

# MAINE STATE LEGISLATURE

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(After Deadline)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1871

S.P. 643 In Senate, June 16, 1987  
Approved for Introduction by a Majority of the Legislative  
Council pursuant to Joint Rule 27.

Reference to the Committee on Labor suggested and ordered  
printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator DUTREMBLE of York.

Cosponsored by President PRAY of Penobscot, Representative  
MCHENRY of Madawaska, Representative JOSEPH of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Prohibit Random or Arbitrary  
2 Substance Abuse Testing of Employees.  
3

4 Be it enacted by the People of the State of Maine as  
5 follows:

6 Sec. 1. 26 MRSA c. 7, sub-c. III-A is enacted to  
7 read:

8 SUBCHAPTER III-A

9 SUBSTANCE ABUSE TESTING

10 §681. Random or arbitrary testing of employees pro-  
11 hibited

1        1. Definitions. As used in this subchapter, un-  
2 less the context otherwise indicates, the following  
3 terms have the following meanings.

4        A. "Employee" means a person who is permitted,  
5 required or directed by any employer to engage in  
6 any employment for consideration of direct gain  
7 or profit.

8        B. "Employer" means any person, partnership,  
9 corporation, association or other legal entity,  
10 public or private, that employs one or more em-  
11 ployees.

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

19        D. "Substance of abuse" means any scheduled  
20 drug, alcohol or other drug, or any of their  
21 metabolites.

22                (1) "Alcohol" has the same meaning as found  
23 in Title 28-A, section 2, subsection 2.

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

26                (3) "Scheduled drug" has the same meaning  
27 as found in Title 17-A, section 1101, sub-  
28 section 11.

29        2. Random or arbitrary test prohibited. No em-  
30 ployer may require, request or suggest that any em-  
31 ployee submit to a substance abuse test on a random  
32 or arbitrary basis.

33        3. Probable cause testing permitted. An employ-  
34 er may require, request or suggest that an employee  
35 submit to a substance abuse test only if he has prob-  
36 able cause to believe that the employee may be under  
37 the influence of a substance of abuse.

1           **Sec. 2. Statutory referendum procedure; submis-**  
2 **sion at statewide election; form of question; effec-**  
3 **tive date.** This Act shall be submitted to the legal  
4 voters of the State of Maine at a statewide election  
5 to be held on the Tuesday following the first Monday  
6 of November following passage of this Act. The city  
7 aldermen, town selectmen and plantation assessors of  
8 this State shall notify the inhabitants of their re-  
9 spective cities, towns and plantations to meet, in  
10 the manner prescribed by law for holding a statewide  
11 election, to vote on the acceptance or rejection of  
12 this Act by voting on the following question:

13           "Shall the State prohibit random and arbitrary  
14 substance abuse testing of employees by their  
15 employers?"

16           The legal voters of each city, town and planta-  
17 tion shall vote by ballot on this question, and shall  
18 designate their choice by a cross or check mark  
19 placed within a corresponding square below the word  
20 "Yes" or "No." The ballots shall be received,  
21 sorted, counted and declared in open ward, town and  
22 plantation meetings and returns made to the Secretary  
23 of State in the same manner as votes for members of  
24 the Legislature. The Governor shall review the re-  
25 turns and, if it appears that a majority of the legal  
26 voters are in favor of the Act, the Governor shall  
27 proclaim that fact without delay, and the Act shall  
28 become effective 30 days after the date of the proc-  
29 lamation.

30           The Secretary of State shall prepare and furnish  
31 to each city, town and plantation all ballots, re-  
32 turns and copies of this Act necessary to carry out  
33 the purpose of this referendum.

1 STATEMENT OF FACT

2 This bill prevents employers from imposing sub-  
3 stance abuse tests upon their employees without hav-  
4 ing a legitimate reason for requiring the test. It  
5 bans the use of random testing of employees and pro-  
6 hibits tests imposed on an arbitrary basis. Under  
7 the bill, an employer may require an employee to sub-  
8 mit to a substance abuse test only if he has probable  
9 cause to believe that the employee may be under the  
10 influence of a substance of abuse. The bill also  
11 contains a referendum clause calling for a statewide  
12 referendum on the bill in November 1987. If the vot-  
13 ers do not approve the bill, it will not become law.  
14 If approved by the voters, the bill takes effect 30  
15 days after the Governor proclaims that fact.

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