

HOUSE BILL NO. 110  
INTRODUCED BY GILBERT

IN THE HOUSE

JANUARY 5, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

JANUARY 7, 1991                   FIRST READING.

FEBRUARY 18, 1991                 COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 19, 1991                 PRINTING REPORT.

FEBRUARY 23, 1991                 SECOND READING, DO PASS.

FEBRUARY 25, 1991                 ENGROSSING REPORT.

FEBRUARY 26, 1991                 THIRD READING, PASSED.  
AYES, 97; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991                 INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FIRST READING.

MARCH 23, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 26, 1991                   SECOND READING, CONCURRED IN.

MARCH 27, 1991                   THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1991                   RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 9, 1991                   THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 110  
 2 INTRODUCED BY GILBERT  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW  
 5 RELATING TO THE REGULATION OF BLOOD AND URINE TESTING;  
 6 ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB  
 7 APPLICANTS IN JOBS INVOLVING THE COMMERCIAL TRANSPORTATION  
 8 OF PERSONS AND COMMODITIES IF THE TESTING IS REQUIRED BY  
 9 FEDERAL LAW; ALLOWING THE RELEASE OF TEST RESULTS AS  
 10 REQUIRED BY FEDERAL LAW; AMENDING SECTION 39-2-304, MCA; AND  
 11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 39-2-304, MCA, is amended to read:

15 "39-2-304. Lie detector tests prohibited -- regulation  
16 of blood and urine testing. (1) No A person, firm,  
17 corporation, or other business entity or representative  
18 thereof ~~shall~~ may not require:

19 (a) as a condition for employment or continuation of  
20 employment, any person to take a polygraph test or any form  
21 of a mechanical lie detector test;

22 (b) as a condition for employment, any person to submit  
23 to a blood or urine test, except for employment in:

- 24 (i) hazardous work environments or in;
- 25 (ii) jobs the primary responsibility of which is

1 security, public safety, or fiduciary responsibility; or  
 2 (iii) jobs involving the commercial transportation of  
 3 persons or commodities if the testing is required by federal  
 4 law; and

5 (c) as a condition for continuation of employment, any  
6 employee to submit to a blood or urine test unless the  
7 employer has reason to believe that the employee's faculties  
8 are impaired on the job as a result of alcohol consumption  
9 or illegal drug use or the testing is required by federal  
10 law.

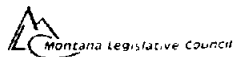
11 (2) Prior to the administration of a drug or alcohol  
12 test, the person, firm, corporation, or other business  
13 entity or its representative shall adopt a written testing  
14 procedure and make it available to all persons subject to  
15 testing. A testing procedure must provide for the:

16 (a) collection of a blood or urine specimen in a manner  
17 that minimizes invasion of personal privacy while ensuring  
18 the integrity of the collection process;

19 (b) collection of a quantity of specimen sufficient to  
20 ensure the administration of several tests;

21 (c) collection, storage, and transportation of the  
22 specimen in tamper-proof containers;

23 (d) adoption of chain-of-custody documentation  
24 procedures identifying how the specimen was handled and  
25 tested;



1 (e) verification of test results by two or more  
2 different testing procedures before judging a test positive;  
3 and

4 (f) prohibition of the release of test results, except  
5 as authorized by the person tested or as required by a court  
6 of law or federal law.

7 (3) The person, firm, corporation, or other business  
8 entity or its representative shall provide a copy of drug or  
9 alcohol test results to the person tested and provide him  
10 the opportunity, at the expense of the person requiring the  
11 test, to obtain a confirmatory test of the blood or urine by  
12 an independent laboratory selected by the person tested. The  
13 person tested must be given the opportunity to rebut or  
14 explain the results of either test or both tests.

15 (4) Adverse action may not be taken against a person  
16 tested under subsections (1)(b), (1)(c), (2), and (3) if the  
17 person tested presents a reasonable explanation or medical  
18 opinion indicating that the results of the test were not  
19 caused by alcohol consumption or illegal drug use.

20 (5) A person who violates this section is guilty of a  
21 misdemeanor."

