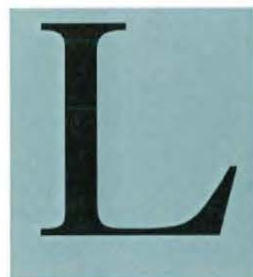


MAINE STATE LEGISLATURE

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Maine Department of Labor

LEGISLATIVE
REPORT

*Report of the Substance Abuse Testing and
Treatment Task Force to the 122nd Legislature,
Joint Standing Committee on Labor*

Submitted by the Maine Department of Labor

September 2006

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JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
20 UNION STREET, P.O. BOX 259
AUGUSTA, MAINE
04332-0259

LAURA A. FORTMAN
COMMISSIONER

September 13, 2006

Senator Ethan Strimling, Senate Chair
Representative William J. Smith, House Chair
Joint Standing Committee on Labor
122nd Maine Legislature
3 State House Station
Augusta, ME 04333

Dear Senator Strimling, Representative Smith, Members of the Joint Standing Committee on Labor:

It is my pleasure to herein present to the Committee the Report of the Substance Abuse Testing and Treatment Task Force in response to 2005 PLc 443 "An Act To Refine and Study Substance Abuse Testing Procedures and Treatment." The task force was to look at three specific issues regarding workplace substance abuse testing procedures and treatment as directed by this law.

I hope this report provides information the Committee finds useful. If you have any questions regarding the report, please contact William Peabody, Director of the Bureau of Labor Standards, who serves as chair of the Task Force.

Sincerely,


Laura A. Fortman
Commissioner

/LF/WAP/ln
enc.



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PHONE: (207) 624-6400

TTY: 1-800-794-1110
E-Mail: Laura.Fortman@maine.gov

FAX: (207) 287-5292

Study Authority and Organization

The Substance Abuse Testing and Treatment Task Force (SATT/TF) was formed in response to 2005 PLc 443 "An Act To Refine and Study Substance Abuse Testing Procedures and Treatment" (see Appendix A). The law required the Department of Labor to form a work group to look at various issues around workplace substance abuse testing and treatment and to report to the Committee in December 2005. The law did not ask the task force to make recommendations or to draft legislation.

The group members were appointed (see Appendix B) and the group held its first meeting in November 2005. After this organizational meeting, the group held four working meetings through January 2006. The group's discussions centered on three areas specified in the legislation:

- ♦ Substance abuse testing and treatment after workplace accidents or other incidents;
- ♦ Point of collection screening testing; and
- ♦ Substance abuse treatment as it relates to small businesses.

Background

In 2004, the Departments of Health and Human Services (DHHS) and Labor (MDOL), completed a report on the prevalence and effect of substance abuse in the work environment. The basis of the report were two surveys; one a survey of individuals, the other a survey of employers. The results of those surveys showed that by all indicators there is a relatively low prevalence of substance abuse in the Maine work place. Both employers and employees report low levels of alcohol and drug use at work, and a low prevalence of alcohol and drug effects experienced at work from use prior to going to work. Despite a low prevalence, the economic costs of work place substance abuse are high. A 2000 study reported that morbidity costs for alcohol and drug use were over \$97 million in Maine alone. Much of the cost is born by the substance abuser who does not get paid for lost work, but a significant portion is born by the employer in absenteeism and lost productivity. Other highlights included:

- 75% of Maine citizens between the ages of 18 and 64 are in the work force
- 48% of workers are employed by companies with fewer than 25 employees and 77% in companies with fewer than 100 employees
- People who work full-time are more likely to drink and to drink heavily than those who are employed part time or are not working, however, full-time employees are less likely to use illicit drugs than part-time employees or those not working
- The prevalence of on-the-job drug use is below 1% as reported by employees
- Nearly 84% of employers felt that alcohol and drug use had little or no effect their business. The larger the size of the employer, the more likely they were to report an effect, with 54% of employers with over 250 employees reporting some effect
- Of those employers who saw an effect, the primary effects were increased absenteeism and decreased productivity

The DHHS Office of Substance Abuse (OSA) Treatment Data System (TDS) reported a 4.5% increase in the number people being treated between 2000 and 2005. Of those in treatment, 23 % were employed full time (35 hours or more), 7% part-time (17-35 hours), and 2% irregularly employed (less than 17 hours). Treatment increased 10% for full-time, 7% for part-time and irregular employees (less than 17hours). Of the treatment referrals by Employee Assistance

Providers (EAP) for full-time employees, 40% were for drug treatment and 60% for alcohol; for employer referrals of part-time employees, 54% were for drug treatment and 46% for alcohol.

The TDS confirms that alcohol is the most prevalent substance being treated for with opiates, marijuana, heroin/morphine, and cocaine/crack following in order. Though alcohol may be the most common substance employees are being treated for, there has been a 10 % decrease over the period in those seeking treatment for alcohol and increases for treatment of marijuana (25%), cocaine/crack (49%), heroin/morphine (44%), oxycontin (98%) and methamphetamine/speed (50%).

Nationally, according to the 2002 National Survey on Drug Use and Health (NSDUH), of the 16.6 million illicit drug users 18 or older, 12.4 million (74.7%) were employed either full- or part-time. The 2000 National Survey reported that 1 in 12 full-time workers reported heavy alcohol usage during the past month, and 1 in 13 reported illicit drug usage during the past month.

Substance abuse testing and treatment after workplace accidents or other incidents

Currently Maine law allows substance abuse testing where the employer has probable cause. However the finding of probable cause may not be based solely on a single work-related accident. So an accident could be a basis for a probable cause test if there were other circumstances around the accident to support such a finding or if the employee were involved in multiple accidents. LD 1361, as submitted, would have allowed testing "if the employee while on duty or in the workplace was involved in an occurrence in which there was loss of human life, serious bodily injury or property damage apparently involving cost or loss greater than \$10,000, unless the circumstances clearly show that the employee did not contribute to the cause of the occurrence" (see Appendix C). At the public hearing before the Labor Committee, the proponents argued that post-accident testing was an important part the investigation and prevention of accidents leading to injury and/or damage. Opponents felt that the current law gave employers the tools necessary to accomplish these goals. There was some testimony that the term "involved in" was so broad that workers who were simply bystanders or passengers could be tested.

