

SENATE BILL NO. 201

INTRODUCED BY

*Summitt Hollen Holden Benedict
Ahner Anderson Foster*

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING DRUG OR ALCOHOL TESTING AS A CONDITION OF CONTINUED EMPLOYMENT WHEN AN EMPLOYEE HAS BEEN INVOLVED IN A WORK-RELATED ACCIDENT THAT CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN EXCESS OF \$500; 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) A person, firm, corporation, or other business entity or representative thereof 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;

(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 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, except when:

(i) ~~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;

(ii) an employee has been involved in a work-related accident that causes death or personal injury or property damage in excess of \$500; or

(iii) ~~except that~~ drug testing ~~may be~~ is being conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

1 (2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other
2 business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR,
3 part 40, and make it available to all persons subject to testing.

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

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

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

13 (6) As used in this section:

14 (a) "commercial motor carrier" has the meaning provided in 69-12-101; and

15 (b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this
16 state."

17

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

19

-END-

SENATE BILL NO. 201

INTRODUCED BY

Summitt Holland Holden Benedict
Ahner Anderson Foster

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING DRUG OR ALCOHOL TESTING AS A CONDITION OF CONTINUED EMPLOYMENT WHEN AN EMPLOYEE HAS BEEN INVOLVED IN A WORK-RELATED ACCIDENT THAT CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN EXCESS OF \$500; 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) A person, firm, corporation, or other business entity or representative thereof 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;

(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 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, except when:

(i) ~~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;

(ii) an employee has been involved in a work-related accident that causes death or personal injury or property damage in excess of \$500; or

(iii) ~~except that~~ drug testing ~~may be~~ is being conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

1 (2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other
2 business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR,
3 part 40, and make it available to all persons subject to testing.

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

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

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

13 (6) As used in this section:

14 (a) "commercial motor carrier" has the meaning provided in 69-12-101; and

15 (b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this
16 state."

17

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

19

-END-

1 SENATE BILL NO. 201

2 INTRODUCED BY BURNETT, HIBBARD, HOLDEN, BENEDICT, AHNER, ANDERSON, FOSTER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING DRUG OR ALCOHOL TESTING AS A CONDITION
5 OF CONTINUED EMPLOYMENT WHEN AN ~~EMPLOYEE HAS BEEN INVOLVED IN~~ EMPLOYEE'S ACTS OR
6 FAILURE TO ACT IS THE DIRECT OR PROXIMATE CAUSE OF A WORK-RELATED ACCIDENT THAT
7 CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN EXCESS OF ~~\$500~~ \$2,500;
8 PROVIDING FOR REMOVAL OF REQUIRED TEST FROM EMPLOYEE'S WORK RECORD; AMENDING
9 SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12
13 **Section 1.** Section 39-2-304, MCA, is amended to read:14 **"39-2-304. Lie detector tests prohibited -- regulation of blood and urine testing.** (1) A person, firm,
15 corporation, or other business entity or representative thereof may not require:16 (a) as a condition for employment or continuation of employment, any person to take a polygraph
17 test or any form of a mechanical lie detector test;18 (b) as a condition for employment, any person to submit to a blood or urine test, except for
19 employment in:

20 (i) hazardous work environments;

21 (ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

22 (iii) jobs involving the intrastate commercial transportation of persons or commodities by a
23 commercial motor carrier or an employee subject to driver qualification requirements; and24 (c) as a condition for continuation of employment, any employee to submit to a blood or urine test,
25 except when:26 (i) ~~unless~~ the employer has reason to believe that the employee's faculties are impaired on the job
27 as a result of alcohol consumption or illegal drug use;28 (ii) ~~an employee has been involved in~~ EMPLOYEE'S ACTS OR FAILURE TO ACT IS THE DIRECT
29 OR PROXIMATE CAUSE OF a work-related accident that causes death or personal injury or property
30 damage in excess of ~~\$500~~ \$2,500; or




HOUSE STANDING COMMITTEE REPORT

March 6, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 201** (third reading copy -- blue) be concurred in as amended.