22 NEW SECTION. **Section 2.** Effective date. [This act] is  
23 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

1 HOUSE BILL NO. 110  
 2 INTRODUCED BY GILBERT  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW  
 5 RELATING TO THE REGULATION OF BLOOD AND URINE TESTING;  
 6 ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB  
 7 APPLICANTS IN JOBS INVOLVING THE INTRASTATE COMMERCIAL  
 8 TRANSPORTATION OF PERSONS AND COMMODITIES ~~IF THE TESTING IS~~  
 9 ~~REQUIRED BY FEDERAL LAW~~; ALLOWING THE RELEASE OF TEST  
 10 RESULTS AS REQUIRED BY FEDERAL LAW; DEFINING "INTRASTATE"  
 11 AND "COMMERCIAL MOTOR CARRIER"; AMENDING SECTION 39-2-304,  
 12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

15 **Section 1.** Section 39-2-304, MCA, is amended to read:  
 16 "39-2-304. Lie detector tests prohibited -- regulation  
 17 of blood and urine testing. (1) No A person, firm,  
 18 corporation, or other business entity or representative  
 19 thereof ~~shall~~ may not require:  
 20 (a) as a condition for employment or continuation of  
 21 employment, any person to take a polygraph test or any form  
 22 of a mechanical lie detector test;  
 23 (b) as a condition for employment, any person to submit  
 24 to a blood or urine test, except for employment in:  
 25 (i) hazardous work environments ~~or in~~;

1 (ii) jobs the primary responsibility of which is  
 2 security, public safety, or fiduciary responsibility; or  
 3 (iii) jobs involving the INTRASTATE commercial  
 4 transportation of persons or commodities ~~if the testing is~~  
 5 ~~required by federal law~~ BY A COMMERCIAL MOTOR CARRIER OR AN  
 6 EMPLOYEE SUBJECT TO DRIVER QUALIFICATION REQUIREMENTS; and  
 7 (c) as a condition for continuation of employment, any  
 8 employee to submit to a blood or urine test unless the  
 9 employer has reason to believe that the employee's faculties  
 10 are impaired on the job as a result of alcohol consumption  
 11 or illegal drug use ~~or the testing is required by federal~~  
 12 ~~law~~, EXCEPT THAT DRUG TESTING MAY BE CONDUCTED AT AN  
 13 EMPLOYEE'S REGULAR BIENNIAL PHYSICAL FOR EMPLOYMENT IN JOBS  
 14 INVOLVING THE INTRASTATE COMMERCIAL MOTOR CARRIER  
 15 TRANSPORTATION OF PERSONS OR COMMODITIES.

16 (2) Prior to the administration of a drug or alcohol  
 17 test, the person, firm, corporation, or other business  
 18 entity or its representative shall adopt a THE written  
 19 testing procedure THAT IS PROVIDED IN 49 CFR, PART 40, and  
 20 make it available to all persons subject to testing. A  
 21 ~~testing procedure must provide for the:~~  
 22 (a) ~~collection of a blood or urine specimen in a manner~~  
 23 ~~that minimizes invasion of personal privacy while ensuring~~  
 24 ~~the integrity of the collection process;~~  
 25 (b) ~~collection of a quantity of specimen sufficient to~~

SECOND READING



1 ensure-the-administration-of-several-tests;  
 2 (c)--collection,--storage,--and--transportation--of--the  
 3 specimen-in-tamper-proof-containers;  
 4 (d)--adoption----of----chain-of-custody----documentation  
 5 procedures--identifying--how--the--specimen--was--handled--and  
 6 tested;  
 7 (e)--verification--of--test--results--by--two--or--more  
 8 different-testing-procedures-before-judging-a-test-positive;  
 9 and  
 10 (f)--prohibition--of--the--release--of--test--results,--except  
 11 as-authorized-by-the-person-tested-or-as-required-by-a-court  
 12 of-law-or-federal-law;

13 (3) The person, firm, corporation, or other business  
 14 entity or its representative shall provide a copy of drug or  
 15 alcohol test results to the person tested and provide him  
 16 the opportunity, at the expense of the person requiring the  
 17 test, to obtain a confirmatory test of the blood or urine by  
 18 an independent laboratory selected by the person tested. The  
 19 person tested must be given the opportunity to rebut or  
 20 explain the results of either test or both tests.

