

SENATE BILL 373

Introduced by Pinsoneault, et al.

2/08	Introduced
2/08	Referred to Public Health, Welfare & Safety
2/13	Rereferred to Judiciary
2/15	Hearing
2/17	Committee Report--Bill Not Passed as Amended
2/17	Rereferred to Judiciary Died in Committee

1 *Senate* BILL NO. 373
2 INTRODUCED BY *Russell*
3 *Grubb* *HARP*
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REGULATION
5 OF BLOOD AND URINE TESTING OF EMPLOYEES AND PROSPECTIVE
6 EMPLOYEES; 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 -- regulation
11 of blood and urine testing. (1) No Except as provided in
12 subsection (2), a person, firm, corporation, or other
13 business entity or representative thereof shall may not
14 require:

15 (a) as a condition for employment or continuation of
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 submit
19 to a blood or urine test, except for employment in hazardous
20 work environments or in jobs the primary responsibility of
21 which is security, public safety, or fiduciary
22 responsibility; and

23 (c) as a condition for continuation of employment, any
24 employee to submit to a blood or urine test unless the
25 employer has reason to believe that the employee's faculties

1 are impaired on the job as a result of alcohol consumption
2 or illegal drug use.

3 (2) Job applicants and employees may be required to
4 submit to blood and urine testing by employers that meet all
5 the following requirements:

6 (a) The employer maintains an organized program to
7 maintain an alcohol-free and drug-free work environment for
8 the benefit of all its employees and customers. The program
9 recognizes that the use of nonmedically prescribed
10 controlled substances is potentially damaging to the
11 employees and should be remedied. The employer's written
12 policies state that one of the purposes of its drug and
13 alcohol program is to prevent and eliminate the abusive use
14 of such substances by its employees.

15 (b) The employer provides to its employees a bona fide
16 drug and alcohol assistance program that is paid for by the
17 employer or is available to the extent provided by a policy
18 of health insurance or provided under contract by a
19 hospital.

20 (c) The employer allows job applicants who test
21 positive to blood or urine tests for alcohol or drugs to
22 reapply for a job after a reasonable period of time has
23 elapsed, and if retested, the original positive test results
24 may not be considered as part of the new job selection
25 process.

1 ~~(2)~~(3) Prior to the administration of a drug or alcohol
2 test, the person, firm, corporation, or other business
3 entity or its representative shall adopt a written testing
4 procedure and make it available to all persons subject to
5 testing. A testing procedure must provide for the:

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

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

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

13 (d) adoption of chain-of-custody documentation
14 procedures identifying how the specimen was handled and
15 tested;

16 (e) verification of test results by two or more
17 different testing procedures before judging a test positive;
18 and

19 (f) prohibition of the release of test results, except
20 as authorized by the person tested or as required by a court
21 of law.

22 ~~(3)~~(4) The Upon request by the person tested, the
23 person, firm, corporation, or other business entity or its
24 representative shall provide a copy of drug or alcohol test
25 results to the person tested and provide him the

1 opportunity, at the expense of the person requiring the
2 test, to obtain a confirmatory test of the blood or urine by
3 an independent laboratory selected by the person tested.
4 The person tested must be given the opportunity to rebut or
5 explain the results of either test or both tests.

6 ~~(4)~~(5) Adverse action may not be taken against a person
7 tested under subsections (1)(b), (1)(c), (2), (3), and ~~(3)~~
8 or (4) if the person tested presents a reasonable
9 explanation or medical opinion indicating that the results
10 of the test were not caused by alcohol consumption or
11 illegal drug use.

12 ~~(5)~~(6) A person who violates this section is guilty of
13 a misdemeanor."

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