 documentation procedures shall include:

40 (a) labeling of specimen containers to reasonably preclude the  
41 likelihood of erroneous identification of test results; and

42 (b) an opportunity for the employee or applicant to provide any  
43 information that he considers relevant to the test.

44 (4) Specimen storage and transportation to the testing site shall be  
45 performed in a reasonable manner to preclude specimen contamination  
46 or adulteration; and

- 1 (5) Specimen testing for drugs shall conform to scientifically  
2 accepted analytical methods and procedures.
- 3 c. A specimen for a drug test under this act may be taken or  
4 collected by any of the following persons:
- 5 (1) A physician, a physician's assistant, a registered professional  
6 nurse, a licensed practical nurse, a nurse practitioner, or a trained  
7 attendant deemed qualified by the employer;
- 8 (2) A qualified person employed by a licensed laboratory; or
- 9 (3) A certified paramedic who is present at the scene of an accident  
10 for the purpose of rendering emergency medical service or treatment.
- 11 d. Employers may establish a program to train and certify persons  
12 to collect specimens and conduct on-site drug tests in the workplace.  
13 Employers may designate employees for this training and certification,  
14 or may utilize any person so trained and certified.
- 15 e. A person who collects or takes a specimen for a drug test  
16 conducted pursuant to this act shall collect an amount sufficient for  
17 two drug tests as defined by the department.
- 18 f. Any drug testing conducted or requested by an employer under  
19 this act shall occur during or immediately after the regular work period  
20 of current employees, and shall be deemed to be performed during  
21 work time for purposes of determining compensation and benefits for  
22 current employees.
- 23 g. An employer testing for drugs under this act may only conduct  
24 those tests necessary to determine the presence of drugs in the  
25 specimen.
- 26 h. A confirmation test shall use a method of equal or greater  
27 sensitivity than that used on the initial drug test. If an initial drug test  
28 is negative, there shall be no confirmation drug test. All confirmed  
29 positive drug test results shall be reviewed by a medical review officer  
30 before being used by an employer.
- 31
- 32 11. (New section) a. Every specimen that produces a confirmed  
33 positive result shall be preserved in a frozen state for a period of 90  
34 days from the time the results of the confirmed positive test are mailed  
35 or otherwise delivered to the employer. During this period, the  
36 employee who has provided the specimen shall be permitted by the  
37 employer to have a portion of the specimen retested, at the employee's  
38 expense, at a licensed laboratory chosen by the employee. The  
39 licensed laboratory or employer that has performed the test for the  
40 employer shall be responsible for the transfer of the portion of the  
41 specimen to be retested, and for the integrity of the chain of custody  
42 during such transfer.
- 43 b. Within five working days after receipt of a confirmed positive  
44 test result, an employer shall, in writing, inform an employee of such  
45 positive test result and inform the employee in writing of the  
46 consequences of such a report and the options available to him.

1 c. An employee may request and receive from the employer a copy  
2 of the test result report. Within 10 working days after receiving notice  
3 of a confirmed positive test result, the employee may submit  
4 information to an employer explaining the test results, and why the  
5 results do not constitute a violation of the employer's policy. If an  
6 employee's explanation of the positive test results is not satisfactory  
7 to the employer, a written explanation submitted by the employer as  
8 to why the employee's explanation is unsatisfactory, along with the  
9 report of positive results, shall be made part of the employee's medical  
10 and personnel records.

11

12 12. (New section) a. An employer testing for drugs under this act  
13 may not discharge, discipline, discriminate against, or request or  
14 require rehabilitation of an employee on the basis of a positive test  
15 result that has not been verified by a confirmatory test.

16 b. In addition to the limitation pursuant to subsection a. of this  
17 section, an employer testing for drugs under this act may not  
18 discharge, discipline, or discriminate against an employee for whom a  
19 confirmed positive drug test result was the first time the employee has  
20 tested positive for any drug while in the employ of the employer unless  
21 the following conditions have been met;

22 (1) the employer has first given the employee an opportunity to  
23 participate in, at the employee's own expense or pursuant to coverage  
24 under an employee benefit plan, drug abuse assessment, and if  
25 necessary, drug abuse rehabilitation, and

26 (2) the employee has either refused to participate in the assessment  
27 or rehabilitation program or has failed to successfully complete such  
28 program, as evidenced by withdrawal from the program before its  
29 completion or a report from the program indicating unsatisfactory  
30 compliance, or by a positive test result on a confirmatory test after  
31 completion of the program; or

32 (3) the employee's work performance has been inadequate, or the  
33 employee has caused or contributed to an accident, or the employee  
34 has taken or omitted to take any other action which ordinarily would  
35 result in the discharge or discipline of the employee.