All of the federal laws that mandate substance abuse testing for certain classes of workers require testing of individuals where an accident or incident resulted in a death or injury or some level of damage to equipment or material. (see Appendix D) Of the 25 states (including Maine) that regulate employers' substance abuse testing, 19 (76%) allow or require an employer to test following a work-related accident either by specific language or because the law does not control the type of testing an employer may conduct (see Appendix E).

The 2004 ME General Population Survey reported that when respondents were asked "would you want to work for an employer that tests its employees for drug or alcohol usage following a work-related accident":

- 44.7% would be "more likely" to work for that employer,
- 45.5% stated it "would make no difference," and
- 7.9% indicated that they were "less likely."

One member proposed a change in the Maine law using language similar to the federal regulations. This proposed modification would include a standard to define a covered accident (a death, significant injury, and/or substantial damage) and a provision that the employee had caused or contributed to the cause of the accident. There was no group consensus on this recommendation and one member expressed strong opposition to changing the law.

Point of collection screening testing

Point of collection testing (POCT) involves the use of on-site testing kits that provide an immediate result. Under Maine law POCT is allowed only as a screening test for applicants. The U. S. Food and Drug Administration (FDA) must approve the testing kits and any non-negative screening result must be submitted to an approved laboratory for confirmatory testing before being considered a positive result. LD 1361 would have expanded the use of the POCT screening to employee testing. Proponents asserted that this would significantly decrease employer costs and the quicker turn-around would benefit both employers and those employees tested. Opponents expressed concerns about the maintenance of confidentiality with the use of POCT in all circumstances but especially when used with employees.

Federal regulations do not allow the use of POCT at this time. Amended regulations to include POCT have been promulgated and have been sent out several times for public comment since they were first proposed in 2000. It is difficult to predict when the regulations will be formalized.

Of the 25 states that regulate employer substance abuse testing, 16 (64%) allow the use of POCT for some or all testing either through specific language or because the law does not control the type of testing an employer may use for an initial or screening test (see Appendix E). Of these states, 11 require laboratory confirmation of an initial positive and six require the use of an U. S. Food and Drug Administration approved device. Only Maine and North Carolina restrict the use of POCT to pre-employment testing. Louisiana allows such testing only if there are no employment-related consequences. The law in Oregon requires that the operator of a POCT testing operation be registered with the state.

One member expressed staunch support for expanding the use of POCT to employee testing but there was no group consensus on this issue.

Substance abuse treatment as it relates to small businesses

Under Maine law, an employer must offer an employee up to six-months rehabilitation following the employee's first confirmed positive result. The employer may not take any disciplinary action based on the positive result provided the employee accepts, follows and completes the treatment plan. Employers with 20 or more employees and having an employee testing policy must have a DHHS-approved employee assistance program (EAP). In addition the employer must pay half the cost of any treatment not covered by the employer's health insurance plan. Those employers with fewer than 20 employees do not need an EAP nor must they assist with payment for the treatment.

None of the federal regulations require rehabilitation treatment, but the Maine law is crafted to require the offer of treatment following the first positive result in most instances. Employers conducting tests mandated by federal regulations are exempt from the EAP and cost assistance requirements.

Six state laws, including Maine, require treatment following the first positive result. Only Maine and Minnesota require the employer to contribute to the payment for these services.

The workplace has a great impact on an employee with a substance abuse problem. The possibility of losing a job, loss of prestige, and loss of income are serious leveraging tools that can direct a problem employee to look at their substance use, abuse, or addiction and lead them to treatment. The workplace may be the final turning point for an individual who has a substance abuse problem.

There was general agreement among task force members that the preferred outcome from any drug-free workplace program, with or without testing, is effective rehabilitation of any employee with a substance abuse problem leading to continued productive employment. According to the 2004 Office of Substance Abuse General Population Survey, overall, 35.2% of those employed did not have access to an EAP or counseling services through their workplace, another 14.1% were unsure of such access. Among smaller employers these figures were higher. For those working for employers with fewer than 25 employees (89% of Maine business), 56% did not have access and another 13% "didn't know" if they did. National figures show that 90% of Fortune 500 companies and 67 % of companies with 100-500 employees have EAPs, just 5% of companies with fewer than 100 employees do.

Substance abuse also affects employees in other ways, even if they are not substance users. The 2005 Hazelden "Making Recovery America's Business" Survey also found that 57 percent of employees dealing with addiction in their family said they had missed a deadline or had their attendance suffer as a result; 46 percent said they had made errors in judgment they would not have otherwise made, and 14 percent said they had been so distracted that they forgot safety or security procedures at work. EAPs can assist employees and their family members in dealing with these and other problems.

The median annual EAP cost per eligible employee, which varied by region of the country, was \$21.83 for internal programs and \$18.09 for external programs in a select sample study. Ensuring Solutions of George Washington University Medical Center reports EAP fees of \$12 to \$30 per employee per year for an employer. The cost-effectiveness data on EAPs generally indicate a savings to investment ratio ranging from 1.5: 1 to 15:1. A study of the McDonnell Douglas EAP estimated a savings of \$5.1 million, due to fewer days missed from work, lower turnover, and lower medical claims of employees, spouses, and departments.

The task force discussed two proposals to promote workplace-related treatment services, particularly among small employers. One is to encourage EAP consortiums, these might be most effective if delivered through an industry group or a regional group covering a relatively small, contiguous area. A working example of this is the start of a pilot "Community Assistance Program" (C.A.P.) in Bucksport, where EAP services will be offered to chamber member businesses and their employees and family members. Nothing in the current law discourages or limits such consortiums.

Another was to grant a discount on workers' compensation premiums for employers having drug-free workplace program similar to programs conducted in other states. There are eleven states that have such laws. Most (7) allow a five percent discount on the employer's premium if they adopt a drug-free workplace program in accordance with the law. Of the ten states where the state law sets the program standards, nine require substance abuse testing programs and eight require access to EAP services. Under the Virginia law, the employer's insurer sets the standards. Texas does not grant a discount rather the law requires all employers having 15 or more employees that are covered by the workers' compensation law to have a drug-free workplace program. The employer is not required to have a testing program nor an EAP. Research by the staff found no studies on the efficacy of these programs. There however was general agreement that this approach should be explored at least to the extent of having a drug-free workplace program and rehabilitation resources available. There was no consensus on requiring substance abuse testing as a part of any such program.

