

SENATE, No. 289

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator EWING

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
33 or employee's specimen.

34 "Department" means the Department of Health.

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

Matter underlined thus is new matter.

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

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

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

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

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

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

25 "Job applicant" means a person who has applied for a position with
26 an employer.

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

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

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

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

44 "Reasonable suspicion drug testing" means drug testing based on a
45 belief that an employee is using or has used drugs in violation of the
46 employer's policy. The belief shall be drawn from specific objective

1 and articulated facts and reasonable inferences drawn from those facts
2 in light of experience, and may be based upon, among other things:

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

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

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

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

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

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

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

19

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

24

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

27 a. Written notice and a policy statement as provided in section 6 of
28 this act.

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

30 c. Resources of employee assistance providers maintained in
31 accordance with section 7 of this act.

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

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

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

35

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

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

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

1 announcements for those positions for which testing is required.

2

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

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

18

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

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

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

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

40

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

43 a. Employers may require job applicants to submit to a drug test as
44 a condition of the employment application and may use a refusal to
45 submit to a test or initial positive test result as a basis for refusal to
46 hire. An employer who conducts job application drug testing shall

1 notify the applicant in writing upon application, and prior to the
2 collection of the specimen for the drug test, that the applicant may be
3 tested for the presence of drugs.

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

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

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

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

21 d. A private employer may require as a condition of employment
22 or as a condition of continued employment that employees submit to
23 neutral selection drug testing.

24 e. A public employer may require as a condition of employment or
25 as a condition of continued employment that employees submit to
26 neutral selection drug testing. The extent to which such employees are
27 tested and the criteria for such testing shall be determined by the
28 public employer, based upon the extent to which the public employer:

29 (1) considers its mission inconsistent with illegal drug use;

30 (2) is engaged in law enforcement;

31 (3) must foster public trust by preserving employee reputation for
32 integrity, honesty and responsibility;

33 (4) has national or State security responsibilities;

34 (5) has drug interdiction responsibilities; or

35 (6) has positions which:

36 (a) authorize employees to carry firearms;

37 (b) give employees access to sensitive information;

38 (c) authorize employees to engage in law enforcement;

39 (d) require employees, as a condition of employment, to obtain a
40 security clearance; or

41 (e) require employees to engage in activities affecting public health
42 or safety.

43

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

- 1 b. All specimen collection and testing for drugs under this act shall
2 be performed in accordance with the following procedures:
- 3 (1) The collection of specimens shall be performed under
4 reasonable and sanitary conditions. Individual dignity shall be
5 preserved to the extent practicable;
- 6 (2) Specimens shall be collected in a manner reasonably calculated
7 to prevent substitution of specimens and interference with the
8 collection or testing of specimens;
- 9 (3) Specimen collection shall be documented, and the
10 documentation procedures shall include:
- 11 (a) labeling of specimen containers to reasonably preclude the
12 likelihood of erroneous identification of test results; and
- 13 (b) an opportunity for the employee or applicant to provide any
14 information that he considers relevant to the test.
- 15 (4) Specimen storage and transportation to the testing site shall be
16 performed in a reasonable manner to preclude specimen contamination
17 or adulteration; and
- 18 (5) Specimen testing for drugs shall conform to scientifically
19 accepted analytical methods and procedures.
- 20 c. A specimen for a drug test under this act may be taken or
21 collected by any of the following persons:
- 22 (1) A physician, a physician's assistant, a registered professional
23 nurse, a licensed practical nurse, a nurse practitioner, or a trained
24 attendant deemed qualified by the employer;
- 25 (2) A qualified person employed by a licensed laboratory; or
- 26 (3) A certified paramedic who is present at the scene of an accident
27 for the purpose of rendering emergency medical service or treatment.
- 28 d. Employers may establish a program to train and certify persons
29 to collect specimens and conduct on-site drug tests in the workplace.
30 Employers may designate employees for this training and certification,
31 or may utilize any person so trained and certified.
- 32 e. A person who collects or takes a specimen for a drug test
33 conducted pursuant to this act shall collect an amount sufficient for
34 two drug tests as defined by the department.
- 35 f. Any drug testing conducted or requested by an employer under
36 this act shall occur during or immediately after the regular work period
37 of current employees, and shall be deemed to be performed during
38 work time for purposes of determining compensation and benefits for
39 current employees.
- 40 g. An employer testing for drugs under this act may only conduct
41 those tests necessary to determine the presence of drugs in the
42 specimen.
- 43 h. A confirmation test shall use a method of equal or greater
44 sensitivity than that used on the initial drug test. If an initial drug test
45 is negative, there shall be no confirmation drug test. All confirmed
46 positive drug test results shall be reviewed by a medical review officer

1 before being used by an employer.

