



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1241

H.P. 932

House of Representatives, March 22, 2011

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**An Act To Remove the Requirement That Employers Offer  
Substance Abuse Services to Employees Who Fail Drug Tests**

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative BICKFORD of Auburn.  
Cosponsored by Senator ROSEN of Hancock and  
Representatives: BEAULIEU of Auburn, BURNS of Whiting, ESPLING of New Gloucester,  
GIFFORD of Lincoln, MALABY of Hancock, TUTTLE of Sanford, WEAVER of York,  
WINTLE of Garland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §682, sub-§6**, as enacted by PL 1989, c. 536, §§1 and 2 and  
3 affected by c. 604, §§2 and 3, is amended to read:

4 **6. Probable cause.** "Probable cause" means a reasonable ground for belief in the  
5 existence of facts that induce a person to believe that an employee may be under the  
6 influence of a substance of abuse, ~~provided~~ except that the existence of probable cause  
7 may not be based exclusively on any of the following:

8 A. Information received from an anonymous informant; or

9 B. Any information tending to indicate that an employee may have possessed or  
10 used a substance of abuse off duty, except when the employee is observed possessing  
11 or ingesting any substance of abuse either while on the employer's premises or in the  
12 proximity of the employer's premises during or immediately before the employee's  
13 working hours; ~~or~~.

14 ~~C. A single work-related accident.~~

15 **Sec. 2. 26 MRSA §684, sub-§2-A** is enacted to read:

16 **2-A. Accidents.** An employer may require, request or suggest that an employee  
17 submit to a substance abuse test if the employee causes a work-related accident in which  
18 property damage, bodily injury or loss of life occurs or if the employee receives a citation  
19 or summons as a result of the accident from a law enforcement officer.

20 **Sec. 3. 26 MRSA §684, sub-§3, ¶B**, as amended by PL 2003, c. 547, §2, is  
21 further amended to read:

22 B. The employee works in a position the nature of which would create an  
23 unreasonable threat to the health or safety of the public or the employee's coworkers  
24 if the employee were under the influence of a substance of abuse. ~~It is the intent of~~  
25 ~~the Legislature that the requirements of this paragraph be narrowly construed; or~~

26 **Sec. 4. 26 MRSA §684, sub-§3-A** is enacted to read:

27 **3-A. Random or arbitrary testing of supervisory personnel and employer.** An  
28 employer that requires, requests or suggests that an employee submit to random or  
29 arbitrary substance abuse testing under subsection 3 must also require, request or suggest  
30 that supervisory personnel submit to a substance abuse test on a random or arbitrary  
31 basis, and similarly submit to a substance abuse test on a random or arbitrary basis. The  
32 substance abuse testing program for supervisory personnel and the employer must be  
33 established in compliance with this subchapter and, to the extent possible, consistent with  
34 the written policy required by section 683, subsection 2, except that an employer must  
35 consult with the employer's supervisory personnel in the development of a substance  
36 abuse testing policy under this subsection. The employer must adhere to the same written  
37 policy for random or arbitrary testing that the Department of Labor approves for the  
38 employer's supervisory personnel.

1           **Sec. 5. 26 MRSA §684, sub-§4**, as enacted by PL 1989, c. 536, §§1 and 2 and  
2 affected by c. 604, §§2 and 3, is amended to read:

3           **4. Testing while undergoing rehabilitation or treatment.** While the employee is  
4 participating in a substance abuse rehabilitation program either as a result of voluntary  
5 contact with or mandatory referral to the employer's employee assistance program ~~or after~~  
6 ~~a confirmed positive result as provided in section 685, subsection 2, paragraphs B and C,~~  
7 substance abuse testing may be conducted by the rehabilitation or treatment provider as  
8 required, requested or suggested by that provider.

9           A. Substance abuse testing conducted as part of such a rehabilitation or treatment  
10 program is not subject to the provisions of this subchapter regulating substance abuse  
11 testing.

12           B. An employer may not require, request or suggest that any substance abuse test be  
13 administered to any employee while the employee is undergoing such rehabilitation  
14 or treatment, except as provided in subsections 2 and 3.

15           C. The results of any substance abuse test administered to an employee as part of  
16 such a rehabilitation or treatment program may not be released to the employer.

17           **Sec. 6. 26 MRSA §684, sub-§5**, as enacted by PL 1989, c. 832, §11, is amended  
18 to read:

19           **5. Testing upon return to work.** If an employee who has received a confirmed  
20 positive result returns to work with the same employer, ~~whether or not the employee has~~  
21 ~~participated in a rehabilitation program under section 685, subsection 2,~~ the employer  
22 may require, request or suggest that the employee submit to a subsequent substance abuse  
23 test anytime between 90 days and one year after the date of the employee's prior test. A  
24 test may be administered under this subsection in addition to any tests conducted under  
25 subsections 2 and 3. An employer may require, request or suggest that an employee  
26 submit to a substance abuse test during the first 90 days after the date of the employee's  
27 prior test only as provided in subsections 2 and 3.

28           **Sec. 7. 26 MRSA §685, sub-§2, ¶A**, as amended by PL 1995, c. 324, §7, is  
29 further amended to read:

30           A. Subject to any limitation of the Maine Human Rights Act or any other state law or  
31 federal law, an employer may use a confirmed positive result or refusal to submit to a  
32 test as a factor in any of the following decisions:

33                   (1) Refusal to hire an applicant for employment or refusal to place an applicant  
34 on a roster of eligibility;

35                   (2) Discharge of an employee;

36                   (3) Discipline of an employee; ~~or~~

37                   (4) Change in the employee's work assignment; and

38                   (5) Provision of an opportunity for an employee to participate for up to 6 months  
39 in a rehabilitation program.



1 of a substance of abuse would place the health and safety of the public or coworkers  
2 under unreasonable threat.