36 c. An employer may not discharge, discipline, discriminate against,  
37 or request or require rehabilitation of an employee on the basis of  
38 medical history information revealed to the employer pursuant to this  
39 act unless the employee had an affirmative obligation to provide such  
40 information before, upon, or after hire.

41

42 13. (New section) An employee or job applicant whose drug test  
43 result is positive in accordance with the provisions of this act shall not,  
44 by virtue of that result alone, be defined as a person with a "disability  
45 or handicap."

1       14. (New section) a. An employer who discharges or disciplines  
2 an employee on the basis of a confirmed positive drug test in  
3 accordance with this act shall be considered to have discharged or  
4 disciplined the employee for cause.

5       b. An employee discharged on the basis of a confirmed positive  
6 drug test in accordance with this act shall be considered to have been  
7 discharged for willful misconduct under State law.

8  
9       15. (New section) a. If an employee refuses to submit to drug  
10 testing administered in accordance with this act, the employer shall not  
11 be barred from discharging, disciplining, or referring the employee to  
12 assessment or drug abuse rehabilitation.

13       b. An employer may temporarily suspend, or transfer an employee  
14 to another position after obtaining the results of a positive on-site  
15 initial test or confirmed positive test if the employee's position is one  
16 which would create a health or safety risk to the employee, to fellow  
17 employees, or to the public, should the employee be affected by the  
18 use of a drug.

19  
20       16. (New section) An employee or job applicant required to  
21 submit to a drug test under this act may be requested by an employer  
22 to sign a statement indicating that he has read and understands the  
23 employer's drug testing policy and notice. An employee's or job  
24 applicant's refusal to sign such a statement shall not invalidate the  
25 results of any drug test, or bar the employer from administering the  
26 drug test or from taking action consistent with the terms of an  
27 applicable collective bargaining agreement or the employer's drug  
28 testing policy, or from refusing to hire the job applicant.

29  
30       17. (New section) a. An employer implementing a drug-free  
31 workplace program in accordance with this act shall provide all  
32 employees with a semi-annual education program on substance abuse,  
33 in general, and its effects on the workplace, specifically.

34       b. The education program shall be for a minimum of one hour and  
35 shall include, but is not limited to, the following information:

36       (1) The explanation of the disease model of addiction to drugs;

37       (2) The effects and dangers of the commonly abused substances in  
38 the workplace; and

39       (3) The employer's policies and procedures regarding substance  
40 abuse in the workplace and how employees who wish to obtain  
41 substance abuse treatment can do so.

42  
43       18. (New section) An employer implementing a drug-free  
44 workplace program in accordance with this act shall provide all  
45 supervisory personnel with a minimum of two hours of supervisor

1 training, which shall include, but is not limited to, the following  
2 information:

- 3 a. How to recognize signs of employee drug abuse;
- 4 b. How to document and collaborate signs of employee drug abuse;
- 5 c. How to refer employees who abuse drugs to the proper  
6 treatment providers.

7  
8 19. (New section) The employer shall pay the costs of all drug  
9 tests under this act to which it requires, or requests, an employee or  
10 job applicant to submit.

11  
12 20. (New section) No physician-patient relationship is created  
13 between an employee or job applicant and an employer, medical  
14 review officer, or any person performing or evaluating a drug test  
15 solely by the establishment, implementation, or administration of a  
16 drug-testing program in accordance with this act.

17  
18 21. (New section) a. All information, interviews, reports,  
19 statements, memoranda, and test results, written or otherwise received  
20 by the employer through its drug-testing program under this act are  
21 confidential communications and may not be used or received in  
22 evidence, obtained in discovery, or disclosed in any public or private  
23 proceedings, except in accordance with this act.

