MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1241

H.P. 932

House of Representatives, March 22, 2011

An Act To Remove the Requirement That Employers Offer Substance Abuse Services to Employees Who Fail Drug Tests

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

HEATHER J.R. PRIEST Clerk

Presented by Representative BICKFORD of Auburn.

Cosponsored by Senator ROSEN of Hancock and

Representatives: BEAULIEU of Auburn, BURNS of Whiting, ESPLING of New Gloucester, GIFFORD of Lincoln, MALABY of Hancock, TUTTLE of Sanford, WEAVER of York,

WINTLE of Garland.

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

- **Sec. 1. 26 MRSA §682, sub-§6,** as enacted by PL 1989, c. 536, §§1 and 2 and affected by c. 604, §§2 and 3, is amended to read:
 - **6. Probable cause.** "Probable cause" means a reasonable ground for belief in the existence of facts that induce a person to believe that an employee may be under the influence of a substance of abuse, provided except that the existence of probable cause may not be based exclusively on any of the following:
 - A. Information received from an anonymous informant; or
 - B. Any information tending to indicate that an employee may have possessed or used a substance of abuse off duty, except when the employee is observed possessing or ingesting any substance of abuse either while on the employer's premises or in the proximity of the employer's premises during or immediately before the employee's working hours; or.
 - C. A single work-related accident.
- Sec. 2. 26 MRSA §684, sub-§2-A is enacted to read:
 - **2-A.** Accidents. An employer may require, request or suggest that an employee submit to a substance abuse test if the employee causes a work-related accident in which property damage, bodily injury or loss of life occurs or if the employee receives a citation or summons as a result of the accident from a law enforcement officer.
- **Sec. 3. 26 MRSA §684, sub-§3, ¶B,** as amended by PL 2003, c. 547, §2, is further amended to read:
 - B. The employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's coworkers if the employee were under the influence of a substance of abuse. It is the intent of the Legislature that the requirements of this paragraph be narrowly construed; or
 - Sec. 4. 26 MRSA §684, sub-§3-A is enacted to read:
 - 3-A. Random or arbitrary testing of supervisory personnel and employer. An employer that requires, requests or suggests that an employee submit to random or arbitrary substance abuse testing under subsection 3 must also require, request or suggest that supervisory personnel submit to a substance abuse test on a random or arbitrary basis, and similarly submit to a substance abuse test on a random or arbitrary basis. The substance abuse testing program for supervisory personnel and the employer must be established in compliance with this subchapter and, to the extent possible, consistent with the written policy required by section 683, subsection 2, except that an employer must consult with the employer's supervisory personnel in the development of a substance abuse testing policy under this subsection. The employer must adhere to the same written policy for random or arbitrary testing that the Department of Labor approves for the employer's supervisory personnel.

Sec. 5. 26 MRSA §684, sub-§4, as enacted by PL 1989, c. 536, §§1 and 2 and 1 2 affected by c. 604, §§2 and 3, is amended to read: 3 **4.** Testing while undergoing rehabilitation or treatment. While the employee is participating in a substance abuse rehabilitation program either as a result of voluntary 4 contact with or mandatory referral to the employer's employee assistance program or after 5 6 a confirmed positive result as provided in section 685, subsection 2, paragraphs B and C, substance abuse testing may be conducted by the rehabilitation or treatment provider as 7 required, requested or suggested by that provider. 8 9 A. Substance abuse testing conducted as part of such a rehabilitation or treatment 10 program is not subject to the provisions of this subchapter regulating substance abuse 11 testing. B. An employer may not require, request or suggest that any substance abuse test be 12 administered to any employee while the employee is undergoing such rehabilitation 13 or treatment, except as provided in subsections 2 and 3. 14 15 C. The results of any substance abuse test administered to an employee as part of such a rehabilitation or treatment program may not be released to the employer. 16 17 Sec. 6. 26 MRSA §684, sub-§5, as enacted by PL 1989, c. 832, §11, is amended 18 to read: 19 5. Testing upon return to work. If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has 20 21 participated in a rehabilitation program under section 685, subsection 2, the employer 22 may require, request or suggest that the employee submit to a subsequent substance abuse test anytime between 90 days and one year after the date of the employee's prior test. A 23 24 test may be administered under this subsection in addition to any tests conducted under subsections 2 and 3. An employer may require, request or suggest that an employee 25 submit to a substance abuse test during the first 90 days after the date of the employee's 26 27 prior test only as provided in subsections 2 and 3. **Sec. 7. 26 MRSA §685, sub-§2, ¶A,** as amended by PL 1995, c. 324, §7, is 28 29 further amended to read: 30 A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a 31 test as a factor in any of the following decisions: 32 33 (1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility; 34 35 (2) Discharge of an employee; 36 (3) Discipline of an employee; or (4) Change in the employee's work assignment-; and 37 (5) Provision of an opportunity for an employee to participate for up to 6 months

in a rehabilitation program.

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- 1 **Sec. 8. 26 MRSA §685, sub-§2, ¶B,** as amended by PL 2003, c. 547, §3, is 2 repealed. 3 Sec. 9. 26 MRSA §685, sub-§2, ¶C, as amended by PL 1995, c. 344, §1, is 4 repealed. 5 Sec. 10. 26 MRSA §685, sub-§2, ¶D, as enacted by PL 1989, c. 536, §§1 and 2 and affected by c. 604, §§2 and 3, is amended to read: 6 7 D. This subsection does not require an employer to take any disciplinary action 8 against an employee who refuses to submit to a test, or receives a single or repeated 9 confirmed positive result or does not choose to participate in a rehabilitation program. 10 This subsection is intended to set minimum opportunities for an employee with a substance abuse problem to address the problem through rehabilitation. An employer 11 12 may offer additional opportunities, not otherwise in violation of this subchapter, for 13 rehabilitation or continued employment without rehabilitation. Sec. 11. 26 MRSA §685, sub-§3, ¶A, as enacted by PL 1989, c. 536, §§1 and 2 14 15 and affected by c. 604, §§2 and 3, is amended to read: 16 A. Unless the employee or applicant consents, all information acquired by an 17 employer in the testing process is confidential and may not be released to any person 18 other than the employee or applicant who is tested, any necessary personnel of the 19 employer and a provider of rehabilitation or treatment services under subsection 2, 20 paragraph C. This paragraph does not prevent: 21 (1) The release of this information when required or permitted by state or federal 22 law, including release under section 683, subsection 8, paragraph D; or

 - The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results.

26 **SUMMARY**

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This bill removes the requirement that an employer must provide an opportunity to participate in a substance abuse rehabilitation program to an employee after the employee has received a confirmed positive result on a substance abuse test. The bill also requires that an employer that requires, requests or suggests that employees submit to substance abuse testing on a random or arbitrary basis must also require, request or suggest that supervisory personnel submit to a substance abuse test on a random or arbitrary basis and similarly submit to substance abuse testing on a random or arbitrary basis.

The bill also allows an employer to require, request or suggest an employee submit to substance abuse testing if the employee causes a work-related accident that results in property damage, personal injury or loss of life or a citation or summons being issued to the employee by a law enforcement officer. The bill also removes the provision stating that it is the intent of the Legislature to narrowly construe the requirement concerning random testing of an employee who works in a position where being under the influence

- of a substance of abuse would place the health and safety of the public or coworkers under unreasonable threat. 1
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