

# MAINE STATE LEGISLATURE

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L.D. 1400

(Filing No. H- 89 )

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
113TH LEGISLATURE  
FIRST REGULAR SESSION

HOUSE AMENDMENT "<sup>A</sup>" to S.P. 457, L.D. 1400,  
Bill, "AN ACT to Ensure Confidential and Reliable  
Substance Abuse Testing of Employees and Applicants  
and the Rehabilitation of Substance Abusing Employ-  
ees."

Amend the bill by inserting after the enacting  
clause the following:

'Sec. 1. 1 MRSA §1008, sub-§2, as amended by PL  
1977, c. 337, §1, is further amended to read:

2. Election practices. To administer and inves-  
tigate any violations of the requirements for cam-  
paign reports and campaign financing and to investi-  
gate and make findings of fact and opinion on the fi-  
nal determination of the results, within the limits  
of the Constitution of the State of Maine and the  
Constitution of the United States, of any contested  
count, state or federal election within this State;  
and

Sec. 2. 1 MRSA §1008, sub-§3 is enacted to read:

3. Substance abuse testing. To oversee the im-  
plementation of substance abuse testing pursuant to  
section 1011-A.

Sec. 3. 1 MRSA §1011-A is enacted to read:

§1011-A. Substance abuse testing

1. Policy. In keeping with the purposes of this  
subchapter to ensure that the members of the Maine  
Legislature be fit and capable individuals on whom  
the public has reposed its trust as the guardians of  
the public weal, each Senator-elect or

1 Representative-elect shall submit to a substance  
2 abuse test pursuant to this section prior to taking  
3 his seat in the Legislature.

4 2. Definitions. As used in this section, unless  
5 the context indicates otherwise, the terms "confirmed  
6 positive test result," "positive test result," "sub-  
7 stance abuse test," "screening test," "confirmation  
8 test" and "substance of abuse" have the same meanings  
9 as set out in Title 26, section 682.

10 3. Commission to implement drug testing pro-  
11 grams; adopt written policy. The commission shall  
12 oversee the implementation of the substance abuse  
13 testing as required in this section. The commission  
14 shall adopt a written policy to provide for:

15 A. The procedure and consequences of a  
16 member-elect's voluntary admission of a substance  
17 abuse problem and any available assistance, in-  
18 cluding the availability and procedure of the  
19 State Employee Assistance Program;

20 B. When substance abuse testing may occur;

21 C. The collection of samples.

22 (1) The collection of any sample for use in  
23 a substance abuse test must be conducted in  
24 a medical facility and be supervised by med-  
25 ical personnel;

26 (2) A member-elect may not be required to  
27 remove any clothing for the purpose of col-  
28 lecting a sample, except that a member-elect  
29 may be required to leave any personal be-  
30 longings other than clothing and any unnec-  
31 essary coat, jacket or similar outer gar-  
32 ments outside of the collection area; and

33 (3) No member-elect may be required to pro-  
34 vide a urine sample while being observed,

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- 1                   directly or indirectly, by another individu-  
2                   al;
- 3                   D. The storage of samples before testing suffi-  
4                   cient to avoid deterioration of the sample;
- 5                   E. The chain of custody of samples sufficient to  
6                   protect the sample from being tampered with and  
7                   to verify the identity of each sample and test  
8                   result;
- 9                   F. The substances of abuse to be tested for;
- 10                   G. The cut-off levels for both screening and  
11                   confirmation tests at which the presence of a  
12                   substance of abuse in a sample is considered a  
13                   positive test result.
- 14                   (1) Cut-off levels for confirmation tests  
15                   for marijuana may not be lower than 10  
16                   nanograms of delta-9 tetrahydrocannabinol  
17                   per milliliter for blood, serum or plasma sam-  
18                   ples and 50 nanograms of del-  
19                   ta-9-tetrahydrocannabinol-9-carboxylic acid  
20                   per milliliter for urine samples.
- 21                   (2) The commission shall adopt rules regu-  
22                   lating screening and confirmation cut-off  
23                   levels for other substances of abuse to en-  
24                   sure that levels are set within known toler-  
25                   ances of test methods and above mere trace  
26                   amounts;
- 27                   H. The extent a member-elect who requests a sam-  
28                   ple to be tested on his own must share the re-  
29                   sults of the test with the commission;
- 30                   I. Opportunities and procedures for rehabilita-  
31                   tion following a confirmed positive result;
- 32                   J. A procedure under which a member-elect who  
33                   receives a confirmed positive result may appeal

1 and contest the accuracy of that result; and

2 K. Any other necessary or desirable matters.

3 4. Qualified testing laboratories required. A  
4 substance abuse test administered under this subchap-  
5 ter must be performed in a qualified testing labora-  
6 tory that complies with this subsection.

