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Introduced and read first time: January 25, 2006
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Health - Job-Related Drug Testing - Breath Tests for Alcohol**

3 FOR the purpose of authorizing certain employers who require certain job-related
4 drug testing to test a breath specimen using a certain alcohol measurement
5 device; providing for a certain exception from a provision that allows certain
6 persons to request independent testing of a certain specimen; authorizing the
7 Department of Health and Mental Hygiene to adopt certain regulations; altering
8 certain definitions; defining a certain term; making stylistic changes; and
9 generally relating to authorizing employers to use breath tests for testing the
10 presence of alcohol for job-related drug testing.

11 BY repealing and reenacting, with amendments,
12 Article - Health - General
13 Section 17-214
14 Annotated Code of Maryland
15 (2005 Replacement Volume and 2005 Supplement)

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

18 **Article - Health - General**

19 17-214.

20 (a) (1) In this section the following words have the meanings indicated.

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

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

26 (4) "Controlled dangerous substance" has the meaning stated in § 5-101
27 of the Criminal Law Article.

1 (5) "EVIDENTIAL BREATH MEASUREMENT DEVICE" MEANS AN
2 INSTRUMENT THAT MEASURES THE ALCOHOL CONCENTRATION LEVEL IN AN
3 INDIVIDUAL'S BREATH AND THAT:

4 (I) IS EASILY PORTABLE AND CAN BE ADMINISTERED AT A WORK
5 SITE OR OTHER APPROPRIATE TESTING SITE; AND

6 (II) IS LISTED ON THE FEDERAL NATIONAL HIGHWAY TRAFFIC
7 SAFETY ADMINISTRATION CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH
8 MEASUREMENT DEVICES.

9 [(5)] (6) "Job applicant" means an individual who:

10 (i) Has applied for a position with an employer; and

11 (ii) Is not currently employed by the employer.

12 [(6)] (7) "Job-related" means any alcohol or controlled dangerous
13 substance testing used by an employer for a legitimate business purpose.

14 [(7)] (8) "Laboratory" means a facility or other entity that conducts
15 job-related alcohol or controlled dangerous substance testing.

16 [(8)] (9) "Medical review officer" means a licensed physician with
17 knowledge of drug abuse disorders and drug and alcohol testing WHO IS CERTIFIED
18 BY:

19 (I) THE AMERICAN ASSOCIATION OF MEDICAL REVIEW OFFICERS;
20 OR

21 (II) THE MEDICAL REVIEW OFFICER CERTIFICATION COUNCIL.

22 [(9)] (10) "Preliminary screening procedure" means a controlled
23 dangerous substance test that uses a single-use test device that:

24 (i) Is easily portable and can be administered at a work site or
25 other appropriate collection site;

26 (ii) Meets the requirements of the federal Food and Drug
27 Administration for commercial distribution; and

28 (iii) Meets generally accepted cutoff levels such as those in the
29 federal Substance Abuse and Mental Health Services Administration Guidelines for
30 drug-free workplace testing programs.

31 [(10)] (11) "Single-use test device" means the reagent-containing unit of a
32 test system that:

33 (i) Is in the form of a sealed container or cartridge that has a
34 validity check, a nonresealable closure, or an evidentiary tape that ensures detection
35 of any tampering;

- 1 (ii) Is self-contained and individually packaged;
- 2 (iii) Is discarded after each test; and
- 3 (iv) Does not allow any test component or constituent of a test
- 4 system to interact between tests.

5 [(11)] (12) "Specimen" means:

- 6 (i) Blood derived from the human body;
- 7 (ii) Urine derived from the human body;
- 8 (iii) Hair derived from the human body as provided in subsection
- 9 (b)(2) of this section; [or]
- 10 (iv) Saliva derived from the human body; OR

11 (V) BREATH DERIVED FROM THE HUMAN BODY BY FORCED
12 EXHALATION FROM THE LUNGS.

13 (b) (1) Except as provided in [paragraph] PARAGRAPHS (2) AND (4) of this
14 subsection, an employer who requires any person to be tested for job-related reasons
15 for the use or abuse of any controlled dangerous substance or alcohol shall:

- 16 (i) Have the specimen tested by a laboratory that:
 - 17 1. Holds a permit under this subtitle; or
 - 18 2. Is located outside of the State and is certified or otherwise
 - 19 approved under subsection (f) of this section; and
- 20 (ii) At the time of testing, at the person's request, inform the person
- 21 of the name and address of the laboratory that will test the specimen.

22 (2) (i) 1. Except as provided in [sub-subparagraph]
23 SUBSUBPARAGRAPH 2 of this subparagraph, an employer may use a preliminary
24 screening procedure to test a job applicant for the use or abuse of any controlled
25 dangerous substance.

26 2. [Sub-subparagraph] SUBSUBPARAGRAPH 1 of this
27 subparagraph does not apply to an employer that has entered into a collective
28 bargaining agreement that prohibits the employer from using a preliminary
29 screening procedure to test a job applicant for the use or abuse of any controlled
30 dangerous substances.

