

# MAINE STATE LEGISLATURE

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**LAWS**

OF THE

**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

**FIRST REGULAR SESSION**

December 7, 1988 to July 1, 1989

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1989

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION  
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ONE HUNDRED AND FOURTEENTH LEGISLATURE  
1989

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pay for the examination only when performed by that specific type of eye care provider or specific provider. An employer may pay for an examination under this section directly, through group health insurance coverage of the employee or otherwise, as long as the employee is not ultimately required to bear the expense of that examination. Any employer who violates this section commits a civil violation for which a forfeiture not to exceed \$50 for each and every violation may be adjudged. It is the duty of the director to enforce this section. Notwithstanding section 591, subsection 2, for the purposes of this section, the term "employer" includes the State, a county, a municipality, a quasi-municipal corporation or any other public employer. For the purposes of this section, the term "accepted applicant" means an applicant who has been offered a job by the employer.

See title page for effective date.

## CHAPTER 536

### H.P. 609 - L.D. 833

#### An Act Relating to Drug Testing

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

Sec. 1. 26 MRSA c. 7, sub-c. III-A is enacted to read:

#### SUBCHAPTER III-A

#### SUBSTANCE ABUSE TESTING

##### §681. Purpose; applicability

1. Purpose. This subchapter is intended to:

A. Protect the privacy rights of individual employees in the State from undue invasion by employers through the use of substance abuse tests while allowing the use of tests when the employer has a compelling reason to administer a test;

B. Ensure that, when substance abuse tests are used, proper test procedures are employed to protect the privacy rights of employees and applicants and to achieve reliable and accurate results; and

C. Ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment of the disease and returns to work as quickly as possible.

2. Employer discretion. This subchapter does not require or encourage employers to conduct substance abuse testing of employees or applicants. An employer who chooses to conduct such testing is limited by this subchapter, but may establish policies which are supplemental to and not inconsistent with this subchapter.

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.

4. Home rule authority preempted. No municipality may enact any ordinance under its home rule authority regulating an employer's use of substance abuse tests.

5. Contracts for work out of State. All employment contracts subject to the laws of this State shall include an agreement that this subchapter will apply to any employer who hires employees to work outside the State.

6. Medical examinations. This subchapter does not prevent an employer from requiring or performing medical examinations of employees or applicants or from conducting medical screenings to monitor exposure to toxic or other harmful substances in the workplace, provided that these examinations are not used to avoid the restrictions of this subchapter. No such examination may include the use of any substance abuse test except in compliance with this subchapter.

7. Other discipline unaffected. This subchapter does not prevent an employer from establishing rules related to the possession or use of substances of abuse by employees, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules, except when a substance abuse test is required, requested or suggested by the employer or used as the basis for any disciplinary action.

8. Federal law; exceptions. This subchapter does not apply to the extent it is preempted by any federal law, rule or regulation. This subchapter does not apply in any way to:

A. Nuclear electrical generating facilities and their employees, including independent contractors and employees of independent contractors who are working at nuclear electrical generating facilities; and

B. Intrastate motor carriers subject to rules adopted under Title 29, section 2707, provided that the carrier's use of substance abuse tests is conducted in compliance with the 49 Code of Federal Regulations, Subtitle A, Part 40, governing the use of substance abuse tests by interstate motor carriers.

##### §682. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Applicant. "Applicant" means any person seeking employment from an employer. The term includes any person using an employment agency's services.

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.

**3. Employer.** "Employer" means any person, partnership, corporation, association or other legal entity, public or private, that employs one or more employees. The term also includes an employment agency.

**4. Negative test result.** "Negative test result" means a test result that indicates that:

A. A substance of abuse is not present in the tested sample; or

B. A substance of abuse is present in the tested sample in a concentration below the cutoff level.

**5. Positive test result.** "Positive test result" means a test result that indicates the presence of a substance of abuse in the tested sample above the cutoff level of the test.