7 A. The director of the laboratory must:

8 (1) Possess a doctoral degree in pharmacol-  
9 ogy, toxicology or analytical chemistry or  
10 be certified by the state in which the labo-  
11 ratory is located as a laboratory director  
12 in forensic or toxicological analysis;

13 (2) Have at least 2 years' experience in an  
14 analytical toxicology laboratory; and

15 (3) Be certified by the American Board of  
16 Forensic Toxicology or the American Board of  
17 Clinical Chemistry in Toxicological Chemis-  
18 try.

19 B. The laboratory must have written testing pro-  
20 cedures and procedures to ensure a clear chain of  
21 custody.

22 C. The laboratory must demonstrate satisfactory  
23 performance in the proficiency testing program of  
24 the National Institute on Drug Abuse, the College  
25 of American Pathology or the American Association  
26 for Clinical Chemistry.

27 D. The laboratory must comply with rules adopted  
28 in subsection 3, paragraph G, subparagraph (2).  
29 These rules shall ensure that:

30 (1) The laboratory possesses all licenses  
31 or certifications that the department finds  
32 necessary or desirable to ensure reliable

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1 and accurate test results;

2 (2) The laboratory follows proper quality  
3 control procedures, including, but not lim-  
4 ited to:

5 (a) The use of internal quality con-  
6 trols during each substance abuse test  
7 conducted under this subchapter, in-  
8 cluding the use of blind samples and  
9 samples of known concentrations which  
10 are used to check the performance and  
11 calibration of testing equipment;

12 (b) The internal review and certifica-  
13 tion process for test results, includ-  
14 ing the qualifications of the person  
15 who performs that function in the test-  
16 ing laboratory; and

17 (c) Security measures implemented by  
18 the testing laboratory; and

19 (3) Other necessary and proper actions are  
20 taken to ensure reliable and accurate test  
21 results.

22 5. Testing procedure. The testing laboratory  
23 shall perform a screening test on each sample submit-  
24 ted to it by the commission for only those substances  
25 of abuse that the commission requests to be identi-  
26 fied. If the screening test result is negative, no  
27 further test may be conducted on that sample. If the  
28 screening test result is positive, the testing labo-  
29 ratory shall perform a confirmation test on that sam-  
30 ple. The testing laboratory shall retain all con-  
31 firmed positive samples for one year in a manner that  
32 will inhibit deterioration of the samples and allow  
33 subsequent retesting. All other samples shall be  
34 disposed of immediately after testing.

35 6. Laboratory report of test results. The labo-

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1 ratory report of test results shall, at a minimum,  
2 state:

3 A. The name of the laboratory that performed the  
4 test or tests;

5 B. Any confirmed positive results on any tested  
6 sample:

7 (1) No testing laboratory may communicate  
8 to the commission any test result other than  
9 a confirmed positive result. The testing  
10 laboratory and the commission must ensure  
11 that an unconfirmed positive screening test  
12 result cannot be determined by the commis-  
13 sion in any manner, including, but not lim-  
14 ited to, the method of billing the commis-  
15 sion for the tests performed by the labora-  
16 tory and the time within which results are  
17 provided to the commission; and

18 (2) Unless the member-elect consents, test  
19 results shall not be reported in numerical  
20 or quantitative form, but shall state only  
21 that the test result was positive;

22 C. The sensitivity or cut-off level of the con-  
23 firmation test; and

24 D. Any available information concerning the mar-  
25 gin of accuracy and precision of the test methods  
26 employed.

27 The report shall not disclose the presence or absence  
28 of evidence of any physical or mental condition or of  
29 any substance other than the specific substances of  
30 abuse that the commission requests to be identified.  
31 The commission shall promptly provide a legible copy  
32 of the laboratory report to the member-elect tested.

33 7. Commission to forward results. The commis-  
34 sion shall forward the test results and the names of

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1 any members-elect who refuse to submit to testing to  
2 the appropriate House of the Legislature.

3 8. Test results; failure to submit; use by Leg-  
4 islature. Each House of the Legislature shall deter-  
5 mine the consequences of:

6 A. A confirmed positive result for any member-  
7 elect; or

8 B. A refusal to submit to a substance abuse test  
9 by a member-elect.

10 9. Costs. The Legislature shall pay the costs  
11 of all substance abuse tests required by this sec-  
12 tion.

13 10. Confidentiality. Unless the member-elect  
14 consents, all information acquired by the commission  
15 or either House of the Legislature in the testing  
16 process is confidential may not be released to any  
17 person other than the member-elect who is tested, any  
18 necessary personnel of the Legislature and the State  
19 Employee Assistance Program. Notwithstanding any  
20 other law, the results of any substance abuse test  
21 required by this section may not be used in any crim-  
22 inal proceeding. This subsection does not prevent:

23 A. The release of this information when required  
24 or permitted by state or federal law; or

25 B. The use of this information in any grievance  
26 procedure, administrative hearing or civil action  
27 relating to the imposition of the test.'

28 Further amend the bill by renumbering the sec-  
29 tions to read consecutively.



