

SENATE BILL 652

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SB 134/98 - FIN

2001 Regular Session
11r0804

By: **Senators Roesser and Astle**
Introduced and read first time: February 2, 2001
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: March 22, 2001

CHAPTER 615

1 AN ACT concerning

2 **Controlled Dangerous Substance Testing for Job Applicants - Preliminary**
3 **Screenings**

4 FOR the purpose of exempting certain employers from certain medical laboratory
5 licensing requirements for preemployment substance abuse testing under
6 certain circumstances; authorizing employers who require job applicants to be
7 tested for the use or abuse of a controlled dangerous substance to use certain
8 preliminary screening procedures to test specimens under certain
9 circumstances; allowing an employer to designate a medical laboratory licensed
10 to perform job-related testing for controlled dangerous substances to perform
11 preliminary screening procedures; providing procedures relating to the
12 voluntary disclosure and documentation by a job applicant of the taking of
13 legally prescribed medication; prohibiting the use of preliminary screening
14 procedures under certain circumstances; permitting the use of preliminary
15 screening procedures by temporary help agencies; requiring an employer who
16 uses preliminary screening procedures to register with the Secretary of Health
17 and Mental Hygiene under certain circumstances; requiring an employer to use
18 a laboratory to confirm the results of preliminary screening procedures under
19 certain circumstances; authorizing an employer to use a laboratory to conduct
20 initial and confirmatory controlled dangerous substance tests for job applicants;
21 requiring an employer that uses preliminary screening procedures to collect,
22 handle, store, and ship each specimen in a certain manner; requiring an
23 employer that uses preliminary screening procedures to maintain certain
24 records related to specimens and to maintain or contract with a medical review
25 officer; requiring certain training for an employee designated to collect
26 specimens and perform controlled dangerous substance tests; requiring the
27 employer to maintain certain training records; requiring the Secretary to adopt
28 certain regulations; authorizing the Secretary to adopt certain regulations;

1 providing for the effect of a collective bargaining agreement; defining certain
2 terms; and generally relating to job-related controlled dangerous substance
3 testing and preliminary screening procedures.

4 BY repealing and reenacting, with amendments,
5 Article - Health - General
6 Section 17-205 and 17-214
7 Annotated Code of Maryland
8 (2000 Replacement Volume)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article - Health - General**

12 17-205.

13 (a) A person shall hold a license issued by the Secretary before the person
14 may:

15 (1) Offer or perform medical laboratory tests or examinations in this
16 State;

17 (2) Offer or perform medical laboratory tests or examinations on
18 specimens acquired from health care providers in this State at a medical laboratory
19 located outside this State; or

20 (3) Represent or service in this State a medical laboratory regardless of
21 the laboratory's location.

22 (b) The Secretary shall issue a letter of exception to a laboratory that:

23 (1) Performs only limited medical laboratory tests or examinations; and

24 (2) Meets the exception requirements in regulations adopted by the
25 Secretary pursuant to this subtitle.

26 (c) For the purposes of this section, "limited medical laboratory tests or
27 examinations" means simple medical laboratory procedures as defined in regulations
28 adopted by the Secretary pursuant to this subtitle.

29 (D) IF PRELIMINARY SCREENING PROCEDURES ARE PERFORMED BY AN
30 OPERATOR WHO IS TRAINED ~~AND CERTIFIED~~ UNDER § 17-214(K) OF THIS SUBTITLE,
31 AN EMPLOYER:

32 (1) IS NOT REQUIRED TO ~~BE LICENSED~~ OBTAIN A PERMIT OR TO OBTAIN
33 A LETTER OF EXCEPTION FROM THE SECRETARY UNDER THIS SECTION TO PERFORM
34 TESTING; BUT

1 (2) IS REQUIRED BEFORE PERFORMING PRELIMINARY SCREENING
2 PROCEDURES, AS DEFINED UNDER § 17-214(A) OF THIS SUBTITLE, TO REGISTER WITH
3 THE SECRETARY IN ACCORDANCE WITH REQUIREMENTS ADOPTED IN REGULATIONS
4 BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

5 17-214.

6 (a) In this section the following words have the meanings indicated.

7 (1) "Alcohol or controlled dangerous substance testing" means a
8 procedure used to determine whether or not a specimen contains a controlled
9 dangerous substance or alcohol.

10 (2) "Certification" means the approval granted by the Department for a
11 laboratory to engage in job-related alcohol or controlled dangerous substance testing.

