

SENATE BILL NO. 338

INTRODUCED BY BOYLAN, RAPP-SVRCEK, VINCENT, STRIZICH,  
PINSONEAULT, BRADLEY

IN THE SENATE

FEBRUARY 14, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FEBRUARY 21, 1987                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1987                   PRINTING REPORT.

FEBRUARY 24, 1987                   SECOND READING, DO PASS.

FEBRUARY 25, 1987                   ENGROSSING REPORT.

                                      THIRD READING, PASSED.  
                                      AYES, 50; NOES, 0.

                                      TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987                       INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 24, 1987                       COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1987                       SECOND READING, CONCURRED IN.

MARCH 30, 1987                       THIRD READING, CONCURRED IN.  
                                      AYES, 91; NOES, 7.

                                      RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987                       RECEIVED FROM HOUSE.

                                      SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 4, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. 338  
 2 INTRODUCED BY *Boyer* *Rep. David Vincent* *Scott*  
 3 *in conference*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TESTING  
 5 OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES;  
 6 AND AMENDING SECTION 39-2-304, MCA."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

10 "39-2-304. Lie detector tests prohibited -- exception  
 11 regulation of blood and urine testing. (1) No person, firm,  
 12 corporation, or other business entity or representative  
 13 thereof shall require:

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

17 (b) as a condition for employment, any person to  
 18 submit to a blood or urine test; and

19 (c) as a condition for continuation of employment, any  
 20 employee to submit to a blood or urine test unless:

21 (i) the employer has demonstrable evidence that the  
 22 employee's faculties are impaired on the job as a result of  
 23 illegal drug use;

24 (ii) the employee's impairment presents a clear and  
 25 present danger to his own safety or the safety of others;

1 (iii) the employer gives the employee the opportunity,  
 2 at the employer's expense, to obtain a confirmatory test of  
 3 the blood or urine by an independent laboratory; and

4 (iv) the employee is given the opportunity to rebut or  
 5 explain the results of either test or both tests.

6 (2) Adverse action may not be taken against an  
 7 employee tested under subsection (1)(c) if the employee  
 8 presents a reasonable explanation or medical opinion  
 9 indicating that the results of the test were not caused by  
 10 illegal drug use.

11 (3) A person who violates this section is guilty of a  
 12 misdemeanor.

13 ~~(2) This section shall not apply to public law~~  
 14 ~~enforcement agencies."~~

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

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14 thereof shall require:

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16 employment, any person to take a polygraph test or any form  
17 of a mechanical lie detector test;

18 (b) as a condition for employment, any person to  
19 submit to a blood or urine test, EXCEPT FOR EMPLOYMENT IN  
20 HAZARDOUS WORK ENVIRONMENTS OR IN JOBS THAT INVOLVE  
21 SECURITY, PUBLIC SAFETY, OR FIDUCIARY RESPONSIBILITY; and

22 (c) as a condition for continuation of employment, any  
23 employee to submit to a blood or urine test unless:

24 ~~{i}~~ the employer ~~has demonstrable evidence~~ BELIEVES  
25 that the employee's faculties are impaired on the job as a

1 result of illegal drug user.

2 ~~{ii} the employee's impairment presents a clear and~~  
3 ~~present danger to his own safety or the safety of others;~~

4 (2) PRIOR TO THE ADMINISTRATION OF A DRUG TEST, THE  
5 PERSON, FIRM, CORPORATION, OR OTHER BUSINESS ENTITY OR ITS  
6 REPRESENTATIVE SHALL ADOPT A WRITTEN DRUG TESTING PROCEDURE  
7 AND MAKE IT AVAILABLE TO ALL PERSONS SUBJECT TO DRUG  
8 TESTING. A DRUG TESTING PROCEDURE MUST PROVIDE FOR THE:

9 (A) COLLECTION OF A BLOOD OR URINE SPECIMEN IN A  
10 MANNER THAT MINIMIZES INVASION OF PERSONAL PRIVACY WHILE  
11 ENSURING THE INTEGRITY OF THE COLLECTION PROCESS;

12 (B) COLLECTION OF A QUANTITY OF SPECIMEN SUFFICIENT TO  
13 ENSURE THE ADMINISTRATION OF SEVERAL TESTS;

14 (C) COLLECTION, STORAGE, AND TRANSPORTATION OF THE  
15 SPECIMEN IN TAMPER-PROOF CONTAINERS;

16 (D) ADOPTION OF CHAIN-OF-CUSTODY DOCUMENTATION  
17 PROCEDURES IDENTIFYING HOW THE SPECIMEN WAS HANDLED AND  
18 TESTED;

19 (E) VERIFICATION OF DRUG TEST RESULTS BY TWO OR MORE  
20 DIFFERENT TESTING PROCEDURES BEFORE JUDGING A DRUG TEST  
21 POSITIVE; AND

22 (F) PROHIBITION OF THE RELEASE OF DRUG TEST RESULTS,  
23 EXCEPT AS AUTHORIZED BY THE PERSON TESTED OR AS REQUIRED BY  
24 A COURT OF LAW.

