

SENATE JOINT RESOLUTION NO. 30

INTRODUCED BY SMITH, BROWN, COCCHIARELLA, JACKSON, LARSON, RYAN, STEINBEISSER,

J. TROPILA

BY REQUEST OF THE SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS STANDING
COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY PERTAINING TO REGULATION OF DRUG TESTING OF EMPLOYEES.

WHEREAS, two bills in the 60th Legislature sought to resolve concerns about on-the-job drug use by employees but encountered concerns about privacy, individual rights, and due process; and

WHEREAS, the U.S. Supreme Court in *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989), and *National Treasury Employees v. Von Raab*, 489 U.S. 656 (1989), held that a government may allow drug tests without particular suspicion when a special need outweighs the individual's privacy interests; and

WHEREAS, Montana in 1997 passed the Workforce Drug and Alcohol Testing Act, which recognizes that a special need must exist for drug and alcohol testing of employees, such as employment in a hazardous work environment, security position, public safety position, or fiduciary position, but that elected officials may be tested as well; and

~~WHEREAS, the National Institute on Drug Abuse estimates that employees who abuse drugs cost their employers about twice as much in medical and workers' compensation claims as their drug-free coworkers; and~~

WHEREAS, confusion exists in the state about which employees may be randomly tested, what procedures exist, and whether other approaches can be used to address public safety concerns without violating a worker's privacy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine:

(1) the history and implementation, costs, and effectiveness of the Workforce Drug and Alcohol Testing Act, including ~~who is being tested~~ WHICH CLASSIFICATIONS OF EMPLOYEE ARE TESTED for drugs and who ought to

be tested;

(2) how tests are reported;

~~(3) who is not being hired because of testing;~~

~~(4)~~(3) whether certain drugs should be included or excluded;

~~(5)~~(4) what types of tests are commonly used and their efficacy;

~~(6)~~(5) how laboratories address certification and quality assurance standards;

~~(7)~~(6) how employers address both positive and negative test results; and

~~(8)~~(7) what rehabilitation or treatment options are provided by public and private employers to employees

who test positive for drugs.

BE IT FURTHER RESOLVED, that the study review how other states and the federal government regulate random drug testing ~~and~~, address technological advances in drug detection to avoid false positive tests, DETERMINE GUIDELINES FOR THE FREQUENCY OF FALSE POSITIVES, AND MANAGE STANDARD REMEDIES FOR RESOLVING INCIDENTS OF FALSE POSITIVES.

BE IT FURTHER RESOLVED, that the study address the right of privacy regarding the use or reporting of drug tests and whether other approaches are available and effective that protect public safety without invading an employee's privacy.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

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