

HOUSE BILL No. 5920

June 9, 1992, Introduced by Reps. DeLange, Jamian, Bartnik, McBryde, Bodem, Gnodtke, London, Fitzgerald, Middaugh, Jaye, Robertson, McNutt, Rocca, Bender, Johnson, Nye, Horton, Oxender, Bandstra, Brackenridge, Dolan, Bankes, Middleton, Gernaat, Gilmer, Shugars, Willis Bullard, Martin, Van Singel, Dalman, Munsell, Sikkema, Walberg and Porreca and referred to the Committee on Judiciary.

A bill to regulate the administration of drug detection tests for employees and applicants for employment; to prescribe the powers and duties of employers, employees, and certain other persons with respect to drug detection tests; to limit the causes of action that may be brought against certain employers with respect to drug detection tests; and to provide for limited confidentiality of information obtained through drug detection tests.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "workplace drug testing act".

3 Sec. 2. As used in this act:

4 (a) "Controlled substance" means that term as defined in
5 section 7104 of the public health code, Act No. 368 of the Public

1 Acts of 1978, being section 333.7104 of the Michigan Compiled
2 Laws.

3 (b) "Drug" means that term as defined in section 7105 of Act
4 No. 368 of the Public Acts of 1978, being section 333.7105 of the
5 Michigan Compiled Laws. As used in this definition, "drug"
6 includes alcohol.

7 (c) "Drug detection test" or "test" means the taking or
8 analysis, or both, of a sample of bodily fluid or other human
9 specimen for the purpose of inferring the presence in the sample
10 of trace elements of a drug or controlled substance.

11 (d) "Employee" means an individual who works for another
12 person for compensation.

13 (e) "Employer" means a person who employs 1 or more persons
14 or who accepts applications for employment. Employer includes an
15 agent of an employer.

16 (f) "Managerial employee" means an employee who formulates
17 and effectuates management policies by expressing and making
18 operative the decisions of his or her employer, and who has dis-
19 cretion in the performance of his or her job independent of his
20 or her employer's established policy.

21 (g) "Sample" means urine, blood, breath, saliva, or hair.

22 Sec. 3. If an employer and the employer's managerial
23 employees submit to a drug detection test on a periodic basis,
24 the employer may require, as a condition of employment or of con-
25 tinued employment, that employees or applicants for employment,
26 or both, submit to a drug detection test in accordance with this
27 act.

1 Sec. 4. (1) A drug detection test shall be conducted only
2 within the terms of a written drug policy that has been distrib-
3 uted to each employee and is available for review by each appli-
4 cant for employment.

5 (2) Within the terms of the written drug policy, an employer
6 may require the collection and testing of samples from employees
7 and applicants for employment and may require presentation of
8 reliable personal identification to the individual collecting the
9 samples. The employer may designate the type of sample to be
10 used in the drug detection test.

11 (3) A drug detection test may be conducted for any of the
12 following purposes:

13 (a) Investigation of possible individual employee
14 impairment.

15 (b) Investigation of an accident in the workplace or an
16 incident of workplace theft.

17 (c) Maintenance of safety for employees or the general
18 public.

19 (d) Maintenance of productivity, quality of products or
20 services, or security of property or information.

21 (4) An employer shall pay all costs involved in a drug
22 detection test required by the employer, including the cost of
23 transportation if the test of an employee is conducted at a loca-
24 tion other than the workplace.

25 (5) An employer's use and disposition of all drug detection
26 test results are subject to this act.

1 Sec. 5. A drug detection test shall be conducted in
2 accordance with all of the following conditions:

3 (a) Each sample shall be collected under reasonable and san-
4 itary conditions.

5 (b) Each sample shall be collected during or immediately
6 after the regular workday of an employee. If a sample is col-
7 lected after the workday of an employee, the time during which
8 the test is conducted shall be considered work time for purposes
9 of compensation and benefits for an employee.

10 (c) A sample shall be collected and tested with due regard
11 to the privacy of the individual being tested and in a manner
12 reasonably calculated to prevent a substitution or interference
13 of any kind.