24 b. Any information obtained by an employer pursuant to this act  
25 shall be the property of the employer.

26 c. An employer shall not release to any person other than the  
27 employee or job applicant, or employer medical, supervisory, or other  
28 personnel, as designated by the employer on a need-to-know basis,  
29 information related to drug test results under this act unless:

30 (1) The employee or job applicant has expressly, in writing,  
31 granted permission for the employer to release such information; or

32 (2) It is necessary to introduce a confirmed positive test result into  
33 an arbitration proceeding pursuant to a collective bargaining  
34 agreement, an administrative hearing under applicable State or local  
35 law, or a judicial proceeding, provided that the information is relevant  
36 to the hearing or proceeding, or the information must be disclosed to  
37 a federal or State agency or other unit of this State or United States  
38 government as required under law, regulation, or order, or in  
39 accordance with compliance requirements of a State or federal  
40 government contract, or disclosed to a drug abuse rehabilitation  
41 program for the purpose of evaluation or treatment of an employee; or

42 (3) There is a risk to public health or safety that can be minimized  
43 or prevented by the release of such information. Unless such risk is  
44 immediate, a court order permitting the release shall be obtained prior  
45 to the release of the information.

46 d. The confidentiality provisions of this section shall not apply to

1 other parts of an employee's or job applicant's personnel or medical  
2 files.

3 e. If an employee refuses to sign a written consent form for release  
4 of information to persons as permitted in this act, the employer shall  
5 not be barred from discharging or disciplining the employee.

6

7 22. (New section) a. Five days after a drug test has been  
8 completed by a laboratory, the laboratory shall report to the employer  
9 the result of the test.

10 b. A laboratory or employer report of a drug test result under this  
11 act shall, at a minimum, state:

12 (1) The name and address of the laboratory that performed the  
13 drug test and the positive identification of the person tested;

14 (2) Any confirmed positive drug test results on a specimen which  
15 tested positive on an initial test, or a negative drug test result on a  
16 specimen. Reports shall not make reference to initial or confirmatory  
17 tests when reporting positive or negative results;

18 (3) A list of the drugs tested for; and

19 (4) The type of tests conducted for both initial and confirmation  
20 tests and the cut off detection levels of the tests.

21 c. The report shall not disclose the presence or absence of any  
22 physical or mental condition or of any drug other than the specific  
23 drug and its metabolites that an employer requests to be identified.

24

25 23. (New section) The department shall adopt, pursuant to the  
26 "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et  
27 seq.), rules and regulations to implement this act by establishing:

28 a. standards for drug testing laboratory licensing, suspension, and  
29 revocation of a license;

30 b. specimens that are appropriate for drug testing;

31 c. methods of analysis and procedures to ensure reliable drug  
32 testing results, including standards for initial and confirmatory tests  
33 and on-site tests;

34 d. guidelines on how to establish cut-off detection levels for drugs  
35 or their metabolites for the purposes of determining a positive drug  
36 test result;

37 e. chain-of-custody procedures to ensure proper identification,  
38 labeling, and handling of specimens being tested;

39 f. retention and storage procedures to ensure reliable results on  
40 confirmation tests and retests;

41 g. procedures for employers who perform on-site initial tests;

42 h. a list of medications pursuant to paragraph (8) of subsection a.  
43 of section 6 of this act; and

44 i. a certification program to determine the compliance of employers  
45 with the provisions of this act, an inspection system that reviews an

1 employer's compliance at least three times annually, and provisions to  
2 revoke the certification of employers that do not comply.

3  
4 24. (New section) a. Upon a violation of any of the provisions of  
5 this act, an aggrieved job applicant, employee or former employee  
6 may, within six months of the violation or the exhaustion of any  
7 internal administrative remedies available to the aggrieved party,  
8 institute a civil action in a court of competent jurisdiction to obtain  
9 relief. The court may order one or more of the following:

10 (1) An injunction to restrain the continued violation of this act;

11 (2) The reinstatement of the person to the same position held  
12 before the unlawful drug testing, disciplinary action or discharge, or  
13 to an equivalent position;

14 (3) The reinstatement of full employee benefits and seniority rights;

15 (4) Compensation for lost wages, benefits and other remuneration  
16 to which the person would have been entitled but for a violation of the  
17 act;

18 (5) Payment by the employer of reasonable costs of suit.

