

SENATE BILL 652

Unofficial Copy
K3
SB 134/98 - FIN

2001 Regular Session
1r0804

By: **Senators Roesser and Astle**

Introduced and read first time: February 2, 2001

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 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; prohibiting the use of preliminary screening procedures under
10 certain circumstances; permitting the use of preliminary screening procedures
11 by temporary help agencies; requiring an employer who uses preliminary
12 screening procedures to register with the Secretary of Health and Mental
13 Hygiene under certain circumstances; requiring an employer to use a laboratory
14 to confirm the results of preliminary screening procedures under certain
15 circumstances; authorizing an employer to use a laboratory to conduct initial
16 and confirmatory controlled dangerous substance tests for job applicants;
17 requiring an employer that uses preliminary screening procedures to maintain
18 certain records related to specimens and to maintain or contract with a medical
19 review officer; requiring certain training for an employee designated to collect
20 specimens and perform controlled dangerous substance tests; requiring the
21 employer to maintain certain training records; requiring the Secretary to adopt
22 certain regulations; providing for the effect of a collective bargaining agreement;
23 defining certain terms; and generally relating to job-related controlled
24 dangerous substance testing and preliminary screening procedures.

25 BY repealing and reenacting, with amendments,
26 Article - Health - General
27 Section 17-205 and 17-214
28 Annotated Code of Maryland
29 (2000 Replacement Volume)

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

Article - Health - General

17-205.

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

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

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

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

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

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

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

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

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

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

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

17-214.

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

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

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

1 (3) "Controlled dangerous substance" has the meaning stated in Article
2 27, § 277 of the Code.

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

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

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

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

8 [(5)] (6) "Laboratory" means a facility or other entity that conducts
9 job-related alcohol or controlled dangerous substance testing.

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

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

14 (I) IS EASILY PORTABLE AND CAN BE ADMINISTERED IN A
15 WORKPLACE;

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

18 (III) MEETS GENERALLY ACCEPTED CUTOFF LEVELS SUCH AS
19 THOSE IN THE FEDERAL GUIDELINES FOR DRUG-FREE WORKPLACE TESTING
20 PROGRAMS.

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

23 (I) IS IN THE FORM OF A CARTRIDGE, TEST PACK, OR OTHER
24 CONTAINER THAT INCLUDES A VALIDITY CHECK;

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

26 (III) IS DISCARDED AFTER EACH TEST; AND

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

29 [(6)] (10) "Specimen" means:

30 (i) Blood derived from the human body;

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

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

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

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

7 1. Holds a permit under this subtitle; or

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

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

12 (2) (I) 1. EXCEPT AS PROVIDED IN ITEM 2 OF THIS SUBPARAGRAPH,
13 AN EMPLOYER MAY USE A PRELIMINARY SCREENING PROCEDURE TO TEST A JOB
14 APPLICANT FOR THE USE OR ABUSE OF ANY CONTROLLED DANGEROUS SUBSTANCE.

15 2. ITEM 1 OF THIS SUBPARAGRAPH DOES NOT APPLY TO AN
16 EMPLOYER THAT HAS ENTERED INTO A COLLECTIVE BARGAINING AGREEMENT
17 THAT PROHIBITS THE EMPLOYER FROM USING A PRELIMINARY SCREENING
18 PROCEDURE TO TEST A JOB APPLICANT FOR THE USE OR ABUSE OF ANY
19 CONTROLLED DANGEROUS SUBSTANCES.

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

23 (III) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
24 PARAGRAPH, AN EMPLOYER MAY NOT USE A PRELIMINARY SCREENING PROCEDURE
25 TO TEST AN INDIVIDUAL WHO IS NOT APPLYING FOR A JOB WITH THE EMPLOYER OR
26 A CONTRACTOR OF THE EMPLOYER AT THE TIME THAT THE TEST IS TO BE
27 ADMINISTERED.

28 (IV) A TEMPORARY HELP AGENCY THAT REFERS EMPLOYEES TO
29 EMPLOYERS FOR TEMPORARY WORK MAY USE A PRELIMINARY SCREENING
30 PROCEDURE TO TEST AN INDIVIDUAL BEFORE REFERRING THE INDIVIDUAL FOR
31 EMPLOYMENT WITH AN EMPLOYER.

