

SENATE BILL 31

Introduced by Towe, et al.

12/27	Introduced
12/31	Referred to Judiciary
1/07	First Reading
1/16	Hearing
2/23	Committee Report--Bill Passed as Amended
2/25	2nd Reading Passed as Amended
2/26	3rd Reading Passed
	Transmitted to House
3/04	First Reading
3/04	Referred to Labor & Employment Relations
3/20	Hearing
4/04	Tabled in Committee

1 SENATE BILL NO. 31

2 INTRODUCED BY TOWE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW
5 RELATING TO DRUG TESTING; REQUIRING DRUG TESTING TO BE
6 PERFORMED ONLY BY DRUG TESTING LABORATORIES CERTIFIED BY THE
7 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ESTABLISHING
8 STANDARDS FOR VERIFICATION AND REPORTING OF TEST RESULTS;
9 AND AMENDING SECTION 39-2-304, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

13 **"39-2-304. Lie detector tests prohibited -- regulation**
14 **of blood and urine testing. (1) (a) No A** person, firm,
15 **corporation, or other business entity or representative**
16 **thereof shall may not require:**

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

20 **(b)(ii)** as a condition for employment, **any a** person to
21 **submit to a blood or urine test, except for employment in**
22 **hazardous work environments or in jobs the primary**
23 **responsibility of which is security, public safety, or**
24 **fiduciary responsibility; and**

25 **(c)(iii)** as a condition for continuation of employment,

1 **any an employee to submit to a blood or urine test unless**
2 **the employer has reason to believe that the employee's**
3 **faculties are impaired on the job as a result of alcohol**
4 **consumption or illegal drug use.**

5 **(b) The testing of blood or urine for illegal drug use**
6 **must be performed by drug testing laboratories certified by**
7 **the U.S. department of health and human services.**

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

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

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

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

20 (d) adoption of chain-of-custody documentation
21 procedures identifying how the specimen was handled and
22 tested;

23 (e) verification of test results by two or more
24 different testing procedures before judging a test positive,
25 **as provided in subsection (5); and**

1 (f) prohibition of the release of test results, except
 2 as authorized by the person tested or as required by a court
 3 of law.

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

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

18 (5) (a) Verification of test results must include an
 19 initial test and a confirmatory test, as follows:

20 (i) The initial test must use an immunoassay that meets
 21 the requirements of the U.S. food and drug administration
 22 for commercial distribution. When screening specimens to
 23 determine whether they are negative for these five drugs or
 24 classes of drugs, the initial cutoff levels may not be less
 25 than the following:

	<u>Initial Test</u>
	<u>Level (ng/ml)</u>
3 <u>marijuana metabolites</u>	<u>100</u>
4 <u>cocaine metabolites</u>	<u>300</u>
5 <u>opiate metabolites</u>	<u>300 (25 ng/ml if</u>
6	<u>immunoassay specific</u>
7	<u>for free morphine)</u>
8 <u>phencyclidine</u>	<u>25</u>
9 <u>amphetamines</u>	<u>1,000</u>

10 (ii) All specimens identified as positive on the initial
 11 test must be confirmed using gas chromatography/mass
 12 spectrometry (GC/MS) techniques at the cutoff values at or
 13 above those listed in this subsection (ii) for each drug.
 14 All confirmations must be by quantitative analysis.
 15 Concentrations that exceed the linear region of the standard
 16 curve must be documented in the laboratory record as
 17 "greater than highest standard curve value". The
 18 confirmatory cutoff levels may not be less than the
 19 following:

	<u>Confirmatory Test</u>
	<u>Level (ng/ml)</u>
22 <u>marijuana metabolites</u>	
23 <u>(delta-9-tetrahydrocannabinol-</u>	
24 <u>9-carboxylic acid)</u>	<u>15</u>
25 <u>cocaine metabolites (benzoylecgonine)</u>	<u>150</u>

1	<u>opiate:</u>	-
2	<u>morphine</u>	<u>300</u>
3	<u>codeine</u>	<u>300</u>
4	<u>phencyclidine</u>	<u>25</u>
5	<u>amphetamines:</u>	-
6	<u>amphetamine</u>	<u>500</u>
7	<u>methamphetamine</u>	<u>500</u>

8 (b) The laboratory shall report as negative all
9 specimens that are negative on the initial test or negative
10 on the confirmatory test. Only specimens confirmed positive
11 may be reported positive for a specific drug.

12 (c) Drug testing laboratories shall retain all
13 specimens confirmed positive and place them in properly
14 secure long-term frozen storage for a minimum of 1 year.

15 (5)(6) A person who violates this section is guilty of
16 a misdemeanor."

-End-

APPROVED BY COMMITTEE ON JUDICIARY

SENATE BILL NO. 31

INTRODUCED BY TOWE, STIMATZ, VAN VALKENBURG, DOHERTY, FRANKLIN, BLAYLOCK, WHELEN, WANZENRIED, DOLEZAL, DRISCOLL, KILPATRICK, SOUTHWORTH, STRIZICH, COHEN, BECKER, D. BROWN, KELLER

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW RELATING TO DRUG TESTING; REQUIRING DRUG TESTING TO BE PERFORMED ONLY BY DRUG TESTING LABORATORIES CERTIFIED BY THE NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ESTABLISHING STANDARDS FOR VERIFICATION AND REPORTING OF TEST RESULTS; AND AMENDING SECTION 39-2-304, MCA."

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) (a) No A person, firm, corporation, or other business entity or representative thereof shall may not require:

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

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

(A) in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility;

(B) IN WHICH THE EMPLOYER PROVIDES TO ITS EMPLOYEES A DRUG AND ALCOHOL REHABILITATION PROGRAM THAT IS PAID FOR THE BY THE EMPLOYER OR THROUGH A POLICY OF HEALTH INSURANCE THAT IS PAID FOR BY THE EMPLOYER, PROVIDED THAT NO PART OF THE COST MAY BE PAID FROM A COLLECTIVELY BARGAINED HEALTH AND WELFARE TRUST FUND; OR

(C) IN WHICH THE EMPLOYER EMPLOYS 10 OR FEWER EMPLOYEES; and

(e)(iii) as a condition for continuation of employment, any an 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.

(b) The testing of blood or urine for illegal drug use must be performed by drug testing laboratories certified by the NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. department of health and human services.

(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-written-testing procedure--and--make--it--available--to--all--persons--subject--to testing--A-testing-procedure-must-provide-for-the:

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

4 ~~(b) collection of a quantity of specimen sufficient to~~
 5 ~~ensure the administration of several tests;~~

6 ~~(c) collection, storage, and transportation of the~~
 7 ~~specimen in tamper-proof containers;~~

8 ~~(d) adoption of chain-of-custody documentation~~
 9 ~~procedures identifying how the specimen was handled and~~
 10 ~~tested;~~

11 ~~(e) verification of test results by two or more~~
 12 ~~different testing procedures before judging a test positive,~~
 13 ~~as provided in subsection (5), and~~

14 ~~(f) prohibition of the release of test results, except~~
 15 ~~as authorized by the person tested or as required by a court~~
 16 ~~of law.~~

17 (3)(2) The person, firm, corporation, or other business
 18 entity or its representative shall provide a copy of drug or
 19 alcohol test results to the person tested and provide him
 20 the opportunity, at the expense of the person requiring the
 21 test, to obtain a confirmatory test of the blood or urine by
 22 an independent NIDA-CERTIFIED laboratory selected by the
 23 person tested. The person tested must be given the
 24 opportunity to rebut or explain the results of either test
 25 or both tests.

