

SENATE BILL NO. 249

INTRODUCED BY G. BARKUS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKFORCE DRUG AND ALCOHOL TESTING
5 ACT; REVISING THE DEFINITION OF "CONTROLLED SUBSTANCE"; INCLUDING HAIR IN THE DEFINITION
6 OF "SAMPLE"; REVISING THE TESTING PROCEDURE FOR HAIR AND ORAL FLUID SPECIMENS; AND
7 AMENDING SECTIONS 39-2-206 AND 39-2-207, MCA."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 39-2-206, MCA, is amended to read:

12 **"39-2-206. Definitions.** As used in 39-2-205 through 39-2-211, the following definitions apply:

13 (1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or
14 the hydrated oxide of ethyl.

15 (2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of
16 alcohol per 210 liters of breath, as indicated by an evidential breath test.

17 (3) "Controlled substance" means a substance designated as a dangerous drug, as defined in 49 CFR,
18 part 40, except a drug used pursuant to a valid prescription or as authorized by law pursuant to Title 50, chapter
19 32, part 2.

20 (4) "Employee" means an individual engaged in the performance, supervision, or management of work
21 in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an
22 employer and does not include an independent contractor. The term includes an elected official.

23 (5) "Employer" means a person or entity that has one or more employees and that is located in or doing
24 business in Montana.

25 (6) "Hazardous work environment" includes but is not limited to positions:

26 (a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation,
27 commercial motor carrier, railroad, pipeline, and commercial marine employees;

28 (b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or
29 mining activities; or

30 (c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar



1 substances.

2 (7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

3 (8) "Prospective employee" means an individual who has made a written or oral application to an
4 employer to become an employee.

5 (9) "Qualified testing program" means a program to test for the presence of controlled substances and
6 alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

7 (10) "Sample" means a urine specimen, a breath test, ~~or~~ hair, or oral fluid obtained in a minimally invasive
8 manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance
9 of drug testing that is used to determine the presence of a controlled substance or alcohol."

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11 **Section 2.** Section 39-2-207, MCA, is amended to read:

12 **"39-2-207. Qualified testing program.** A qualified testing program must comply with the following
13 criteria:

14 (1) Testing must be conducted according to the terms of written policies and procedures that must be
15 adopted by the employer and must be available for review by all employees 60 days before the terms are
16 implemented or changed. Controlled substance and alcohol testing procedures for samples that are covered by
17 49 CFR, part 40, must conform to 49 CFR, part 40. For samples that are not covered by 49 CFR, part 40, the
18 qualified testing program must contain chain-of-custody and other procedural requirements that are at least as
19 stringent as those contained in 49 CFR, part 40, and the testing methodology must be cleared by the United
20 States food and drug administration. At a minimum, the policies and procedures must require:

21 (a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful
22 manufacture, distribution, possession, or use of a controlled substance;

23 (b) the employer's program for regularly educating or providing information to employees on the health
24 and workplace safety risks associated with the use of controlled substances and alcohol;

25 (c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by
26 employees;

27 (d) a description of available employee assistance programs, including drug and alcohol counseling,
28 treatment, or rehabilitation programs that are available to employees;

29 (e) a description of the sanctions that the employer may impose on an employee if the employee is found
30 to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test

1 positive for the presence of a controlled substance or alcohol;

2 (f) identification of the types of controlled substance and alcohol tests to be used from the types of tests
3 listed in 39-2-208;

4 (g) a list of controlled substances for which the employer intends to test and a stated alcohol
5 concentration level above which a tested employee must be sanctioned;

6 (h) a description of the employer's hiring policy with respect to prospective employees who test positive;

7 (i) a detailed description of the procedures that will be followed to conduct the testing program, including
8 the resolution of a dispute concerning test results;

9 (j) a provision that all information, interviews, reports, statements, memoranda, and test results are
10 confidential communications that may not be disclosed to anyone except:

11 (i) the tested employee;

12 (ii) the designated representative of the employer; or

13 (iii) in connection with any legal or administrative claim arising out of the employer's implementation of
14 39-2-205 through 39-2-211 or in response to inquiries relating to a workplace accident involving death, physical
15 injury, or property damage in excess of \$1,500, when there is reason to believe that the tested employee may
16 have caused or contributed to the accident; and

17 (k) a provision that information obtained through testing that is unrelated to the use of a controlled
18 substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released
19 to the employer.

20 (2) In addition to imposing appropriate sanctions on an employee for violation of the employer's
21 standards of conduct, an employer may require an employee who tests positive on a test for controlled
22 substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation
23 program as a condition of continued employment. An employer may require the employee to submit to periodic
24 followup testing as a condition of the counseling, treatment, or rehabilitation program.

25 (3) Testing must be at the employer's expense, and all employees must be compensated at the
26 employee's regular rate, including benefits, for time attributable to the testing program.

27 (4) The collection, transport, and confirmation testing of urine samples must be performed in accordance
28 with 49 CFR, part 40, and the collection, transport, and confirmation testing of nonurine samples must be as
29 stringent as the requirements of 49 CFR, part 40, in requiring ~~split specimens as defined by the United States~~
30 ~~department of health and human services, requiring transport to a testing facility under the chain of custody; and~~

1 control form described in the federal regulations and in requiring confirmation of all screened positive results using
2 mass-spectrometry technology. For hair and oral fluid specimens, a split specimen is not required TWO SAMPLES,
3 TAKEN WITHIN 10 MINUTES OF EACH OTHER, MAY BE USED.

4 (5) Before an employer may take any action based on a positive test result, the employer shall have the
5 results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An
6 employee or prospective employee must be given the opportunity to provide notification to the medical review
7 officer of any medical information that is relevant to interpreting test results, including information concerning
8 currently or recently used prescription or nonprescription drugs.

9 (6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be
10 conducted using testing equipment that appears on the list of conforming products published in the Federal
11 Register.

12 (7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person
13 to be considered as having alcohol in the person's body."

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