2

3 11. (New section) a. Every specimen that produces a confirmed
4 positive result shall be preserved in a frozen state for a period of 90
5 days from the time the results of the confirmed positive test are mailed
6 or otherwise delivered to the employer. During this period, the
7 employee who has provided the specimen shall be permitted by the
8 employer to have a portion of the specimen retested, at the employee's
9 expense, at a licensed laboratory chosen by the employee. The
10 licensed laboratory or employer that has performed the test for the
11 employer shall be responsible for the transfer of the portion of the
12 specimen to be retested, and for the integrity of the chain of custody
13 during such transfer.

14 b. Within five working days after receipt of a confirmed positive
15 test result, an employer shall, in writing, inform an employee of such
16 positive test result and inform the employee in writing of the
17 consequences of such a report and the options available to him.

18 c. An employee may request and receive from the employer a copy
19 of the test result report. Within 10 working days after receiving notice
20 of a confirmed positive test result, the employee may submit
21 information to an employer explaining the test results, and why the
22 results do not constitute a violation of the employer's policy. If an
23 employee's explanation of the positive test results is not satisfactory
24 to the employer, a written explanation submitted by the employer as
25 to why the employee's explanation is unsatisfactory, along with the
26 report of positive results, shall be made part of the employee's medical
27 and personnel records.

28

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

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

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

43 (2) the employee has either refused to participate in the assessment
44 or rehabilitation program or has failed to successfully complete such
45 program, as evidenced by withdrawal from the program before its
46 completion or a report from the program indicating unsatisfactory

1 compliance, or by a positive test result on a confirmatory test after
2 completion of the program; or

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

7 c. An employer may not discharge, discipline, discriminate against,
8 or request or require rehabilitation of an employee on the basis of
9 medical history information revealed to the employer pursuant to this
10 act unless the employee had an affirmative obligation to provide such
11 information before, upon, or after hire.

12

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

17

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

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

25

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

30 b. An employer may temporarily suspend, or transfer an employee
31 to another position after obtaining the results of a positive on-site
32 initial test or confirmed positive test.

33

34 16. (New section) An employee or job applicant required to
35 submit to a drug test under this act may be requested by an employer
36 to sign a statement indicating that he has read and understands the
37 employer's drug testing policy and notice. An employee's or job
38 applicant's refusal to sign such a statement shall not invalidate the
39 results of any drug test, or bar the employer from administering the
40 drug test or from taking action consistent with the terms of an
41 applicable collective bargaining agreement or the employer's drug
42 testing policy, or from refusing to hire the job applicant.

43

44 17. (New section) a. An employer implementing a drug-free
45 workplace program in accordance with this act shall provide all
46 employees with a semi-annual education program on substance abuse,

1 in general, and its effects on the workplace, specifically.

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

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

5 (2) The effects and dangers of the commonly abused substances in
6 the workplace; and

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

10

11 18. (New section) An employer implementing a drug-free
12 workplace program in accordance with this act shall provide all
13 supervisory personnel with a minimum of two hours of supervisor
14 training, which shall include, but is not limited to, the following
15 information:

16 a. How to recognize signs of employee drug abuse;

17 b. How to document and corroborate signs of employee drug
18 abuse;

19 c. How to refer employees who abuse drugs to the proper
20 treatment providers.

21

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

25

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

31

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

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

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

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

46 (2) It is necessary to introduce a confirmed positive test result into

1 an arbitration proceeding pursuant to a collective bargaining
2 agreement, an administrative hearing under applicable State or local
3 law, or a judicial proceeding, provided that the information is relevant
4 to the hearing or proceeding, or the information must be disclosed to
5 a federal or State agency or other unit of this State or United States
6 government as required under law, regulation, or order, or in
7 accordance with compliance requirements of a State or federal
8 government contract, or disclosed to a drug abuse rehabilitation
9 program for the purpose of evaluation or treatment of an employee; or

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

14 d. The confidentiality provisions of this section shall not apply to
15 other parts of an employee's or job applicant's personnel or medical
16 files.