1 (4)(3) Adverse action may not be taken against a person
 2 tested under subsections (1)(a)(ii), (1)(a)(iii), AND (2) and (3) if the person tested presents
 3 a reasonable explanation or medical opinion indicating that
 4 the results of the test were not caused by alcohol
 5 consumption or illegal drug use.

6 (5)(4) (a) Verification of test results must include an
 7 initial test and a confirmatory test, as follows:

8 (i) The initial test must use an immunoassay that meets
 9 the requirements of the U.S. food and drug administration
 10 for commercial distribution. When screening specimens to
 11 determine whether they are negative for these five drugs or
 12 classes of drugs, the initial cutoff levels may not be less
 13 than the following:

	<u>Initial Test</u>
	<u>Level (ng/ml)</u>
<u>marijuana metabolites</u>	<u>--100</u>
<u>cocaine metabolites</u>	<u>--300</u>
<u>opiate metabolites</u>	<u>--300 (25 ng/ml if</u>
	<u>immunoassay specific</u>
	<u>for free morphine)</u>
<u>phencyclidine</u>	<u>---25</u>
<u>amphetamines</u>	<u>±7000</u>

24 THOSE PROVIDED IN THE NIDA GUIDELINES.

25 (ii) All specimens identified as positive on the initial

1 test must be confirmed using gas chromatography/mass
 2 spectrometry (GC/MS) techniques at the cutoff values at or
 3 above those listed in ~~this subsection (ii) for each drug~~ THE
 4 NIDA GUIDELINES FOR CONFIRMATORY TESTS. All confirmations
 5 must be by quantitative analysis. Concentrations that exceed
 6 the linear region of the standard curve must be documented
 7 in the laboratory record as "greater than highest standard
 8 curve value". The confirmatory cutoff levels may not be less
 9 than the following:

	<u>Confirmatory Test</u>
	<u>Level (ng/ml)</u>
12 <u>marijuana-metabolites</u>	
13 <u>(delta-9-tetrahydrocannabinol-</u>	
14 <u>9-carboxylic acid)</u>	-35
15 <u>cocaine-metabolites-(benzoylecgonine)</u>	150
16 <u>opiate:</u>	=
17 <u> morphine</u>	300
18 <u> codeine</u>	300
19 <u>phencyclidine</u>	-25
20 <u>amphetamines:</u>	=
21 <u> amphetamine</u>	500
22 <u> methamphetamine</u>	500

23 NIDA GUIDELINES FOR CONFIRMATORY TESTS.

24 (b) The laboratory shall report as negative all
 25 specimens that are negative on the initial test or negative

1 on the confirmatory test. Only specimens confirmed positive
 2 may be reported positive for a specific drug.

3 (c) Drug testing laboratories shall retain all
 4 specimens confirmed positive and place them in properly
 5 secure long-term frozen storage for a minimum of 1 year.

6 (D) FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST
 7 BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF THE FEDERAL
 8 PREEMPTION.

9 (5)(6)--A person who violates this section is guilty of
 10 a misdemeanor."

11 NEW SECTION. SECTION 2. DEFINITIONS. AS USED IN
 12 39-2-304 AND [SECTIONS 2 THROUGH 6], THE FOLLOWING
 13 DEFINITIONS APPLY:

14 (1) (A) "CONTROLLED SUBSTANCE" MEANS A DANGEROUS DRUG
 15 AS DEFINED IN 50-32-101 AND AS LISTED OR TO BE LISTED IN THE
 16 SCHEDULE IN 50-32-222 OR 50-32-224.

17 (B) CONTROLLED SUBSTANCE DOES NOT MEAN A DANGEROUS DRUG
 18 USED PURSUANT TO A VALID PRESCRIPTION OR AS AUTHORIZED BY
 19 LAW.

20 (2) "EMPLOYEE" MEANS AN INDIVIDUAL ENGAGED IN THE
 21 PERFORMANCE OF WORK FOR A PRIVATE EMPLOYER BUT DOES NOT
 22 INCLUDE AN INDIVIDUAL HAVING THE STATUS OF AN INDEPENDENT
 23 CONTRACTOR.

24 (3) "EMPLOYER" MEANS A PERSON OR ENTITY IN THE PRIVATE
 25 SECTOR THAT HAS ONE OR MORE EMPLOYEES AND IS LOCATED OR IS

1 DOING BUSINESS IN THE STATE.

2 (4) "MEDICAL REVIEW OFFICER" MEANS A LICENSED PHYSICIAN
 3 WHO CONTRACTS WITH AN EMPLOYER TO RECEIVE LABORATORY RESULTS
 4 GENERATED BY AN EMPLOYER'S DRUG TESTING PROGRAM, WHO HAS
 5 KNOWLEDGE OF SUBSTANCE ABUSE DISORDERS, AND WHO HAS
 6 APPROPRIATE MEDICAL TRAINING TO INTERPRET AND EVALUATE AN
 7 EMPLOYEE'S POSITIVE TEST RESULTS, TOGETHER WITH THE
 8 EMPLOYEE'S MEDICAL HISTORY AND ANY OTHER RELEVANT BIOMEDICAL
 9 INFORMATION.

10 (5) "PROSPECTIVE EMPLOYEE" MEANS AN INDIVIDUAL WHO HAS
 11 MADE APPLICATION TO AN EMPLOYER, WHETHER WRITTEN OR ORAL, TO
 12 BECOME AN EMPLOYEE.

13 (6) "QUALIFIED TESTING PROGRAM" MEANS A PROGRAM TO TEST
 14 FOR THE PRESENCE OF CONTROLLED SUBSTANCES THAT MEETS THE
 15 CRITERIA SET FORTH IN [SECTIONS 3 AND 4].

16 (7) "SAMPLE" MEANS, IN THE CASE OF DRUG TESTING, A
 17 URINE SPECIMEN AND, IN THE CASE OF ALCOHOL TESTING, A BLOOD,
 18 BREATH, OR URINE SPECIMEN.

