

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1191

H.P. 860

House of Representatives, April 4, 1995

### **An Act to Amend the Substance Abuse Testing Laws.**

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Submitted by the Department of Labor pursuant to Joint Rule 24.  
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CHASE of China.  
Cosponsored by Senator: BEGLEY of Lincoln.

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

2  
4       **Sec. 1. 26 MRSA §681, sub-§3**, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

6           **3. Collective bargaining agreements.** This subchapter does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this subchapter.

10       A labor organization with a collective bargaining agreement effective in the State may conduct a program of substance abuse testing of its members. The program may include testing of new members and periodic testing of all members. It may not include random testing of members. The program may be voluntary. The results may not be used to preclude referral to a job where testing is not required or to otherwise discipline a member. Sample collection and testing must be done in accordance with this subchapter. Approval of the Department of Labor is not required.

22       **Sec. 2. 26 MRSA §682, sub-§2**, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

24           **2. Employee.** "Employee" means a person who is permitted, required or directed by any employer to engage in any employment for consideration of direct gain or profit. A person separated from employment while receiving a mandated benefit, including but not limited to workers' compensation, unemployment compensation and family medical leave, is an employee for the period the person receives the benefit and for a minimum of 30 days beyond the termination of the benefit. A person separated from employment while receiving a nonmandated benefit is an employee for a minimum of 30 days beyond the separation.

36           A. A full-time employee is an employee who customarily works 30 hours or more each week.

38       **Sec. 3. 26 MRSA §683, sub-§2, ¶G**, as amended by PL 1989, c. 40 832, §6, is further amended to read:

42           **G.** The cutoff levels for both screening and confirmation tests at which the presence of a substance of abuse in a sample is considered a positive test result.

46           ~~(1) -- Cutoff levels for confirmation tests for marijuana may not be lower than 20 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples.~~

2 (2) The Department of Human Services shall adopt rules  
under section 687 regulating screening and confirmation  
4 cutoff levels for ~~ether~~ substances of abuse, including  
those substances tested for in blood samples under  
6 subsection 5, paragraph B, to ensure that levels are  
set within known tolerances of test methods and above  
8 mere trace amounts. An employer may request that the  
Department of Human Services establish a cutoff level  
10 for any substance of abuse for which the department has  
not established a cutoff level;

12 **Sec. 4. 26 MRSA §683, sub-§2, ¶K**, as affected by PL 1989, c.  
604, §§2 and 3, is amended to read:

14 K. A procedure under which an employee or applicant who  
16 receives a confirmed positive result may appeal and contest  
the accuracy of that result. The appeal must be at no cost  
18 to the appellant; and

20 **Sec. 5. 26 MRSA §683, sub-§3**, as amended by PL 1989, c. 832,  
§7, is further amended to read:

22 **3. Copies to employees and applicants.** The employer shall  
24 provide each employee with a copy of the written policy approved  
by the Department of Labor under section 686 at least 30 days  
26 before any portion of the written policy applicable to employees  
takes effect. The employer shall provide each employee with a  
28 copy of any change in a written policy approved by the Department  
of Labor under section 686 at least 60 days before any portion of  
30 the change applicable to employees takes effect. The Department  
of Labor may waive the 60-day notice for the implementation of an  
32 amendment covering employees if the amendment was necessary to  
comply with the law or if, in the judgment of the department, the  
34 amendment promotes the purpose of the law and does not lessen the  
protection of an individual employee. If an employer intends to  
36 test an applicant, the employer shall provide the applicant with  
a copy of the written policy under subsection 2 before  
38 administering a substance abuse test to the applicant. The  
30-day and 60-day notice periods provided for employees under  
40 this subsection do not apply to applicants.

42 **Sec. 6. 26 MRSA §683, sub-§5, ¶A**, as affected by PL 1989, c.  
604, §§2 and 3, is amended to read:

44 A. Segregate a portion of the sample for that person's own  
46 testing. Within 5 days after ~~the sample is collected~~ notice  
of the test result is given to the employee or applicant,  
48 the employee or applicant shall notify the employer of the  
testing laboratory selected by the employee or applicant.  
50 This laboratory must comply with the requirements of this

2 section related to testing laboratories. When the employer  
receives notice of the employee or applicant's selection,  
4 the employer shall promptly send the segregated portion of  
the sample to the named testing laboratory, subject to the  
6 same chain of custody requirements applicable to testing of  
the employer's portion of the sample. The employee or  
applicant shall pay the costs of these tests. Payment for  
8 these tests may not be required earlier than when notice of  
the choice of laboratory is given to the employer; and

10 **Sec. 7. 26 MRSA §685, sub-§2, ¶A**, as affected by PL 1989, c.  
12 604, §§2 and 3, is amended to read:

14 A. Subject to any limitation of the Maine Human Rights Act  
or any other state law or federal law, an employer may use a  
16 confirmed positive result or refusal to submit to a test as  
a factor in any of the following decisions:

- 18 (1) Refusal to hire an applicant for employment or  
20 refusal to place an applicant on a roster of  
eligibility;  
22 (2) Discharge of an employee;  
24 (3) Discipline of an employee; or  
26 (4) Change in the employee's work assignment.

28 **Sec. 8. 26 MRSA §685, sub-§2, ¶A-1** is enacted to read:

30 A-1. An employer who tests a person as an applicant and  
32 employs that person prior to receiving the test result may  
take no action on a positive result except in accordance  
34 with the employee provisions of the employer's approved  
policy.

36 **Sec. 9. 26 MRSA §686, sub-§2, ¶A**, as affected by PL 1989, c.  
38 604, §§2 and 3, is amended to read:

40 A. The rules ~~shall~~ must provide for notice to be given to  
the employees of any employer who submits a written policy  
42 or amendment applicable to employees to the department for  
review under this section. The employees may submit written  
44 comments to the department challenging any portion of the  
employer's written policy, including the proposed  
46 designation of any position under section 684, subsection 3,  
paragraph B.

## STATEMENT OF FACT

2

The bill allows a labor organization with a collective bargaining agreement effective in the State to create a voluntary substance abuse testing program for its members providing the testing procedures comply with the law. Approval of the Department of Labor is not required.

8

The bill also makes it clear that the definition of "employee" includes workers who are separated from the workplace but are receiving mandated benefits and creates a minimum 30-day period following separation from the employer or termination of mandated benefits during which the person is still an employee by definition. Further it defines a full-time employee as one that works more than 30 hours a week.

16

The bill repeals the standard for confirmation of the use of marijuana which will allow the Department of Human Services to set the standard by rule.

20

The bill also clarifies that the appeal of a positive result must be at no cost to the applicant or employee.

22

The bill also allows the Department of Labor to waive the 60-day notice limitation on amendments that affect employees if the amendment advances the purpose of the law and does not lessen protection of the individual employee.

28

The bill also changes the start of the period when an applicant or employee has to give notice of a demand for a 2nd test from the day of the sample collection to the day of the notice of the test result and makes it clear that payment for the test is due no sooner than when notice of the laboratory of choice is given.

34

The bill also adds refusal to place an applicant on a roster of eligibility to the allowable actions to be taken on a positive result.

38

The bill also clarifies that a person tested as an applicant but employed prior to the receipt of the test results must be treated as an employee if the employer takes action on the result.

40

The bill also removes the requirement that an employer notify employees of the submission of a policy or amendment to the Department of Labor if the policy or amendment does not affect employees.

46