12 (3) "Controlled dangerous substance" has the meaning stated in Article
13 27, § 277 of the Code.

14 (4) "JOB APPLICANT" MEANS AN INDIVIDUAL WHO:

15 (I) HAS APPLIED FOR A POSITION WITH AN EMPLOYER;

16 (II) IS NOT CURRENTLY EMPLOYED BY THE EMPLOYER.

17 (5) "Job-related" means any alcohol or controlled dangerous substance
18 testing used by an employer for a legitimate business purpose.

19 [(5)] (6) "Laboratory" means a facility or other entity that conducts
20 job-related alcohol or controlled dangerous substance testing.

21 (7) "MEDICAL REVIEW OFFICER" MEANS A LICENSED PHYSICIAN WITH
22 KNOWLEDGE OF DRUG ABUSE DISORDERS AND DRUG AND ALCOHOL TESTING.

23 (8) "PRELIMINARY SCREENING PROCEDURE" MEANS A CONTROLLED
24 DANGEROUS SUBSTANCE TEST THAT USES A SINGLE-USE TEST DEVICE THAT:

25 (I) IS EASILY PORTABLE AND CAN BE ADMINISTERED ~~IN A~~
26 WORKPLACE AT A WORK SITE OR OTHER APPROPRIATE COLLECTION SITE;

27 (II) MEETS THE REQUIREMENTS OF THE FEDERAL FOOD AND DRUG
28 ADMINISTRATION FOR COMMERCIAL DISTRIBUTION; AND

29 (III) MEETS GENERALLY ACCEPTED CUTOFF LEVELS SUCH AS
30 THOSE IN THE FEDERAL SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
31 ADMINISTRATION GUIDELINES FOR DRUG-FREE WORKPLACE TESTING PROGRAMS.

32 (9) "SINGLE-USE TEST DEVICE" MEANS THE REAGENT-CONTAINING
33 UNIT OF A TEST SYSTEM THAT:

1 (I) IS IN THE FORM OF A ~~CARTRIDGE, TEST PACK, OR OTHER~~
 2 ~~CONTAINER THAT INCLUDES A VALIDITY CHECK~~ SEALED CONTAINER OR CARTRIDGE
 3 THAT HAS A VALIDITY CHECK, A NONRESEALABLE CLOSURE, OR AN EVIDENTIARY
 4 TAPE THAT ENSURES DETECTION OF ANY TAMPERING;

5 (II) IS SELF-CONTAINED AND INDIVIDUALLY PACKAGED;

6 (III) IS DISCARDED AFTER EACH TEST; AND

7 (IV) DOES NOT ALLOW ANY TEST COMPONENT OR CONSTITUENT OF
 8 A TEST SYSTEM TO INTERACT BETWEEN TESTS.

9 [(6)] (10) "Specimen" means:

10 (i) Blood derived from the human body;

11 (ii) Urine derived from the human body; or

12 (iii) Hair derived from the human body as provided in subsection
 13 (b)(2) of this section.

14 (b) (1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
 15 AN employer who requires any person to be tested for job-related reasons for the use
 16 or abuse of any controlled dangerous substance or alcohol shall:

17 (i) Have the specimen tested by a laboratory that:

18 1. Holds a permit under this subtitle; or

19 2. Is located outside of the State and is certified or otherwise
 20 approved under subsection [(e)] (F) of this section; and

21 (ii) At the time of testing, at the person's request, inform the person
 22 of the name and address of the laboratory that will test the specimen.

23 (2) (I) 1. EXCEPT AS PROVIDED IN ~~ITEM~~ SUB-SUBPARAGRAPH 2 OF
 24 THIS SUBPARAGRAPH, AN EMPLOYER MAY USE A PRELIMINARY SCREENING
 25 PROCEDURE TO TEST A JOB APPLICANT FOR THE USE OR ABUSE OF ANY
 26 CONTROLLED DANGEROUS SUBSTANCE.

27 2. ~~ITEM~~ SUB-SUBPARAGRAPH 1 OF THIS SUBPARAGRAPH
 28 DOES NOT APPLY TO AN EMPLOYER THAT HAS ENTERED INTO A COLLECTIVE
 29 BARGAINING AGREEMENT THAT PROHIBITS THE EMPLOYER FROM USING A
 30 PRELIMINARY SCREENING PROCEDURE TO TEST A JOB APPLICANT FOR THE USE OR
 31 ABUSE OF ANY CONTROLLED DANGEROUS SUBSTANCES.

