

2015 -- H 5196

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - URINE AND BLOOD TESTS AS A
CONDITION OF EMPLOYMENT

Introduced By: Representatives Morgan, Giarrusso, Chippendale, Price, and Nardolillo

Date Introduced: January 21, 2015

Referred To: House Labor

It is enacted by the General Assembly as follows:

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

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

9 (1) The employer has reasonable grounds to believe based on specific aspects of the
10 employee's job performance and specific contemporaneous documented observations, concerning
11 the employee's appearance, behavior or speech that the employee may be under the influence of a
12 controlled substance, which may be 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

1 Rhode Island)) for assistance; provided, that additional testing may be required by the employer
2 in accordance with this referral, and an employee whose testing indicates any continued use of
3 controlled substances despite treatment may be terminated;

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

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

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

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

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

17 (b) Any employer who subjects any person employed by him or her to this test, or
18 causes, directly or indirectly, any employee to take the test, except as provided for by this chapter,
19 shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars
20 (\$1,000) or not more than one year in jail, or both.

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

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

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

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

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

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

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

33 (2) Prohibit an employer in the public utility or mass transportation industry from
34 requiring testing otherwise barred by this chapter if that testing is explicitly mandated by federal

1 regulation or statute as a condition for the continued receipt of federal funds.

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

6 [\(4\) Prohibit the state, municipalities within the state, any political subdivision of the state](#)
7 [or municipalities, fire districts, quasi-public agencies, or any other agency or entity using vehicles](#)
8 [funded with taxpayer dollars from requiring random drug and alcohol testing otherwise barred by](#)
9 [this chapter if such testing is required from employees who are operating state or municipally-](#)
10 [owned vehicles.](#)

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

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

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

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

21 **28-6.5-2. Testing of prospective employees.** -- (a) Except as provided in subsections (b)
22 and (c) of this section, an employer may require a job applicant to submit to testing of his or her
23 blood, urine or any other bodily fluid or tissue if:

24 (1) The job applicant has been given an offer of employment conditioned on the
25 applicant's receiving a negative test result;

26 (2) The applicant provides the test sample in private, outside the presence of any person;
27 and

28 (3) Positive tests of urine, blood, or any other bodily fluid or tissue are confirmed by a
29 federal certified laboratory by means of gas chromatography/mass spectrometry or technology
30 recognized as being at least as scientifically accurate.

31 (b) The pre-employment drug testing authorized by this section shall not extend to job
32 applicants for positions with any agency or political subdivision of the state or municipalities,
33 except for applicants seeking employment as a law enforcement or correctional officer,
34 firefighter, [employees who are operators of any vehicle owned or leased by the state, any](#)

1 municipality of the state, any political subdivision of the state or municipalities, any fire district,
2 quasi-public agency or any other entity or agency using vehicles funded with taxpayer dollars, or
3 any other position where that testing is required by federal law or required for the continued
4 receipt of federal funds.

5 (c) An employer shall not be required to comply with the conditions of testing under
6 subsection (a) of this section to the extent they are inconsistent with federal law.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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- 1 This act would permit drug and alcohol testing of employees of state or municipal
- 2 agencies who operate state or municipally-owned vehicles.
- 3 This act would take effect upon passage.

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