19 NEW SECTION. SECTION 3. QUALIFIED TESTING PROGRAM. A
 20 QUALIFIED TESTING PROGRAM MUST MEET AND BE CONDUCTED
 21 ACCORDING TO THE FOLLOWING CRITERIA:

22 (1) TESTING MUST BE CONDUCTED ACCORDING TO THE TERMS OF
 23 WRITTEN POLICIES AND PROCEDURES THAT MUST BE ADOPTED BY THE
 24 EMPLOYER AND BE AVAILABLE FOR REVIEW BY ALL EMPLOYEES AND
 25 PROSPECTIVE EMPLOYEES 60 DAYS PRIOR TO IMPLEMENTATION. THE

1 POLICIES AND PROCEDURES MUST SET FORTH, AT A MINIMUM:

2 (A) A DESCRIPTION OF THE APPLICABLE LEGAL SANCTIONS
 3 UNDER FEDERAL, STATE, AND LOCAL LAW FOR THE UNLAWFUL
 4 MANUFACTURE, DISTRIBUTION, POSSESSION, OR USE OF A
 5 CONTROLLED SUBSTANCE;

6 (B) THE EMPLOYER'S PROPOSAL FOR EDUCATING OR PROVIDING
 7 INFORMATION TO EMPLOYEES ON THE HEALTH RISKS ASSOCIATED WITH
 8 THE USE OF CONTROLLED SUBSTANCES;

9 (C) THE EMPLOYER'S STANDARDS OF CONDUCT THAT REGULATE
 10 THE USE OF CONTROLLED SUBSTANCES BY EMPLOYEES;

11 (D) A DESCRIPTION OF AVAILABLE EMPLOYEE ASSISTANCE
 12 PROGRAMS, INCLUDING DRUG AND ALCOHOL COUNSELING, TREATMENT,
 13 OR REHABILITATION PROGRAMS THAT ARE AVAILABLE TO EMPLOYEES;

14 (E) A DESCRIPTION OF THE SANCTIONS THAT THE EMPLOYER
 15 MAY IMPOSE ON AN EMPLOYEE IF THE EMPLOYEE IS FOUND TO HAVE
 16 VIOLATED THE STANDARDS OF CONDUCT REFERRED TO IN SUBSECTION
 17 (1)(C) OR IF THE EMPLOYEE IS FOUND TO TEST POSITIVE FOR THE
 18 PRESENCE OF A CONTROLLED SUBSTANCE;

19 (F) A STATEMENT THAT EMPLOYEES MAY BE TESTED AS
 20 PROVIDED IN [SECTION 1(1)(A)(III)], INCLUDING A DISCUSSION
 21 OF THE CIRCUMSTANCES THAT MAY TRIGGER AN IMMEDIATE TEST;

22 (G) A LIST OF THE CONTROLLED SUBSTANCES FOR WHICH THE
 23 EMPLOYER INTENDS TO TEST;

24 (H) A DETAILED DESCRIPTION OF THE PROCEDURES THAT WILL
 25 BE FOLLOWED TO CONDUCT THE TESTING PROGRAM, INCLUDING THE

1 RESOLUTION OF A DISPUTE CONCERNING TEST RESULTS;

2 (I) A PROVISION THAT ALL INFORMATION, INTERVIEWS,
 3 REPORTS, STATEMENTS, MEMORANDA, AND TEST RESULTS ARE
 4 CONFIDENTIAL COMMUNICATIONS THAT WILL NOT BE DISCLOSED TO
 5 ANYONE EXCEPT:

6 (I) THE TESTED EMPLOYEE OR HIS AGENT;

7 (II) EMPLOYEES OR AGENTS OF THE EMPLOYER WHO ARE
 8 SPECIFICALLY AUTHORIZED BY THE TESTED EMPLOYEE TO RECEIVE
 9 THE EMPLOYEE'S TEST RESULTS; OR

10 (III) IN A PROCEEDING RELATED TO A LEGAL ACTION ARISING
 11 OUT OF THE EMPLOYER'S IMPLEMENTATION OF 39-2-304 AND
 12 [SECTIONS 2 THROUGH 6] OR INQUIRIES RELATING TO A WORKPLACE
 13 ACCIDENT INVOLVING DEATH, PHYSICAL INJURY, OR PROPERTY
 14 DAMAGE IN EXCESS OF \$5,000 WHEN THERE IS INDIVIDUAL
 15 PARTICULARIZED SUSPICION THAT THE TESTED EMPLOYEE MAY HAVE
 16 CAUSED OR CONTRIBUTED TO THE ACCIDENT; AND

17 (J) A PROVISION THAT INFORMATION OBTAINED THROUGH DRUG
 18 TESTING THAT IS UNRELATED TO DRUG USE MUST BE HELD IN STRICT
 19 CONFIDENTIALITY BY THE MEDICAL REVIEW OFFICER AND MAY NOT BE
 20 RELEASED TO THE EMPLOYER.

21 (2) IN ADDITION TO IMPOSING APPROPRIATE SANCTIONS ON
 22 EMPLOYEES FOR VIOLATIONS OF THE EMPLOYER'S STANDARDS OF
 23 CONDUCT REFERRED TO IN SUBSECTION (1)(C), THE EMPLOYER MAY
 24 REQUIRE AN AFFECTED EMPLOYEE TO PARTICIPATE IN AN
 25 APPROPRIATE DRUG REHABILITATION PROGRAM AS A CONDITION OF

1 CONTINUED EMPLOYMENT. THE EMPLOYER MAY SUBJECT THE EMPLOYEE
 2 TO PERIODIC RETESTING AS A CONDITION OF THE REHABILITATION
 3 PROGRAM.

4 (3) TESTING MUST BE AT THE EMPLOYER'S EXPENSE, AND ALL
 5 EMPLOYEES MUST BE COMPENSATED AT THEIR REGULAR RATE,
 6 INCLUDING BENEFITS, FOR TIME ATTRIBUTABLE TO THE TESTING
 7 PROGRAM.

8 (4) SAMPLE COLLECTION MUST BE PERFORMED IN A MANNER
 9 DESIGNED TO PROTECT THE PRIVACY OF THE EMPLOYEE, USING WHEN
 10 PRACTICABLE SCREENS OR STALLS.

11 (5) SAMPLES MUST BE HANDLED UNDER STRICT FORENSIC
 12 CHAIN-OF-CUSTODY PROCEDURES. THESE PROCEDURES SHOULD REQUIRE
 13 THAT THE SAMPLE BE COLLECTED, STORED, AND TRANSPORTED IN A
 14 MANNER THAT WILL DOCUMENT AND PRESERVE THE IDENTITY OF EACH
 15 SAMPLE AND PREVENT THE ADULTERATION, CONTAMINATION, OR
 16 ERRONEOUS IDENTIFICATION OF TEST RESULTS.

17 (6) ONCE SAMPLES ARE OBTAINED, TESTING OF SAMPLES MUST
 18 BE PERFORMED ACCORDING TO SCIENTIFICALLY ACCEPTED ANALYTICAL
 19 PROCEDURES BY A QUALIFIED LABORATORY CERTIFIED BY THE
 20 NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. DEPARTMENT OF
 21 HEALTH AND HUMAN SERVICES, AND MUST INCLUDE AN INITIAL TEST
 22 AND A CONFIRMATORY TEST CONDUCTED BY THE SAME LABORATORY, AS
 23 FOLLOWS:

24 (A) (I) THE INITIAL TEST MUST USE AN IMMUNOASSAY THAT
 25 MEETS THE REQUIREMENTS OF THE U.S. FOOD AND DRUG

1 ADMINISTRATION FOR COMMERCIAL DISTRIBUTION. WHEN SCREENING
 2 SPECIMENS TO DETERMINE WHETHER THEY ARE NEGATIVE, THE
 3 INITIAL CUTOFF LEVELS MAY NOT BE LESS THAN THOSE PROVIDED IN
 4 THE NIDA GUIDELINES.