32 (II) IF THE RESULT OF A PRELIMINARY SCREENING PROCEDURE IS
 33 POSITIVE, THE EMPLOYER SHALL SUBMIT THE SPECIMEN FOR TESTING BY A
 34 LABORATORY AS REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

1 (III) FOLLOWING VOLUNTARY DISCLOSURE AND DOCUMENTATION
 2 BY AN APPLICANT OF THE TAKING OF A LEGALLY PRESCRIBED MEDICATION, AN
 3 EMPLOYER MAY HIRE THE APPLICANT PENDING CONFIRMATION OF A POSITIVE TEST
 4 RESULT BY THE MEDICAL LABORATORY AND REVIEW BY THE EMPLOYER'S MEDICAL
 5 REVIEW OFFICER.

6 ~~(III) (IV) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS~~
 7 ~~PARAGRAPH, AN EMPLOYER MAY NOT USE A PRELIMINARY SCREENING PROCEDURE~~
 8 ~~TO TEST AN INDIVIDUAL WHO IS NOT APPLYING FOR A JOB WITH THE THAT~~
 9 ~~EMPLOYER OR A CONTRACTOR OF THE EMPLOYER AT THE TIME THAT THE TEST IS~~
 10 ~~TO BE ADMINISTERED.~~

11 ~~(IV) A TEMPORARY HELP AGENCY THAT REFERS EMPLOYEES TO~~
 12 ~~EMPLOYERS FOR TEMPORARY WORK MAY USE A PRELIMINARY SCREENING~~
 13 ~~PROCEDURE TO TEST AN INDIVIDUAL BEFORE REFERRING THE INDIVIDUAL FOR~~
 14 ~~EMPLOYMENT WITH AN EMPLOYER.~~

15 ~~(IV) (V) AN EMPLOYER MAY DESIGNATE A MEDICAL LABORATORY~~
 16 ~~LICENSED TO PERFORM JOB-RELATED TESTING FOR CONTROLLED DANGEROUS~~
 17 ~~SUBSTANCES TO ALSO PERFORM PRELIMINARY SCREENING PROCEDURES ON JOB~~
 18 ~~APPLICANTS FOR THE EMPLOYER.~~

19 [(2)] (3) (i) An employer who requires any person to be tested for
 20 job-related reasons for the use or abuse of any controlled dangerous substance may
 21 use hair derived from the human body as a specimen in accordance with this
 22 paragraph.

23 (ii) An employer may use hair derived from the human body only
 24 for pre-employment purposes.

25 (iii) If an employer uses hair derived from the human body as a
 26 specimen, the employer may not:

27 1. Use a specimen that is longer than one and one-half
 28 inches measured from the human body; or

29 2. Use the specimen for any purpose other than testing for
 30 controlled dangerous substances.

31 (c) (1) An employer who requires any employee, contractor, or other person
 32 to be tested for job-related reasons for the use or abuse of any controlled dangerous
 33 substance or alcohol and who receives notice FROM THE LABORATORY UNDER
 34 SUBSECTION (B) OF THIS SECTION that an employee, contractor, or other person has
 35 tested positive for the use or abuse of any controlled dangerous substance or alcohol
 36 shall, after confirmation of the test result, provide the employee, contractor, or other
 37 person with:

38 (i) A copy of the laboratory test indicating the test results;

1 (ii) A copy of the employer's written policy on the use or abuse of
 2 controlled dangerous substances or alcohol by employees, contractors, or other
 3 persons;

4 (iii) If applicable, written notice of the employer's intent to take
 5 disciplinary action, terminate employment, or change the conditions of continued
 6 employment; and

7 (iv) A statement or copy of the provisions set forth in subsection
 8 [(d)] (E) of this section permitting an employee to request independent testing of the
 9 same sample for verification of the test result.

10 (2) The information required to be provided to the employee, contractor,
 11 or other person under paragraph (1) of this subsection shall be delivered to the
 12 employee, contractor, or other person:

13 (i) Either in person or by certified mail; and

14 (ii) Within 30 days from the date the test was performed.