A. "Confirmed positive result" means a confirmation test result that indicates the presence of a substance of abuse above the cutoff level in the tested sample.

**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 that the existence of probable cause may not be based exclusively on any of the following:

A. Information received from an anonymous informant;

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.

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

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 is used as a preliminary step in detecting the presence of substances of abuse.

B. "Confirmation test" means a 2nd substance abuse test performed through the use of gas chromatography-mass spectrometry that is used to verify the presence of a substance of abuse indicated by an initial positive screening test result.

**8. Substance of abuse.** "Substance of abuse" means any scheduled drug, alcohol or other drug, or any of their metabolites.

A. "Alcohol" has the same meaning as found in Title 28-A, section 2, subsection 2.

B. "Drug" has the same meaning as found in Title 32, section 13702, subsection 9.

C. "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11.

### **§683. Testing procedures**

No employer may require, request or suggest that any employee or applicant submit to a substance abuse test except in compliance with this section. All actions taken under a substance abuse testing program shall comply with this subchapter, rules adopted under this subchapter and the employer's written policy approved under section 686.

**1. Employee assistance program required.** Before establishing any substance abuse testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program.

A. The employer may meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer.

B. The employee assistance program must be certified by the Department of Human Services under rules adopted pursuant to section 687. The rules shall ensure that the employee assistance programs have the necessary personnel, facilities and procedures to meet minimum standards of professionalism and effectiveness in assisting employees.

**2. Written policy.** Before establishing any substance abuse testing program, an employer must develop a written policy in compliance with this subchapter providing for, at a minimum:

A. The procedure and consequences of an employee's voluntary admission of a substance abuse problem and any available assistance, including the availability and procedure of the employer's employee assistance program;

B. When substance abuse testing may occur, including:

(1) A description of which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3; and

(2) The procedure to be followed in selecting employees to be tested on a random or arbitrary basis under section 684, subsection 3;

C. The collection of samples.

(1) The collection of any sample for use in a substance abuse test must be conducted in a medical facility and supervised by a physician licensed under Title 32, chapter 36 or 48, or a nurse licensed under Title 32, chapter 31. A medical facility includes a first aid station located at the work site.

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

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

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

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

D. The storage of samples before testing sufficient to inhibit deterioration of the sample;

E. The chain of custody of samples sufficient to protect the sample from tampering and to verify the identity of each sample and test result;

F. The substances of abuse to be tested for;

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.

(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) The Department of Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances of abuse, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts;

H. The consequences of a confirmed positive substance abuse test result;

I. The consequences for refusal to submit to a substance abuse test;

J. Opportunities and procedures for rehabilitation following a confirmed positive result;

K. A procedure under which an employee or applicant who receives a confirmed positive result may appeal and contest the accuracy of that result; and

L. Any other matters required by rules adopted by the Department of Labor under section 687.

An employer must consult with the employer's employees in the development of a substance abuse testing policy under this subsection. The employer shall send a copy of the final written policy to the Department of Labor for review under section 686. The employer may not implement the policy until the Department of Labor approves the policy. The employer shall send a copy of any proposed change in an approved written policy to the Department of Labor for review under section 686. The employer may not implement the change until the Department of Labor approves the change.

3. Copies to employees and applicants. The employer shall provide each employee with a copy of the written policy approved by the Department of Labor under section 686 and a copy of this subchapter at least 60 days before the policy takes effect. The employer shall provide each employee with a copy of any change in a written policy approved by the Department of Labor under section 686 at least 60 days before the change takes effect. If applicants are subject to testing under the written policy, the employer shall provide each applicant with a copy of the written policy under subsection 2 and a copy of this subchapter before administering a substance abuse test to the applicant.

4. Consent forms prohibited. No employer may require, request or suggest that any employee or applicant sign or agree to any form or agreement that attempts to:

A. Absolve the employer from any potential liability arising out of the imposition of the substance abuse test; or

B. Waive an employee's or applicant's rights or eliminate or diminish an employer's obligations under this subchapter.

Any form or agreement prohibited by this subsection is void.