5 (II) ALL SPECIMENS IDENTIFIED AS POSITIVE ON THE INITIAL
 6 TEST MUST BE CONFIRMED USING GAS CHROMATOGRAPHY/MASS
 7 SPECTROMETRY (GC/MS) TECHNIQUES AT THE CUTOFF VALUES AT OR
 8 ABOVE THOSE LISTED IN THE NIDA GUIDELINES FOR CONFIRMATORY
 9 TESTS. ALL CONFIRMATIONS MUST BE BY QUANTITATIVE ANALYSIS.
 10 CONCENTRATIONS THAT EXCEED THE LINEAR REGION OF THE STANDARD
 11 CURVE MUST BE DOCUMENTED IN THE LABORATORY RECORD AS
 12 "GREATER THAN HIGHEST STANDARD CURVE VALUE". THE
 13 CONFIRMATORY CUTOFF LEVELS MAY NOT BE LESS THAN THE NIDA
 14 GUIDELINES FOR CONFIRMATORY TESTS.

15 (B) THE LABORATORY SHALL REPORT AS NEGATIVE ALL
 16 SPECIMENS THAT ARE NEGATIVE ON THE INITIAL TEST OR NEGATIVE
 17 ON THE CONFIRMATORY TEST. ONLY SPECIMENS CONFIRMED POSITIVE
 18 MAY BE REPORTED POSITIVE FOR A SPECIFIC DRUG.

19 (C) DRUG TESTING LABORATORIES SHALL RETAIN ALL
 20 SPECIMENS CONFIRMED POSITIVE AND PLACE THEM IN PROPERLY
 21 SECURE LONG-TERM FROZEN STORAGE FOR A MINIMUM OF 1 YEAR.

22 (D) FEDERAL PREEMPTION OF ANY PART OF THIS SECTION IS
 23 STRICTLY LIMITED TO THE SPECIFIC SCOPE OF THE FEDERAL
 24 PREEMPTION.

25 (7) (A) EACH EMPLOYER SHALL DESIGNATE OR APPOINT A

1 MEDICAL REVIEW OFFICER. IF AN EMPLOYER DOES NOT HAVE A
 2 QUALIFIED INDIVIDUAL ON STAFF TO SERVE AS MEDICAL REVIEW
 3 OFFICER, THE EMPLOYER MAY CONTRACT FOR THE PROVISION OF
 4 MEDICAL REVIEW OFFICER SERVICES AS PART OF ITS ANTIDRUG
 5 PROGRAM.

6 (B) THE MEDICAL REVIEW OFFICER MUST BE A LICENSED
 7 PHYSICIAN WITH KNOWLEDGE OF DRUG ABUSE DISORDERS.

8 (C) THE MEDICAL REVIEW OFFICER SHALL PERFORM THE
 9 FOLLOWING FUNCTIONS FOR THE EMPLOYER:

10 (I) REVIEW THE RESULTS OF DRUG TESTING BEFORE THEY ARE
 11 REPORTED TO THE EMPLOYER;

12 (II) VERIFY THAT THE LABORATORY REPORT AND ASSESSMENT
 13 ARE CORRECT;

14 (III) REVIEW AND INTERPRET EACH CONFIRMED POSITIVE TEST
 15 RESULT AS FOLLOWS TO DETERMINE IF THERE IS AN ALTERNATIVE
 16 MEDICAL EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT:

17 (A) CONDUCT A MEDICAL INTERVIEW WITH THE INDIVIDUAL
 18 TESTED;

19 (B) REVIEW THE INDIVIDUAL'S MEDICAL HISTORY AND ANY
 20 RELEVANT BIOMEDICAL FACTORS;

21 (C) REVIEW ALL MEDICAL RECORDS MADE AVAILABLE BY THE
 22 INDIVIDUAL TESTED TO DETERMINE IF A CONFIRMED POSITIVE TEST
 23 RESULTED FROM LEGALLY PRESCRIBED MEDICATION;

24 (D) IF NECESSARY, REQUIRE THAT THE ORIGINAL SPECIMEN BE
 25 REANALYZED TO DETERMINE THE ACCURACY OF THE REPORTED TEST

1 RESULT;
 2 (IV) DETERMINE WHETHER AND WHEN AN EMPLOYEE INVOLVED IN
 3 A REHABILITATION PROGRAM MAY BE RETURNED TO DUTY; AND
 4 (V) ENSURE THAT AN EMPLOYEE HAS BEEN DRUG TESTED IN
 5 ACCORDANCE WITH THIS SECTION BEFORE THE EMPLOYEE RETURNS TO
 6 DUTY AFTER REHABILITATION, AND THEREAFTER, AS CONSIDERED
 7 NECESSARY BY THE MEDICAL REVIEW OFFICER AND THE INDIVIDUAL'S
 8 REHABILITATION PLAN.
 9 (D) THE FOLLOWING RULES GOVERN MEDICAL REVIEW OFFICER
 10 DETERMINATIONS:
 11 (I) IF THE MEDICAL REVIEW OFFICER DETERMINES, AFTER
 12 APPROPRIATE REVIEW, THAT THERE IS A LEGITIMATE MEDICAL
 13 EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT OTHER
 14 THAN THE UNAUTHORIZED USE OF A PROHIBITED DRUG, THE MEDICAL
 15 REVIEW OFFICER MAY NOT TAKE FURTHER ACTION EXCEPT TO REPORT
 16 THE RESULTS AS NEGATIVE TO THE EMPLOYER.
 17 (II) IF THE MEDICAL REVIEW OFFICER DETERMINES, AFTER
 18 APPROPRIATE REVIEW, THAT THERE IS NO LEGITIMATE MEDICAL
 19 EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT OTHER
 20 THAN THE UNAUTHORIZED USE OF A PROHIBITED DRUG, THE MEDICAL
 21 REVIEW OFFICER SHALL REFER THE INDIVIDUAL TESTED TO AN
 22 EMPLOYEE ASSISTANCE PROGRAM OR TO A PERSONNEL OFFICER OR
 23 ADMINISTRATIVE OFFICER FOR FURTHER PROCEEDINGS IN ACCORDANCE
 24 WITH THE EMPLOYER'S ANTIDRUG PROGRAM.
 25 (III) BASED ON A REVIEW OF LABORATORY INSPECTION

1 REPORTS, QUALITY ASSURANCE AND QUALITY CONTROL DATA, AND
 2 OTHER DRUG TEST RESULTS, THE MEDICAL REVIEW OFFICER MAY
 3 CONCLUDE THAT A PARTICULAR DRUG TEST RESULT IS
 4 SCIENTIFICALLY INSUFFICIENT FOR FURTHER ACTION. UNDER THESE
 5 CIRCUMSTANCES, THE MEDICAL REVIEW OFFICER SHALL CONCLUDE
 6 THAT THE TEST IS NEGATIVE FOR THE PRESENCE OF A PROHIBITED
 7 DRUG OR DRUG METABOLITE IN AN INDIVIDUAL'S SYSTEM AND SHALL,
 8 IN A MANNER THAT DOES NOT REVEAL THE IDENTITY OF THE PERSON
 9 TESTED, NOTIFY THE EMPLOYER OF THE NATURE OF THE SCIENTIFIC
 10 INSUFFICIENCY.