31 (ii) If the result of a preliminary screening procedure is positive,
32 the employer shall submit the specimen for testing by a laboratory as required under
33 paragraph (1) of this subsection.

1 (iii) Following voluntary disclosure and documentation by an
2 applicant of the taking of a legally prescribed medication, an employer may hire the
3 applicant pending confirmation of a positive test result by the medical laboratory and
4 review by the employer's medical review officer.

5 (iv) An employer may not use a preliminary screening procedure to
6 test an individual who is not applying for a job with that employer.

7 (v) An employer may designate a medical laboratory licensed to
8 perform job-related testing for controlled dangerous substances to also perform
9 preliminary screening procedures on job applicants for the employer.

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

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

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

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

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

22 (4) AN EMPLOYER THAT REQUIRES ANY PERSON TO BE TESTED FOR
23 JOB-RELATED REASONS FOR THE USE OR ABUSE OF ALCOHOL MAY TEST A BREATH
24 SPECIMEN USING AN EVIDENTIAL BREATH MEASUREMENT DEVICE.

25 (c) (1) An employer who requires any employee, contractor, or other person
26 to be tested for job-related reasons for the use or abuse of any controlled dangerous
27 substance or alcohol and who receives notice from the laboratory under subsection (b)
28 of this section that an employee, contractor, or other person has tested positive for the
29 use or abuse of any controlled dangerous substance or alcohol shall, after
30 confirmation of the test result, provide the employee, contractor, or other person with:

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

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

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

1 (iv) A statement or copy of the provisions set forth in subsection (e)
2 of this section permitting an employee to request independent testing of the same
3 sample for verification of the test result.

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

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

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

9 (d) An employer that uses a preliminary screening procedure to test
10 specimens for the use or abuse of a controlled dangerous substance under this section
11 shall:

12 (1) In using a single-use test device, collect, handle, store, and ship each
13 specimen in a manner that:

14 (i) Maintains the specimen donor's identity and confidentiality and
15 the physical integrity of the specimen; and

16 (ii) Precludes contamination of the specimen; and

17 (2) Maintain a written record of the chain of custody of each specimen
18 from the time that the specimen is collected until the time that the specimen is no
19 longer needed for retesting.

20 (e) (1) [A] EXCEPT FOR A PERSON TESTED UNDER SUBSECTION (B)(4) OF
21 THIS SECTION, A person who is required to submit to job-related testing, under
22 subsection (b) or (c) of this section, may request independent testing of the same
23 specimen for verification of the test results by a laboratory that:

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

25 (ii) If located outside of the State, is certified or otherwise approved
26 under subsection (f) of this section.

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

29 (f) (1) The Department of Health and Mental Hygiene:

30 (i) Shall adopt regulations governing the certification of
31 laboratories that conduct job-related alcohol or controlled dangerous substance
32 testing; and

33 (ii) May adopt regulations governing the oversight of [preliminary
34 screening] THE FOLLOWING procedures administered by employers:

35 1. PRELIMINARY SCREENING; AND

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

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

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

10 (3) The prohibitions against disclosure of information under paragraph
11 (1) of this subsection do not apply if, prior to the administration of a preliminary
12 screening for controlled dangerous substances, the test operator notifies the applicant
13 that if the preliminary test is positive, the applicant may voluntarily disclose and
14 provide documentation to the operator that the applicant is taking a legally
15 prescribed medication.

16 (j) (1) An employer using preliminary screening procedures to test job
17 applicants under this section shall have a medical review officer review a positive test
18 result after laboratory confirmation of the positive test result.

19 (2) The employer may contract for the services of an outside medical
20 review officer if the employer does not have a medical review officer on staff.

21 (k) (1) An employer using preliminary screening procedures shall establish
22 a program to train individuals to collect specimens and perform controlled dangerous
23 substance tests in the workplace.

24 (2) The employer may designate an employee or any other individual to
25 be trained, including any individual employed by a medical laboratory designated
26 under subsection (b)(2)(v) of this section who will perform preliminary screening
27 procedures for the employer.

28 (3) A trainee shall receive appropriate and practical instruction, which
29 includes:

30 (i) A reading of the test manufacturer's package insert sheet;

31 (ii) Observing the test manufacturer's training video or receiving
32 training from the test manufacturer;

33 (iii) Completing the test manufacturer's self-administered test; and

34 (iv) The actual performance of tests and the actual interpretation of
35 the results.

36 (4) (i) The employer shall:

- 1 1. Keep a record of the training received by each trainee; and
- 2 2. Establish a procedure for training each trainee as having
- 3 received the minimum training required to properly perform the test.

- 4 (ii) After the trainee has demonstrated competency in performing
- 5 the test, the employer shall maintain documentation that indicates that the trainee
- 6 has been trained under this section.

- 7 (l) The provisions of a collective bargaining agreement that concern drug
- 8 testing override and preempt the provisions of this section that authorize an employer
- 9 to use a preliminary screening procedure to test a job applicant.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2006.