15 (D) AN EMPLOYER THAT USES A PRELIMINARY SCREENING PROCEDURE TO
 16 TEST SPECIMENS FOR THE USE OR ABUSE OF A CONTROLLED DANGEROUS
 17 SUBSTANCE UNDER THIS SECTION SHALL:

18 (1) IN USING A SINGLE-USE TEST DEVICE, COLLECT, HANDLE, STORE,
 19 AND SHIP EACH SPECIMEN IN A MANNER THAT:

20 (I) MAINTAINS THE SPECIMEN DONOR'S IDENTITY AND
 21 CONFIDENTIALITY AND THE PHYSICAL INTEGRITY OF THE SPECIMEN; AND

22 (II) PRECLUDES CONTAMINATION OF THE SPECIMEN; AND

23 (2) MAINTAIN A WRITTEN RECORD OF THE CHAIN OF CUSTODY OF EACH
 24 SPECIMEN FROM THE TIME THAT THE SPECIMEN IS COLLECTED UNTIL THE TIME
 25 THAT THE SPECIMEN IS NO LONGER NEEDED FOR RETESTING.

26 [(d)] (E) (1) A person who is required to submit to job-related testing, under
 27 subsection (b) OR (C) of this section, may request independent testing of the same
 28 specimen for verification of the test results by a laboratory that:

29 (i) Holds a permit under this subtitle; or

30 (ii) If located outside of the State, is certified or otherwise approved
 31 under subsection [(e)] (F) of this section.

32 (2) The person shall pay the cost of an independent test conducted under
 33 this subsection.

34 [(e)] (F) (1) The Department of Health and Mental Hygiene shall adopt
 35 regulations ~~[governing the]~~ GOVERNING:

1 (I) ~~THE SHALL ADOPT REGULATIONS GOVERNING THE~~
2 certification of laboratories that conduct job-related alcohol or controlled dangerous
3 substance testing; AND

4 (II) ~~THE MAY ADOPT REGULATIONS GOVERNING THE OVERSIGHT~~
5 OF PRELIMINARY SCREENING PROCEDURES ADMINISTERED BY EMPLOYERS.

6 (2) In addition to any other laboratory standards, the regulations shall:

7 (i) Require that the laboratory comply with the guidelines for
8 laboratory accreditation, if any, as set forth by the College of American Pathologists,
9 the U. S. Health Care Financing Administration (HCFA), or any other government
10 agency or program designated to certify or approve a laboratory that is acceptable to
11 the Secretary;

12 (ii) Require that a laboratory performing confirmation tests, for
13 controlled dangerous substances or alcohol be inspected and accredited in forensic
14 drug analysis by the College of American Pathologists, the U. S. Health Care
15 Financing Administration (HCFA), or any other government agency or program
16 designated to inspect and accredit a laboratory that is acceptable to the Secretary;

17 (iii) Require that, if the laboratory performs job related drug testing,
18 the laboratory be a participant in a program of proficiency testing of drug screening
19 conducted by an organization acceptable to the Secretary;

20 (iv) Require that the laboratory comply with standards regarding
21 cutoff levels for positive testing that are established by the United States Department
22 of Health and Human Services or established by the Secretary as mandatory
23 guidelines for workplace drug testing programs; and

24 (v) Include procedures for annual recertification and inspection.

25 [(f)] (G) This section does not apply to:

26 (1) Alcohol or controlled dangerous substance testing of a person under
27 arrest or held by a law enforcement or correctional agency;

28 (2) Alcohol testing procedures conducted by a law enforcement or
29 correctional agency on breath testing equipment certified by the State Toxicologist; or

30 (3) Controlled dangerous substance testing by a laboratory facility of a
31 law enforcement or correctional agency that maintains laboratory testing standards
32 comparable to the standards in this section.

33 [(g)] (H) This section applies to job-related alcohol and controlled dangerous
34 substance testing of any person, including preemployment applicants, employees, and
35 contractors.

36 [(h)] (I) (1) Except as provided in ~~paragraph (2)~~ PARAGRAPHS (2) AND (3) of
37 this subsection, in the course of obtaining information for, or as a result of, conducting

1 job-related alcohol or controlled dangerous substance testing for an employer under
2 this section, a laboratory, a physician, including a physician retained by the employer,
3 or any other person may not reveal to the employer information regarding:

4 (i) The use of a nonprescription drug, excluding alcohol, that is not
5 prohibited under the laws of the State; or

6 (ii) The use of a medically prescribed drug, unless the person being
7 tested is unable to establish that the drug was medically prescribed under the laws of
8 the State.

9 (2) The prohibitions against disclosure of information under paragraph
10 (1) of this subsection do not apply to the extent that they prevent a person from
11 complying with the applicable provisions of the federal Commercial Motor Vehicle
12 Safety Act of 1986 and the federal Motor Carrier Safety Regulations.

