

MAINE STATE LEGISLATURE

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(New Draft of S.P. 54, L.D. 105)
(New Title)

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1399

S.P. 456

In Senate, April 30, 1987

Reported by Report C 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 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 a person seeking employment
12 from an employer. The term includes a person

1 seeking to use an employment agency's services.

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

6 C. "Employer" means a person, partnership, cor-
7 poration, association or other legal entity, pub-
8 lic or private, which employs one or more employ-
9 ees. The term includes an employment agency.

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

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

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

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

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

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

30 (1) Obtaining or retaining employment;

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

33 (3) Receiving any employment benefit;

34 B. Administer or cause to be administered to any
35 employee or applicant any substance abuse test;
36 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 subject to the laws of this State when
5 entered into shall include an agreement that this
6 section will apply to any employer who hires employ-
7 ees to work outside the State.

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

10 A. Any employer who violates this section:

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

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

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

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

21 (c) Court costs; and

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

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

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

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

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

1 The new draft also includes a provision designed
2 to protect employees whose work requires them to
3 leave the State. This provision requires that every
4 employment contract which is subject to the laws of
5 this State when it is made, shall have the provisions
6 of this new draft automatically read into the con-
7 tract. Even if an employee is required to perform
8 work outside of the State, this provision will ensure
9 that the substance abuse testing prohibition will
10 continue to protect his privacy rights on a contract
11 basis.

12 An enforcement section was also added to this new
13 draft to provide a means of enforcing its provisions.
14 It allows either the Department of Labor or the in-
15 jured employee to file suit if an employer violates
16 the testing prohibition in any way. Any violation of
17 the prohibition is a civil violation with penalties
18 from \$100 to \$500. The injured employee may also re-
19 cover treble damages for any lost wages, reinstatement
20 to his previous job and court costs and attor-
21 neys fees. The Department of Labor, besides being
22 authorized to pursue the civil violation forfeitures,
23 is also authorized to recover and pay over any dam-
24 ages due any injured employee for a violation of the
25 prohibition.

26 Finally, the new draft encourages the use of em-
27 ployee assistance programs in the workplace as an al-
28 ternative to substance abuse testing. These programs
29 have consistently demonstrated their ability to deal
30 effectively with employee substance abuse problems
31 and do not intrude into an individual's privacy nor
32 suffer from the problems of inaccuracy inherent in
33 testing programs.

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