19 b. For the purposes of this act, damages shall be limited to the  
20 recovery of compensatory damages directly resulting from injury or  
21 loss caused by a violation of this act, and shall not include  
22 noneconomic losses.

23 c. A person or collective bargaining agent may bring an action  
24 under this section only after first exhausting all applicable grievance  
25 procedures and arbitration proceeding requirements under a collective  
26 bargaining agreement; provided that, the person's right to bring an  
27 action under this section shall not be affected by a decision of a  
28 collective bargaining agent not to pursue a grievance.

29  
30 25. (New section) a. Any employer who complies with the  
31 provisions of this act shall not be liable in any civil action arising from  
32 any drug testing programs or procedures performed in compliance  
33 with this act.

34 b. Pursuant to any claim alleging a violation of this act, including  
35 a claim under this act in which it is alleged that an employer's action  
36 with respect to a person was based on an incorrect drug test result,  
37 there shall be a rebuttable presumption that the test result was valid if  
38 the employer complied with the provisions of this act.

39 c. No cause of action for defamation of character, libel, slander, or  
40 damage to reputation shall arise in favor of any person against an  
41 employer who has established a program of drug testing in accordance  
42 with this act, unless:

43 (1) information regarded as confidential is released not in  
44 accordance with an information release form signed by the person or  
45 otherwise not in accordance with this act;

1 (2) the information disclosed was based on an incorrect drug test  
2 result;

3 (3) the incorrect drug test result was disclosed with malice; and

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

7

8 26. (New section) No cause of action shall arise in favor of any  
9 person based upon the failure of an employer to establish a program  
10 or policy for drug testing in accordance with this act.

11

12 27. (New section) The drug testing procedures provided in this act  
13 do not apply if the specific work performed requires employees or job  
14 applicants to be subject to drug testing pursuant to:

15 a. federal regulations that specifically preempt State and local  
16 regulation of drug testing with respect to such employees and job  
17 applicants;

18 b. federal regulations or requirements enacted or implemented in  
19 connection with the operation of federally regulated facilities;

20 c. federal contracts where the drug testing is conducted for safety,  
21 or protection of sensitive or proprietary data or national security; or

22 d. State agency rules that adopt federal regulations applicable to  
23 the interstate component of a federally regulated activity.

24

25 28. (New section) Nothing in this act shall be construed to prevent  
26 an employer from establishing reasonable work rules related to an  
27 employee's possession, use, sale, or solicitation of drugs, including  
28 convictions for drug related offenses, and taking action based upon a  
29 violation of any of those rules.

30

31 29. (New section) Nothing in this act shall be construed to operate  
32 retroactively, and nothing in this act shall abrogate the right of an  
33 employer under State and federal law to conduct drug tests, or  
34 implement employee drug-testing programs; provided, however, only  
35 those programs that meet the criteria outlined in this act qualify for  
36 reduced workers' compensation insurance premiums pursuant to  
37 R.S.43:15-89.

38

39 30. (New section) This act does not prohibit an employer from  
40 conducting medical screening or other tests required by any statute,  
41 rule, or regulation for the purpose of monitoring exposure of  
42 employees to toxic or other unhealthy substances in the workplace or  
43 in the performance of job responsibilities. Such screenings or tests  
44 shall be limited to the specific substances expressly identified in the  
45 applicable statute, rule, or regulation, unless prior written consent of  
46 the employee is obtained for other tests.

1 31. R.S.34:15-89 is amended to read as follows:

2 34:15-89. The compensation rating and inspection bureau as  
3 created and established by the act entitled "An act concerning the  
4 compulsory insurance of compensation payments arising under section  
5 2 of an act entitled "An act prescribing the liability of an employer to  
6 make compensation for injuries received by an employee in the course  
7 of employment, establishing an elective schedule of compensation, and  
8 regulating procedure for the determination of liability and  
9 compensation thereunder," approved April 4, 1911," approved  
10 March 27, 1917 (P.L.1917, c.178, p.522), as amended and  
11 supplemented is continued under the supervision of the Commissioner  
12 of Banking and Insurance.