5. Right to obtain other samples. At the request of the employee or applicant at the time the test sample is taken, the employer shall, at that time:

A. Segregate a portion of the sample for that person's own testing. Within 5 days after the sample is collected, the employee or applicant shall notify the employer of the testing laboratory selected by the

employee or applicant. This laboratory must comply with the requirements of this section related to testing laboratories. When the employer receives notice of the employee or applicant's selection, the employer shall promptly send the segregated portion of the sample to the named testing laboratory, subject to the 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; and

B. In the case of an employee, have a blood sample taken from the employee by a licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services to draw blood samples. The employer shall have this sample tested for the presence of alcohol or marijuana metabolites, if those substances are to be tested for under the employer's written policy. If the employee requests that a blood sample be taken as provided in this paragraph, the employer may not test any other sample from the employee for the presence of these substances.

(1) The Department of Human Services may identify, by rules adopted under section 687, other substances of abuse for which an employee may request a blood sample be tested instead of a urine sample if the department determines that a sufficient correlation exists between the presence of the substance in an individual's blood and its effect upon the individual's performance.

(2) No employer may require, request or suggest that any employee or applicant provide a blood sample for substance abuse testing purposes nor may any employer conduct a substance abuse test upon a blood sample except as provided in this paragraph.

(3) Applicants do not have the right to require the employer to test a blood sample as provided in this paragraph.

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, except that the employer's testing facilities do not have to comply with paragraph A. Any substance abuse test administered under this subchapter must be performed in a qualified testing laboratory that complies with this subsection.

A. The director of the laboratory must be certified by the American Board of Forensic Toxicology or the American Board of Clinical Chemistry in Toxicological Chemistry.

B. The laboratory must have written testing procedures and procedures to ensure a clear chain of custody.

C. The laboratory must demonstrate satisfactory performance in the proficiency testing program of the National Institute on Drug Abuse, the College of American Pathology or the American Association for Clinical Chemistry.

D. The laboratory must comply with rules adopted by the Department of Human Services under section 687. These rules shall ensure that:

(1) The laboratory possesses all licenses or certifications that the department finds necessary or desirable to ensure reliable and accurate test results;

(2) The laboratory follows proper quality control procedures, including, but not limited to:

(a) The use of internal quality controls during each substance abuse test conducted under this subchapter, including the use of blind samples and samples of known concentrations which are used to check the performance and calibration of testing equipment;

(b) The internal review and certification process for test results, including the qualifications of the person who performs that function in the testing laboratory; and

(c) Security measures implemented by the testing laboratory; and

(3) Other necessary and proper actions are taken to ensure reliable and accurate test results.

7. Testing procedure. A testing laboratory shall perform a screening test on each sample submitted by the employer for only those substances of abuse that the employer requests to be identified. If a screening test result is negative, no further test may be conducted on that sample. If a screening test result is positive, a confirmation test shall be performed on that sample. A testing laboratory shall retain all confirmed positive samples for one year in a manner that will inhibit deterioration of the samples and allow subsequent retesting. All other samples shall be disposed of immediately after testing.

8. Laboratory report of test results. This subsection governs the reporting of test results.

A. A laboratory report of test results shall, at a minimum, state:

(1) The name of the laboratory that performed the test or tests;

(2) Any confirmed positive results on any tested sample.

(a) Unless the employee or applicant consents, test results shall not be reported in numerical or quantitative form but shall state only that the test result was positive or negative.

(b) A testing laboratory and the employer must ensure that an employee's unconfirmed positive screening test result cannot be determined by the employer in any manner, including, but not limited to, the method of billing the employer for the tests performed by the laboratory and the time within which results are provided to the employer. This division does not apply to test results for applicants;

(3) The sensitivity or cutoff level of the confirmation test; and

(4) Any available information concerning the margin of accuracy and precision of the test methods employed.