In addition, seven states have laws that require employers receiving state contracts and/or grants to have drug-free workplace programs. Only Ohio and South Carolina require drug testing as a part of the program and only Ohio requires the employer to have an EAP. Florida does not require a drug-free workplace program but does use the existence of such a program as a tiebreaker where bids for state construction work are substantially equal. The group had no recommendations regarding enacting such a requirement in Maine.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIVE

H.P. 944 - L.D. 1361

An Act To Refine and Study Substance Abuse Testing
Procedures and Treatment

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §683, sub-§5-A, ¶C is enacted to read:

C. A person who performs a point of collection screening test or a confirmation test may release the results of that test only as follows.

(1) For a point of collection screening test that results in a preliminary positive or negative test result, the person performing the test shall release the test result to the employee who is the subject of the test immediately.

(2) For a point of collection screening test that results in a preliminary positive test result, the person performing the test may not release the test result to the employer until after the result of the confirmation test has been determined.

(3) For a point of collection screening test that results in a preliminary negative test result, the person performing the test may not release the test result to the employer until after the result of a confirmation test would have been determined if one had been performed.

(4) For a confirmation test, the person performing the test shall release the result immediately to the

employee who is the subject of the test and to the employer.

Sec. 2. Department of Labor to establish task force. The Department of Labor shall establish a task force on substance abuse testing and treatment. The task force shall review the following issues relating to substance abuse testing and treatment in the workplace:

1. Substance abuse testing and treatment after workplace accidents or other incidents;
2. Point of collection screening testing; and
3. Substance abuse treatment as it relates to small businesses.

Sec. 3. Membership; report. The Department of Labor shall include on its task force on substance abuse testing and treatment the following members: one representative of large businesses; one representative of small businesses; one representative of organized labor; one representative of a civil liberties advocacy organization; one representative of the Department of Health and Human Services, Office of Substance Abuse; and the legislative sponsor of Legislative Document 1361 of the 122nd Legislature. The task force shall submit a report detailing its findings to the Joint Standing Committee on Labor by December 7, 2005.

SUBSTANCE ABUSE STUDY GROUP
MEMBERS

Rita Bubar
CIANBRO Corp.
One Hunnewell Square
P O Box 1000
Pittsfield, ME 04967

David Clough
NFIB/ME
P O Box 796
South Freeport, ME 04078-0796

Thomas Douglas
Murray, Plum & Murray
P O Box 9785
Portland, ME 04104-5085

Ed Gorham
Maine AFL-CIO
65 State Street
Augusta, ME 04330

Kim Johnson
DHHS
Office Substance Abuse
11 State House Station
Augusta, ME 04333-0011

William Peabody
BLS
45 State House Station
Augusta, ME 04333-0045

Rep. Anne Perry
474 South Street
Calais, ME 04619



122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1361

H.P. 944

House of Representatives, March 17, 2005

An Act To Enhance Workplace Safety and Health through Substance Abuse Testing and Treatment

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PERRY of Calais.
Cosponsored by Senator MARTIN of Aroostook and
Representatives: DUCHESNE of Hudson, MARRACHÉ of Waterville, MAZUREK of
Rockland, PIOTTI of Unity, Senator: NUTTING of Androscoggin.

Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 26 MRSA §682, sub-§2, as amended by PL 1995, c. 324,
4 §3, is further amended to read:

6 2. **Employee.** "Employee" means a person who is permitted,
8 required or directed by any employer to engage in any employment
10 for consideration of direct gain or profit. ~~-A person separated~~
12 ~~from employment while receiving a mandated benefit, including but~~
14 ~~not limited to workers' compensation, unemployment compensation~~
16 ~~and family medical leave, is an employee for the period the~~
18 ~~person receives the benefit and for a minimum of 30 days beyond~~
20 ~~the termination of the benefit.~~ A person separated from
22 employment while receiving a nonmandated benefit is an employee
24 for a minimum of 30 days beyond the separation.

26 A. A full-time employee is an employee who customarily
28 works 30 hours or more each week.

30 Sec. 2. 26 MRSA §682, sub-§5-A is enacted to read:

32 5-A. **Post-accident.** "Post-accident" means within 8 hours
34 following an occurrence involving one or more employees on duty
36 or in the workplace in which there is loss of human life or
38 serious bodily injury or property damage apparently involving
40 cost or loss greater than \$10,000.

42 Sec. 3. 26 MRSA §682, sub-§6, ¶C, as enacted by PL 1989, c.
44 536, §§1 and 2 and affected by c. 604, §§2 and 3, is amended to
46 read:

48 C. ~~--A-~~ The mere fact of a single work-related accident,
50 unless circumstances related to the accident provide a
52 reasonable basis for suspicion of impairment or of the
54 influence of a substance of abuse. This exclusion does not
56 restrict post-accident testing otherwise permitted by this
58 subchapter.

60 Sec. 4. 26 MRSA §682, sub-§7, ¶A, as amended by PL 2001, c.
62 556, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to
64 read:

66 A. "Screening test" means an initial substance abuse test
68 performed through the use of immunoassay technology, or a
70 test technology of similar or greater accuracy and
72 reliability approved by the Department of Health and Human
74 Services under rules adopted under section 687, and that is
76 used as a preliminary step in detecting the presence of
78 substances of abuse.

(1) A screening test of an applicant's or employee's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests.

Sec. 5. 26 MRSA §683, sub-§2, ¶B, as amended by PL 1989, c. 832, §6, is further amended to read:

B. When substance abuse testing may occur. The written policy must describe:

(1) Which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3. For applicant testing and probable cause and post-accident testing of employees, an employer may designate that all positions are subject to testing; and

(2) The procedure to be followed in selecting employees to be tested on a random or arbitrary basis under section 684, subsection 3;

Sec. 6. 26 MRSA §684, sub-§2-A is enacted to read:

2-A. Post-accident testing. An employer may require, request or suggest that a surviving employee submit to a post-accident substance abuse test if the employee while on duty or in the workplace was involved in an occurrence in which there was loss of human life, serious bodily injury or property damage apparently involving cost or loss greater than \$10,000, unless the circumstances clearly show that the employee did not contribute to the cause of the occurrence. A post-accident test sample may not be collected more than 8 hours after the occurrence.