13 It shall establish and maintain rules, regulations and premium rates  
14 for workmen's workers' compensation and employer's liability  
15 insurance and equitably adjust the same, as far as practicable, to the  
16 hazard of individual risks, by inspection by the bureau.

17 It shall adopt means for assuring uniform and accurate audit of  
18 payrolls as they relate to policies of workmen's workers'  
19 compensation and employer's liability insurance by auditors, appointed  
20 by the bureau, with the approval of the said commissioner or by such  
21 other means as the bureau may, with the approval of the Commissioner  
22 of Banking and Insurance, establish.

23 It shall furnish upon request to any of its members or to any  
24 employer upon whose risk a rating has been promulgated by it,  
25 information as to such rating, including the method of its computation,  
26 and shall encourage employers to reduce the number and severity of  
27 accidents by adjusting premiums and rates, through the use of credits  
28 and debits or other proper factors, under such uniform system of  
29 experience or other form of merit rating as may be approved by the  
30 said commissioner.

31 The compensation rating and inspection bureau shall reduce the  
32 workers' compensation premiums paid by an employer that implements  
33 a drug-free workplace program which complies with the provisions of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill),  
35 which compliance shall be annually certified by the Department of  
36 Health. The premium reduction shall be 5% during the period of  
37 compliance or for three years, whichever date is earlier. Thereafter,  
38 the premium reduction shall be determined from the employer's  
39 experience rating plan or, if the employer is not experience rated, from  
40 the rating and statistical plan designed by the bureau.

41 (cf: P.L.1955, c.108, s.1)

42

43 32. This act shall take effect on the 180th day after enactment,  
44 except that any rules and regulations to implement the provisions of  
45 this act may be promulgated prior to the effective date.

## 1 STATEMENT

2

3

4 This bill provides for a reduction in an employer's workers'  
5 compensation premium if the employer has a drug-free workplace  
6 program that complies with the provisions of this bill.

7 Under a drug-free workplace program the employer must: give  
8 certain written notices and policy statements on drug usage and drug  
9 testing to his employees; follow certain drug testing procedures;  
10 provide certain counseling and treatment resources to employees;  
11 provide to employees and supervisors certain substance abuse  
12 education; and comply with certain confidentiality standards.

13 An employer implementing a drug-free workplace program in  
14 accordance with this act must conduct drug tests of employees who:  
15 have caused or contributed to accidents in the workplace; have a  
16 confirmed positive drug test and have entered and been released from  
17 a rehabilitation program; and have received a confirmed positive test  
18 result under certain circumstances.

19 An employer implementing a drug-free workplace program in  
20 accordance with this act may also require certain other drug tests, such  
21 as drug tests for job applicants, for reasonable suspicion of drug use,  
22 and as part of a routine medical examination for determining fitness for  
23 duty.

24 An employer implementing a drug-free workplace program in  
25 accordance with this act may not discharge, discipline, discriminate  
26 against, or request or require rehabilitation of any employee on the  
27 basis of a positive drug test result that has not been verified by a  
28 confirmatory test.

29 Upon a violation of any provision of the bill, an aggrieved job  
30 applicant, employee or former employee may institute an action in  
31 court to obtain relief. The court may order one or more of the  
32 following:

33 (1) An injunction to restrain the continued violation of the  
34 provisions of the bill;

35 (2) The reinstatement of the person to the same position held  
36 before the unlawful drug testing, disciplinary action or discharge, or  
37 to an equivalent position;

38 (3) The reinstatement of full employee benefits and seniority rights;

39 (4) Compensation for lost wages, benefits and other remuneration  
40 to which the person would have been entitled but for a violation of the  
41 provisions of the bill;

42 (5) Payment by the employer of reasonable costs of suit.

43 The bill requires the Department of Health to adopt rules and  
44 regulations establishing standards for: drug testing laboratory  
45 licensing; procedures for drug testing; and a certification program  
46 administered by the department to determine employer compliance  
with the provisions of this bill.

- 1 \_\_\_\_\_
- 2
- 3 "New Jersey Drug-Free Workplace Incentive Act."