

SENATE BILL 134

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1998 Regular Session
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By: **Senator Astle**

Introduced and read first time: January 21, 1998

Assigned to: Finance

A BILL ENTITLED

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; authorizing
6 employers who require job applicants to be tested for the use or abuse of any
7 controlled dangerous substance to use a certain preliminary screening
8 procedure to test specimens under certain circumstances; requiring an employer
9 to register with the Secretary of the Department of Health and Mental Hygiene;
10 requiring an employer to use a laboratory to confirm the results of a preliminary
11 screening test under certain circumstances; authorizing an employer to use a
12 laboratory to conduct initial and confirmatory controlled dangerous substance
13 tests for job applicants; requiring an employer that uses a preliminary screening
14 procedure to maintain certain records related to specimens; defining certain
15 terms; and generally relating to job-related controlled dangerous substance
16 testing.

17 BY repealing and reenacting, with amendments,
18 Article - Health - General
19 Section 17-205 and 17-214
20 Annotated Code of Maryland
21 (1994 Replacement Volume and 1997 Supplement)

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

24 **Article - Health - General**

25 17-205.

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

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

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

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

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

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

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

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

13 (D) (1) AN EMPLOYER IS NOT REQUIRED TO BE LICENSED OR OBTAIN A
14 LETTER OF EXCEPTION FROM THE SECRETARY TO PERFORM PRELIMINARY
15 SCREENING PROCEDURES, AS DEFINED IN § 17-214(A) OF THIS SUBTITLE, PROVIDED
16 THE PRELIMINARY SCREENING PROCEDURES ARE PERFORMED BY OPERATORS WHO
17 ARE TRAINED AND CERTIFIED UNDER § 17-214(L) OF THIS SUBTITLE.

18 (2) BEFORE PERFORMING PRELIMINARY SCREENING PROCEDURES, AS
19 DEFINED IN § 17-214(A) OF THIS SUBTITLE, AN EMPLOYER SHALL REGISTER WITH
20 THE SECRETARY.

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
24 procedure used to determine whether or not a specimen contains a controlled
25 dangerous substance 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
29 27, § 277 of the Code.

30 (4) "JOB APPLICANT" MEANS AN INDIVIDUAL WHO HAS APPLIED FOR A
31 POSITION WITH AN EMPLOYER BUT HAS NOT YET BEEN HIRED.

32 [(4)] (5) "Job-related" means any alcohol or controlled dangerous
33 substance testing used by an employer for a legitimate business purpose.

34 [(5)] (6) "Laboratory" means a facility or other entity that conducts
35 job-related alcohol or controlled dangerous substance testing.

1 (7) "MEDICAL REVIEW OFFICER" MEANS A LICENSED PHYSICIAN WITH
2 KNOWLEDGE OF DRUG ABUSE DISORDERS.

3 (8) "PRELIMINARY SCREENING PROCEDURE" MEANS A CONTROLLED
4 DANGEROUS SUBSTANCE TEST USING A SINGLE-USE TEST DEVICE THAT:

5 (I) IS EASILY PORTABLE AND ABLE TO BE ADMINISTERED IN A
6 WORKPLACE;

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

9 (III) MEETS GENERALLY ACCEPTED CUTOFF LEVELS SUCH AS
10 THOSE IN THE MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING
11 PROGRAMS.

12 (9) "SINGLE-USE TEST DEVICE" MEANS THE REAGENT-CONTAINING
13 UNIT OF A TEST SYSTEM IN THE FORM OF A CARTRIDGE, TEST PACK, OR OTHER
14 CONTAINER THAT INCLUDES A VALIDITY CHECK, IS SELF-CONTAINED AND
15 INDIVIDUALLY PACKAGED, IS DISCARDED AFTER EACH TEST, AND DOES NOT ALLOW
16 ANY TEST COMPONENT OR CONSTITUENT OF A TEST SYSTEM TO INTERACT FROM
17 TEST TO TEST.

18 [(6)] (10) "Specimen" means:

19 (i) Blood derived from the human body;

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

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

23 (b) (1) [An] SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN employer
24 who requires any person, INCLUDING JOB APPLICANTS, to be tested for job-related
25 reasons for the use or abuse of any controlled dangerous substance or alcohol shall:

26 (i) Have CONFIRMATORY TESTING OF the specimen [tested] by a
27 laboratory that:

28 1. Holds a permit under this subtitle; or

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

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

33 (2) (I) AN EMPLOYER MAY USE A PRELIMINARY SCREENING
34 PROCEDURE TO TEST A JOB APPLICANT FOR THE USE OR ABUSE OF ANY
35 CONTROLLED DANGEROUS SUBSTANCE.

