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

follows:

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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

AN ACT to Ensure Confidential and Reliable

- Substance Abuse Testing of Employees.

 Be it enacted by the People of the State of Maine as
- 6 Sec. 1. 26 MRSA §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 the tested sample.

5 6	B. "Employee" means a person who is permitted, required or directed by an employer to engage in any employment in consideration of direct gain or profit. C. "Employer" means a person, partnership, corporation, association or other legal entity, public and the second of the second or s
8	lic or private, which employs one or more employ- ees. D. "Probable cause" means a reasonable ground
10 11	for belief in the existence of facts which would induce a person to believe that an employee may be under the influence of a substance of abuse.
14 15	E. "Safety-sensitive position" means an employment position or work assignment in which an employee would create a substantial risk of serious bodily harm to the general public or a co-worker if that employee was under the influence of a substance of abuse while performing in that position.
20 21 22 23 24 25 26	F. "Substance abuse test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances of abuse. The term does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.
27 28 29 30 31	(1) "Screening test" means a substance abuse test that is reliable within known tolerances and which is used as a preliminary step in detecting the presence of substances of abuse.
32 33 34 35 36 37 38 39 40	(2) "Confirmation test" means a substance abuse test that uses a scientifically-recognized method capable of providing quantitative data specific to the substance of abuse detected. A confirmation test used on a sample which resulted in a positive screening test result must use a method more reliable than the screening test used to test that sample.

	1 2	G. "Substance of abuse" means any scheduled drug, alcohol or other drug, or any of their
	3	metabolites.
7.	4 5	(1) "Alcohol" has the same meaning as found in Title 28, section 2, subsection 1.(2) "Drug" has the same meaning as found in
	7	Title 32, section 2805, subsection 4.
	8 9 10	(3) "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11.
	11 12	 Testing procedures. No employer may require, request or suggest that any employee submit to a sub-
	13	stance abuse test, except as provided in this subsec-
	14	tion.
	15 16 17	A. Before establishing any substance abuse test- ing program, an employer must develop a written policy governing the following:
	18 19	(1) The conditions under which substance abuse testing will be required;
	20 21 22	(2) The jobs or job classifications, if any, that are classified by the employer as safety-sensitive;
	23 24 25 26 27 28 29	(3) The consequences of a confirmed positive test result, including, for all jobs not classified as safety-sensitive, a written policy entitling the employee to participate in an employee assistance program after he receives a confirmed positive result; and
	30 `	(4) Any other desirable information.
-	31 32 33 34 35	The employer shall notify his employees about the written policy at least 30 days before the substance abuse testing program is implemented. The employer shall notify each new employee about the written policy at the time of hiring.

1	B. No employer may require, request or suggest that any employee submit to a substance abuse
2 3	test unless:
4 5	(1) The employee works in a safety-sensitive position; or
6 7	(2) The employer has probable cause to conduct the test.
8 9 10 11 12 13	3. Use of test results. Any sample that receives a positive screening test result must be submitted for a confirmation test. No employer may take any final action against an employee based upon any substance abuse test result other than a confirmed positive result.
14 15 16	4. Confidentiality. This subsection governs the use of information acquired by an employer in the testing process.
17 18 19 20 21 22 23 24	A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services. This paragraph does not prevent:
25 26 27	(1) The release of this information when required or permitted by state law or federal law; or
28 29 30 31	(2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test.
32 33 34 35	B. Notwithstanding any other law, the results of any substance abuse test required, requested or suggested by any employer may not be used in any criminal proceeding.
36 37 38	5. Home rule authority preempted. No municipality may enact any ordinance concerning an employer's use of substance abuse tests.

6	. Viol	ation; pe	nalty. A	y emp	loyer	who	vio-
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STATEMENT OF FACT

This new draft restricts the scope of testing permitted under the original bill in order to accurately reflect the proper balance between an individual worker's right to personal privacy legitimate interests of the employer and the public. The original bill permitted substance abuse testing of any employee or applicant under any circumstances. new draft restricts the use of random or arbitrary testing to only those employment positions where the employee poses a substantial risk of seriously injuring another person. In such a case, employee's right to personal privacy is clearly outweighed by the potential for serious harm that may occur to other persons if potentially dangerous on the part of the employee cannot be detected or deterred. In such a case, the employer and public cannot afford to wait until an employee begins show outward signs of a substance abuse problem. At that point, it may well be too late to prevent the harm to other persons.

On the other hand, where the employee works in that presents little risk of harm to other position persons, the employee's privacy rights are protected in this new draft by requiring an employer to probable cause in order to test that individual. While not condoning substance abuse by employees, draft recognizes that individuals have a right to their personal privacy which may not be disturbed without substantial justification.

The 2nd major change in this new draft is to require employees who test positive and who work in a position that is not safety-sensitive to receive an opportunity to participate in an employer's employee assistance program. Rather than having the employer simply terminate the substance abusing employee's employment, this will ensure that persons suffering

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

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