32 [(2)] (3) (i) An employer who requires any person to be tested for
33 job-related reasons for the use or abuse of any controlled dangerous substance may
34 use hair derived from the human body as a specimen in accordance with this
35 paragraph.

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

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

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

5 2. Use the specimen for any purpose other than testing for
6 controlled dangerous substances.

7 (c) (1) An employer who requires any employee, contractor, or other person
8 to be tested for job-related reasons for the use or abuse of any controlled dangerous
9 substance or alcohol and who receives notice FROM THE LABORATORY UNDER
10 SUBSECTION (B) OF THIS SECTION that an employee, contractor, or other person has
11 tested positive for the use or abuse of any controlled dangerous substance or alcohol
12 shall, after confirmation of the test result, provide the employee, contractor, or other
13 person with:

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

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

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

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

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

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

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

29 (D) AN EMPLOYER THAT USES A PRELIMINARY SCREENING PROCEDURE TO
30 TEST SPECIMENS FOR THE USE OR ABUSE OF A CONTROLLED DANGEROUS
31 SUBSTANCE UNDER THIS SECTION SHALL MAINTAIN A WRITTEN RECORD OF THE
32 CHAIN OF CUSTODY OF EACH SPECIMEN FROM THE TIME THAT THE SPECIMEN IS
33 COLLECTED UNTIL THE TIME THAT THE SPECIMEN IS NO LONGER NEEDED FOR
34 RETESTING.

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

- 1 (i) Holds a permit under this subtitle; or
- 2 (ii) If located outside of the State, is certified or otherwise approved
- 3 under subsection [(e)] (F) of this section.

4 (2) The person shall pay the cost of an independent test conducted under

5 this subsection.

6 [(e)] (F) (1) The Department of Health and Mental Hygiene shall adopt

7 regulations [governing the] GOVERNING:

8 (I) THE certification of laboratories that conduct job-related

9 alcohol or controlled dangerous substance testing; AND

10 (II) THE OVERSIGHT OF PRELIMINARY SCREENING PROCEDURES

11 ADMINISTERED BY EMPLOYERS.

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

13 (i) Require that the laboratory comply with the guidelines for

14 laboratory accreditation, if any, as set forth by the College of American Pathologists,

15 the U. S. Health Care Financing Administration (HCFA), or any other government

16 agency or program designated to certify or approve a laboratory that is acceptable to

17 the Secretary;

18 (ii) Require that a laboratory performing confirmation tests, for

19 controlled dangerous substances or alcohol be inspected and accredited in forensic

20 drug analysis by the College of American Pathologists, the U. S. Health Care

21 Financing Administration (HCFA), or any other government agency or program

22 designated to inspect and accredit a laboratory that is acceptable to the Secretary;

23 (iii) Require that, if the laboratory performs job related drug testing,

24 the laboratory be a participant in a program of proficiency testing of drug screening

25 conducted by an organization acceptable to the Secretary;

26 (iv) Require that the laboratory comply with standards regarding

27 cutoff levels for positive testing that are established by the United States Department

28 of Health and Human Services or established by the Secretary as mandatory

29 guidelines for workplace drug testing programs; and

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

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

32 (1) Alcohol or controlled dangerous substance testing of a person under

33 arrest or held by a law enforcement or correctional agency;

34 (2) Alcohol testing procedures conducted by a law enforcement or

35 correctional agency on breath testing equipment certified by the State Toxicologist; or

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

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

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

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

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

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

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

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

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

32 (2) THE EMPLOYER MAY DESIGNATE AN EMPLOYEE OR ANY OTHER
33 INDIVIDUAL TO BE TRAINED AND CERTIFIED.

34 (3) A TRAINEE SHALL RECEIVE APPROPRIATE AND PRACTICAL
35 INSTRUCTION, WHICH INCLUDES:

36 (I) A READING OF THE TEST MANUFACTURER'S PACKAGE INSERT
37 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 EACH
11 TRAINEE AS HAVING RECEIVED THE MINIMUM TRAINING REQUIRED TO PROPERLY
12 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 THAT INDICATES THAT THE TRAINEE HAS BEEN
16 CERTIFIED 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.