21 (4) Adverse action may not be taken against a person  
 22 tested under subsections (1)(b), (1)(c), (2), and (3) if the  
 23 person tested presents a reasonable explanation or medical  
 24 opinion indicating that the results of the test were not  
 25 caused by alcohol consumption or illegal drug use.

1 (5) A person who violates this section is guilty of a  
 2 misdemeanor.

3 (6) AS USED IN THIS SECTION:

4 (A) "COMMERCIAL MOTOR CARRIER" HAS THE MEANING PROVIDED  
 5 IN 69-12-101; AND

6 (B) "INTRASTATE" MEANS COMMERCE OR TRADE THAT IS BEGUN,  
 7 CARRIED ON, AND COMPLETED WHOLLY IN THIS STATE."

8 NEW SECTION. Section 2. Effective date. [This act] is  
 9 effective on passage and approval.

-End-

1 HOUSE BILL NO. 110  
2 INTRODUCED BY GILBERT

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW  
5 RELATING TO THE REGULATION OF BLOOD AND URINE TESTING;  
6 ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB  
7 APPLICANTS IN JOBS INVOLVING THE INTRASTATE COMMERCIAL  
8 TRANSPORTATION OF PERSONS AND COMMODITIES ~~IF-THE-TESTING-IS~~  
9 ~~REQUIRED-BY-FEDERAL-LAW~~; ALLOWING THE RELEASE OF TEST  
10 RESULTS AS REQUIRED BY FEDERAL LAW; DEFINING "INTRASTATE"  
11 AND "COMMERCIAL MOTOR CARRIER"; AMENDING SECTION 39-2-304,  
12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

15 **Section 1.** Section 39-2-304, MCA, is amended to read:

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17 of blood and urine testing. (1) No A person, firm,  
18 corporation, or other business entity or representative  
19 thereof ~~shall~~ may not require:

20 (a) as a condition for employment or continuation of  
21 employment, any person to take a polygraph test or any form  
22 of a mechanical lie detector test;

23 (b) as a condition for employment, any person to submit  
24 to a blood or urine test, except for employment in:

25 (i) hazardous work environments or in:

1 (ii) jobs the primary responsibility of which is  
2 security, public safety, or fiduciary responsibility; or  
3 (iii) jobs involving the INTRASTATE commercial  
4 transportation of persons or commodities if-the-testing-is  
5 required-by-federal-law BY A COMMERCIAL MOTOR CARRIER OR AN  
6 EMPLOYEE SUBJECT TO DRIVER QUALIFICATION REQUIREMENTS; and

7 (c) as a condition for continuation of employment, any  
8 employee to submit to a blood or urine test unless the  
9 employer has reason to believe that the employee's faculties  
10 are impaired on the job as a result of alcohol consumption  
11 or illegal drug use ~~or-the-testing-is-required-by-federal~~  
12 ~~law, EXCEPT THAT DRUG TESTING MAY BE CONDUCTED AT AN~~  
13 EMPLOYEE'S REGULAR BIENNIAL PHYSICAL FOR EMPLOYMENT IN JOBS  
14 INVOLVING THE INTRASTATE COMMERCIAL MOTOR CARRIER  
15 TRANSPORTATION OF PERSONS OR COMMODITIES.

16 (2) Prior to the administration of a drug or alcohol  
17 test, the person, firm, corporation, or other business  
18 entity or its representative shall adopt a THE written  
19 testing procedure THAT IS PROVIDED IN 49 CFR, PART 40, and  
20 make it available to all persons subject to testing. A  
21 ~~testing-procedure-must-provide-for-the:~~

22 (a) ~~collection-of-a-blood-or-urine-specimen-in-a-manner~~  
23 ~~that-minimizes-invasion-of-personal-privacy-while-ensuring~~  
24 ~~the-integrity-of-the-collection-process;~~

