

SENATE BILL 652

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SB 134/98 - FIN

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

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

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CHAPTER \_\_\_\_\_

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.