
By: Delegate Fulton

Introduced and read first time: March 3, 1997

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Job-Related Alcohol and Controlled Dangerous Substance Testing - Preliminary**
3 **Screenings**

4 FOR the purpose of exempting certain employers from certain medical laboratory
5 licensing requirements; authorizing employers who require persons to be tested for
6 job-related reasons for the use or abuse of any controlled dangerous substance or
7 alcohol to use a certain preliminary screening procedure to test specimens under
8 certain circumstances; requiring an employer to use a laboratory to confirm the
9 results of a preliminary screening test under certain circumstances; authorizing an
10 employer to use a laboratory to conduct initial and confirmatory job-related
11 controlled dangerous substance or alcohol tests; requiring an employer that uses a
12 preliminary screening procedure to maintain certain records related to specimens
13 and retain certain specimens for a certain period of time for a certain purpose;
14 exempting certain employers from certain regulations; defining a certain term; and
15 generally relating to job-related alcohol and controlled dangerous substance testing.

16 BY repealing and reenacting, with amendments,
17 Article - Health - General
18 Section 17-205 and 17-214
19 Annotated Code of Maryland
20 (1994 Replacement Volume and 1996 Supplement)

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

23 **Article - Health - General**

24 17-205.

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

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

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

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

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

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

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

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

10 (D) AN EMPLOYER IS NOT REQUIRED TO BE LICENSED OR OBTAIN A LETTER
11 OF EXCEPTION FROM THE SECRETARY TO PERFORM RELIABLE PRELIMINARY
12 SCREENING PROCEDURES, AS DEFINED IN § 17-214(A) OF THIS SUBTITLE, PROVIDED
13 THE RELIABLE PRELIMINARY SCREENING PROCEDURES ARE PERFORMED BY
14 OPERATORS WHO ARE TRAINED AND CERTIFIED UNDER § 17-214(L) OF THIS
15 SUBTITLE.

16 17-214.

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

18 (1) "Alcohol or controlled dangerous substance testing" means a procedure
19 used to determine whether or not a specimen contains a controlled dangerous substance
20 or alcohol.

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

23 (3) "Controlled dangerous substance" has the meaning stated in Article 27,
24 § 277 of the Code.

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

27 (5) "Laboratory" means a facility or other entity that conducts job-related
28 alcohol or controlled dangerous substance testing.

29 (6) "RELIABLE PRELIMINARY SCREENING PROCEDURE" MEANS:

30 (I) A CONTROLLED DANGEROUS SUBSTANCE TEST THAT:

31 1. IS EASILY PORTABLE AND ABLE TO BE ADMINISTERED IN
32 A WORKPLACE;

33 2. MEETS THE REQUIREMENTS OF THE FEDERAL FOOD AND
34 DRUG ADMINISTRATION FOR COMMERCIAL DISTRIBUTION; AND

35 3. MEETS GENERALLY ACCEPTED CUTOFF LEVELS SUCH AS
36 THOSE IN THE MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG
37 TESTING PROGRAMS; OR

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1 (II) AN ALCOHOL TEST THAT:

2 1. IS EASILY PORTABLE AND ABLE TO BE ADMINISTERED IN
3 A WORKPLACE; AND

4 2. MEETS THE FEDERAL DEPARTMENT OF
5 TRANSPORTATION GUIDELINES FOR AN INITIAL ALCOHOL TEST.

6 (b) An employer, who requires any person to be tested for job-related reasons for
7 the use or abuse of any controlled dangerous substance or alcohol [shall], MAY TEST BY
8 USING A RELIABLE PRELIMINARY SCREENING PROCEDURE AT THE EMPLOYER'S
9 PLACE OF BUSINESS OR OTHER PLACE DESIGNATED BY THE EMPLOYER A SPECIMEN
10 OF A PERSON FOR THE USE OR ABUSE OF ANY CONTROLLED DANGEROUS
11 SUBSTANCE OR ALCOHOL.