The report shall not disclose the presence or absence of evidence of any physical or mental condition or of any substance other than the specific substances of abuse that the employer requested to be identified.

B. The employer shall promptly notify the employee or applicant tested of the test result. Upon request of an employee or applicant, the employer shall promptly provide a legible copy of the laboratory report to the employee or applicant.

C. The testing laboratory shall send test reports for samples segregated at an employee's or applicant's request under subsection 5, paragraph A, to both the employer and the employee or applicant tested.

D. Every employer whose policy is approved by the Department of Labor under section 686 shall annually send to the department a compilation of the results of all substance abuse tests administered by that employer in the previous calendar year. This report shall provide separate categories for employees and applicants and shall be presented in statistical form so that no person who was tested by that employer can be identified from the report. The report shall include a separate category for any tests conducted on a random or arbitrary basis under section 684, subsection 3.

9. Costs. The employer shall pay the costs of all substance abuse tests which the employer requires, requests

or suggests that an employee or applicant submit. Except as provided in paragraph A, the employee or applicant shall pay the costs of any additional substance abuse tests.

Costs of a substance abuse test administered at the request of an employee under subsection 5, paragraph B, shall be paid:

A. By the employer if the test results are negative for all substances of abuse tested for in the sample; and

B. By the employee if the test results in a confirmed positive result for any of the substances of abuse tested for in the sample.

10. Limitation on use of tests. An employer may administer substance abuse tests to employees or applicants only for the purpose of discovering the use of any substance of abuse likely to cause impairment of the user or the use of any scheduled drug. No employer may have substance abuse tests administered to an employee or applicant for the purpose of discovering any other information.

11. Rules. The Department of Human Services shall adopt any rules under section 687 regulating substance abuse testing procedures that it finds necessary or desirable to ensure accurate and reliable substance abuse testing and to protect the privacy rights of employees and applicants.

#### §684. Imposition of tests

1. Testing of applicants. An employer may require, request or suggest that an applicant submit to a substance abuse test only if:

A. The applicant has been offered employment with the employer; or

B. The applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. The number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding 6 months.

The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result.

2. Probable cause testing of employees. An employer may require, request or suggest that an employee submit to a substance abuse test if the employer has probable cause to test the employee.

A. The employee's immediate supervisor, other supervisory personnel or the employer's security personnel shall make the determination of probable cause.

B. The supervisor or other person must state, in writing, the facts upon which this determination is based and provide a copy of the statement to the employee.



**3. Random or arbitrary testing of employees.** In addition to testing employees on a probable cause basis under subsection 2, an employer may require, request or suggest that an employee submit to a substance abuse test on a random or arbitrary basis if at least one of the following conditions is met:

A. The employer and the employee have bargained for provisions in a collective bargaining agreement, either before or after the effective date of this subchapter, that provide for random or arbitrary testing of employees; or

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 co-workers 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.

**4. Testing while undergoing rehabilitation or treatment.** While the employee is participating in a substance abuse rehabilitation program either as a result of voluntary contact with or mandatory referral to the employer's employee assistance program or after 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 required, requested or suggested by that provider.

A. Substance abuse testing conducted as part of such a rehabilitation or treatment program is not subject to the provisions of this subchapter regulating substance abuse testing.

B. An employer may not require, request or suggest that any substance abuse test be administered to any employee while the employee is undergoing such rehabilitation or treatment, except as provided in subsections 2 and 3.

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.

#### **§685. Action taken on substance abuse tests**

Action taken by an employer on the basis of a substance abuse test is limited as provided in this section.

**1. Before receipt of test results.** An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results.

**2. Use of confirmation test results.** This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter.

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 test as a factor in any of the following decisions:

(1) Refusal to hire an applicant for employment;

(2) Discharge of an employee;

(3) Discipline of an employee; or

(4) Change in the employee's work assignment.