14 (d) Each sample shall be documented, and the documentation
15 procedures shall include both of the following:

16 (i) Proper labeling so as to reasonably preclude the proba-
17 bility of erroneous identification of a test result.

18 (ii) An opportunity for an employee or applicant for employ-
19 ment to provide notice to the individual analyzing the sample of
20 any information that may be considered relevant to the test,
21 including identification of currently or recently used prescrip-
22 tion or nonprescription drugs or other relevant medical
23 information.

24 (e) Sample collection, storage, and transportation to the
25 place of testing shall be performed so as to reasonably preclude
26 the probability of sample contamination or adulteration.

1 (f) A drug detection test shall comply with scientifically
2 accepted analytical methods and procedures. Testing shall
3 include verification or confirmation of a positive test result by
4 gas chromatography, gas chromatography-mass spectroscopy, or
5 other comparably reliable analytical method before the result of
6 a test may be used as a basis for any action by an employer.

7 Sec. 6. Upon receipt of a confirmed positive drug detection
8 test result that indicates a violation of an employer's written
9 policy, or upon the refusal of an employee or applicant for
10 employment to provide a sample, an employer may use that test or
11 refusal as the basis for disciplinary or rehabilitative actions
12 that may include the following:

13 (a) Refusal to hire an applicant for employment.

14 (b) A requirement that the employee enroll in an
15 employer-approved rehabilitation, treatment, or counseling pro-
16 gram that may include additional drug detection tests as a condi-
17 tion of continued employment.

18 (c) Suspension of the employee with or without pay for a
19 period of time.

20 (d) Termination of employment.

21 (e) Other disciplinary measures in conformance with the
22 employer's usual procedures, including any measure specified in a
23 collective bargaining agreement.

24 Sec. 7. A cause of action does not arise in favor of an
25 individual against an employer who has established a drug detec-
26 tion test program in accordance with this act for either of the
27 following reasons:

1 (a) Failure to test for, or if tested for, failure to
2 detect, drugs or controlled substances or a specific drug or con-
3 trolled substance, disease, infectious agent, virus, or other
4 physical abnormality, problem, or defect of any kind.

5 (b) Termination or suspension of a drug detection test pro-
6 gram or policy.

7 Sec. 8. (1) A cause of action does not arise against an
8 employer who has established a drug detection test program in
9 accordance with this act unless the employer's action was based
10 upon a false test result.

11 (2) In an action against an employer where it is alleged
12 that an employer's action was based upon a false test result:

13 (a) There is a rebuttable presumption that the test result
14 was valid if the employer complied with this act.

15 (b) The employer is not liable for monetary damages if the
16 employer's reliance on a false test result was reasonable and in
17 good faith.

18 Sec. 9. A cause of action for defamation of character,
19 libel, slander, or damage to reputation does not arise in favor
20 of an individual against an employer who has established a drug
21 detection test program in accordance with this act unless all of
22 the following conditions apply:

23 (a) The results of that test were disclosed to an individual
24 other than the employer, an authorized employee or agent of the
25 employer, the tested employee, or the tested job applicant.

26 (b) The information disclosed was a false test result.

1 (c) The false test result was disclosed with malice.

2 (d) All elements of an action for defamation of character,
3 libel, slander, or damage to reputation, as applicable, as estab-
4 lished by statute or common law, are satisfied.

5 Sec. 10. A cause of action does not arise in favor of an
6 individual against an employer who does not establish a drug
7 detection test program.

8 Sec. 11. All information, interviews, reports, statements,
9 memoranda, or test results received by the employer through a
10 drug detection test program are confidential communications and
11 may not be used or received into evidence, obtained in discovery,
12 or disclosed in any public or private proceeding, except in a
13 proceeding related to an action taken by an employer under this
14 act.

15 Sec. 12. This act does not supersede a provision of a col-
16 lective bargaining agreement that is in effect and that overlaps
17 with this act.

18 Sec. 13. This act shall take effect January 1, 1993.