12 (C) IF THE PRELIMINARY SCREENING PROCEDURE PERFORMED UNDER
13 SUBSECTION (B) OF THIS SECTION RESULTS IN A POSITIVE TEST RESULT FOR THE
14 USE OR ABUSE OF ANY CONTROLLED DANGEROUS SUBSTANCE OR ALCOHOL, TO
15 CONFIRM THE POSITIVE TEST RESULT, THE EMPLOYER SHALL:

16 (1) Have the specimen tested by a laboratory that:

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

18 (ii) Is located outside of the State and is certified or otherwise
19 approved under subsection [(e)] (H) of this section; and

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

22 (D) AN EMPLOYER WHO REQUIRES ANY PERSON TO BE TESTED FOR
23 JOB-RELATED REASONS FOR THE USE OR ABUSE OF ANY CONTROLLED
24 DANGEROUS SUBSTANCE OR ALCOHOL:

25 (1) MAY HAVE BOTH INITIAL AND CONFIRMATORY TESTING
26 PERFORMED BY A LABORATORY THAT:

27 (I) HOLDS A PERMIT UNDER THIS SUBTITLE; OR

28 (II) IS LOCATED OUTSIDE OF THE STATE AND IS CERTIFIED OR
29 OTHERWISE APPROVED UNDER SUBSECTION (H) OF THIS SECTION; AND

30 (2) SHALL, AT THE TIME OF TESTING, AT THE PERSON'S REQUEST,
31 INFORM THE PERSON OF THE NAME AND ADDRESS OF THE LABORATORY THAT
32 WILL TEST THE SPECIMEN.

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

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- 1 (i) A copy of the laboratory test indicating the test results;
- 2 (ii) A copy of the employer's written policy on the use or abuse of
3 controlled dangerous substances or alcohol by employees, contractors, or other 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 [(d)]
8 (G) of this section permitting an employee to request independent testing of the same
9 sample for verification of the test result.

10 (2) The information required to be provided to the employee, contractor, or
11 other person under paragraph (1) of this subsection shall be delivered to the employee,
12 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 (F) AN EMPLOYER THAT USES A PRELIMINARY SCREENING PROCEDURE TO
16 TEST SPECIMENS FOR THE USE OR ABUSE OF ANY CONTROLLED DANGEROUS
17 SUBSTANCE OR ALCOHOL UNDER SUBSECTION (B) OF THIS SECTION SHALL:

18 (1) MAINTAIN A WRITTEN RECORD OF THE CHAIN OF CUSTODY OF ALL
19 SPECIMENS FROM THE TIME A SPECIMEN IS COLLECTED UNTIL THE TIME A
20 SPECIMEN IS NO LONGER NEEDED FOR RETESTING; AND

21 (2) REFRIGERATE AND PRESERVE ALL SPECIMENS THAT RESULTED IN
22 A PRELIMINARY POSITIVE TEST RESULT IN SUFFICIENT QUANTITIES FOR
23 RETESTING FOR A PERIOD OF AT LEAST 6 MONTHS.

24 [(d)] (G) (1) A person who is required to submit to job-related testing, under
25 subsection (b) OR (D) of this section, may request independent testing of the same urine
26 or blood sample for verification of the test results by a laboratory that:

- 27 (i) Holds a permit under this subtitle; or
- 28 (ii) If located outside of the State, is certified or otherwise approved
29 under subsection [(e)] (H) of this section.

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

32 [(e)] (H) (1) The Department of Health and Mental Hygiene shall adopt
33 regulations governing the certification of laboratories that conduct job-related alcohol or
34 controlled dangerous substance testing.