11 NEW SECTION. SECTION 4. CONFIDENTIALITY OF RESULTS.
 12 (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ALL INFORMATION,
 13 INTERVIEWS, REPORTS, STATEMENTS, MEMORANDA, OR TEST RESULTS
 14 RECEIVED BY THE EMPLOYER THROUGH A QUALIFIED DRUG TESTING
 15 PROGRAM ARE CONFIDENTIAL COMMUNICATIONS AND MAY NOT BE USED
 16 OR RECEIVED IN EVIDENCE, OBTAINED IN DISCOVERY, OR DISCLOSED
 17 IN ANY PUBLIC OR PRIVATE PROCEEDING.
 18 (2) THE MATERIAL TREATED AS CONFIDENTIAL IN SUBSECTION
 19 (1) MAY BE USED IN A PROCEEDING RELATED TO:
 20 (A) LEGAL ACTION ARISING OUT OF THE EMPLOYER'S
 21 IMPLEMENTATION OF 39-2-304 AND [SECTIONS 2 THROUGH 6]; OR
 22 (B) INQUIRIES RELATING TO A WORKPLACE ACCIDENT
 23 INVOLVING DEATH, PHYSICAL INJURY, OR PROPERTY DAMAGE IN
 24 EXCESS OF \$5,000 WHEN THERE IS INDIVIDUAL PARTICULARIZED
 25 SUSPICION THAT THE TESTED EMPLOYEE MAY HAVE CAUSED OR

1 CONTRIBUTED TO THE ACCIDENT.

2 NEW SECTION. SECTION 5. ALCOHOL TESTING. NOTHING IN
3 39-2-304 AND [SECTIONS 2 THROUGH 6] REQUIRING THE USE OF
4 LABORATORIES CERTIFIED BY THE NATIONAL INSTITUTE ON DRUG
5 ABUSE (NIDA) FOR DRUG TESTING MAY BE CONSTRUED TO REQUIRE
6 NIDA-CERTIFIED LABORATORIES FOR ALCOHOL TESTING OR TO
7 PROHIBIT OR PREJUDICE THE USE OF BLOOD, BREATH, OR URINE
8 TESTING FOR ALCOHOL PURSUANT TO THE METHODS, PROCEDURES, OR
9 GUIDELINES OUTLINED IN TITLE 61, CHAPTER 8, PARTS 4 THROUGH
10 8.

11 NEW SECTION. SECTION 6. PENALTY. A PERSON WHO VIOLATES
12 39-2-304 AND [SECTIONS 2 THROUGH 6] IS GUILTY OF A
13 MISDEMEANOR.

14 NEW SECTION. SECTION 7. SEVERABILITY. IF A PART OF
15 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
16 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
17 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
18 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
19 SEVERABLE FROM THE INVALID APPLICATIONS.

-End-

SENATE BILL NO. 31

INTRODUCED BY TOWE, STIMATZ, VAN VALKENBURG, DOHERTY,

FRANKLIN, BLAYLOCK, WHALEN, WANZENRIED, DOLEZAL,

DRISCOLL, KILPATRICK, SOUTHWORTH, STRIZICH, COHEN,

BECKER, D. BROWN, KELLER

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW RELATING TO DRUG TESTING; REQUIRING DRUG TESTING TO BE PERFORMED ONLY BY DRUG TESTING LABORATORIES CERTIFIED BY THE NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ESTABLISHING STANDARDS FOR VERIFICATION AND REPORTING OF TEST RESULTS; AND AMENDING SECTION 39-2-304, MCA."

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) (a) No A person, firm, corporation, or other business entity or representative thereof ~~shall~~ may not require:

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

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

(A) in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility;

(B) IN WHICH THE EMPLOYER PROVIDES TO ITS EMPLOYEES A COMPREHENSIVE DRUG AND ALCOHOL REHABILITATION PROGRAM THAT IS PAID FOR THE BY THE EMPLOYER OR THROUGH A POLICY OF HEALTH INSURANCE THAT IS PAID FOR BY THE EMPLOYER, PROVIDED THAT NO PART OF THE COST MAY BE PAID FROM A COLLECTIVELY BARGAINED HEALTH AND WELFARE TRUST FUND; OR

(C) IN WHICH THE EMPLOYER EMPLOYS 10 OR FEWER EMPLOYEES; and

(e)(iii) as a condition for continuation of employment, any an 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.

(b) The testing of blood or urine for illegal drug use must be performed by drug testing laboratories certified by the NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. department of health and human services.

~~(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 written testing procedure and make it available to all persons subject to testing. A testing procedure must provide for the:~~

1 ~~(a) collection of a blood or urine specimen in a manner~~
 2 ~~that minimizes invasion of personal privacy while ensuring~~
 3 ~~the integrity of the collection process;~~
 4 ~~(b) collection of a quantity of specimen sufficient to~~
 5 ~~ensure the administration of several tests;~~
 6 ~~(c) collection, storage, and transportation of the~~
 7 ~~specimen in tamper proof containers;~~
 8 ~~(d) adoption of chain of custody documentation~~
 9 ~~procedures identifying how the specimen was handled and~~
 10 ~~tested;~~
 11 ~~(e) verification of test results by two or more~~
 12 ~~different testing procedures before judging a test positive,~~
 13 ~~as provided in subsection (5), and~~
 14 ~~(f) prohibition of the release of test results, except~~
 15 ~~as authorized by the person tested or as required by a court~~
 16 ~~of law.~~
 17 (3)(2) The person, firm, corporation, or other business
 18 entity or its representative shall provide a copy of drug or
 19 alcohol test results to the person tested and provide him
 20 the opportunity, at the expense of the person requiring the
 21 test, to obtain a confirmatory test of the blood or urine by
 22 an independent NIDA-CERTIFIED laboratory selected by the
 23 person tested. The person tested must be given the
 24 opportunity to rebut or explain the results of either test
 25 or both tests.

1 (4)(3) Adverse action may not be taken against a person
 2 tested under subsections (1)(b) (1)(a)(ii), (1)(c)
 3 (1)(a)(iii), AND (2), and (3) if the person tested presents
 4 a reasonable explanation or medical opinion indicating that
 5 the results of the test were not caused by alcohol
 6 consumption or illegal drug use.
 7 (5)(4) (a) Verification of test results must include an
 8 initial test and a confirmatory test, as follows:
 9 (i) The initial test must use an immunoassay that meets
 10 the requirements of the U.S. food and drug administration
 11 for commercial distribution. When screening specimens to
 12 determine whether they are negative for these five drugs or
 13 classes of drugs, the initial cutoff levels may not be less
 14 than the following:

	<u>Initial Test</u>
	<u>level (ng/ml)</u>
<u>marijuana metabolites</u>	<u>--100</u>
<u>cocaine metabolites</u>	<u>--300</u>
<u>opiate metabolites</u>	<u>--300 (25 ng/ml if</u>
	<u>immunoassay specific</u>
	<u>for free morphine)</u>
<u>phencyclidine</u>	<u>---25</u>
<u>amphetamines</u>	<u>±7000</u>

24 THOSE PROVIDED IN THE NIDA GUIDELINES.
 25 (ii) All specimens identified as positive on the initial

1 test must be confirmed using gas chromatography/mass
 2 spectrometry (GC/MS) techniques at the cutoff values at or
 3 above those listed in this-subsection-(iii)-for-each-drug THE
 4 NIDA GUIDELINES FOR CONFIRMATORY TESTS. All confirmations
 5 must be by quantitative analysis. Concentrations that exceed
 6 the linear region of the standard curve must be documented
 7 in the laboratory record as "greater than highest standard
 8 curve value". The confirmatory cutoff levels may not be less
 9 than the following:

	<u>Confirmatory-Test</u>
	<u>level-(ng/ml)</u>
12 <u>marijuana-metabolites</u>	
13 <u>{delta-9-tetrahydrocannabinol-</u>	
14 <u>9-carboxylic-acid}</u>	-15
15 <u>cocaine-metabolites-(benzoylecgonine)</u>	±50
16 <u>opiate:</u>	-
17 <u> morphine</u>	300
18 <u> codeine</u>	300
19 <u>phenylethidine</u>	-25
20 <u>amphetamines:</u>	-
21 <u> amphetamine</u>	500
22 <u> methamphetamine</u>	500

23 NIDA GUIDELINES FOR CONFIRMATORY TESTS.

24 (b) The laboratory shall report as negative all
 25 specimens that are negative on the initial test or negative

1 on the confirmatory test. Only specimens confirmed positive
 2 may be reported positive for a specific drug.