Signed:


Bruce Simon, Chair

Carried by: Rep. Hibbard

And, that such amendments read:

1. Title, lines 5 and 6.

Following: "~~IN~~"

Strike: remainder of line 5 through "OF" on line 6

Insert: "EMPLOYEE HAS BEEN INVOLVED IN"

2. Title, line 7.

Page 1, line 30.

Strike: "\$2,500"

Insert: "\$1,000"

3. Page 1, lines 28 and 29.

Following: "~~in~~"

Strike: remainder of line 28 through "OF" on line 29

Insert: "employee has been involved in"

-END-


Committee Vote:

Yes 18, No 0.

SB 201

HOUSE



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 201
Representative Kottel

March 9, 1995 12:47 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 201 (third reading copy -- blue).

Signed: *John Kottel*
Representative Kottel

And, that such amendments to Senate Bill 201 read as follows:

1. Page 2, line 11.

Following: "tests."

Insert: "In the case of an accident referred to in subsection (1)(c)(ii), the tests may not be delayed, but the person, firm, corporation, or other business entity or its representative shall, as soon as possible, make a written finding as to whether the act or failure to act is believed to be a direct or proximate cause of the accident and shall provide the tested employee with a copy of the finding."

-END-

ADOPT

82-4

SB 201

HOUSE

REJECT

551247CW.Hbk

1 SENATE BILL NO. 201

2 INTRODUCED BY BURNETT, HIBBARD, HOLDEN, BENEDICT, AHNER, ANDERSON, FOSTER

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING DRUG OR ALCOHOL TESTING AS A CONDITION
 5 OF CONTINUED EMPLOYMENT WHEN AN ~~EMPLOYEE HAS BEEN INVOLVED IN EMPLOYEE'S ACTS OR~~
 6 ~~FAILURE TO ACT IS THE DIRECT OR PROXIMATE CAUSE OF~~ EMPLOYEE HAS BEEN INVOLVED IN A
 7 WORK-RELATED ACCIDENT THAT CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN
 8 EXCESS OF ~~\$500~~ ~~\$2,500~~ \$1,000; PROVIDING FOR REMOVAL OF REQUIRED TEST FROM EMPLOYEE'S
 9 WORK RECORD; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 10 DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13
14 **Section 1.** Section 39-2-304, MCA, is amended to read:15 **"39-2-304. Lie detector tests prohibited -- regulation of blood and urine testing.** (1) A person, firm,
16 corporation, or other business entity or representative thereof may not require:17 (a) as a condition for employment or continuation of employment, any person to take a polygraph
18 test or any form of a mechanical lie detector test;19 (b) as a condition for employment, any person to submit to a blood or urine test, except for
20 employment in:

21 (i) hazardous work environments;

22 (ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

23 (iii) jobs involving the intrastate commercial transportation of persons or commodities by a
24 commercial motor carrier or an employee subject to driver qualification requirements; and25 (c) as a condition for continuation of employment, any employee to submit to a blood or urine test,
26 except when:27 (i) ~~unless~~ the employer has reason to believe that the employee's faculties are impaired on the job
28 as a result of alcohol consumption or illegal drug use;29 (ii) ~~an employee has been involved in EMPLOYEE'S ACTS OR FAILURE TO ACT IS THE DIRECT~~
30 ~~OR PROXIMATE CAUSE OF EMPLOYEE HAS BEEN INVOLVED IN~~ a work-related accident that causes death

1 or personal injury or property damage in excess of \$500 \$2,500 \$1,000; or

2 (iii) except that drug testing may be is being conducted at an employee's regular biennial physical
3 for employment in jobs involving the intrastate commercial motor carrier transportation of persons or
4 commodities.

5 (2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other
6 business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR,
7 part 40, and make it available to all persons subject to testing.

