To: Public Health and Welfare

MISSISSIPPI LEGISLATURE REGULAR SESSION 2002
By: Representative Moody

HOUSE BILL NO. 905

AN ACT TO AMEND SECTIONS 71-7-1, 71-7-3, 71-7-9 AND 71-7-11, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS AND CLARIFY STATUTES RELATING TO DRUG AND ALCOHOL TESTING LABORATORIES IN CONFORMITY WITH THE FEDERAL CLINICAL LABORATORY IMPROVEMENT ACT AND REGULATIONS; TO REPEAL SECTION 71-7-17, MISSISSIPPI CODE OF 1972, WHICH PROVIDES CERTAIN STANDARDS FOR LABORATORIES CONDUCTING DRUG AND ALCOHOL CONFIRMATION TESTS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 71-7-1, Mississippi Code of 1972, is amended as follows:

71-7-1. As used in this chapter, the following terms shall have the meaning ascribed to them herein unless the context requires otherwise:

(a) "Confirmation test" means a drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous drug and alcohol test.

(b) "Drug" means an illegal drug, or a prescription or nonprescription medication.

(c) "Alcohol" means ethyl alcohol.

(d) "Drug and alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's body fluids.

(e) "Employee" means any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state.

(f) "Employee assistance program" means a program provided by an employer offering assessment, short-term counseling...
and referral services to employees, including drug, alcohol and
mental health programs.

(g) "Employer" means any individual, organization or
government body, subdivision or agency thereof, including
partnership, association, trustee, estate, corporation,
joint-stock company, insurance company or legal representative,
whether domestic or foreign, or the receiver, trustee in
bankruptcy, trustee or successor thereof, and any common carrier
by mail, motor, water, air or express company doing business in or
operating within this state, which has one or more employees
within this state, or which has offered or may offer employment to
one or more individuals in this state.

(h) "Illegal drug" means any substance, other than
alcohol, having psychological and/or physiological effects on a
human being and that is not a prescription or nonprescription
medication, including controlled dangerous substances and
controlled substance analogs or volatile substances which produce
the psychological and/or physiological effects of a controlled
dangerous substance through deliberate introduction into the body.

(i) "Initial test" means an initial drug test to
determine the presence or absence of drugs or their metabolites in
specimens.

(j) "Laboratory" means any laboratory that is currently
certified or accredited by the federal Clinical Laboratory
Improvement Act, as amended, by the federal Substance Abuse and
Mental Health Services Administration, by the College of American
Pathologists, or that has been deemed by the State Board of Health
to have been certified or accredited by an appropriate federal
agency, organization or another state.

(k) "Neutral selection basis" means a mechanism for
selecting employees for drug tests that: (i) results in an equal
probability that any employee from a group of employees subject to
the selection mechanism will be selected, and (ii) does not give
an employer discretion to waive the selection of any employee
selected under the mechanism.

(l) "Prescription or nonprescription medication" means
a drug prescribed for use by a duly licensed physician, dentist or
other medical practitioner licensed to issue prescriptions or a
drug that is authorized pursuant to federal or state law for
general distribution and use without a prescription in the
treatment of human diseases, ailments or injuries.

(m) "Reasonable suspicion drug and alcohol testing"
means drug and alcohol testing based on a belief that an employee
is using or has used drugs in violation of the employer's policy
drawn from specific objective and articulable facts and reasonable
inferences drawn from those facts in light of experience, and may
be based upon, among other things:

(i) Observable phenomena, such as direct
observation of drug use and/or the physical symptoms or
manifestations of being under the influence of a drug;

(ii) Abnormal conduct or erratic behavior while at
work, absenteeism, tardiness or deterioration in work performance;

(iii) A report of drug use provided by reliable
and credible sources and which has been independently
corroborated;

(iv) Evidence that an individual has tampered with
a drug and alcohol test during his employment with the current
employer;

(v) Information that an employee has caused or
contributed to an accident while at work;

(vi) Evidence that an employee is involved in the
use, possession, sale, solicitation or transfer of drugs while
working or while on the employer's premises or operating the
employer's vehicle, machinery or equipment.
(n) "Specimen" means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

SECTION 2. Section 71-7-3, Mississippi Code of 1972, is amended as follows:

71-7-3. (1) For the purposes of this chapter, the election of a public or private employer to conduct alcohol testing is voluntary. If an employer elects voluntarily to follow this chapter, the employer must follow all the terms of this chapter without exception.

