

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 156

S.P. 73

In Senate, February 2, 1987

Reported by Senator TUTTLE of York for the Commission to Examine Chemical Testing of Employees pursuant to Resolves of 1985, c. 86.

Reference to the Committee on LABOR suggested and Ordered Printed pursuant to Joint Rule 18.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Prohibit Substance Abuse Testing in
2 the Workplace.
3

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

6 26 MRSA §595 is enacted to read:

7 §595. Substance abuse testing of employees

8 . 1. Definitions. As used in this section, unless
9 the context otherwise indicates, the following terms
10 have the following meanings.

11 A. "Applicant" means any person seeking employ-
12 ment from an employer. The term includes any
13 person seeking to use an employment agency's ser-
14 vices.

1 B. "Employee" means a person who is permitted,
2 required or directed by any employer to engage in
3 any employment in consideration of direct gain or
4 profit.

5 C. "Employer" means any person, partnership,
6 corporation, association or other legal entity,
7 public or private, which employs one or more em-
8 ployees. The term includes an employment agency.

9 D. "Substance abuse test" means any test proce-
10 dure designed to take and analyze body fluids or
11 materials from the body for the purpose of de-
12 tecting the presence of scheduled drugs, alcohol
13 or other drugs, or any of their metabolites. The
14 term does not include tests designed to determine
15 blood alcohol concentration levels from a sample
16 of an individual's breath.

17 (1) "Alcohol" has the same meaning as found
18 in Title 28, section 2, subsection 1.

19 (2) "Drug" has the same meaning as found in
20 Title 32, section 2805, subsection 4.

21 (3) "Scheduled drug" has the same meaning
22 as found in Title 17-A, section 1101, sub-
23 section 11.

24 2. Testing prohibited. No employer may, direct-
25 ly or indirectly:

26 A. Require, request or suggest that any employee
27 or applicant submit to a substance abuse test as
28 a condition of:

29 (1) Obtaining or retaining employment;

30 (2) Qualifying for a promotion or change in
31 work assignment; or

32 (3) Receiving any employment benefit;

33 B. Administer or cause to be administered to any
34 employee or applicant any substance abuse test;
35 or

1 C. Use or refer to the results of a substance
2 abuse test for hiring or employment purposes.

3 3. Contracts for work out of State. All employ-
4 ment contracts made in this State shall include an
5 agreement that this section applies to any employer
6 who hires employees to work outside the State.

7 4. Violation and remedies. The following provi-
8 sions govern the enforcement of this section.

9 A. Any employer who violates this section:

10 (1) Commits a civil violation for which a
11 forfeiture of not less than \$100 nor more
12 than \$500 shall be adjudged; and

13 (2) Is liable to any employee subjected to
14 discipline or discharge based on a violation
15 of this section for:

16 (a) An amount equal to 3 times any
17 lost wages;

18 (b) Reinstatement of the employee to
19 his job with full benefits;

20 (c) Court costs; and

21 (d) Reasonable attorneys fees, as set
22 by the court.

23 B. The Department of Labor or the affected em-
24 ployee or employees may enforce this section.
25 The department may:

26 (1) Collect the judgment on behalf of the
27 employee or employees;

28 (2) Supervise the payment of the judgment
29 and the reinstatement of the employee or em-
30 ployees; and

31 (3) Collect fines incurred through viola-
32 tion of this section.

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STATEMENT OF FACT

2 This bill is the result of recommendations made
3 by the majority of the Commission to Examine Chemical
4 Testing of Employees, established by Resolve 1985,
5 chapter 86. The reasons for its introduction are set
6 out in the Majority Report of that commission. In
7 short, the prohibition is necessary to avoid wide-
8 spread interference with the privacy rights of Maine
9 workers and to prevent inaccurate and unreliable test
10 methods from being employed in the Maine workplace to
11 the detriment of innocent Maine workers and job ap-
12 plicants.

13 This bill prohibits an employer's use of any sub-
14 stance abuse test, except for a breathalyzer, in the
15 workplace. A "substance abuse test" is defined to
16 include any test designed to use a bodily sample to
17 determine whether a substance of abuse is present; a
18 breathalyzer is excepted from this definition. "Sub-
19 stance of abuse" is defined to include scheduled
20 drugs, alcohol or any other drug in its widest sense.
21 The prohibition applies to all employers in the
22 State, both public and private.

23 Its specific provisions prohibit an employer from
24 requiring, requesting or suggesting that an employee
25 submit to a substance abuse test as a condition of
26 obtaining or retaining employment, qualifying for a
27 promotion or a change in work assignment, or receiv-
28 ing any employment benefit. It further prohibits an
29 employer from administering or having a test adminis-
30 tered to any employee or job applicant, and from
31 using or referring to the results of any substance
32 abuse test for any hiring or employment purpose.
33 These provisions are intended to prevent an employer
34 from making any possible use of a substance abuse
35 test or test result for any hiring or employment pur-
36 pose.

37 The bill includes a provision designed to protect
38 employees whose work requires them to leave the
39 State. This provision requires that every employment
40 contract, which is subject to the laws of this State
41 when it is made, shall have the provisions of this
42 bill automatically read into the contract. Even if

1 an employee is required to perform work outside of
2 the State, this provision will ensure that the sub-
3 stance abuse testing prohibition will continue to
4 protect his privacy rights on a contract basis.

5 An enforcement section was added to this bill to
6 provide a means of enforcing its provisions. It al-
7 lows either the Department of Labor or the injured
8 employee to file suit if an employer violates the
9 testing prohibition in any way. Any violation of the
10 prohibition is made a civil violation with penalties
11 from \$100 to \$500. The injured employee may recover
12 treble damages for any lost wages, reinstatement to
13 his previous job and court costs and attorneys fees.
14 The Department of Labor, besides being authorized to
15 pursue the civil violation forfeitures, may recover
16 and pay over any damages due any injured employee for
17 a violation of the prohibition.

18 It is recognized that this bill has already been
19 preempted by regulations of the Federal Government in
20 at least 2 areas: The testing of military personnel
21 and the testing of railroad employees in certain in-
22 stances. Further preemption may occur, but the pro-
23 visions of the bill will remain valid for all other
24 Maine employees.

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