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

20

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

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

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

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

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

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

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

38

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

42 a. standards for drug testing laboratory licensing, suspension, and
43 revocation of a license;

44 b. specimens that are appropriate for drug testing;

45 c. methods of analysis and procedures to ensure reliable drug
46 testing results, including standards for initial and confirmatory tests

- 1 and on-site tests;
- 2 d. guidelines on how to establish cut-off detection levels for drugs
3 or their metabolites for the purposes of determining a positive drug
4 test result;
- 5 e. chain-of-custody procedures to ensure proper identification,
6 labeling, and handling of specimens being tested;
- 7 f. retention and storage procedures to ensure reliable results on
8 confirmation tests and retests;
- 9 g. procedures for employers who perform on-site initial tests;
- 10 h. a list of medications pursuant to paragraph (8) of subsection a.
11 of section 6 of this act; and
- 12 i. a certification program to determine the compliance of employers
13 with the provisions of this act, an inspection system that reviews an
14 employer's compliance at least three times annually, and provisions to
15 revoke the certification of employers that do not comply.

16

17 24. (New section) a. Upon a violation of any of the provisions of
18 this act, an aggrieved job applicant, employee or former employee
19 may, within six months of the violation or the exhaustion of any
20 internal administrative remedies available to the aggrieved party,
21 institute a civil action in a court of competent jurisdiction to obtain
22 relief. The court may order one or more of the following:

- 23 (1) An injunction to restrain the continued violation of this act;
- 24 (2) The reinstatement of the person to the same position held before
25 the unlawful drug testing, disciplinary action or discharge, or to an
26 equivalent position;
- 27 (3) The reinstatement of full employee benefits and seniority rights;
- 28 (4) Compensation for lost wages, benefits and other remuneration
29 to which the person would have been entitled but for a violation of the
30 act;
- 31 (5) Payment by the employer of reasonable costs of suit.

32 b. For the purposes of this act, damages shall be limited to the
33 recovery of compensatory damages directly resulting from injury or
34 loss caused by a violation of this act, and shall not include
35 noneconomic losses.

36 c. A person or collective bargaining agent may bring an action
37 under this section only after first exhausting all applicable grievance
38 procedures and arbitration proceeding requirements under a collective
39 bargaining agreement; provided that, the person's right to bring an
40 action under this section shall not be affected by a decision of a
41 collective bargaining agent not to pursue a grievance.

42

43 25. (New section) a. Any employer who complies with the
44 provisions of this act shall not be liable in any civil action arising from
45 any drug testing programs or procedures performed in compliance
46 with this act.

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

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

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

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

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

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

19
20 26. (New section) No cause of action shall arise in favor of any
21 person based upon the failure of an employer to establish a program
22 or policy for drug testing in accordance with this act.

23
24 27. (New section) The drug testing procedures provided in this act
25 do not apply if the specific work performed requires employees or job
26 applicants to be subject to drug testing pursuant to:

27 a. federal regulations that specifically preempt State and local
28 regulation of drug testing with respect to such employees and job
29 applicants;

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

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

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

36
37 28. (New section) Nothing in this act shall be construed to prevent
38 an employer from establishing reasonable work rules related to an
39 employee's possession, use, sale, or solicitation of drugs, including
40 convictions for drug related offenses, and taking action based upon a
41 violation of any of those rules.

42
43 29. (New section) Nothing in this act shall be construed to operate
44 retroactively, and nothing in this act shall abrogate the right of an
45 employer under State and federal law to conduct drug tests, or
46 implement employee drug-testing programs; provided, however, only

1 those programs that meet the criteria outlined in this act qualify for
2 reduced workers' compensation insurance premiums pursuant to
3 R.S.43:15-89.

