LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

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J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

	1990-91
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF	
State Board of Substance Abuse Counselors	
All Other	$8,000
Authorizes expenditure of additional funds for increased general operating costs.	

Sec. 12. Sunset. Section 6 of this Act is repealed July 1, 1991.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 17, 1990.

CHAPTER 832

S.P. 801 - L.D. 2049

An Act to Make Revisions in the Drug Testing Laws

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

Whereas, the laws governing an employer's use of substance abuse tests require certain revisions to ensure effective implementation; and

Whereas, these revisions need to take effect as soon as possible to enable employers to continue their substance abuse testing programs with a minimum of interruption; 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:

Sec. 1. 26 MRSA §681, sub-§1, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is further amended to read:

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.~~;~~ and

D. Eliminate drug use in the workplace.

Sec. 2. 26 MRSA §681, sub-§8, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is repealed and the following enacted in its place:

8. Nuclear power plants; federal law. The following limitations apply to the application of this subchapter.

A. This subchapter does not apply to nuclear electrical generating facilities and their employees, including independent contractors and employees of independent contractors who are working at nuclear electrical generating facilities.

B. This subchapter, except for section 685, subsection 2 and section 689, subsections 1 and 4, does not apply to employees subject to substance abuse testing under any federal law or regulation or under rules adopted by this State's Department of Public Safety that incorporate any federal laws or regulations related to substance abuse testing for motor carriers.

(1) For the purposes of applying section 685, subsection 2 to an employee under this paragraph, the employee is deemed to have previously worked in an employment position subject to random or arbitrary testing under an employer's written policy.

Sec. 3. 26 MRSA §681, sub-§9 is enacted to read:

9. Board of Licensure of Railroad Personnel; testing restricted. The Board of Licensure of Railroad Personnel, as established by Title 5, chapter 379, may not require, request or suggest that any person subject to licensure by the board submit to a substance abuse test as a condition of the issuance or renewal of a license under Title 32, chapter 60.

The Board of Licensure of Railroad Personnel may require a person to submit to a substance abuse test as a condition of continued licensure or restoration of a license only if the license holder acknowledges to the board that the license holder has a substance abuse problem.

Sec. 4. 26 MRSA §682, sub-§3-A is enacted to read:

3-A. Medically disqualified. "Medically disqualified" means that an employee is prohibited by a federal law or regulation, or any rules adopted by the State's Department of Public Safety that incorporate any federal laws or regulations related to substance abuse testing for motor carriers, from continuing in the employee's former employment position due to the result of a substance abuse test conducted under the federal law or regulation or the Department of Public Safety rule.

Sec. 5. 26 MRSA §682, sub-§7, ¶B, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is further amended to read:

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.

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

Sec. 6. 26 MRSA §683, sub-§2, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is further amended to read:

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~~. The written policy must describe:

(1) ~~A description of which~~ Which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3. For applicant testing and probable cause testing of employees, an employer may designate that all positions are subject to testing; 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 licensed 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~~;~~.

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

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. An employer may request that the Department of Human Services establish a cutoff level for any substance of abuse for which the department has not established a cutoff level;

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 any portion of a substance abuse testing policy under this subsection that relates to the employees. The employer is not required to consult with the employees on those portions of a policy that relate only to applicants. 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.

Sec. 7. 26 MRSA §683, sub-§3, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§1 to 3, is further amended to read:

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~~ 30 days before any portion of the written policy applicable to employees 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 any portion of the change applicable to employees takes effect. If ~~applicants are subject to testing under the written policy~~ an employer intends to test an applicant, the employer shall provide ~~each~~ the 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. The 30-day and 60-day notice ~~period~~ periods provided for employees under this subsection ~~does~~ do not apply to applicants.

Sec. 8. 26 MRSA §683, sub-§6, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is further amended 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; ~~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, includ-

ing 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.

Sec. 9. 26 MRSA §683, sub-§8, ¶¶A and B, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, are further amended to read:

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. This division does not apply if the test or the test results become the subject of any grievance procedure, administrative proceeding or civil action.