25 ~~{iii} the employer gives the employee~~ (3) THE PERSON,

1 FIRM, CORPORATION, OR OTHER BUSINESS ENTITY OR ITS  
2 REPRESENTATIVE SHALL PROVIDE A COPY OF DRUG TEST RESULTS TO  
3 THE PERSON TESTED AND PROVIDE HIM the opportunity, at the  
4 employer's expense OF THE PERSON REQUIRING THE TEST, to  
5 obtain a confirmatory test of the blood or urine by an  
6 independent laboratory;--and SELECTED BY THE PERSON TESTED.

7 ~~(iv)-the-employee-is~~ THE PERSON TESTED MUST BE given  
8 the opportunity to rebut or explain the results of either  
9 test or both tests.

10 ~~(2)(4)~~ Adverse action may not be taken against an A  
11 employee PERSON tested under subsection SUBSECTIONS (1)(B),  
12 (1)(C), AND (1)(E) if the employee PERSON TESTED presents a  
13 reasonable explanation or medical opinion indicating that  
14 the results of the test were not caused by illegal drug use.

15 ~~(3)(5)~~ A person who violates this section is guilty of  
16 a misdemeanor.

17 ~~(2)--This--section--shall--not--apply--to--public--law~~  
18 enforcement-agencies."

-End-

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that the employee's faculties are impaired on the job as a

result of illegal drug use;

~~(ii) the employee's impairment presents a clear and  
present danger to his own safety or the safety of others;~~

(2) PRIOR TO THE ADMINISTRATION OF A DRUG TEST, THE  
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EXCEPT AS AUTHORIZED BY THE PERSON TESTED OR AS REQUIRED BY  
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~~(iii) the employer gives the employee (3) THE PERSON,~~

1 FIRM, CORPORATION, OR OTHER BUSINESS ENTITY OR ITS  
2 REPRESENTATIVE SHALL PROVIDE A COPY OF DRUG TEST RESULTS TO  
3 THE PERSON TESTED AND PROVIDE HIM the opportunity, at the  
4 employer's expense OF THE PERSON REQUIRING THE TEST, to  
5 obtain a confirmatory test of the blood or urine by an  
6 independent laboratory;--and SELECTED BY THE PERSON TESTED.

7 ~~{iv}~~the-employee-is THE PERSON TESTED MUST BE given  
8 the opportunity to rebut or explain the results of either  
9 test or both tests.

10 ~~{2}~~(4) Adverse action may not be taken against an A  
11 employee PERSON tested under subsection SUBSECTIONS (1)(B),  
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13 reasonable explanation or medical opinion indicating that  
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15 ~~{3}~~(5) A person who violates this section is guilty of  
16 a misdemeanor.

17 ~~{2}~~--This--section--shall--not--apply--to--public---law  
18 enforcement-agencies."

-End-

1 EXCEPT AS AUTHORIZED BY THE PERSON TESTED OR AS REQUIRED BY  
2 A COURT OF LAW.

3 ~~{iii}-the-employer-gives-the-employee~~

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 employer's expense OF THE PERSON  
8 REQUIRING THE TEST, to obtain a confirmatory test of the  
9 blood or urine by an independent laboratory; and SELECTED BY  
10 THE PERSON TESTED.

11 ~~{iv}-the-employee-is~~ THE PERSON TESTED MUST BE given  
12 the opportunity to rebut or explain the results of either  
13 test or both tests.

14 ~~{2}{4}~~ Adverse action may not be taken against an A  
15 employee PERSON tested under subsection SUBSECTIONS (1)(B),  
16 (1)(C), (2), AND ~~{1}{E}~~ {3} if the employee PERSON TESTED  
17 presents a reasonable explanation or medical opinion  
18 indicating that the results of the test were not caused by  
19 ALCOHOL CONSUMPTION OR illegal drug use.

20 ~~{3}{5}~~ A person who violates this section is guilty of  
21 a misdemeanor.

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~~(ii) the employee's impairment presents a clear and  
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STANDING COMMITTEE REPORT

HOUSE

MARCH 24,

87

19

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 338

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

Chairman

1. Page 1, line 20.

Strike: "THAT INVOLVE"

Insert: "the primary responsibility of which is"

2. Page 1, line 24.

Strike: "BELIEVES"

Insert: "has reason to believe"

3. Page 2, line 1 and line 14 of page 3.

Following: "result of" on page 2, line 1 and following "caused by" on line 14 of page 3

Insert: "alcohol consumption or"

4. Page 2, line 4 and line 2 of page 3.

Following: "DRUG" on each line

Insert: "or alcohol"

5. Page 2, lines 6 through 8, 19, 20, and 22.

Strike: "DRUG"

6. Page 3, line 12.

Following: "(1)(c),"

Insert: "(2),"

Strike: "(1)(E)"

Insert: "(3)"

~~XXXXXXXXXXXX~~

THIRD

BLUE

reading copy ( \_\_\_\_\_ )  
color

REP. RAPP-SVRCEK WILL CARRY THE BILL!

SW