B. Before taking any action described in paragraph A in the case of an employee who receives a confirmed positive result, an employer shall provide the employee with an opportunity to participate for at least 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance of abuse. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed positive result within 3 years after the rehabilitation or treatment provider indicates that the employee has successfully completed a rehabilitation program as provided in paragraph C, subparagraph (3).

C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply.

(1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program.

(a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program shall be equally divided between the employer and employee if the employer has more than 20 full-time employees. If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan.

(b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees is not required to

pay for any costs of rehabilitation or treatment under any public or private rehabilitation program.

(2) No employer may take any action described in paragraph A while an employee is participating in a rehabilitation program, except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. No reduction in pay or benefits may be made while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation. The employee may apply normal sick leave and vacation time, if any, for these periods.

(3) Except as provided in division (a), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A.

(a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. No reduction may be made in the employee's previous benefits or rate of pay while awaiting reassignment to work or while working in a position other than the previous job. The employee shall be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed posi-

tive result within that time from a test administered under this subchapter.

D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for an employee with a substance abuse problem to address the problem through rehabilitation. An employer may offer additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation.

3. Confidentiality. This subsection governs the use of information acquired by an employer in the testing process.

A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent:

(1) The release of this information when required or permitted by state or federal law, including release under section 683, subsection 8, paragraph D; or

(2) 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.

B. Notwithstanding any other law, the results of any substance abuse test required, requested or suggested by any employer may not be used in any criminal proceeding.

#### §686. Review of written policies

1. Review required. The Department of Labor shall review each written policy or change to an approved policy submitted to the department by an employer under section 683, subsection 2.

A. The department shall determine if the employer's written policy or change complies with this subchapter and shall immediately notify the employer who submitted the policy or change of that determination. If the department finds that the policy or change does not comply with this subchapter, the department shall also notify the employer of the specific areas in which the policy or change is defective.

B. The department may request additional information from an employer when necessary to determine whether an employment position meets the require-

ments of section 684, subsection 3. The department shall not approve any written policy that provides for random or arbitrary testing of any employment position that the employer has failed to demonstrate meets the requirements of section 684, subsection 3.

**2. Review procedure.** The Department of Labor shall adopt rules under section 687 governing the procedure for reviews conducted under this section.

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

B. Nothing in this section requires a formal hearing to be held concerning the submission and review of an employer's written policy.

C. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act, Title 5, chapter 375, does not apply to reviews conducted under this section except that all determinations by the Department of Labor under this section may be appealed as provided in Title 5, chapter 375, subchapter VII.

#### **§687. Rulemaking**

**1. Department of Human Services.** The Department of Human Services shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, as provided in this subchapter.

**2. Department of Labor.** The Department of Labor shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, as provided in this subchapter.

**3. Coordination; deadline.** The Department of Human Services and the Department of Labor shall cooperate to ensure any necessary coordination between the rules of both departments. The Department of Human Services and the Department of Labor shall adopt initial rules before December 1, 1989.

#### **§688. Substance abuse education**

All employers shall cooperate fully with the Department of Labor, the Department of Human Services, the Department of Public Safety and any other state agency in programs designed to educate employees about the dangers of substance abuse and about public and private services available to employees who have a substance abuse problem.

#### **§689. Violation and remedies**

This section governs the enforcement of this subchapter.

**1. Remedies.** Any employer who violates this subchapter is liable to any employee subjected to discipline or discharge based on that violation for:

- A. An amount equal to 3 times any lost wages;
- B. Reinstatement of the employee to the employee's job with full benefits;
- C. Court costs; and
- D. Reasonable attorney's fees, as set by the court.

**2. Breach of confidentiality.** In addition to the liability imposed under subsection 1, any person who violates section 684, subsection 4, paragraph C, or section 685, subsection 3:

- A. For the first offense, is subject to a civil penalty not to exceed \$1,000, payable to the affected employee, to be recovered in a civil action; and
- B. For any subsequent offense, is subject to a civil penalty of \$2,000, payable to the affected employee, to be recovered in a civil action.

