

MAINE STATE LEGISLATURE

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**STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 741, L.D. 2066, Bill, "An Act to Expedite Employment in Maine Industry"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 26 MRSA §682, sub-§7, ¶A, as enacted by PL 1989, c. 536, §§1 and 2 and affected by c. 604, §§2 and 3, is amended to read:

A. "Screening test" means an initial substance abuse test performed through the use of immunoassay technology, or a test technology of similar or greater accuracy and reliability approved by the Department of Human Services under rules adopted under section 687, and which that is used as a preliminary step in detecting the presence of substances of abuse.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests.

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

2 C. The collection of samples.

4 (1) The collection of any sample for use in a
6 substance abuse test must be conducted in a medical
8 facility and supervised by a licensed physician or
nurse. A medical facility includes a first aid station
located at the work site.

10 (2) An employer may not require an employee or
12 applicant to remove any clothing for the purpose of
collecting a urine sample, except that:

14 (a) An employer may require that an employee or
16 applicant leave any personal belongings other than
clothing and any unnecessary coat, jacket or
18 similar outer garments outside the collection
area; or

20 (b) If it is the standard practice of an off-site
22 medical facility to require the removal of
clothing when collecting a urine sample for any
24 purpose, the physician or nurse supervising the
collection of the sample in that facility may
26 require the employee or applicant to remove their
clothing.

28 (3) No employee or applicant may be required to
30 provide a urine sample while being observed, directly
or indirectly, by another individual.

32 (4) The employer may take additional actions necessary
34 to ensure the integrity of a urine sample if the sample
collector or testing laboratory determines that the
36 sample may have been substituted, adulterated, diluted
or otherwise tampered with in an attempt to influence
38 test results. The Department of Human Services shall
adopt rules governing when those additional actions are
40 justified and the scope of those actions. These rules
may not permit the direct or indirect observation of
42 the collection of a urine sample. If an employee or
applicant is found to have twice substituted,
44 adulterated, diluted or otherwise tampered with the
employee employee's or applicant's urine sample, as
46 determined under the rules adopted by the department,
the employee or applicant is deemed to have refused to
submit to a substance abuse test.

48 (5) If the employer proposes to use the type of
50 screening test described in section 682, subsection 7,

paragraph A, subparagraph (1), the employer's policy must include:

(a) Procedures to ensure the confidentiality of test results as required in section 685, subsection 3; and

(b) Procedures for training persons performing the test in the proper manner of collecting samples and reading results, maintaining a proper chain of custody and complying with other applicable provisions of this subchapter;

Sec. 3. 26 MRSA §683, sub-§5-A is enacted to read:

5-A. Point of collection screening test. Except as provided in this subsection, all provisions of this subchapter regulating screening tests apply to noninstrumented point of collection test devices described in section 682, subsection 7, paragraph A, subparagraph (1).

A. A noninstrumented point of collection test described in section 682, subsection 7, paragraph A, subparagraph (1) may be performed at the point of collection rather than in a laboratory. Subsections 6 and 7 and subsection 8, paragraphs A to C do not apply to such screening tests. Subsection 5 applies only to a sample that results in a positive test result.

B. Any sample that results in a negative test result must be destroyed. Any sample that results in a positive test result must be sent to a qualified testing laboratory consistent with subsections 6 to 8 for confirmation testing.

Sec. 4. 26 MRSA §683, sub-§6, as amended by PL 1989, c. 832, §8, is further amended by amending the first paragraph to read:

6. Qualified testing laboratories required. No employer may perform any substance abuse test administered to any of that employer's employees. An employer may perform screening tests administered to applicants if the employer's testing facilities comply with the requirements for testing laboratories under this subsection. Any Except as provided in subsection 5-A, any substance abuse test administered under this subchapter must be performed in a qualified testing laboratory that complies with this subsection.'

Further amend the bill by inserting at the end before the summary the following:

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FISCAL NOTE

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6 The additional costs associated with reviewing employers'
8 revised substance abuse testing policies, estimated by the
10 department to be approximately \$3,600 in fiscal year 2002-03, can
12 be absorbed by the Bureau of Labor Standards within the
14 Department of Labor utilizing existing budgeted resources.'

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SUMMARY

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16 This amendment replaces the bill. It allows the use of
18 noninstrumented test devices that yield results at the point of
20 collection, provided the testing is used only for preemployment
22 screening purposes. It requires employers who wish to use the
24 so-called "Rapid Response" test to include procedures in their
26 written policy to ensure that confidentiality of test results is
maintained and to ensure that those performing the test are
properly trained. It also clarifies that positive screening test
samples must be sent to a qualified testing laboratory for
confirmation testing. Finally, it requires employers to report
results of these tests, in statistical form, to the Department of
Labor in the same manner they currently report results of other
substance abuse tests. It also adds a fiscal note to the bill.