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**By: Senator Bromwell**

Introduced and read first time: January 29, 1997

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of authorizing employers who require persons to be tested for  
5 job-related reasons for the use or abuse of any controlled dangerous substance or  
6 alcohol to use a certain preliminary screening procedure to test specimens under  
7 certain circumstances; requiring an employer to use a laboratory to confirm the  
8 results of a preliminary screening test under certain circumstances; requiring an  
9 employer that uses a preliminary screening procedure to maintain certain records  
10 related to specimens and retain certain specimens for a certain period of time for a  
11 certain purpose; and generally relating to job-related alcohol and controlled  
12 dangerous substances testing.

13 BY repealing and reenacting, with amendments,  
14 Article - Health - General  
15 Section 17-214  
16 Annotated Code of Maryland  
17 (1994 Replacement Volume and 1996 Supplement)

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

20 **Article - Health - General**

21 17-214.

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

23 (1) "Alcohol or controlled dangerous substance testing" means a procedure  
24 used to determine whether or not a specimen contains a controlled dangerous substance  
25 or alcohol.

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

28 (3) "Controlled dangerous substance" has the meaning stated in Article 27,  
29 § 277 of the Code.

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

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

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

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

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

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

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

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

21 [(c)] (D) (1) An employer who requires any employee, contractor, or other  
22 person to be tested for job-related reasons for the use or abuse of any controlled  
23 dangerous substance or alcohol and who receives notice FROM THE LABORATORY  
24 UNDER SUBSECTION (C) OF THIS SECTION that an employee, contractor, or other  
25 person has tested positive for the use or abuse of any controlled dangerous substance or  
26 alcohol shall, after confirmation of the test result, provide the employee, contractor, or  
27 other person with:

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

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

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

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

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

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

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

3 (E) AN EMPLOYER THAT USES A PRELIMINARY SCREENING PROCEDURE TO  
4 TEST SPECIMENS FOR THE USE OR ABUSE OF ANY CONTROLLED DANGEROUS  
5 SUBSTANCE OR ALCOHOL UNDER SUBSECTION (B) OF THIS SECTION SHALL:

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

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

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

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

16 (ii) If located outside of the State, is certified or otherwise approved  
17 under subsection [(e)] (G) of this section.

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

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

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

24 (i) Require that the laboratory comply with the guidelines for  
25 laboratory accreditation as set forth by the College of American Pathologists, the U.S.  
26 Health Care Financing Administration (HCFA), or any other federal government agency  
27 or program designated to certify or approve a laboratory that is acceptable to the  
28 Secretary;

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

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

37 (iv) Require that the laboratory comply with any federal standards  
38 regarding cutoff levels for positive testing that are established by the United States

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1 Department of Health and Human Services as mandatory guidelines for federal  
2 workplace drug testing programs; and

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

4 [(f)] (H) This section does not apply to:

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

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

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

12 [(g)] (I) This section applies to job-related alcohol and controlled dangerous  
13 substance testing of any person, including preemployment applicants, employees, and  
14 contractors.

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

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

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

25 (2) The prohibitions against disclosure of information under paragraph (1)  
26 of this subsection do not apply to the extent that they prevent a person from complying  
27 with the applicable provisions of the Federal Commercial Motor Vehicle Safety Act of  
28 1986 and the Federal Motor Carrier Safety Regulations.

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