25 (b) ~~collection-of-a-quantity-of-specimen-sufficient-to~~

THIRD READING

1 ~~ensure the administration of several tests;~~  
 2 ~~(c) collection, storage, and transportation of the~~  
 3 ~~specimen in tamper-proof containers;~~  
 4 ~~(d) adoption of chain-of-custody documentation~~  
 5 ~~procedures identifying how the specimen was handled and~~  
 6 ~~tested;~~  
 7 ~~(e) verification of test results by two or more~~  
 8 ~~different testing procedures before judging a test positive;~~  
 9 ~~and~~  
 10 ~~(f) prohibition of the release of test results, except~~  
 11 ~~as authorized by the person tested or as required by a court~~  
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 13 (3) The person, firm, corporation, or other business  
 14 entity or its representative shall provide a copy of drug or  
 15 alcohol test results to the person tested and provide him  
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 17 test, to obtain a confirmatory test of the blood or urine by  
 18 an independent laboratory selected by the person tested. The  
 19 person tested must be given the opportunity to rebut or  
 20 explain the results of either test or both tests.  
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 22 tested under subsections (1)(b), (1)(c), (2), and (3) if the  
 23 person tested presents a reasonable explanation or medical  
 24 opinion indicating that the results of the test were not  
 25 caused by alcohol consumption or illegal drug use.

1 (5) A person who violates this section is guilty of a  
 2 misdemeanor.  
 3 (6) AS USED IN THIS SECTION:  
 4 (A) "COMMERCIAL MOTOR CARRIER" HAS THE MEANING PROVIDED  
 5 IN 69-12-101; AND  
 6 (B) "INTRASTATE" MEANS COMMERCE OR TRADE THAT IS BEGUN,  
 7 CARRIED ON, AND COMPLETED WHOLLY IN THIS STATE."  
 8 NEW SECTION. Section 2. Effective date. [This act] is  
 9 effective on passage and approval.

-End-



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 110 (third reading copy -- blue), respectfully report that House Bill No. 110 be amended and as so amended be concurred in:

1. Page 4, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Coordination instruction. If Senate Bill No. 31 is passed and approved and if it includes a section that amends 39-2-304, then 39-2-304 as it appears in [this act] is amended by adding a new subsection (6) that reads:

"(6) Intrastate commercial motor carriers involved in the transportation of persons or commodities are exempt from the provisions of [subsections (2) through (4) of 39-2-304 as they appear in Senate Bill No. 31] and are exempt from [sections 2 through 4 and 6 of Senate Bill No. 31]. Prior to the administration of a drug or alcohol test, an intrastate commercial motor carrier involved in the transportation of persons or commodities shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing."

Signed: *Richard Pinsonneault*  
Richard Pinsonneault, Chairman

*ky 3-23-91*  
And. Coord.

*SB 3-23-91 9:35*  
Sec. of Senate

SENATE  
HB 110

HOUSE BILL NO. 110  
INTRODUCED BY GILBERT

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW RELATING TO THE REGULATION OF BLOOD AND URINE TESTING; ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB APPLICANTS IN JOBS INVOLVING THE INTRASTATE COMMERCIAL TRANSPORTATION OF PERSONS AND COMMODITIES IF-THE-TESTING-IS REQUIRED-BY-FEDERAL-LAW; ALLOWING THE RELEASE OF TEST RESULTS AS REQUIRED BY FEDERAL LAW; DEFINING "INTRASTATE" AND "COMMERCIAL MOTOR CARRIER"; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 39-2-304, MCA, is amended to read:

"39-2-304. Lie detector tests prohibited -- regulation of blood and urine testing. (1) No A person, firm, corporation, or other business entity or representative thereof ~~shall~~ may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments ~~or in;~~