Sec. 7. 26 MRSA §684, sub-§5, as enacted by PL 1989, c. 832, §11, is amended to read:

5. Testing upon return to work. If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has participated in a rehabilitation program under section 685, subsection 2, the employer may require, request or suggest that the employee submit to -a- subsequent substance-abuse-test-anytime-between-90-days-and-one-year-after-the-date-of-the-employee's-prior-test follow-up testing during the 18 months after the date of the employee's return to work, in accordance with a written follow-up

2 treatment plan provided to the employer by a rehabilitation or
3 treatment provider. --A--test Testing may be administered under
4 this subsection in addition to any tests conducted under
5 subsections 2, 2-A and 3. An-employer-may-require--request-of
6 suggest-that-an-employee-submit-to-a-substance-abuse-test-during
7 the-first-90-days-after-the-date-of-the-employee's-prior-test
8 only--as-provided--in--subsections--2--and--3. If the returning
9 employee holds a position that would create an unreasonable
10 threat to the health and safety of the public, the employee or
11 coworkers if the employee were under the influence of a substance
12 of abuse, testing under the follow-up treatment plan may extend
13 over 24 months and must provide for at least 6 follow-up tests in
14 the first 12 months after return to work.

15 Sec. 8. 26 MRSA §685, sub-§2, ¶C, as amended by PL 1995, c.
16 344, §1, is further amended to read:

17 C. If the employee chooses not to participate in a
18 rehabilitation program under this subsection, the employer
19 may take any action described in paragraph A. If the
20 employee chooses to participate in a rehabilitation program,
21 the following provisions apply.

22 (1) If the employer has an employee assistance program
23 that offers counseling or rehabilitation services, the
24 employee may choose to enter that program at the
25 employer's expense. If these services are not
26 available from an employer's employee assistance
27 program or if the employee chooses not to participate
28 in that program, the employee may enter a public or
29 private rehabilitation program.

30 (a) Except to the extent that costs are covered
31 by a group health insurance plan, ~~the costs of the~~
32 ~~public or private rehabilitation program must be~~
33 ~~equally divided between the employer and employee~~
34 if the employer has more than 20 full-time
35 employees. ~~This requirement does not apply to~~
36 ~~municipalities or other political subdivisions of~~
37 ~~the State or to any employer when the employee is~~
38 ~~tested because of the alcohol and controlled~~
39 ~~substance testing mandated by the federal Omnibus~~
40 ~~Transportation Employee Testing Act of 1991,~~
41 ~~Public Law 102-143, Title V. If necessary, the~~
42 ~~employer shall assist in financing the cost share~~
43 ~~of the employee through a payroll deduction plan.~~
44 the employer shall pay a portion of the costs of
45 the public or private rehabilitation program as
46 follows:

2 (i) For employees with fewer than 2 full
4 years of service prior to the confirmed
positive test, 1/2 of the cost up to \$250;

6 (ii) For employees with 2 to 5 full years of
8 service prior to the confirmed positive test,
1/2 of the cost up to \$500;

10 (iii) For employees with 6 to 15 full years
12 of service prior to the confirmed positive
test, 1/2 of the cost up to \$1,000; and

14 (iv) For employees with over 15 full years
16 of service prior to the confirmed positive
test, 1/2 of the cost up to \$2,000.

18 This requirement does not apply to municipalities
20 or other political subdivisions of the State or to
22 any employer when the employee is tested because
24 of the alcohol and controlled substance testing
26 mandated by the federal Omnibus Transportation
Employee Testing Act of 1991, Public Law 102-143,
Title V. If necessary, the employer shall assist
in financing the cost share of the employee
through a payroll deduction plan.

28 (b) Except to the extent that costs are covered
30 by a group health insurance plan, an employer with
32 20 or fewer full-time employees, a municipality or
34 other political subdivision of the State is not
36 required to pay for any costs of rehabilitation or
38 treatment under any public or private
40 rehabilitation program. An employer is not
required to pay for the costs of rehabilitation if
the employee was tested because of the alcohol and
controlled substance testing mandated by the
federal Omnibus Transportation Employee Testing
Act of 1991, Public Law 102-143, Title V.

42 (2) ~~No An employer may not take any action described~~
44 ~~in paragraph A while an employee is participating in a~~
~~rehabilitation program, except as---provided---in~~
~~subparagraph--(2-A)--and--except--that--an--employer--may~~
46 ~~change--the--employee's--work--assignment--or--suspend--the~~
~~employee--from--active--duty--to--reduce--any--possible--safety~~
~~hazard---Except--as--provided--in--subparagraph--(2-A)--an~~
48 ~~employee's--pay--or--benefits--may--not--be--reduced--while--an~~
~~employee--is--participating--in--a--rehabilitation--program,~~

provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(i) As provided in subparagraph (2-A);

(ii) That an employer may change the employee's work assignment to reduce any possible safety hazard. If the employee is reassigned, the employer shall pay the employee the rate of the new work assignment until an evaluation conducted by or arranged through the rehabilitation or treatment provider concludes the unreasonable safety hazard has abated, with or without conditions such as regular or irregular interim substance abuse testing during rehabilitation;

(iii) That an employer may suspend the employee from active duty to reduce any possible safety hazard. If the employee is suspended, the employer shall pay the employee 1/2 of the employee's regular weekly rate, unless and until an evaluation conducted by or arranged through the rehabilitation or treatment provider concludes the unreasonable safety hazard has abated, with or without conditions such as regular or irregular interim substance abuse testing during rehabilitation; and

(iv) That the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified.

The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as

2 determined by the rehabilitation or treatment provider
3 after consultation with the employer, the employee is
4 entitled to return to the employee's previous job with
5 full pay and benefits unless conditions unrelated to
6 the employee's previous confirmed positive result make
7 the employee's return impossible. Reinstatement of the
8 employee must may not conflict with any provision of a
9 collective bargaining agreement between the employer
10 and a labor organization that is the collective
11 bargaining representative of the unit of which the
12 employee is or would be a part. If the rehabilitation
13 or treatment provider determines that the employee has
14 not successfully completed the rehabilitation program
15 within 6 months after starting the program, the
16 employer may take any action described in paragraph A.