3 (c) Drug testing laboratories shall retain all
 4 specimens confirmed positive and place them in properly
 5 secure long-term frozen storage for a minimum of 1 year.

6 (D) FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST
 7 BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF THE FEDERAL
 8 PREEMPTION.

9 {5}{6}-A-person-who-violates-this-section-is-guilty--of
 10 a-misdemeanor-"

11 NEW SECTION. SECTION 2. DEFINITIONS. AS USED IN
 12 39-2-304 AND [SECTIONS 2 THROUGH 6], THE FOLLOWING
 13 DEFINITIONS APPLY:

14 (1) (A) "CONTROLLED SUBSTANCE" MEANS A DANGEROUS DRUG
 15 AS DEFINED IN 50-32-101 AND AS LISTED OR TO BE LISTED IN THE
 16 SCHEDULE IN 50-32-222 OR 50-32-224.

17 (B) CONTROLLED SUBSTANCE DOES NOT MEAN A DANGEROUS DRUG
 18 USED PURSUANT TO A VALID PRESCRIPTION OR AS AUTHORIZED BY
 19 LAW.

20 (2) "EMPLOYEE" MEANS AN INDIVIDUAL ENGAGED IN THE
 21 PERFORMANCE OF WORK FOR A PRIVATE EMPLOYER BUT DOES NOT
 22 INCLUDE AN INDIVIDUAL HAVING THE STATUS OF AN INDEPENDENT
 23 CONTRACTOR.

24 (3) "EMPLOYER" MEANS A PERSON OR ENTITY IN THE PRIVATE
 25 SECTOR THAT HAS ONE OR MORE EMPLOYEES AND IS LOCATED OR IS

DOING BUSINESS IN THE STATE.

(4) "MEDICAL REVIEW OFFICER" MEANS A LICENSED PHYSICIAN WHO CONTRACTS WITH AN EMPLOYER TO RECEIVE LABORATORY RESULTS GENERATED BY AN EMPLOYER'S DRUG TESTING PROGRAM, WHO HAS KNOWLEDGE OF SUBSTANCE ABUSE DISORDERS, AND WHO HAS APPROPRIATE MEDICAL TRAINING TO INTERPRET AND EVALUATE AN EMPLOYEE'S POSITIVE TEST RESULTS, TOGETHER WITH THE EMPLOYEE'S MEDICAL HISTORY AND ANY OTHER RELEVANT BIOMEDICAL INFORMATION.

(5) "PROSPECTIVE EMPLOYEE" MEANS AN INDIVIDUAL WHO HAS MADE APPLICATION TO AN EMPLOYER, WHETHER WRITTEN OR ORAL, TO BECOME AN EMPLOYEE.

(6) "QUALIFIED TESTING PROGRAM" MEANS A PROGRAM TO TEST FOR THE PRESENCE OF CONTROLLED SUBSTANCES THAT MEETS THE CRITERIA SET FORTH IN [SECTIONS 3 AND 4].

(7) "SAMPLE" MEANS, IN THE CASE OF DRUG TESTING, A URINE SPECIMEN AND, IN THE CASE OF ALCOHOL TESTING, A BLOOD, BREATH, OR URINE SPECIMEN.

NEW SECTION. SECTION 3. QUALIFIED TESTING PROGRAM. A QUALIFIED TESTING PROGRAM MUST MEET AND BE CONDUCTED ACCORDING TO THE FOLLOWING CRITERIA:

(1) TESTING MUST BE CONDUCTED ACCORDING TO THE TERMS OF WRITTEN POLICIES AND PROCEDURES THAT MUST BE ADOPTED BY THE EMPLOYER AND BE AVAILABLE FOR REVIEW BY ALL EMPLOYEES AND PROSPECTIVE EMPLOYEES 60 DAYS PRIOR TO IMPLEMENTATION. THE

POLICIES AND PROCEDURES MUST SET FORTH, AT A MINIMUM:

(A) A DESCRIPTION OF THE APPLICABLE LEGAL SANCTIONS UNDER FEDERAL, STATE, AND LOCAL LAW FOR THE UNLAWFUL MANUFACTURE, DISTRIBUTION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE;

(B) THE EMPLOYER'S PROPOSAL FOR EDUCATING OR PROVIDING INFORMATION TO EMPLOYEES ON THE HEALTH RISKS ASSOCIATED WITH THE USE OF CONTROLLED SUBSTANCES;

(C) THE EMPLOYER'S STANDARDS OF CONDUCT THAT REGULATE THE USE OF CONTROLLED SUBSTANCES BY EMPLOYEES;

(D) A DESCRIPTION OF AVAILABLE EMPLOYEE ASSISTANCE PROGRAMS, INCLUDING DRUG AND ALCOHOL COUNSELING, TREATMENT, OR REHABILITATION PROGRAMS THAT ARE AVAILABLE TO EMPLOYEES;

(E) A DESCRIPTION OF THE SANCTIONS THAT THE EMPLOYER MAY IMPOSE ON AN EMPLOYEE IF THE EMPLOYEE IS FOUND TO HAVE VIOLATED THE STANDARDS OF CONDUCT REFERRED TO IN SUBSECTION (1)(C) OR IF THE EMPLOYEE IS FOUND TO TEST POSITIVE FOR THE PRESENCE OF A CONTROLLED SUBSTANCE;

(F) A STATEMENT THAT EMPLOYEES MAY BE TESTED AS PROVIDED IN [SECTION 1(1)(A)(III)], INCLUDING A DISCUSSION OF THE CIRCUMSTANCES THAT MAY TRIGGER AN IMMEDIATE TEST;

(G) A LIST OF THE CONTROLLED SUBSTANCES FOR WHICH THE EMPLOYER INTENDS TO TEST;