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

- 36 (i) Require that the laboratory comply with the guidelines for
37 laboratory accreditation as set forth by the College of American Pathologists, the U.S.
38 Health Care Financing Administration (HCFA), or any other federal government agency

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1 or program designated to certify or approve a laboratory that is acceptable to the
2 Secretary;

3 (ii) Require that a laboratory performing confirmation tests be
4 inspected and accredited in forensic urine drug analysis by the College of American
5 Pathologists, the U.S. Health Care Financing Administration (HCFA), or any other
6 federal government agency or program designated to inspect and accredit a laboratory
7 that is acceptable to the Secretary;

8 (iii) Require that the laboratory be a participant in a program of
9 proficiency testing of urinary drug screening conducted by an organization acceptable to
10 the Secretary;

11 (iv) Require that the laboratory comply with any federal standards
12 regarding cutoff levels for positive testing that are established by the United States
13 Department of Health and Human Services as mandatory guidelines for federal
14 workplace drug testing programs; and

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

16 (3) AN EMPLOYER WHO PERFORMS RELIABLE PRELIMINARY
17 SCREENING PROCEDURES UNDER THIS SECTION MAY NOT BE REQUIRED TO
18 COMPLY WITH THE REGULATIONS ADOPTED UNDER THIS SUBTITLE, BUT ONLY IF
19 THE EMPLOYER COMPLIES WITH ALL OTHER REQUIREMENTS FOR RELIABLE
20 PRELIMINARY SCREENING PROCEDURES UNDER THIS SECTION.

21 [(f)] (I) This section does not apply to:

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

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

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

29 [(g)] (J) This section applies to job-related alcohol and controlled dangerous
30 substance testing of any person, including preemployment applicants, employees, and
31 contractors.

32 [(h)] (K) (1) Except as provided in paragraph (2) of this subsection, in the
33 course of obtaining information for, or as a result of, conducting job-related alcohol or
34 controlled dangerous substance testing for an employer under this section, a laboratory, a
35 physician, including a physician retained by the employer, or any other person may not
36 reveal to the employer information regarding:

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

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

4 (2) The prohibitions against disclosure of information under paragraph (1)
5 of this subsection do not apply to the extent that they prevent a person from complying
6 with the applicable provisions of the Federal Commercial Motor Vehicle Safety Act of
7 1986 and the Federal Motor Carrier Safety Regulations.

8 (L) (1) EMPLOYERS USING RELIABLE PRELIMINARY SCREENING
9 PROCEDURES SHALL ESTABLISH A PROGRAM TO TRAIN AND CERTIFY OPERATORS
10 TO COLLECT SPECIMENS AND PERFORM CONTROLLED DANGEROUS SUBSTANCE
11 AND ALCOHOL TESTS IN THE WORKPLACE.

12 (2) EMPLOYERS MAY DESIGNATE EMPLOYEES FOR THIS TRAINING AND
13 CERTIFICATION, OR MAY UTILIZE ANY PERSON SO TRAINED AND CERTIFIED.

14 (3) OPERATORS MUST HAVE A MINIMUM OF 1 HOUR HANDS-ON
15 INSTRUCTION CONSISTING OF:

16 (I) READING THE TEST MANUFACTURER'S PACKAGE INSERT
17 SHEET;

18 (II) OBSERVING THE TEST MANUFACTURER'S TRAINING VIDEO OR
19 RECEIVING TRAINING FROM THE TEST MANUFACTURER;

20 (III) COMPLETING THE TEST MANUFACTURER'S SELF TEST; AND

21 (IV) PERFORMING TESTS AND INTERPRETING THE RESULTS.

22 (4) (I) EMPLOYERS SHALL KEEP OPERATOR TRAINING RECORDS AND
23 ESTABLISH A PROCEDURE FOR CERTIFYING EACH OPERATOR AS HAVING
24 RECEIVED THE MINIMUM TRAINING REQUIRED TO PROPERLY PERFORM THE TEST.

25 (II) A CERTIFICATE SHALL BE PLACED IN THE OPERATOR'S
26 TRAINING RECORD INDICATING THAT THE OPERATOR HAS BEEN CERTIFIED UNDER
27 THIS SECTION.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1997.