(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. A testing laboratory shall retain records of confirmed positive results in a numerical or quantitative form for at least 2 years.

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. Within 3 working days after notice of a confirmed positive test result, the employee or applicant may submit information to the employer explaining or contesting the results.

Sec. 10. 26 MRSA §684, sub-§2, ¶A, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is further amended to read:

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

Sec. 11. 26 MRSA §684, sub-§5 is enacted to read:

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 participated in a rehabilitation program under section 685, subsection 2, the employer 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 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 submit to a substance abuse test during the first 90 days after the date of the employee's prior test only as provided in subsections 2 and 3.

Sec. 12. 26 MRSA §685, sub-§2, ¶B, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is further amended to read:

B. Before taking any action described in paragraph A in the case of an employee who receives ~~a~~ an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for ~~at least~~ up to 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)~~ from a test administered by the employer under this subchapter.

Sec. 13. 26 MRSA §685, sub-§2, ¶C, as enacted by PL 1989, c. 536, §§1 and 2, and as amended by c. 604, §§2 and 3, is further amended to read:

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 as provided in subparagraph (2-A) and 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~~ Except as provided in subparagraph (2-A), an employee's pay or benefits may not be ~~made~~ reduced 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 or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in ~~division (a)~~ divisions (a) and (b), 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. Reinstatement of the employee must not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. 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 positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the

employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part.

(b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the employer is not required to reinstate the employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 17, 1990.

CHAPTER 833

H.P. 1570 - L.D. 2175

An Act Concerning Political Campaign Financing and Reporting

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

Whereas, the current law governing campaign finance reporting by candidates and political action committees contains a number of technical errors; and

Whereas, these errors may cause confusion and expense to those required to report campaign finances, especially in an election year; and

Whereas, political action committees are not currently required to report information necessary for a complete understanding of their role in funding and influencing state political campaigns; and

Whereas, the law regarding candidates' campaign financing obligations needs clarification to ensure that the Commission on Governmental Ethics and Election Practices receives the information it needs for an accurate picture of how campaigns are run; 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:

Sec. 1. 21-A MRSA §1013-A, sub-§§1 to 3, as enacted by PL 1989, c. 504, §§4 and 31, are amended to read:

1. Candidates; candidates' treasurers. Candidates and candidates' treasurers are required to register with the commission ~~for each election as follows~~ at least once in each legislative biennium as provided in this section. For the purpose of this section, "legislative biennium" means the term of office for which a person is elected to serve in the Legislature.

A. A candidate may accept contributions personally or make or authorize expenditures personally. A candidate for a state or county office other than the office of Governor shall register the candidate's name and address with the commission within 7 days of accepting contributions in an aggregate amount in excess of $500 or incurring obligations or making expenditures in an aggregate amount in excess of $500. A candidate for the office of Governor shall register the candidate's name and address with the commission within 7 days of accepting contributions in an aggregate amount in excess of $1,000, or incurring obligations or making or authorizing expenditures in an aggregate amount in excess of $1,000.

B. A candidate may appoint a treasurer to accept contributions or to make or authorize expenditures. A candidate who appoints a treasurer must register with the commission the name and address of the treasurer, the name and address of the candidate making the appointment and the treasurer's term of office, if any, within 7 days after the appointment. Contributions accepted by or expenditures authorized by a candidate's treasurer ~~shall be~~ are deemed accepted or authorized by the candidate for the purposes of this subchapter.

C. Any candidate not required to register earlier shall do so within ~~5~~ 7 days after qualifying as a candidate, by petition, write-in election or otherwise.

Any candidate whose treasurer is registered with the commission before the candidate files a petition or accepts contributions, incurs obligations or makes expenditures in the aggregate in excess of $500 shall be considered in compliance with paragraphs A and C of this subsection.

2. Authorized political committees. A candidate may authorize one political committee and one exploratory committee to promote that candidate's election. Each committee shall register with the commission ~~for~~