17 (a) If the employee who has completed
18 rehabilitation previously worked in an employment
19 position subject to random or arbitrary testing
20 under an employer's written policy, the employer
21 may refuse to allow the employee to return to the
22 previous job if the employer believes that the
23 employee may pose an unreasonable safety hazard
24 because of the nature of the position a position
25 that would create an unreasonable threat to the
26 health and safety of the public, the employee or
27 coworkers if the employee were under the influence
28 of a substance of abuse, the employer may refuse
29 to allow the employee to return to the previous
30 job if the employer believes that the employee
31 might pose an unreasonable safety hazard because
32 of the nature of the position. The employer shall
33 attempt to find suitable work for the employee
34 immediately after refusing the employee's return
35 to the previous position. No reduction may be
36 made in the employee's previous benefits or rate
37 of pay while awaiting reassignment to work or
38 while working in a position other than the
39 previous job. The employee shall must be
40 reinstated to the previous position or to another
41 position with an equivalent rate of pay and
42 benefits and with no loss of seniority after an
43 evaluation conducted by or arranged through the
44 rehabilitation or treatment provider concludes
45 that the unreasonable safety hazard has abated, or
46 in any event within 6 months after returning to
47 work in any capacity with the employer unless the
48 employee has received a subsequent confirmed
49 positive result within that time from a test
50 administered under this subchapter or unless

2 conditions unrelated to the employee's previous
confirmed positive test result make that
4 reinstatement or reassignment impossible.
Placement of the employee in suitable work and
6 reinstatement may not conflict with any provision
of a collective bargaining agreement between the
8 employer and a labor organization that is the
collective bargaining representative of the unit
of which the employee is or would be a part.

10
12 (b) Notwithstanding division (a), if an employee
who has successfully completed rehabilitation is
14 medically disqualified, the employer is not
required to reinstate the employee or find
16 suitable work for the employee during the period
of disqualification. The employer is not required
18 to compensate the employee during the period of
disqualification. Immediately after the
20 employee's medical disqualification ceases, the
employer's obligations under division (a) attach
22 as if the employee had successfully completed
rehabilitation on that date.

24 SUMMARY

26 The bill:

28 1. Allows for post-accident testing when death, serious
30 injury or substantial property damage has occurred, separate and
apart from probable cause or random testing;

32 2. Permits the employer to require, request or suggest
34 subsequent follow-up testing of an employee returning to work
during the 18 months after the date of the employee's return to
36 work;

38 3. Allows for point-of-collection screening tests of
employees. Confirmation of positive tests would still be
40 required in the existing manner;

42 4. Amends the exclusion of a single work-related accident
as probable cause for testing when circumstances surrounding a
44 single work-related accident may give rise to probable cause to
test, even if the harm from the accident is not so severe as to
46 warrant general post-accident testing;

48 5. Sets reasonable limits on the currently open-ended
shifting of uninsured treatment or rehabilitation costs, based on
50 an employee's length of service and incorporates changes

recognizing that outpatient treatment is often the recommended approach;

6. Permits a program of follow-up testing after return to work following a confirmed positive test, as recommended by a rehabilitation or treatment provider. The statutes currently permit only a single follow-up test in the period between 90 days and one year after the employee's positive prior test. This change would permit a program of follow-up testing in the 12 months following a confirmed positive test, under circumstances similar to those now used for drivers of commercial motor vehicles under the Federal Motor Carrier Safety Regulations; and

7. Amends the provisions requiring return of an employee with a confirmed positive test result to a safety-sensitive position and insulating the employee from any financial consequences. The existing law requires that, if due to a perceived safety hazard an employee is not immediately returned to the safety-sensitive position, the employer must nonetheless pay the rate of the safety-sensitive job even though that job is not being performed. This change would provide employers greater flexibility to temporarily reassign such persons to other duties at the rates of pay corresponding to the new positions. As soon as the employee's rehabilitation or treatment provider concludes the unreasonable safety hazard has abated, the employee must be restored to full pay.

Appendix D

Post-accident Testing Language in Federal Rules

Federal Aviation Administration: Provides that "(e)ach employer shall test each employee who performs a safety-sensitive function for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the employee's system if that employee's performance either contributed to an accident or can not be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident."

Federal Motor Carrier Safety Administration: Requires post-accident testing "(a)s soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

- (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

- (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle."

Federal Railroad Administration: Provides that "post-accident toxicological tests must be conducted after any event that involves one or more of the circumstances described in paragraphs...(1) through (4) of this section:

(1) Major train accident. Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:

- (i) A fatality;
 - (ii) A release of hazardous material lading from railroad equipment accompanied by-
- (A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of \$1,000,000 or more.

(2) Impact accident. An impact accident (i.e., a rail equipment accident defined as an "impact accident" in §219.5) that involves damage in excess of the current reporting threshold, resulting in-

(i) A reportable injury; or

(ii) Damage to railroad property of \$150,000 or more.

(3) Fatal train incident. Any train incident that involves a fatality to any on-duty railroad employee.

(4) Passenger train accident. Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

(b) Exceptions. No test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene."

Federal Transit Administration: Requires post-accident testing in the case of "(1) Fatal accidents. (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49.CFR 389.303(a)(1) or (b)(1).

(ii) The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) Nonfatal accidents. (i) As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.

(b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

(d) The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

(e) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(f) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section."

Pipeline and Hazardous Materials Safety Administration: Requires that "(a)s soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and

(i) A death, or personal injury necessitating in-patient hospitalization; or

(ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.

(2) An event that results in an emergency shutdown of an LNG facility.

(3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2)."

U. S. Coast Guard: Provides for post-accident testing in the case of a "marine casualty or accident (which) includes any accidental grounding, or any occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, or cargo, or injury or loss of life of any person; and includes among other things, collisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of the vessel.

Any marine casualty or accident as defined in §4.03-1 which is required by §4.05-1 to be reported to the Coast Guard and which results in any of the following:

- (1) One or more deaths;
 - (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;
 - (3) Damage to property, as defined in §4.05-1 (a)(7) of this part, in excess of \$100,000;
 - (4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or
 - (5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 gross tons or more.
- (b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.
- (c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty."