13 (3) THE PROHIBITIONS AGAINST DISCLOSURE OF INFORMATION UNDER
14 PARAGRAPH (1) OF THIS SUBSECTION DO NOT APPLY IF, PRIOR TO THE
15 ADMINISTRATION OF A PRELIMINARY SCREENING FOR CONTROLLED DANGEROUS
16 SUBSTANCES, THE TEST OPERATOR NOTIFIES THE APPLICANT THAT IF THE
17 PRELIMINARY TEST IS POSITIVE, THE APPLICANT MAY VOLUNTARILY DISCLOSE AND
18 PROVIDE DOCUMENTATION TO THE OPERATOR THAT THE APPLICANT IS TAKING A
19 LEGALLY PRESCRIBED MEDICATION.

20 (J) (1) AN EMPLOYER USING PRELIMINARY SCREENING PROCEDURES TO
21 TEST JOB APPLICANTS UNDER THIS SECTION SHALL HAVE A MEDICAL REVIEW
22 OFFICER REVIEW A POSITIVE TEST RESULT AFTER LABORATORY CONFIRMATION OF
23 THE POSITIVE TEST RESULT.

24 (2) THE EMPLOYER MAY CONTRACT FOR THE SERVICES OF AN OUTSIDE
25 MEDICAL REVIEW OFFICER IF THE EMPLOYER DOES NOT HAVE A MEDICAL REVIEW
26 OFFICER ON STAFF.

27 (K) (1) AN EMPLOYER USING PRELIMINARY SCREENING PROCEDURES
28 SHALL ESTABLISH A PROGRAM TO TRAIN ~~AND CERTIFY~~ INDIVIDUALS TO COLLECT
29 SPECIMENS AND PERFORM CONTROLLED DANGEROUS SUBSTANCE TESTS IN THE
30 WORKPLACE.

31 (2) THE EMPLOYER MAY DESIGNATE AN EMPLOYEE OR ANY OTHER
32 INDIVIDUAL TO BE TRAINED ~~AND CERTIFIED~~, INCLUDING ANY INDIVIDUAL
33 EMPLOYED BY A MEDICAL LABORATORY DESIGNATED UNDER SUBSECTION (B)(2)(IV)
34 OF THIS SECTION WHO WILL PERFORM PRELIMINARY SCREENING PROCEDURES FOR
35 THE EMPLOYER.

36 (3) A TRAINEE SHALL RECEIVE APPROPRIATE AND PRACTICAL
37 INSTRUCTION, WHICH INCLUDES:

38 (I) A READING OF THE TEST MANUFACTURER'S PACKAGE INSERT
39 SHEET;

1 (II) OBSERVING THE TEST MANUFACTURER'S TRAINING VIDEO OR
2 RECEIVING TRAINING FROM THE TEST MANUFACTURER;

3 (III) COMPLETING THE TEST MANUFACTURER'S
4 SELF-ADMINISTERED TEST; AND

5 (IV) THE ACTUAL PERFORMANCE OF TESTS AND THE ACTUAL
6 INTERPRETATION OF THE RESULTS.

7 (4) (I) THE EMPLOYER SHALL:

8 1. KEEP A RECORD OF THE TRAINING RECEIVED BY EACH
9 TRAINEE; AND

10 2. ESTABLISH A PROCEDURE FOR ~~CERTIFYING~~ TRAINING
11 EACH TRAINEE AS HAVING RECEIVED THE MINIMUM TRAINING REQUIRED TO
12 PROPERLY PERFORM THE TEST.

13 (II) AFTER THE TRAINEE HAS DEMONSTRATED COMPETENCY IN
14 PERFORMING THE TEST, THE EMPLOYER SHALL ~~PLACE A CERTIFICATE IN THE~~
15 ~~TRAINEE'S TRAINING RECORD~~ MAINTAIN DOCUMENTATION THAT INDICATES THAT
16 THE TRAINEE HAS BEEN ~~CERTIFIED~~ TRAINED UNDER THIS SECTION.

17 (L) THE PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT THAT
18 CONCERN DRUG TESTING OVERRIDE AND PREEMPT THE PROVISIONS OF THIS
19 SECTION THAT AUTHORIZE AN EMPLOYER TO USE A PRELIMINARY SCREENING
20 PROCEDURE TO TEST A JOB APPLICANT.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2001.