

HOUSE BILL No. 4460

March 16, 1989, Introduced by Rep. Krause and referred to the Committee on Public Health.

A bill to regulate employer drug screening policies and drug detection tests for certain employees and applicants for employment; to prescribe the rights and duties of employers with respect to drug detection tests; and to prescribe remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

4 (a) "Controlled substance" means a controlled substance as
5 defined in section 7104 of the public health code, Act No. 368 of
6 the Public Acts of 1978, being section 333.7104 of the Michigan
7 Compiled Laws.

8 (b) "Drug" means a drug as defined in section 7105 of Act
9 No. 368 of the Public Acts of 1978, being section 333.7105 of the
10 Michigan Compiled Laws.

1 (c) "Drug detection test" means the taking or examining, or
2 both, of bodily fluids or other specimens derived from the human
3 body for the purpose of inferring or identifying the presence in
4 an individual of a drug or controlled substance.

5 (d) "Employee" means an individual who works for another
6 person for compensation.

7 (e) "Employer" means an individual, firm, corporation, part-
8 nership, or other legal entity that employs 1 or more persons or
9 who accepts applications for employment. Employer includes an
10 agent of an employer.

11 (f) "Person" means an individual.

12 (g) "Return to service employee" means an employee who
13 returns to work after a layoff or leave of absence.

14 (h) "Sensitivity or cutoff level" means the least amount of
15 a drug or controlled substance that can be detected by a particu-
16 lar drug detection test.

17 Sec. 3. (1) An employer may require, as a condition of
18 employment or as a condition of continued employment, that
19 employees, return to service employees, or applicants for employ-
20 ment submit to a drug detection test.

21 (2) An employer, as part of any drug detection testing pro-
22 gram for employees, return to service employees, or applicants
23 for employment, shall do all of the following:

24 (a) Provide advance notice to applicants and return to serv-
25 ice employees before a drug detection test is administered and,
26 not less than 60 days before a drug detection testing program

1 begins, inform present employees of the employer's drug detection
2 testing policies in writing, by posted notice or otherwise.

3 (b) Utilize only professionally developed and administered
4 drug detection tests.

5 (c) For purposes of performing the actual drug detection
6 test, employ a clinical laboratory licensed under article 17 of
7 the public health code, Act No. 368 of the Public Acts of 1978,
8 being sections 333.20101 to 333.22181 of the Michigan Compiled
9 Laws, or a clinical laboratory described in section 20507 of Act
10 No. 368 of the Public Acts of 1978, being section 333.20507 of
11 the Michigan Compiled Laws, or a clinical laboratory licensed by
12 another state.

13 (d) Pay the costs of all drug detection tests required by
14 the employer.

15 (e) Require a sample which tests positive for the presence
16 of a drug or controlled substance to be saved by the clinical
17 laboratory for a period of not less than 90 days.

18 (f) Require confirmation of an initial, positive screening
19 drug detection test result by a subsequent gas
20 chromatography-mass spectrometry drug detection test.

21 Sec. 4. An employee, return to service employee, or appli-
22 cant for employment whose drug detection test results are con-
23 firmed as positive under section 3(2)(f) shall not, by virtue of
24 those results alone, be considered a person with a handicap as
25 defined under section 103 of the Michigan handicappers' civil
26 rights act, Act No. 220 of the Public Acts of 1976, being section
27 37.1103 of the Michigan Compiled Laws.

1 Sec. 5. (1) In conducting a drug detection test, an
2 employer shall ensure, to the extent feasible, that the drug
3 detection test only measures and that the employer's records only
4 reflect information regarding drugs or controlled substances in
5 the body. This subsection shall not apply if the drug detection
6 test is administered in conjunction with a general physical
7 examination.

8 (2) An employee, return to service employee, or applicant
9 for employment has the right to rebut or explain the results and
10 analysis of a drug detection test and the documentation of the
11 results and analysis of a drug detection test. The determination
12 as to whether or not rebuttal or explanation under this subsec-
13 tion is satisfactory shall be made solely by the employer.

14 (3) An employer who conducts a drug detection test shall
15 provide the employee, return to service employee, or applicant
16 for employment with both of the following:

17 (a) A copy of any positive drug detection test results and
18 all reports or analyses that are prepared as a result of the pos-
19 itive test results, upon the written request of the employee,
20 return to service employee, or applicant for employment.

21 (b) The name of the clinical laboratory used, types of drug
22 detection tests conducted for both initial screening and confir-
23 mation, and the sensitivity or cutoff level of each drug detec-
24 tion test.

25 Sec. 6. This act does not prohibit an employer from con-
26 ducting medical screening or tests required by any state or
27 federal statute, rule, or regulation for the purpose of

1 monitoring exposure to toxic or other unhealthy substances in the
2 workplace or performance of job responsibilities. A medical
3 screening or test described in this section shall be limited to
4 the specific substances expressly identified in the statute,
5 rule, or regulation, unless the written consent of the employee
6 to test for other substances is obtained.

7 Sec. 7. This act does not restrict an employer's ability to
8 prohibit the use of alcoholic beverages during work hours or to
9 discipline employees for the use of alcoholic beverages during
10 work hours.

11 Sec. 8. (1) The results of a drug detection test shall be
12 confidential and not revealed except as follows:

13 (a) In a proceeding or action regarding the relationship
14 between the employer and the employee, return to service employ-
15 ee, or applicant for employment, as applicable.

16 (b) To the person performing the actual chemical analysis
17 involved in the drug detection test.

18 (c) To the employee, return to service employee, or appli-
19 cant for employment who is subjected to a drug detection test.

20 (d) To persons having a need to know in making, supporting,
21 reviewing, or challenging decisions based on the results.

22 (2) Drug detection test specimens and drug detection test
23 results shall be encoded to protect the identity of the person
24 supplying the specimen to be tested.

25 (3) An employer shall maintain adequate records of all drug
26 detection tests conducted in order to establish a chain of
27 custody.

1 Sec. 9. A person alleging a violation of this act may bring
2 an action for injunctive relief or damages, or both.