

MAINE STATE LEGISLATURE

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(New Draft of S.P. 54, L.D. 105)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1398

S.P. 455

In Senate, April 30, 1987

Reported by Report B for the Committee on Labor and printed under Joint Rule 2. Original Bill submitted by the Maine Commission to Examine Chemical Testing of Employees pursuant to Resolves of 1985, c. 86.

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 Ensure Confidential and Reliable**
2 **Substance Abuse Testing of Employees.**
3

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

6 Sec. 1. 26 MRS A §595 is enacted to read:

7 §595. Substance abuse testing

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

11 A. "Confirmed positive result" means a confirma-
12 tion test result which indicates the presence of
13 a substance of abuse above the cut-off level in
14 the tested sample.

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

5 C. "Employer" means a person, partnership, cor-
6 poration, association or other legal entity, pub-
7 lic or private, which employs one or more employ-
8 ees.

9 D. "Probable cause" means a reasonable ground
10 for belief in the existence of facts which would
11 induce a person to believe that an employee may
12 be under the influence of a substance of abuse.

13 E. "Safety-sensitive position" means an employ-
14 ment position or work assignment in which an em-
15 ployee would create a substantial risk of serious
16 bodily harm to the general public or a co-worker
17 if that employee was under the influence of a
18 substance of abuse while performing in that posi-
19 tion.

20 F. "Substance abuse test" means any test proce-
21 dure designed to take and analyze body fluids or
22 materials from the body for the purpose of de-
23 tecting the presence of substances of abuse. The
24 term does not include tests designed to determine
25 blood-alcohol concentration levels from a sample
26 of an individual's breath.

27 (1) "Screening test" means a substance
28 abuse test that is reliable within known
29 tolerances and which is used as a prelimi-
30 nary step in detecting the presence of sub-
31 stances of abuse.

32 (2) "Confirmation test" means a substance
33 abuse test that uses a
34 scientifically-recognized method capable of
35 providing quantitative data specific to the
36 substance of abuse detected. A confirmation
37 test used on a sample which resulted in a
38 positive screening test result must use a
39 method more reliable than the screening test
40 used to test that sample.

1 G. "Substance of abuse" means any scheduled
2 drug, alcohol or other drug, or any of their
3 metabolites.

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

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

8 (3) "Scheduled drug" has the same meaning
9 as found in Title 17-A, section 1101, sub-
10 section 11.

11 2. Testing procedures. No employer may require,
12 request or suggest that any employee submit to a sub-
13 stance abuse test, except as provided in this subsec-
14 tion.

15 A. Before establishing any substance abuse test-
16 ing program, an employer must develop a written
17 policy governing the following:

18 (1) The conditions under which substance
19 abuse testing will be required;

20 (2) The jobs or job classifications, if
21 any, that are classified by the employer as
22 safety-sensitive;

23 (3) The consequences of a confirmed posi-
24 tive test result, including, for all jobs
25 not classified as safety-sensitive, a writ-
26 ten policy entitling the employee to partic-
27 ipate in an employee assistance program af-
28 ter he receives a confirmed positive result;
29 and

30 (4) Any other desirable information.

31 The employer shall notify his employees about the
32 written policy at least 30 days before the sub-
33 stance abuse testing program is implemented. The
34 employer shall notify each new employee about the
35 written policy at the time of hiring.

1 B. No employer may require, request or suggest
2 that any employee submit to a substance abuse
3 test unless:

4 (1) The employee works in a
5 safety-sensitive position; or

6 (2) The employer has probable cause to con-
7 duct the test.

8 3. Use of test results. Any sample that re-
9 ceives a positive screening test result must be sub-
10 mitted for a confirmation test. No employer may take
11 any final action against an employee based upon any
12 substance abuse test result other than a confirmed
13 positive result.

14 4. Confidentiality. This subsection governs the
15 use of information acquired by an employer in the
16 testing process.

17 A. Unless the employee or applicant consents,
18 all information acquired by an employer in the
19 testing process is confidential and may not be
20 released to any person other than the employee or
21 applicant who is tested, any necessary personnel
22 of the employer and a provider of rehabilitation
23 or treatment services. This paragraph does not
24 prevent:

25 (1) The release of this information when
26 required or permitted by state law or feder-
27 al law; or

28 (2) The use of this information in any
29 grievance procedure, administrative hearing
30 or civil action relating to the imposition
31 of the test.

32 B. Notwithstanding any other law, the results
33 of any substance abuse test required, requested
34 or suggested by any employer may not be used in
35 any criminal proceeding.

36 5. Home rule authority preempted. No municipal-
37 ity may enact any ordinance concerning an employer's
38 use of substance abuse tests.

1 from the disease of substance abuse will have a
2 chance to address that problem through rehabilitation
3 and counseling.

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