Appendix E

Substance Abuse Testing Laws

Showing All States With Laws Materially Effecting Employers' Actions Regarding Substance Abuse Testing

State	Statutory Reference	Type [See note]	Coverage	Circumstances where testing is allowed						POCT Allowed	Treatment Requirements	Comments
				Pre-Employment	For Cause	Random	Post Accident	Post Treatment	Other			
Alabama	25 AC 5-330 et seq	Voluntary [WC]	All employers, all employees	Yes	Yes	Yes*	Yes*	Yes*	Yes*	No	N/A	Random testing allowed but not required for WC discount. Post-accident testing required where the employer has "(l)nformation that an employee has caused or contributed to an accident while at work." Post-treatment testing required at least once a year for a minimum of two years. Other - "Fit-for-duty tests allowed.
Alaska	23 AS 10.600	Voluntary [Lib]	All employers, all employees	Yes	Yes	Yes	Yes*	Yes*	N/A	Yes*	Allowed*	Post-accident test allowed for "employees who the employer reasonably believes may have contributed to the accident." Unlimited post-treatment testing allowed. POCT is allowed for all categories. FDA-approved device and lab confirmation of initial positive required. Employers are allowed to require treatment as condition of employment.
Arizona	23 ARS 493	Voluntary [Lib]	All private employers, some state agencies, all employees	Yes	Yes	Yes	Yes*	Yes*	N/A	Yes*	Allowed*	Post-accident test allowed for "employees who the employer reasonably believes may have contributed to the accident." Unlimited post-treatment testing allowed. POCT allowed for all categories. Lab confirmation of initial positive required. Employers allowed to require treatment as condition of employment.
Arkansas	11 ACA 14-101 et seq	Voluntary [WC]	All employers, all employees	Yes	Yes	Yes*	Yes*	Yes*	Yes*	No	N/A	Random testing allowed but not required for WC premium discount. Post-accident test required when the accident "results in an injury." Post treatment testing required at least once a year for two years following rehabilitation. Other - "Fit-for-duty tests" required for safety sensitive positions, allowed for most others.
Connecticut	31 CGS 51t et seq	Controlling	All private employers, all employees	Yes	Yes	Yes*	No	No	N/A	Yes*	N/A	Random testing restricted to safety sensitive positions Law does not specify the initial test methodology, so POCT is allowed. All positive screen results must be confirmed by lab follow-up.
Florida	XXXI FS 440.101 et seq	Voluntary [WC]	All employers, all employees	Yes	Yes	No	Yes*	Yes*	Yes*	Yes*	Yes*	Post-accident test allowed where employer has "information that an employee has caused, or contributed to, an accident while at work."

Circumstances where testing is allowed

State	Statutory Reference	Type [See note]	Coverage	Pre-Employment	For Cause	Random	Post Accident	Post Treatment	Other	POCT Allowed	Treatment Requirements	Comments
Florida (Continued)												<p>Post-treatment tests are allowed for up to 24 months following return to work but must be pre-scheduled on a quarterly, bi-annual, or annual basis.</p> <p>Other - law allows "fitness for duty" testing for employees that are otherwise required to pass an annual physical exam.</p> <p>POCT devices must be FDA-approved.</p> <p>Treatment required after first positive result.</p>
Georgia	45 GC 20-90 et seq	Controlling	State as employer, "high risk" employees only	No	No	Yes	No	No	N/A	No	None, employee must be terminated for any positive result.	High risk means a position where "inattention to duty or errors in judgment while on duty will have the potential for significant risk of harm to the employee, other employees, or the general public."
Hawaii	HRS 329B	Controlling	All employers, all employees	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	No	N/A	The law sets standards for sample collection and laboratory testing. It requires an employer to comply with those standards but does not otherwise control employer substance abuse testing activities.
Idaho	72 IC 1701 et seq	Voluntary [Lib, WC]	All employers, all employees	Yes	Yes	Yes	Yes	Yes	Yes*	No	Allowed*	<p>Post-accident testing allowed "(i) if the employee has caused or contributed to an on-the-job injury which resulted in a loss of work time."</p> <p>Other - law allows a "baseline" test.</p> <p>Employers allowed to require treatment as condition of employment.</p>
Iowa	XVI IC 730.5	Controlling	All private employers, all employees	Yes	Yes	Yes	Yes*	Yes	N/A	No	Required*	<p>Post accident testing allowed where the employer has "(e)vidence that an employee has caused an accident while at work which resulted in an [OSHA-recordable] injury...or resulted in damage to property, including to equipment, in an amount reasonably estimated...to exceed one thousand dollars."</p> <p>Employers of 50 or more employees are required to offer treatment, smaller employers are allowed to require treatment as condition of employment.</p>
Kansas	KSA 65-1,107 1,108	Controlling	All employers all employees	Yes	Yes	Yes	Yes	Yes	N/A	Yes*	N/A	The law governs the laboratory standards, not employer actions. Under an Atty Gen. Opinion employer on-site testing (POCT) is exempt from these requirements.
Louisiana	23 LRSA 1001 et seq	Controlling	All employers, all employees*	Yes	Yes	Yes	Yes	Yes	N/A	Yes*	Allowed*	<p>The law sets different standards for testing by public sector employers.</p> <p>POCT allowed if there are no negative work-related consequences attached.</p> <p>Employers allowed to require treatment as condition of employment.</p>

Circumstances where testing is allowed

State	Statutory Reference	Type [See note]	Coverage	Pre-Employment	For Cause	Random	Post Accident	Post Treatment	Other	POCT Allowed	Treatment Requirements	Comments
Maine	26 MRSA Sub-chapter 3-A	Controlling	All employers, all employees	Yes	Yes	Yes*	No*	Yes*	N/A	Yes*	Required*	<p>Random testing allowed only for "safety sensitive" positions, under a collective bargaining agreement, or for large employers meeting certain standards. Post-accident testing not allowed for a single accident, but can be a factor in a probable cause finding.</p> <p>A single post treatment test is allowed no earlier than 90 days nor later than one year after the initial positive test.</p> <p>Other - arbitrary testing allowed for "safety sensitive" positions, usually a "fit-for-duty" test associated with an annual physical.</p> <p>POCT allowed only for pre-employment testing. FDA-approved device and lab confirmation of initial positive required.</p> <p>Offer of treatment required after first positive result. In some circumstances employer may have to pay 50% of costs not covered by medical plan.</p>
Maryland	Health-Gen 17-214 et seq	Controlling	All employers, all employees	Yes	Yes	Yes	Yes	Yes	N/A	Yes*	N/A	POCT allowed for all categories. Lab confirmation of initial positive required.
Minnesota	MS181.950 et seq	Controlling	All employers, all employees	Yes	Yes	Yes*	Yes*	Yes*	Yes*	No	Required*	<p>Random testing allowed for "only if (1) they are employed in safety-sensitive positions, or (2) they are employed as professional athletes if the professional athlete is subject to a collective bargaining agreement permitting random testing."</p> <p>Post accident testing allowed if the employee "has sustained a personal injury...or has caused another employee to sustain a personal injury" or "has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident."</p> <p>Post treatment testing allowed up to two years following completion of treatment. Other-testing also allowed as part of a routine physical.</p> <p>Offer of treatment required after first positive result. Costs beyond medical plan covered by employee.</p>
Mississippi	MCA 71-7-1 et seq	Controlling	All employers, all employees*	Yes	Yes	Yes	Yes*	Yes*	N/A	Yes	N/A	Law has some restrictions on public employers electing to test.

