

MAINE STATE LEGISLATURE

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L.D. 1788

(Filing No. S-195)

STATE OF MAINE
SENATE
113TH LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT "A" to H.P. 1310, L.D. 1788,
Bill, "AN ACT to Ensure Confidential and Reliable
Substance Abuse Testing of Employees and Applicants."

Amend the bill in section 1 in that part design-
ated "§681." in subsection 1 by striking out all of
paragraph A and inserting in its place the following:

'A. Protect the privacy rights of individual em-
ployees in the State from undue invasion by em-
ployers through the use of substance abuse tests
while allowing the use of tests when the employer
has a compelling reason to administer a test;'

Further amend the bill in section 1 in that part
designated "§682." by inserting after subsection 6
the following:

'7. Safety-sensitive position. "Safety-sensi-
tive position" means an employment position or work
assignment which is designated by the Department of
Labor in rules adopted under the Maine Administrative
Procedure Act, Title 5, chapter 375, to carry out the
purposes of this Act. These rules shall provide for:

A. The designation of those employment positions
which would create a substantial risk of serious
bodily harm to the general public or co-workers
if an employee under the influence of a substance
of abuse was performing in that position.

(1) The rules shall provide for the auto-
matic designation of the positions of nucle-
ar power plant operator, bus driver and com-
mercial truck driver as safety-sensitive;

B. A process under which an employer may peti-

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1 tion the department to designate as
2 safety-sensitive a position which is not design-
3 ated in the list of positions established under
4 paragraph A; and

5 C. A procedure for notifying the employees of
6 any employer who petitions the department under
7 paragraph B, and a process under which the em-
8 ployees may challenge the proposed designation of
9 any position as safety-sensitive and offer evi-
10 dence rebutting the employer's evidence support-
11 ing that designation.'

12 Further amend the bill in section 1 in that part
13 designated "§682." by renumbering the subsections to
14 read consecutively.

15 Further amend the bill in section 1 in that part
16 designated "§683." in subsection 2 by striking out
17 all of paragraph B and inserting in its place the
18 following:

19 'B. When substance abuse testing may occur, in-
20 cluding:

21 (1) A description of which positions, if
22 any, will be subject to testing, including
23 any positions subject to random testing un-
24 der section 684, subsection 3; and

25 (2) A procedure for selecting employees to
26 be tested on a random basis under section
27 684, subsection 3. This procedure must en-
28 sure that employees are selected on an
29 indisputably random basis;'

30 Further amend the bill in section 1 in that part
31 designated "§684." by inserting after subsection 2
32 the following:

33 '3. Random testing for safety-sensitive posi-
34 tions. In addition to testing employees on a proba-

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1 ble cause basis under subsection 2, an employer may
2 require, request or suggest that an employee submit
3 to a substance abuse test on a random basis if the
4 employee is working in a safety-sensitive position
5 when the employer requires, requests or suggests that
6 the employee submit to the test.

7 A. The procedure for selecting employees in
8 safety-sensitive positions for testing shall com-
9 ply with section 683, subsection 2, paragraph B,
10 subparagraph (2).

11 B. An employee who receives 2 consecutive nega-
12 tive test results from tests administered under
13 this subsection may not be tested again under
14 this subsection unless he has previously or sub-
15 sequently received a positive test result from
16 another test administered under this subchapter.

17 C. The limitations of this subsection do not ap-
18 ply to an employer who, has entered into a col-
19 lective bargaining agreement with his employees
20 in which he has bargained for provisions differ-
21 ent than this subsection regarding random sub-
22 stance abuse testing of employees. Such an em-
23 ployer may continue to bargain with his employees
24 for provisions different than this subsection.'

25 Further amend the bill in section 1 in that part
26 designated "§684." in subsection 3, in the 3rd line
27 (page 13, line 16 in L.D.) by inserting after the
28 following: "subsection 2" the following: 'or on a
29 random basis under subsection 3'

30 Further amend the bill in section 1 in that part
31 designated "§684." by renumbering subsections 3 and 4
32 to be subsections 4 and 5.

33 Further amend the bill in section 1 in that part
34 designated "§688." in subsection 2, in the 3rd line
35 (page 18, line 32 in L.D.) by striking out the fol-
36 lowing: "subsection 4" and inserting in its place the

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1 following: 'subsection 5'

2 STATEMENT OF FACT

3 This amendment permits employers to implement
4 random testing programs for employees in
5 safety-sensitive positions. A safety-sensitive posi-
6 tion is defined to include those positions in which
7 an employee under the influence of a substance of
8 abuse would create a substantial risk of serious
9 bodily injury to the general public or his
10 co-workers.

11 The selection of employees to be tested must be
12 made on an indisputably random basis to ensure that
13 employees will not be harassed through testing. Fur-
14 ther protection against unjust testing is provided by
15 preventing further random testing of any employee
16 whose first 2 random tests receive negative results.
17 This will prevent intrusive testing of employees
18 whose test results have indicated that they are not
19 substance abusers. Of course, these persons may
20 still be tested for probable cause. If an employee
21 has indicated that he may have a substance abuse
22 problem by receiving a positive result on a probable
23 cause or random test, that person may still be sub-
24 ject to random testing under an employer's policy
25 even if that person previously received or subse-
26 quently receives 2 consecutive negative results on
27 random tests.


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1 This amendment also grandfathers testing programs
2 that already include random testing provisions that
3 were mutually negotiated between an employer and his
4 employees. Those employers may continue to test em-
5 ployees randomly as provided in their collective bar-
6 gaining agreements and are free to negotiate on that
7 subject in the future.

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9 (Sen. Dutremble)
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11 COUNTY: York

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