1 (II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
2 PARAGRAPH, AN EMPLOYER MAY NOT USE A PRELIMINARY SCREENING PROCEDURE
3 TO TEST PERSONS WHO ARE NOT APPLYING FOR A JOB WITH THAT EMPLOYER OR
4 THE EMPLOYER'S CONTRACTOR.

5 (III) A TEMPORARY HELP SERVICE COMPANY THAT REFERS
6 EMPLOYEES TO OTHER COMPANIES FOR TEMPORARY WORK MAY USE A
7 PRELIMINARY SCREENING PROCEDURE TO TEST PERSONS BEFORE REFERRING
8 THEM FOR TEMPORARY EMPLOYMENT WITH AN EMPLOYER.

9 [(2)] (3) (i) An employer who requires any person to be tested for
10 job-related reasons for the use or abuse of any controlled dangerous substance may
11 use hair derived from the human body as a specimen in accordance with this
12 paragraph.

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

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

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

19 2. Use the specimen for any purpose other than testing for
20 controlled dangerous substances.

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

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

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

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

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

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

6 (D) AN EMPLOYER THAT USES A PRELIMINARY SCREENING PROCEDURE TO
7 TEST SPECIMENS FOR THE USE OR ABUSE OF ANY CONTROLLED DANGEROUS
8 SUBSTANCE UNDER THIS SECTION SHALL MAINTAIN A WRITTEN RECORD OF THE
9 CHAIN OF CUSTODY OF ALL SPECIMENS FROM THE TIME A SPECIMEN IS COLLECTED
10 UNTIL THE TIME A SPECIMEN IS NO LONGER NEEDED FOR RETESTING.

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

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

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

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

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

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

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

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

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

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

1 of Health and Human Services or established by the Secretary as mandatory
2 guidelines for workplace drug testing programs; and

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

4 [(f)] (G) 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
10 law enforcement or correctional agency that maintains laboratory testing standards
11 comparable to the standards in this section.

12 [(g)] (H) 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)] (I) (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
18 laboratory, a physician, including a physician retained by the employer, or any other
19 person may not 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
24 the State.

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

29 (J) EMPLOYERS USING PRELIMINARY SCREENING PROCEDURES TO TEST JOB
30 APPLICANTS UNDER THIS SECTION SHALL HAVE A MEDICAL REVIEW OFFICER
31 REVIEW A TEST RESULT WHICH TESTED POSITIVE AFTER LABORATORY
32 CONFIRMATION.

33 (K) THE EMPLOYER MAY CONTRACT FOR THE SERVICES OF AN OUTSIDE
34 MEDICAL REVIEW OFFICER IF THE EMPLOYER DOES NOT HAVE A MEDICAL REVIEW
35 OFFICER ON STAFF.

36 (L) (1) EMPLOYERS USING PRELIMINARY SCREENING PROCEDURES SHALL
37 ESTABLISH A PROGRAM TO TRAIN AND CERTIFY INDIVIDUALS TO COLLECT

1 SPECIMENS AND PERFORM CONTROLLED DANGEROUS SUBSTANCE TESTS IN THE
2 WORKPLACE.

3 (2) EMPLOYERS MAY DESIGNATE AN EMPLOYEE OR ANY OTHER PERSON
4 TO BE TRAINED AND CERTIFIED.

5 (3) TRAINEES MUST HAVE APPROPRIATE AND PRACTICAL INSTRUCTION,
6 WHICH INCLUDES:

7 (I) READING THE TEST MANUFACTURER'S PACKAGE INSERT
8 SHEET;

9 (II) OBSERVING THE TEST MANUFACTURER'S TRAINING VIDEO OR
10 RECEIVING TRAINING FROM THE TEST MANUFACTURER;

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

12 (IV) PERFORMING TESTS AND INTERPRETING THE RESULTS.

13 (4) (I) EMPLOYERS SHALL KEEP TRAINING RECORDS AND ESTABLISH
14 A PROCEDURE FOR CERTIFYING EACH TRAINEE AS HAVING RECEIVED THE MINIMUM
15 TRAINING REQUIRED TO PROPERLY PERFORM THE TEST.

16 (II) AFTER A DEMONSTRATION OF COMPETENCY IN PERFORMING
17 THE TEST, A CERTIFICATE SHALL BE PLACED IN THE TRAINEE'S TRAINING RECORD
18 INDICATING THAT THE TRAINEE HAS BEEN CERTIFIED UNDER THIS SECTION.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 1998.