

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 549

S.P. 209

In Senate, February 12, 2009

### **An Act To Amend the Employment Practices Law Regarding Substance Abuse Testing**

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Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator WESTON of Waldo.

Cosponsored by Senators: DIAMOND of Cumberland, HASTINGS of Oxford, NUTTING of Androscoggin, Representative: THIBODEAU of Winterport.

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

2 **Sec. 1. 26 MRSA §682, sub-§7**, as amended by PL 2001, c. 556, §1 and PL 2003,  
3 c. 689, Pt. B, §6, is further amended to read:

4 **7. Substance abuse test.** "Substance abuse test" means any test procedure designed  
5 to take and analyze body fluids or materials from the body for the purpose of detecting  
6 the presence of substances of abuse. The term does not include tests designed to  
7 determine blood-alcohol concentration levels from a sample of an individual's breath.

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

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

17 B. "Confirmation test" means a 2nd substance abuse test that is used to verify the  
18 presence of a substance of abuse indicated by an initial positive screening test result  
19 and is a federally recognized substance abuse test or is performed through the use of  
20 liquid or gas chromatography-mass spectrometry that is used to verify the presence of  
21 a substance of abuse indicated by an initial positive screening test result.

22 ~~(1) The Department of Health and Human Services may recommend to the joint~~  
23 ~~standing committee of the Legislature having jurisdiction over labor matters that~~  
24 ~~other testing technologies be authorized for use in confirmation tests if the~~  
25 ~~department finds those technologies to be of equal or greater accuracy and~~  
26 ~~reliability than gas chromatography mass spectrometry.~~

27 C. "Federally recognized substance abuse test" means any substance abuse test  
28 recognized by the federal Food and Drug Administration as accurate and reliable  
29 through the administration's clearance or approval process.

30 **Sec. 2. 26 MRSA §683, sub-§2, ¶G**, as amended by PL 1999, c. 199, §1 and PL  
31 2003, c. 689, Pt. B, §6, is further amended to read:

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

34 (1) Cutoff levels for confirmation tests for marijuana may not be lower than 15  
35 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for  
36 urine samples.

37 (2) The Department of Health and Human Services shall adopt rules under  
38 section 687 regulating screening and confirmation cutoff levels for other  
39 substances of abuse, including those substances tested for in blood samples under  
40 subsection 5, paragraph B, to ensure that levels are set within known tolerances  
41 of test methods and above mere trace amounts. An employer may request that

1 the Department of Health and Human Services establish a cutoff level for any  
2 substance of abuse for which the department has not established a cutoff level;

3 (3) Notwithstanding subparagraphs (1) and (2), if the Department of Health and  
4 Human Services does not have established cutoff levels or procedures for any  
5 specific federally recognized substance abuse test, the cutoff levels and  
6 procedures cleared or approved by the federal Food and Drug Administration  
7 must be used;

8 **Sec. 3. 26 MRSA §686, sub-§1, ¶C** is enacted to read:

9 C. The department shall allow for the use of any federally recognized substance  
10 abuse test.

11 **SUMMARY**

12 This bill provides that employers using substance abuse testing may use tests that  
13 have been recognized by the federal Food and Drug Administration as accurate and  
14 reliable through a clearance or approval process and directs the use of that agency's  
15 cleared or approved cutoff levels and procedures if the Department of Health and Human  
16 Services cutoff levels or procedures do not exist for the particular test.