(H) A DETAILED DESCRIPTION OF THE PROCEDURES THAT WILL BE FOLLOWED TO CONDUCT THE TESTING PROGRAM, INCLUDING THE

1 RESOLUTION OF A DISPUTE CONCERNING TEST RESULTS;
 2 (I) A PROVISION THAT ALL INFORMATION, INTERVIEWS,
 3 REPORTS, STATEMENTS, MEMORANDA, AND TEST RESULTS ARE
 4 CONFIDENTIAL COMMUNICATIONS THAT WILL NOT BE DISCLOSED TO
 5 ANYONE EXCEPT:
 6 (I) THE TESTED EMPLOYEE OR HIS AGENT;
 7 (II) EMPLOYEES OR AGENTS OF THE EMPLOYER WHO ARE
 8 SPECIFICALLY AUTHORIZED BY THE TESTED EMPLOYEE TO RECEIVE
 9 THE EMPLOYEE'S TEST RESULTS; OR
 10 (III) IN A PROCEEDING RELATED TO A LEGAL ACTION ARISING
 11 OUT OF THE EMPLOYER'S IMPLEMENTATION OF 39-2-304 AND
 12 [SECTIONS 2 THROUGH 6] OR INQUIRIES RELATING TO A WORKPLACE
 13 ACCIDENT INVOLVING DEATH, PHYSICAL INJURY, OR PROPERTY
 14 DAMAGE IN EXCESS OF \$5,000 WHEN THERE IS INDIVIDUAL
 15 PARTICULARIZED SUSPICION THAT THE TESTED EMPLOYEE MAY HAVE
 16 CAUSED OR CONTRIBUTED TO THE ACCIDENT; AND
 17 (J) A PROVISION THAT INFORMATION OBTAINED THROUGH DRUG
 18 TESTING THAT IS UNRELATED TO DRUG USE MUST BE HELD IN STRICT
 19 CONFIDENTIALITY BY THE MEDICAL REVIEW OFFICER AND MAY NOT BE
 20 RELEASED TO THE EMPLOYER.
 21 (2) IN ADDITION TO IMPOSING APPROPRIATE SANCTIONS ON
 22 EMPLOYEES FOR VIOLATIONS OF THE EMPLOYER'S STANDARDS OF
 23 CONDUCT REFERRED TO IN SUBSECTION (1)(C), THE EMPLOYER MAY
 24 REQUIRE AN AFFECTED EMPLOYEE TO PARTICIPATE IN AN
 25 APPROPRIATE DRUG REHABILITATION PROGRAM AS A CONDITION OF

1 CONTINUED EMPLOYMENT. THE EMPLOYER MAY SUBJECT THE EMPLOYEE
 2 TO PERIODIC RETESTING AS A CONDITION OF THE REHABILITATION
 3 PROGRAM.
 4 (3) TESTING MUST BE AT THE EMPLOYER'S EXPENSE, AND ALL
 5 EMPLOYEES MUST BE COMPENSATED AT THEIR REGULAR RATE,
 6 INCLUDING BENEFITS, FOR TIME ATTRIBUTABLE TO THE TESTING
 7 PROGRAM.
 8 (4) SAMPLE COLLECTION MUST BE PERFORMED IN A MANNER
 9 DESIGNED TO PROTECT THE PRIVACY OF THE EMPLOYEE, USING WHEN
 10 PRACTICABLE SCREENS OR STALLS.
 11 (5) SAMPLES MUST BE HANDLED UNDER STRICT FORENSIC
 12 CHAIN-OF-CUSTODY PROCEDURES. THESE PROCEDURES SHOULD REQUIRE
 13 THAT THE SAMPLE BE COLLECTED, STORED, AND TRANSPORTED IN A
 14 MANNER THAT WILL DOCUMENT AND PRESERVE THE IDENTITY OF EACH
 15 SAMPLE AND PREVENT THE ADULTERATION, CONTAMINATION, OR
 16 ERRONEOUS IDENTIFICATION OF TEST RESULTS.
 17 (6) ONCE SAMPLES ARE OBTAINED, TESTING OF SAMPLES MUST
 18 BE PERFORMED ACCORDING TO SCIENTIFICALLY ACCEPTED ANALYTICAL
 19 PROCEDURES BY A QUALIFIED LABORATORY CERTIFIED BY THE
 20 NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. DEPARTMENT OF
 21 HEALTH AND HUMAN SERVICES, AND MUST INCLUDE AN INITIAL TEST
 22 AND A CONFIRMATORY TEST CONDUCTED BY THE SAME LABORATORY, AS
 23 FOLLOWS:
 24 (A) (I) THE INITIAL TEST MUST USE AN IMMUNOASSAY THAT
 25 MEETS THE REQUIREMENTS OF THE U.S. FOOD AND DRUG

1 ADMINISTRATION FOR COMMERCIAL DISTRIBUTION. WHEN SCREENING
 2 SPECIMENS TO DETERMINE WHETHER THEY ARE NEGATIVE, THE
 3 INITIAL CUTOFF LEVELS MAY NOT BE LESS THAN THOSE PROVIDED IN
 4 THE NIDA GUIDELINES.

5 (II) ALL SPECIMENS IDENTIFIED AS POSITIVE ON THE INITIAL
 6 TEST MUST BE CONFIRMED USING GAS CHROMATOGRAPHY/MASS
 7 SPECTROMETRY (GC/MS) TECHNIQUES AT THE CUTOFF VALUES AT OR
 8 ABOVE THOSE LISTED IN THE NIDA GUIDELINES FOR CONFIRMATORY
 9 TESTS. ALL CONFIRMATIONS MUST BE BY QUANTITATIVE ANALYSIS.
 10 CONCENTRATIONS THAT EXCEED THE LINEAR REGION OF THE STANDARD
 11 CURVE MUST BE DOCUMENTED IN THE LABORATORY RECORD AS
 12 "GREATER THAN HIGHEST STANDARD CURVE VALUE". THE
 13 CONFIRMATORY CUTOFF LEVELS MAY NOT BE LESS THAN THE NIDA
 14 GUIDELINES FOR CONFIRMATORY TESTS.

15 (B) THE LABORATORY SHALL REPORT AS NEGATIVE ALL
 16 SPECIMENS THAT ARE NEGATIVE ON THE INITIAL TEST OR NEGATIVE
 17 ON THE CONFIRMATORY TEST. ONLY SPECIMENS CONFIRMED POSITIVE
 18 MAY BE REPORTED POSITIVE FOR A SPECIFIC DRUG.

19 (C) DRUG TESTING LABORATORIES SHALL RETAIN ALL
 20 SPECIMENS CONFIRMED POSITIVE AND PLACE THEM IN PROPERLY
 21 SECURE LONG-TERM FROZEN STORAGE FOR A MINIMUM OF 1 YEAR.

22 (D) FEDERAL PREEMPTION OF ANY PART OF THIS SECTION IS
 23 STRICTLY LIMITED TO THE SPECIFIC SCOPE OF THE FEDERAL
 24 PREEMPTION.

25 (7) (A) EACH EMPLOYER SHALL DESIGNATE OR APPOINT A

1 MEDICAL REVIEW OFFICER. IF AN EMPLOYER DOES NOT HAVE A
 2 QUALIFIED INDIVIDUAL ON STAFF TO SERVE AS MEDICAL REVIEW
 3 OFFICER, THE EMPLOYER MAY CONTRACT FOR THE PROVISION OF
 4 MEDICAL REVIEW OFFICER SERVICES AS PART OF ITS ANTIDRUG
 5 PROGRAM.

6 (B) THE MEDICAL REVIEW OFFICER MUST BE A LICENSED
 7 PHYSICIAN WITH KNOWLEDGE OF DRUG ABUSE DISORDERS.