**3. Harassment.** In addition to the liability imposed under subsection 1, any employer who requires or repeatedly attempts to require an employee or applicant to submit to a substance abuse test under conditions that would not justify the test under this subchapter or who without substantial justification repeatedly requires an employee to submit to a substance abuse test under section 684, subsection 3:

- A. Is subject to a civil penalty not to exceed \$1,000, payable to the affected employee, to be recovered in a civil action; and
- B. For any subsequent offense against the same employee, is subject to a civil penalty of \$2,000, payable to the affected employee, to be recovered in a civil action.

**4. Enforcement.** The Department of Labor or the affected employee or employees may enforce this subchapter. The department may:

- A. Collect the judgment on behalf of the employee or employees; and
- B. Supervise the payment of the judgment and the reinstatement of the employee or employees.

#### **§690. Report**

The Department of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on March 1, 1990, and annually on that date thereafter. This report shall:

**1. List of employers.** List those employers whose substance abuse testing policies have been approved by the Department of Labor under section 686;

**2. Persons tested.** Indicate whether those employers are testing applicants or employees, or both;

**3. Random or arbitrary testing.** Indicate those employers whose substance abuse testing policies permit random or arbitrary testing under section 684, subsection 3, and describe the employment positions subject to such random or arbitrary testing;

**4. Results.** Provide statistical data relating to the reports received from employers indicating the number of substance abuse tests administered by those employers in the previous calendar year and the results of those tests; and

**5. Description.** Briefly describe the general scope and practice of workplace substance abuse testing in the State.

**Sec. 2. Transition.** No employer may commence a workplace substance abuse testing program after the effective date of this Act until January 1, 1990. All workplace substance abuse testing programs in existence on the effective date of this Act may continue operation until January 1, 1990. All workplace substance abuse testing programs must comply fully with this Act and rules adopted under this Act on January 1, 1990.

**Sec. 3. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
HUMAN SERVICES, DEPARTMENT OF		
Bureau of Health		
Positions	(1)	(1)
Personal Services	\$18,483	\$25,050
All Other	2,000	5,216
Capital Expenditures	1,000	
Provides funds for a Chemist II position to establish rules and monitor substance abuse testing procedures.		
DEPARTMENT OF HUMAN SERVICES TOTAL	\$21,483	\$30,266

See title page for effective date.

## CHAPTER 537

H.P. 949 - L.D. 1317

### An Act to Change the Method of Approving Equivalent Instruction in Home Schools

**Emergency preamble.** **Whereas,** Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this Act provides a method of approving home schools so that students attending those schools may

meet the compulsory education requirements of state law; and

**Whereas,** it is desirable that this method of approval be available in time to approve schools for the 1989-90 school year; and

**Whereas,** the application process for the school year must begin immediately to permit time for approval before the start of the 1989-90 school year; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**20-A MRSA §5001-A, sub-§3, ¶A,** as enacted by PL 1983, c. 806, §49, is repealed and the following enacted in its place:

A. Equivalent instruction alternatives are as follows.

(1) A person shall be excused from attending a public day school if the person obtains equivalent instruction in:

(a) A private school approved for attendance purposes pursuant to section 2901;

(b) A private school recognized by the department as providing equivalent instruction;

(c) A manner approved by the commissioner pursuant to subparagraph (3); or

(d) Any other manner arranged for by the school board and approved by the commissioner.

(2) A student shall be credited with attendance at a private school only if a certificate showing the name, residence and attendance of the person at the school, signed by the person or persons in charge of the school, has been filed with the school officials of the administrative unit in which the student resides.

(3) A person who wishes to obtain approval of equivalent instruction under rules established by the commissioner for equivalent instruction through home instruction shall simultaneously submit a completed application for approval to the local board and to the commissioner. The local board shall provide for review of the application. The purpose of local review shall only be to facilitate coop-