4
5 30. (New section) This act does not prohibit an employer from
6 conducting medical screening or other tests required by any statute,
7 rule, or regulation for the purpose of monitoring exposure of
8 employees to toxic or other unhealthy substances in the workplace or
9 in the performance of job responsibilities. Such screenings or tests
10 shall be limited to the specific substances expressly identified in the
11 applicable statute, rule, or regulation, unless prior written consent of
12 the employee is obtained for other tests.

13
14 31. R.S.34:15-89 is amended to read as follows:

15 34:15-89. The compensation rating and inspection bureau as
16 created and established by the act entitled "An act concerning the
17 compulsory insurance of compensation payments arising under section
18 2 of an act entitled "An act prescribing the liability of an employer to
19 make compensation for injuries received by an employee in the course
20 of employment, establishing an elective schedule of compensation, and
21 regulating procedure for the determination of liability and
22 compensation thereunder,' approved April 4, 1911," approved March
23 27, 1917 (L.1917, c.178, p.522), as amended and supplemented is
24 continued under the supervision of the Commissioner of [Banking and]
25 Insurance.

26 It shall establish and maintain rules, regulations and premium rates
27 for [workmen's] workers' compensation and employer's liability
28 insurance and equitably adjust the same, as far as practicable, to the
29 hazard of individual risks, by inspection by the bureau.

30 It shall adopt means for assuring uniform and accurate audit of
31 payrolls as they relate to policies of [workmen's] workers'
32 compensation and employer's liability insurance by auditors, appointed
33 by the bureau, with the approval of the said commissioner or by such
34 other means as the bureau may, with the approval of the Commissioner
35 of [Banking and] Insurance, establish.

36 It shall furnish upon request to any of its members or to any
37 employer upon whose risk a rating has been promulgated by it,
38 information as to such rating, including the method of its computation,
39 and shall encourage employers to reduce the number and severity of
40 accidents by adjusting premiums and rates, through the use of credits
41 and debits or other proper factors, under such uniform system of
42 experience or other form of merit rating as may be approved by the
43 said commissioner.

44 The compensation rating and inspection bureau shall reduce the
45 workers' compensation premiums paid by an employer that implements
46 a drug-free workplace program which complies with the provisions of

1 P.L. , c. (C.) (pending before the Legislature as this bill.),
2 which compliance shall be annually certified by the Department of
3 Health. The premium reduction shall be 5% during the period of
4 compliance or for three years, whichever date is earlier. Thereafter,
5 the premium reduction shall be determined from the employer's
6 experience rating plan or, if the employer is not experience rated, from
7 the rating and statistical plan designed by the bureau.

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

9
10 32. This act shall take effect on the 180th day after enactment,
11 except that any rules and regulations to implement the provisions of
12 this act may be promulgated prior to the effective date.

13 14 15 STATEMENT

16
17 This bill provides for a reduction in an employer's workers'
18 compensation premium if the employer has a drug-free workplace
19 program that complies with the provisions of this bill.

20 Under a drug-free workplace program the employer must: give
21 certain written notices and policy statements on drug usage and drug
22 testing to his employees; follow certain drug testing procedures;
23 provide certain counseling and treatment resources to employees;
24 provide to employees and supervisors certain substance abuse
25 education; and comply with certain confidentiality standards.

26 An employer implementing a drug-free workplace program in
27 accordance with this act must conduct drug tests of employees who:
28 have caused or contributed to accidents in the workplace; have a
29 confirmed positive drug test and have entered and been released from
30 a rehabilitation program; and have received a confirmed positive test
31 result under certain circumstances.

32 An employer implementing a drug-free workplace program in
33 accordance with this act may also require certain other drug tests, such
34 as drug tests for job applicants, for reasonable suspicion of drug use,
35 and as part of a routine medical examination for determining fitness for
36 duty.

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

42 Upon a violation of any provision of the bill, an aggrieved job
43 applicant, employee or former employee may institute an action in
44 court to obtain relief. The court may order one or more of the
45 following:

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

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

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

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

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

11 The bill requires the Department of Health to adopt rules and
12 regulations establishing standards for: drug testing laboratory
13 licensing; procedures for drug testing; and a certification program
14 administered by the department to determine employer compliance
15 with the provisions of this bill.

16

17

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19

20 "New Jersey Drug-Free Workplace Incentive Act."