8 (3) The person, firm, corporation, or other business entity or its representative shall provide a copy
9 of drug or alcohol test results to the person tested and provide ~~him~~ the person with the opportunity, at the
10 expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an
11 independent laboratory selected by the person tested. The person tested must be given the opportunity to
12 rebut or explain the results of either test or both tests. IN THE CASE OF AN ACCIDENT REFERRED TO IN
13 SUBSECTION (1)(C)(II), THE TESTS MAY NOT BE DELAYED, BUT THE PERSON, FIRM, CORPORATION,
14 OR OTHER BUSINESS ENTITY OR ITS REPRESENTATIVE SHALL, AS SOON AS POSSIBLE, MAKE A
15 WRITTEN FINDING AS TO WHETHER THE ACT OR FAILURE TO ACT IS BELIEVED TO BE A DIRECT OR
16 PROXIMATE CAUSE OF THE ACCIDENT AND SHALL PROVIDE THE TESTED EMPLOYEE WITH A COPY
17 OF THE FINDING. THE WRITTEN RECORD OF A BLOOD OR URINE TEST OF AN EMPLOYEE WHO IS
18 REQUIRED TO SUBMIT TO TESTING PURSUANT TO SUBSECTION (1)(C)(II) AND WHOSE ACTS OR
19 FAILURE TO ACT IS SUBSEQUENTLY FOUND NOT TO BE THE DIRECT OR PROXIMATE CAUSE OF A
20 WORK-RELATED ACCIDENT MUST BE REMOVED FROM THE EMPLOYEE'S WORK RECORD AND BE
21 DESTROYED.

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

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

26 (6) As used in this section:

27 (a) "commercial motor carrier" has the meaning provided in 69-12-101; and

28 (b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this
29 state."
30

Conference Committee
on SB 201
Report No.1', April 4, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 201, met and considered:
House floor amendments to third reading copy (blue)

We recommend that SB 201 (reference copy - salmon) be amended as follows:

1. Title, line 5.
Following: "WHEN"
Insert: "THE EMPLOYER HAS REASON TO BELIEVE THAT"

2. Title, line 6.
Following: "EMPLOYEE"
Strike: "HAS BEEN INVOLVED IN"
Insert: "MAY HAVE CONTRIBUTED TO"

3. Title, line 8.
Strike: "\$1,000"
Insert: "\$1,500"

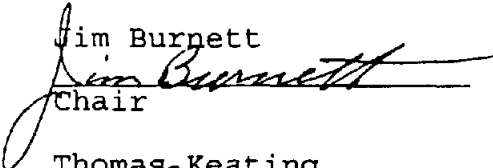
4. Page 1, lines 29 and 30.
Following: "(ii)" on line 29
Insert: "the employer has reason to believe that"
Following: "EMPLOYEE" on line 30
Strike: "HAS BEEN INVOLVED IN"
Insert: "may have contributed to"

5. Page 2, line 1.
Strike: "\$1,000"
Insert: "\$1,500"

And that this Conference Committee report be adopted.

For the Senate:

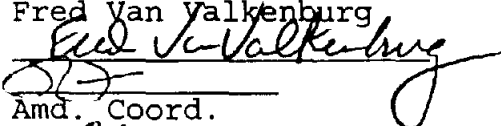
Jim Burnett


Chair

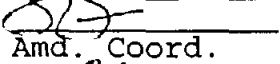
Thomas Keating



Fred Van Valkenburg



Amd. Coord.


SA
Sec. of Senate

ADOPT

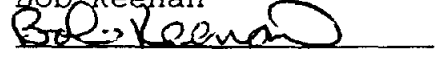
REJECT

For the House:

Norman Mills


Chair

Bob Keenan



Vicki Cocchiarella



SB 201
CCR #1

771017CC.SRF

1 SENATE BILL NO. 201

2 INTRODUCED BY BURNETT, HIBBARD, HOLDEN, BENEDICT, AHNER, ANDERSON, FOSTER

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING DRUG OR ALCOHOL TESTING AS A CONDITION
 5 OF CONTINUED EMPLOYMENT WHEN THE EMPLOYER HAS REASON TO BELIEVE THAT AN EMPLOYEE
 6 HAS BEEN INVOLVED IN EMPLOYEE'S ACTS OR FAILURE TO ACT IS THE DIRECT OR PROXIMATE CAUSE
 7 OF EMPLOYEE HAS BEEN INVOLVED IN MAY HAVE CONTRIBUTED TO A WORK-RELATED ACCIDENT
 8 THAT CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN EXCESS OF ~~\$500~~ ~~\$2,500~~
 9 ~~\$1,000~~ \$1,500; PROVIDING FOR REMOVAL OF REQUIRED TEST FROM EMPLOYEE'S WORK RECORD;
 10 AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 11

