

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to S.P. 801,
L.D. 2049, Bill, "An Act to Make Revisions in the Drug Testing
Laws"

Amend the amendment in section 2 by striking out all of
subsection 8 and inserting in its place the following:

'8. Nuclear power plants; federal law. The following
limitations apply to the application of this subchapter.

A. This subchapter does not apply to nuclear electrical
generating facilities and their employees, including
independent contractors and employees of independent
contractors who are working at nuclear electrical generating
facilities.

B. This subchapter, except for section 685, subsection 2
and section 689, subsections 1 and 4, does not apply to
employees subject to substance abuse testing under any
federal law or regulation or under rules adopted by this
State's Department of Public Safety that incorporate any
federal laws or regulations related to substance abuse
testing for motor carriers.

(1) For the purposes of applying section 685,
subsection 2 to an employee under this paragraph, the
employee is deemed to have previously worked in an
employment position subject to random or arbitrary
testing under an employer's written policy.'

Further amend the amendment in section 3 by striking out all
of subsection 9 and inserting in its place the following:

'9. Board of Licensure of Railroad Personnel; testing
restricted. The Board of Licensure of Railroad Personnel, as
established by Title 5, chapter 379, may not require, request or
suggest that any person subject to licensure by the board submit
to a substance abuse test as a condition of the issuance or
renewal of a license under Title 32, chapter 60.

2 The Board of Licensure of Railroad Personnel may require a person
4 to submit to a substance abuse test as a condition of continued
6 licensure or restoration of a license only if the license holder
acknowledges to the board that the license holder has a substance
abuse problem.'

8 Further amend the amendment by inserting after section 3 the
10 following:

12 'Sec. 4. 26 MRSA §682, sub-§3-A is enacted to read:

14 3-A. Medically disqualified. "Medically disqualified"
means that an employee is prohibited by a federal law or
16 regulation, or any rules adopted by the State's Department of
Public Safety that incorporate any federal laws or regulations
18 related to substance abuse testing for motor carriers, from
continuing in the employee's former employment position due to
20 the result of a substance abuse test conducted under the federal
law or regulation or the Department of Public Safety rule.'

22 Further amend the amendment in section 12 in paragraph C in
24 subparagraph (2) in the 3rd line from the end (page 9, line 44 in
26 amendment) by inserting after the word: "rehabilitation" the
following: 'or while the employee is medically disqualified'

28 Further amend the amendment in section 12 in paragraph C in
subparagraph (3) in the first line (page 10, line 2 in amendment)
by striking out the following: "division (a)" and inserting in
30 its place the following: 'division-(a) divisions (a) and (b)'

32 Further amend the amendment in section 12 in paragraph C in
subparagraph (3) by adding at the end the following:

34 '(b) Notwithstanding division (a), if an employee
36 who has successfully completed rehabilitation is
medically disqualified, the employer is not
38 required to reinstate the employee or find
suitable work for the employee during the period
40 of disqualification. The employer is not required
to compensate the employee during the period of
42 disqualification. Immediately after the
employee's medical disqualification ceases, the
44 employer's obligations under division (a) attach
as if the employee had successfully completed
46 rehabilitation on that date.'

48 Further amend the amendment by renumbering the sections to
read consecutively.

STATEMENT OF FACT

The amendment provides an exemption from the state drug testing laws for the testing of any employee under any federal law or regulation. This ensures that employers who are required or permitted under those regulations to test employees may conduct those tests as provided under federal law. The employers do not need comply with any additional requirements that may exist under Maine's drug testing laws except that the employee's right to rehabilitation and reinstatement is retained. The amendment further limits an employer's obligation to pay an employee during the rehabilitation period by creating an exception for any time during which the employee is medically disqualified from returning to the employee's prior position under federal law or regulation. To provide equal consideration to intrastate motor carriers, the general exemption from the drug testing laws includes the testing of employees under rules adopted by the State's Department of Public Safety that incorporate the federal drug testing regulations applicable to interstate motor carriers.

The exemption provided by this amendment includes only those employees who are subject to testing under the federal regulations or the Department of Public Safety rule. The use of substance abuse tests for all other employees of those employers continues to be governed by the Maine drug testing laws.

This amendment also restricts the extent of the prohibition against the use of substance abuse tests by licensing or certification agencies, boards or other entities. The amendment prohibits the Board of Licensure of Railroad Personnel from requiring any person to submit to a substance abuse test as a condition of the issuance or renewal of a license. It permits the Board to require a test as a condition of continued licensure or restoration if a license holder admits that the holder has a substance abuse problem.

Filed by Rep. Ruhlin of Brewer
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