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or  
(iii) jobs involving the INTRASTATE commercial transportation of persons or commodities if-the-testing-is required-by-federal-law BY A COMMERCIAL MOTOR CARRIER OR AN EMPLOYEE SUBJECT TO DRIVER QUALIFICATION REQUIREMENTS; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use ~~or-the-testing-is-required-by-federal law~~, EXCEPT THAT DRUG TESTING MAY BE CONDUCTED AT AN EMPLOYEE'S REGULAR BIENNIAL PHYSICAL FOR EMPLOYMENT IN JOBS INVOLVING THE INTRASTATE COMMERCIAL MOTOR CARRIER TRANSPORTATION OF PERSONS OR COMMODITIES.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt a THE written testing procedure THAT IS PROVIDED IN 49 CFR, PART 40, and make it available to all persons subject to testing. A ~~testing-procedure-must-provide-for-the:~~

~~(a)--collection-of-a-blood-or-urine-specimen-in-a-manner that-minimizes-invasion-of-personal-privacy--while--ensuring the-integrity-of-the-collection-process;~~

~~(b)--collection--of-a-quantity-of-specimen-sufficient-to~~



1 ~~ensure the administration of several tests;~~  
 2 ~~(c) collection, storage, and transportation of the~~  
 3 ~~specimen in tamper-proof containers;~~  
 4 ~~(d) adoption of chain-of-custody documentation~~  
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 7 ~~(e) verification of test results by two or more~~  
 8 ~~different testing procedures before judging a test positive;~~  
 9 ~~and~~  
 10 ~~(f) prohibition of the release of test results, except~~  
 11 ~~as authorized by the person tested or as required by a court~~  
 12 ~~of law or federal law.~~  
 13 (3) The person, firm, corporation, or other business  
 14 entity or its representative shall provide a copy of drug or  
 15 alcohol test results to the person tested and provide him  
 16 the opportunity, at the expense of the person requiring the  
 17 test, to obtain a confirmatory test of the blood or urine by  
 18 an independent laboratory selected by the person tested. The  
 19 person tested must be given the opportunity to rebut or  
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 21 (4) Adverse action may not be taken against a person  
 22 tested under subsections (1)(b), (1)(c), (2), and (3) if the  
 23 person tested presents a reasonable explanation or medical  
 24 opinion indicating that the results of the test were not  
 25 caused by alcohol consumption or illegal drug use.

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 2 misdemeanor.  
 3 (6) AS USED IN THIS SECTION:  
 4 (A) "COMMERCIAL MOTOR CARRIER" HAS THE MEANING PROVIDED  
 5 IN 69-12-101; AND  
 6 (B) "INTRASTATE" MEANS COMMERCE OR TRADE THAT IS BEGUN,  
 7 CARRIED ON, AND COMPLETED WHOLLY IN THIS STATE."  
 8 NEW SECTION. Section 2. Effective date. [This act] is  
 9 effective on passage and approval.  
 10 NEW SECTION. SECTION 3. COORDINATION INSTRUCTION. IF  
 11 SENATE BILL NO. 31 IS PASSED AND APPROVED AND IF IT INCLUDES  
 12 A SECTION THAT AMENDS 39-2-304, THEN 39-2-304 AS IT APPEARS  
 13 IN [THIS ACT] IS AMENDED BY ADDING A NEW SUBSECTION (6) THAT  
 14 READS:  
 15 "(6) INTRASTATE COMMERCIAL MOTOR CARRIERS INVOLVED IN  
 16 THE TRANSPORTATION OF PERSONS OR COMMODITIES ARE EXEMPT FROM  
 17 THE PROVISIONS OF [SUBSECTIONS (2) THROUGH (4) OF 39-2-304  
 18 AS THEY APPEAR IN SENATE BILL NO. 31] AND ARE EXEMPT FROM  
 19 [SECTIONS 2 THROUGH 4 AND 6 OF SENATE BILL NO. 31]. PRIOR  
 20 TO THE ADMINISTRATION OF A DRUG OR ALCOHOL TEST, AN  
 21 INTRASTATE COMMERCIAL MOTOR CARRIER INVOLVED IN THE  
 22 TRANSPORTATION OF PERSONS OR COMMODITIES SHALL ADOPT THE  
 23 WRITTEN TESTING PROCEDURE THAT IS PROVIDED IN 49 CFR, PART  
 24 40, AND MAKE IT AVAILABLE TO ALL PERSONS SUBJECT TO  
 25 TESTING."