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

13
14 **Section 1.** Section 39-2-304, MCA, is amended to read:15 **"39-2-304. Lie detector tests prohibited -- regulation of blood and urine testing.** (1) A person, firm,
16 corporation, or other business entity or representative thereof may not require:17 (a) as a condition for employment or continuation of employment, any person to take a polygraph
18 test or any form of a mechanical lie detector test;19 (b) as a condition for employment, any person to submit to a blood or urine test, except for
20 employment in:

21 (i) hazardous work environments;

22 (ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

23 (iii) jobs involving the intrastate commercial transportation of persons or commodities by a
24 commercial motor carrier or an employee subject to driver qualification requirements; and25 (c) as a condition for continuation of employment, any employee to submit to a blood or urine test,
26 except when:27 (i) ~~unless~~ the employer has reason to believe that the employee's faculties are impaired on the job
28 as a result of alcohol consumption or illegal drug use;29 (ii) THE EMPLOYER HAS REASON TO BELIEVE THAT an employee has been involved in
30 EMPLOYEE'S ACTS OR FAILURE TO ACT IS THE DIRECT OR PROXIMATE CAUSE OF EMPLOYEE HAS

1 BEEN INVOLVED IN MAY HAVE CONTRIBUTED TO a work-related accident that causes death or personal
 2 injury or property damage in excess of \$500 \$2,500 \$1,000 \$1,500; or

3 (iii) ~~except that drug testing may be~~ is being conducted at an employee's regular biennial physical
 4 for employment in jobs involving the intrastate commercial motor carrier transportation of persons or
 5 commodities.

6 (2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other
 7 business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR,
 8 part 40, and make it available to all persons subject to testing.

9 (3) The person, firm, corporation, or other business entity or its representative shall provide a copy
 10 of drug or alcohol test results to the person tested and ~~provide him~~ the person with the opportunity, at the
 11 expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an
 12 independent laboratory selected by the person tested. The person tested must be given the opportunity to
 13 rebut or explain the results of either test or both tests. IN THE CASE OF AN ACCIDENT REFERRED TO IN
 14 SUBSECTION (1)(C)(II), THE TESTS MAY NOT BE DELAYED, BUT THE PERSON, FIRM, CORPORATION,
 15 OR OTHER BUSINESS ENTITY OR ITS REPRESENTATIVE SHALL, AS SOON AS POSSIBLE, MAKE A
 16 WRITTEN FINDING AS TO WHETHER THE ACT OR FAILURE TO ACT IS BELIEVED TO BE A DIRECT OR
 17 PROXIMATE CAUSE OF THE ACCIDENT AND SHALL PROVIDE THE TESTED EMPLOYEE WITH A COPY
 18 OF THE FINDING. THE WRITTEN RECORD OF A BLOOD OR URINE TEST OF AN EMPLOYEE WHO IS
 19 REQUIRED TO SUBMIT TO TESTING PURSUANT TO SUBSECTION (1)(C)(II) AND WHOSE ACTS OR
 20 FAILURE TO ACT IS SUBSEQUENTLY FOUND NOT TO BE THE DIRECT OR PROXIMATE CAUSE OF A
 21 WORK-RELATED ACCIDENT MUST BE REMOVED FROM THE EMPLOYEE'S WORK RECORD AND BE
 22 DESTROYED.

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

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

27 (6) As used in this section:

28 (a) "commercial motor carrier" has the meaning provided in 69-12-101; and

29 (b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this
 30 state."

