# 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

5 P 45F

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 <b>2</b> 3	AN ACT to Prohibit Substance Abuse Testing in the Workplace.
4 5	Be it enacted by the People of the State of Maine as 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
0	have the following meanings.
1 2	A. "Applicant" means a person seeking employment from an employer. The term includes a person
144	Annual transfer of the second

1 .	seeking to use an employment agency's services.
2 3 4 5	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.
6 7 8 9	C. "Employer" means a person, partnership, corporation, association or other legal entity, public or private, which employs one or more employees. The term includes an employment agency.
10 11 12 13 14 15 16	D. "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 scheduled drugs, alcohol or other drugs or any of their metabolites. The term does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.
L8 L9	(1) "Alcohol" has the same meaning as found in Title 28, section 2, subsection 1.
20 21	(2) "Drug" has the same meaning as found in Title 32, section 2805, subsection 4.
22 23 24	(3) "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11.
25 26 <u>1</u> 3	2. Testing prohibited. No employer may, direct- y or indirectly:
27 28 29	A. Require, request or suggest that any employee or applicant submit to a substance abuse test as a condition of:
30	(1) Obtaining or retaining employment;
31 32	(2) Qualifying for a promotion or change in work assignment; or
33	(3) Receiving any employment benefit;
34 35	B. Administer or cause to be administered to any employee or applicant any substance abuse test;

	1	C. Use or refer to the results of a substance
	2	abuse test for hiring or employment purposes.
	3 4 5 6 7	3. Contracts for work out of state. All employment contracts subject to the laws of this State when entered into shall include an agreement that this section will apply to any employer who hires employees to work outside the State.
	8 9	4. Violation and remedies. The following provisions govern the enforcement of this section.
	10	A. Any employer who violates this section:
	11 12 13	(1) Commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged; and
	14 15 16	(2) Is liable to any employee subjected to discipline or discharge based on a violation of this section for:
	17 18	(a) An amount equal to 3 times any lost wages;
)	19 20	(b) Reinstatement of the employee to his job with full benefits;
	21	(c) Court costs; and
	22 23	(d) Reasonable attorneys fees, as set by the court.
	24 25 26	B. The Department of Labor or the affected employee or employees may enforce this section. The Department of Labor may:
	27 28	(1) Collect the judgment on behalf of the employee or employees;
	29 30 31	(2) Supervise the payment of the judgment and the reinstatement of the employee or employees; and
	32 33	(3) Collect fines incurred through viola-

5. Employee assistance programs encouraged. All employers are encouraged to establish employee assistance programs in their workplaces to assist employees who suffer from substance abuse problems, as well as other problems which may lead to a decrease in worker productivity or create safety hazards in the workplace.

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#### STATEMENT OF FACT

This new draft follows the recommendations 10 the majority of the Maine Commission to Examine 11 Chemical Testing of Employees and provides for a to-12 ban on substance abuse testing in the workplace. 13 The total prohibition is necessary to avoid wide-14 spread interference with the privacy rights of Maine 15 workers and to prevent inaccurate and unreliable test 16 methods from being employed in the Maine workplace to the detriment of innocent Maine workers and job ap-17 18 plicants. The use of substance abuse testing is not 19 justified in the Maine workplace because 20 tence of a severe workplace substance abuse problem 21 in the State has not been documented, substance abuse 22 tests are inaccurate and are incapable of determining 23 the present impairment of an employee, and finally, 24 the use of substance abuse tests in the workplace un-25 justifiably intrudes upon the privacy rights of indi-26 vidual employees.

new draft prohibits an employer's use of any substance abuse test, except for a breathalyzer, the workplace. The prohibition applies to all employers in the State, both public and private. specific provisions prohibit an employer from requiring, requesting or suggesting that an employee submit to a substance abuse test as a condition of obtaining or retaining employment, qualifying for a promotion or a change in work assignment or receiving any benefit. It further prohibits an employer ployment from administering or having a test administered to employee or job applicant and from using or referring to the results of any substance abuse any hiring or employment purpose. These provisions are intended to prevent an employer from making any possible use of a substance abuse test or result for any hiring or employment purpose.

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

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An enforcement section was also added to this new draft to provide a means of enforcing its provisions. allows either the Department of Labor or the injured employee to file suit if an employer violates the testing prohibition in any way. Any violation of prohibition is a civil violation with penalties from \$100 to \$500. The injured employee may also recover treble damages for any lost wages, reinstatement to his previous job and court costs and attorneys fees. The Department of Labor, besides authorized to pursue the civil violation forfeitures, is also authorized to recover and pay over any damages due any injured employee for a violation of prohibition.

Finally, the new draft encourages the use of employee assistance programs in the workplace as an alternative to substance abuse testing. These programs have consistently demonstrated their ability to deal effectively with employee substance abuse problems and do not intrude into an individual's privacy nor suffer from the problems of inaccuracy inherent in testing programs.

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