State	Statutory Reference	Type [See note]	Coverage	Circumstances where testing is allowed						POCT Allowed	Treatment Requirements	Comments
				Pre-Employment	For Cause	Random	Post Accident	Post Treatment	Other			
Mississippi (Continued)												Post-accident testing allowed if employer has "(f) information that an employee has caused or contributed to an accident while at work." Unlimited post treatment testing allowed for one year following completion of treatment.
Montana	MCA 39-2-205 et seq	Controlling	All employers, employees who have safety, security, or fiduciary duties, or who work in hazardous work environments	Yes	Yes	Yes	Yes*	Yes*	N/A	No	Allowed*	Post-accident testing allowed if employer has "reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of \$1,500." Unlimited post-treatment testing allowed for one year following completion of treatment. Employers allowed to require treatment as condition of employment.
Nebraska	NRS 48-1901 et seq	Controlling	All employers of 6 or more, all employees	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	N/A	The law only sets standards for confirmatory testing so by omission all types of testing are allowed.
North Carolina	NCGS 95-230 et seq	Controlling	All employers, all employees	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	N/A	The law only sets standards for confirmatory testing so by omission all types of testing are allowed. POCT allowed only for pre-employment testing.
Oklahoma	40 OSA 551 - 565	Controlling	All employers, all employees	Yes	Yes	Yes*	Yes*	Yes*	Yes*	Yes*	N/A	Random testing for public employees is restricted to law enforcement and related positions. Post accident testing allowed "if the employee or another person has sustained a work-related injury or the employer's property has been damaged, including damage to equipment, in an amount reasonably estimated at the time of the accident to exceed Five Hundred Dollars (\$500.00)." Post treatment testing allowed up to two years following completion of treatment. Other-routine "fit-for-duty" testing allow but for public employees it is limited to law enforcement and related positions. POCT allowed using FDA approved test kits. Lab confirmation of positive required.
Oregon	ORS 438.435	Controlling	All employers, all employees	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*	N/A	The law only sets standards for testing so by omission all types of testing are allowed. POCT allowed using FDA approved test kits. Lab confirmation of positive required. Operators of on-site testing must register with DHS.

State	Statutory Reference	Type (See note)	Coverage	Circumstances where testing is allowed						POCT Allowed	Treatment Requirements	Comments
				Pre-Employment	For Cause	Random	Post Accident	Post Treatment	Other			
Rhode Island	136 RIGL 28-6.5	Controlling	All employers, all employees	Yes*	Yes	No	No	No	No	Yes*	Required*	Pre-employment testing for public employees is restricted to law enforcement and related positions. The law only sets standards for confirmatory testing so by omission POCT testing appears to be allowed. Offer of treatment required after first positive result.
Tennessee	TCA 50-9-101 et seq	Controlling	All employers, all employees	Yes	Yes	No	Yes*	Yes*	Yes*	No	Allowed*	If the employer claims a workers' compensation discount, the employer must conduct certain tests. Post accident testing is required if the employer has "Information that an employee has caused, contributed to or been involved in an accident while at work." An employer must conduct at least one follow-up test each year for two years following the completion of the rehabilitation program. Other-routine "fit-for-duty" testing allowed but for public employees is limited to law enforcement and related positions. The employer may not discipline based on the first confirmed positive but may require treatment as a condition of employment.
Utah	34 UCA 38	Controlling	All private employers, all employees	Yes	Yes	No	Yes*	No	Yes*	Yes*	Allowed*	Post-accident testing allowed as part of an "investigation of accidents in the workplace." Other - testing allowed as part of an "investigation of.....incidents of workplace theft." The law specifies that an employer may only act on a positive test after confirmatory testing, so by omission POCT would be allowed. Employers allowed to require treatment as condition of employment.
Vermont	21 VS 511 et seq	Controlling	All employers, all employees	Yes	Yes	No	No	No	No	No	Required*	Offer of treatment required after first positive result.

Note on "Type": The term "Controlling" is used where a covered employer may conduct substance abuse testing only in accordance with the law. The term "Voluntary" is used where state law does not generally control employer substance abuse testing but the law provides an incentive such as liability protection [Lib] or a workers' compensation premium discount [WC].

Appendix F

Synopsis of State Programs to Encourage Drug-free Workplace Activities

Alabama 25 AC 5-330 et seq	The Workers' Compensation Premium Discount Act provides a five percent discount to employers who establish a drug-free workplace program in compliance with the act. In order to qualify for the benefit, the program must include a written policy, employee education, supervisor training, resources of employee assistance providers, pre-employment, post-accident, reasonable suspicion, and rehabilitation and post-rehabilitation drug testing. Employers must have their program certified in advance by the Department of Industrial Relations in order to receive the premium discount.
Arkansas 11 ACA 14-112	The Voluntary Drug Testing Act provides that the Insurance Commissioner is to approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to the law (see Appendix B). The credit is to be at least five percent unless the Commissioner determines that five percent is actuarially unsound. The Insurance Commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that attain certain criteria for safety performance. The Insurance Commissioner is to consult with the Director of the Department of Labor in setting this criteria.
California CCA 8350 et seq	The Drug-Free Workplace Act requires all state contractors and grantees to implement a drug-free workplace policy and establish an employee drug awareness education program.
Florida XXXI FS 440.101 et seq	The Florida Premium Reduction Act provides a five percent discount on workers' compensation premiums to employers who implement and maintain a certified drug-free workplace program in accordance with the standards set forth in the Act (see Appendix B). The Act requires reemployment, for-cause, periodic, post-accident, and rehabilitation drug testing. Random testing is permitted but not required. A comprehensive written policy must be implemented and specific requirements relating to drug testing procedures must be followed.
XIX FS 287.087	The State Contracts law provides that in situations where two or more bids of equal merit are submitted, the business certifying that it has implemented a drug-free workplace program will be given preference in being awarded the contract.
Georgia 33 GC 9-40.2	The Workers' Compensation Premium Reduction Act provides a 7.5 percent discount on workers' compensation premiums to employers who have implemented a drug-free workplace program which is certified by the state Board of Workers' Compensation. A certified program must include the following: (1) a written policy statement; (2) substance abuse testing; (3) resources of employee assistance providers; (4) one hour of employee education; and (5) two hours of supervisory training annually. Annual certification is required. Length of premium discount is not to exceed 8 years
50 GC 24-1 et seq	The Drug-Free Workplace Act provides that contractors (and their subcontractors) who receive state contracts in the amount of \$25,000 or more must certify that they have implemented a substance abuse prevention program. At a minimum, the program must include a written policy and an employee drug-awareness program. The Act does not address drug testing.
Idaho IC 72-1716	The Premium Reduction Discount Program provides a workers' compensation premium discount to employers who implement and maintain a drug-free workplace program in accordance with the state's voluntary drug testing law (see Appendix B).
IC 72-1717	The Employer Alcohol and Drug-free Workplace Act requires all contractors and sub-contractors working on any public property or public buildings to maintain a drug-free workplace program in accordance with the state's voluntary drug testing law (see Appendix B).
Illinois IRS 132.211	The Drug-Free Workplace Act provides that employers who are awarded a state contract or grant must adopt an anti-drug policy and program and provide a copy of its policy. This law does not specifically address drug testing.