8 (C) THE MEDICAL REVIEW OFFICER SHALL PERFORM THE
 9 FOLLOWING FUNCTIONS FOR THE EMPLOYER:

10 (I) REVIEW THE RESULTS OF DRUG TESTING BEFORE THEY ARE
 11 REPORTED TO THE EMPLOYER;

12 (II) VERIFY THAT THE LABORATORY REPORT AND ASSESSMENT
 13 ARE CORRECT;

14 (III) REVIEW AND INTERPRET EACH CONFIRMED POSITIVE TEST
 15 RESULT AS FOLLOWS TO DETERMINE IF THERE IS AN ALTERNATIVE
 16 MEDICAL EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT:

17 (A) CONDUCT A MEDICAL INTERVIEW WITH THE INDIVIDUAL
 18 TESTED;

19 (B) REVIEW THE INDIVIDUAL'S MEDICAL HISTORY AND ANY
 20 RELEVANT BIOMEDICAL FACTORS;

21 (C) REVIEW ALL MEDICAL RECORDS MADE AVAILABLE BY THE
 22 INDIVIDUAL TESTED TO DETERMINE IF A CONFIRMED POSITIVE TEST
 23 RESULTED FROM LEGALLY PRESCRIBED MEDICATION;

24 (D) IF NECESSARY, REQUIRE THAT THE ORIGINAL SPECIMEN BE
 25 REANALYZED TO DETERMINE THE ACCURACY OF THE REPORTED TEST

1 RESULT;
 2 (IV) DETERMINE WHETHER AND WHEN AN EMPLOYEE INVOLVED IN
 3 A REHABILITATION PROGRAM MAY BE RETURNED TO DUTY; AND
 4 (V) ENSURE THAT AN EMPLOYEE HAS BEEN DRUG TESTED IN
 5 ACCORDANCE WITH THIS SECTION BEFORE THE EMPLOYEE RETURNS TO
 6 DUTY AFTER REHABILITATION, AND THEREAFTER, AS CONSIDERED
 7 NECESSARY BY THE MEDICAL REVIEW OFFICER AND THE INDIVIDUAL'S
 8 REHABILITATION PLAN.
 9 (D) THE FOLLOWING RULES GOVERN MEDICAL REVIEW OFFICER
 10 DETERMINATIONS:
 11 (I) IF THE MEDICAL REVIEW OFFICER DETERMINES, AFTER
 12 APPROPRIATE REVIEW, THAT THERE IS A LEGITIMATE MEDICAL
 13 EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT OTHER
 14 THAN THE UNAUTHORIZED USE OF A PROHIBITED DRUG, THE MEDICAL
 15 REVIEW OFFICER MAY NOT TAKE FURTHER ACTION EXCEPT TO REPORT
 16 THE RESULTS AS NEGATIVE TO THE EMPLOYER.
 17 (II) IF THE MEDICAL REVIEW OFFICER DETERMINES, AFTER
 18 APPROPRIATE REVIEW, THAT THERE IS NO LEGITIMATE MEDICAL
 19 EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT OTHER
 20 THAN THE UNAUTHORIZED USE OF A PROHIBITED DRUG, THE MEDICAL
 21 REVIEW OFFICER SHALL REFER THE INDIVIDUAL TESTED TO AN
 22 EMPLOYEE ASSISTANCE PROGRAM OR TO A PERSONNEL OFFICER OR
 23 ADMINISTRATIVE OFFICER FOR FURTHER PROCEEDINGS IN ACCORDANCE
 24 WITH THE EMPLOYER'S ANTIDRUG PROGRAM.
 25 (III) BASED ON A REVIEW OF LABORATORY INSPECTION

1 REPORTS, QUALITY ASSURANCE AND QUALITY CONTROL DATA, AND
 2 OTHER DRUG TEST RESULTS, THE MEDICAL REVIEW OFFICER MAY
 3 CONCLUDE THAT A PARTICULAR DRUG TEST RESULT IS
 4 SCIENTIFICALLY INSUFFICIENT FOR FURTHER ACTION. UNDER THESE
 5 CIRCUMSTANCES, THE MEDICAL REVIEW OFFICER SHALL CONCLUDE
 6 THAT THE TEST IS NEGATIVE FOR THE PRESENCE OF A PROHIBITED
 7 DRUG OR DRUG METABOLITE IN AN INDIVIDUAL'S SYSTEM AND SHALL,
 8 IN A MANNER THAT DOES NOT REVEAL THE IDENTITY OF THE PERSON
 9 TESTED, NOTIFY THE EMPLOYER OF THE NATURE OF THE SCIENTIFIC
 10 INSUFFICIENCY.

11 NEW SECTION. SECTION 4. CONFIDENTIALITY OF RESULTS.
 12 (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ALL INFORMATION,
 13 INTERVIEWS, REPORTS, STATEMENTS, MEMORANDA, OR TEST RESULTS
 14 RECEIVED BY THE EMPLOYER THROUGH A QUALIFIED DRUG TESTING
 15 PROGRAM ARE CONFIDENTIAL COMMUNICATIONS AND MAY NOT BE USED
 16 OR RECEIVED IN EVIDENCE, OBTAINED IN DISCOVERY, OR DISCLOSED
 17 IN ANY PUBLIC OR PRIVATE PROCEEDING.
 18 (2) THE MATERIAL TREATED AS CONFIDENTIAL IN SUBSECTION
 19 (1) MAY BE USED IN A PROCEEDING RELATED TO:
 20 (A) LEGAL ACTION ARISING OUT OF THE EMPLOYER'S
 21 IMPLEMENTATION OF 39-2-304 AND [SECTIONS 2 THROUGH 6]; OR
 22 (B) INQUIRIES RELATING TO A WORKPLACE ACCIDENT
 23 INVOLVING DEATH, PHYSICAL INJURY, OR PROPERTY DAMAGE IN
 24 EXCESS OF \$5,000 WHEN THERE IS INDIVIDUAL PARTICULARIZED
 25 SUSPICION THAT THE TESTED EMPLOYEE MAY HAVE CAUSED OR

1 CONTRIBUTED TO THE ACCIDENT.

2 NEW SECTION. SECTION 5. ALCOHOL TESTING. NOTHING IN
3 39-2-304 AND [SECTIONS 2 THROUGH 6] REQUIRING THE USE OF
4 LABORATORIES CERTIFIED BY THE NATIONAL INSTITUTE ON DRUG
5 ABUSE (NIDA) FOR DRUG TESTING MAY BE CONSTRUED TO REQUIRE
6 NIDA-CERTIFIED LABORATORIES FOR ALCOHOL TESTING OR TO
7 PROHIBIT OR PREJUDICE THE USE OF BLOOD, BREATH, OR URINE
8 TESTING FOR ALCOHOL PURSUANT TO THE METHODS, PROCEDURES, OR
9 GUIDELINES OUTLINED IN TITLE 61, CHAPTER 8, PARTS 4 THROUGH
10 8.

11 NEW SECTION. SECTION 6. PENALTY. A PERSON WHO VIOLATES
12 39-2-304 AND [SECTIONS 2 THROUGH 6] IS GUILTY OF A
13 MISDEMEANOR.

14 NEW SECTION. SECTION 7. SEVERABILITY. IF A PART OF
15 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
16 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
17 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
18 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
19 SEVERABLE FROM THE INVALID APPLICATIONS.

-End-