Mississippi 71 MSCA 3-201 et seq	The Workers' Compensation Premium Reduction Law provides for a five percent reduction in workers' compensation premiums to employers who establish a drug-free workplace program. In order to qualify for the reduction, employers must have a written policy statement, maintain a resource list of EAP providers, provide employee education and supervisor training, and maintain confidentiality standards. Drug testing is elective and must be conducted in accordance with state labor law (see Appendix B).
Ohio OAC 4123-17-58	Drug-Free Workplace (DFWP) discount program provides that the administrator may grant a discount on premium rates to an eligible employer that meets the DFWP requirements. The DFWP eligibility requirements stipulate the following: only state-fund employers may receive a discount; employers must be in good standing with the Bureau of Workers' Compensation (BWC) in terms of policy coverage status, payment of premiums and other monies due BWC and have limited lapses in coverage; employers must have an active, reinstated or debtor-in-possession coverage status at the time they are approved to participate in the DFWP and throughout continued participation; employers must be current on premium payments as of March 31 for the application year that begins July 1, or must be current as of Sept. 30 for the application year that begins Jan. 1; employers may not have cumulative lapses in workers' compensation coverage in excess of 59 days within the last 18 months preceding application for the DFWP program; comparable to BWC's DFWP Level 1, for four or more years; employers must not have previously completed their eligible four or five years of participation in the DFWP program. The program requirements at all levels of discount include the following: a written policy statement; employee education; supervisory training; drug and alcohol testing; and employee assistance.
OH Executive Order 2002-13T.	All construction contracts on state-administered construction projects require the contractors and subcontractors on the project to be enrolled in the Ohio Bureau of Workers' Compensation Drug-Free Workplace Program or a similar program approved by the BWC.
South Carolina 41 SCA 1-15.	The Workers' Compensation Premium Reduction Program provides for a five percent discount on workers' compensation premiums to employers who voluntarily establish a drug-free workplace program in compliance with the act. The statute calls for the Director to promulgate regulations for the certification of employer programs. At a minimum, the requirements include a written substance abuse policy statement, employee notification of program, confidentiality procedures, and random sampling of all employees. A second test must be conducted within thirty minutes of the initial test.
44 SCA 107-10 et seq	The Drug-Free Workplace Act requires that every individual and business receiving a state grant or state contract for \$50,000 or more must implement a drug-free workplace program in accordance with the Act. Requirements include establishing and distributing a written substance abuse policy to all employees and establishing an employee drug awareness program. Drug testing is not required.
Tennessee 50 TCA 6-418	The Workers' Compensation Premium Reduction law provides that the Department of Commerce and Insurance (DCI) is to approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to rules adopted by the Division of Workers' Compensation of the Department of Labor and Workforce Development (DLWD). The credit must be at least five percent unless commissioner determines that five percent is actuarially unsound. The commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that attain certain criteria for safety performance. The commissioner shall consult with the DLWD in setting the criteria.
50 TCA 9-113	The Drug-Free Workplace Act requires that employers with five or more paid employees who contract with state or local government to provide construction services submit an affidavit stating that the employer has a drug-free workplace program that complies with state drug testing law, at least to the extent required of governmental entities (see Appendix E). Any private employer that certifies compliance only to the extent required by this section, does not receive any reduction in workers' compensation premiums. Covered employers must obtain a certificate of compliance from the DLWD.

Texas TLCA 411.091	The Workers' Compensation law requires that employers with 15 or more employees who maintain workers' compensation insurance adopt a policy designed to eliminate drug abuse in the workplace. The employer must distribute a written policy to each employee. The law does not require an employer to implement a drug testing or rehabilitation program.
Virginia CV 65.2-813.2	The Workers' Compensation Premium Reduction law provides a 5 percent premium discount for employers who institute and maintain a drug free workplace program that meets the criteria established by their insurer.
CV 2.2-4312	The Drug-Free Workplace Act requires all public bodies to include in every contract over \$10,000 the following provisions: the contractor must 1) provide a drug-free workplace for the contractor's employees; 2) post a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the consequences for policy violations; 3) state in all solicitations or advertisements for employees that the contractor maintains a drug-free workplace, and 4) must include the drug-free workplace clauses from this Act in every subcontract or purchase order over \$10,000 so that the provisions are binding on the subcontractor or vendor.
Wyoming 27 WS 14-201	The Safety Discount Program, offered by the Workers' Safety and Compensation Division, provides base rate discounts for enrolled companies that demonstrate a reduction in their loss ratio. The loss ratio is the incurred injury cost to paid premium ratio in a state fiscal year. The division offers a rate discount in an amount not to exceed ten percent of the base rate for the employment classification of any employer if the employer complies with a safety program approved by the division. Among considerations to be included for the discount is whether the employer adopts and enforces policies establishing a drug-free workplace which may include an employee assistance program to assist employees with alcohol or other drug problems. In order to obtain accreditation in the Wyoming Workers Safety and Compensation Safety Discount Program (SDP), a company health and safety program with the necessary requirements must be approved by the Division. Safety programs must be submitted for approval before December 15 to be eligible for approval for the following calendar year. Discounts are re-evaluated annually.