(2) Any employee who may be required by an employer to submit to a drug and alcohol test shall be provided, at least thirty (30) days prior to the implementation of a drug and alcohol testing program, a written policy statement from the employer which contains:

(a) A general statement of the employer's policy on employee drug use which shall include identifying both the grounds on which an employee may be required to submit to a drug and alcohol test and the actions the employer may take against an employee on the basis of a positive confirmed drug and alcohol test result, or other violation of the employer's drug use policy;

(b) A statement advising the employee of the existence of this chapter;

(c) A general statement concerning confidentiality;

(d) Procedures for how employees can confidentially report the use of prescription or nonprescription medications prior to being tested;

(e) Circumstances under which drug and alcohol testing may occur, and a description of which positions will be subject to testing on a reasonable suspicion, neutral selection or other basis;

(f) The consequences of refusing to submit to a drug and alcohol test;
(g) Information on opportunities for assessment and rehabilitation if an employee has a positive confirmed test result and the employer determines that discipline or discharge are not necessary or appropriate;

(h) A statement that an employee who receives a positive confirmed drug and alcohol test result may contest the accuracy of that result or explain it;

(i) A list of all drugs for which the employer might test. Each drug shall be described by its brand name, common name, or its chemical name;

(j) A statement regarding any applicable collective bargaining agreement or contract.

(3) An employer shall post the notice in an appropriate and conspicuous location on the employer's premises and copies of the policy shall be made available for inspection during regular business hours by employees in the employer's personnel office or other suitable locations.

(4) The State Board of Health shall develop standard language for those sections of drug and alcohol testing notices described in paragraphs (b), (c) and (d) of subsection (1) of this section.

(5) An employer who conducts job applicant drug and alcohol testing shall notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs or their metabolites.

(6) An employee or job applicant required to submit to a drug and alcohol test may be requested by an employer to sign a statement indicating that he has read and understands the employer's drug and alcohol testing policy and/or notice. An employee's or job applicant's refusal to sign such a statement shall not invalidate the results of any drug and alcohol test, or bar the employer from administering the drug and alcohol test or
from taking action consistent with the terms of an applicable
collective bargaining agreement or the employer's drug and alcohol
testing policy, or from refusing to hire the job applicant.

(7) If the employer is a government employer, the decision
of whether to require employees and/or applicants for employment
to submit to drug and alcohol tests in accordance with the
provisions of this chapter shall be made by the executive head or
governing body of the department, agency, institution or political
subdivision authorized to employ. However, in the case of any
elected public official of the State of Mississippi or of any
department, agency, institution or political subdivision thereof,
the decision of whether any person who such official is authorized
to employ, or any person who any governing board, commission or
body upon which or as a member of which such public official has
been elected by the people to serve is authorized to employ, shall
be required to submit to a drug and alcohol test in accordance
with the provisions of this chapter shall be made:

(a) By the governing board, commission or body upon
which or as a member of which such public official has been
elected to serve; or

(b) If the elected public official has not been elected
to serve upon or as a member of a governing board, commission or
body, by the elected official himself.

SECTION 3. Section 71-7-9, Mississippi Code of 1972, is
amended as follows:

71-7-9. (1) The collection of specimens shall be performed
under reasonable and sanitary conditions. Individual dignity
shall be preserved to the extent practicable.

(2) Specimens shall be collected in a manner reasonably
calculated to prevent substitution of specimens and interference
with the collection or testing of specimens.

(3) Specimen collection shall be documented, and the
documentation procedures shall include:
(a) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and
(b) An opportunity for the employee or applicant to provide any information that he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug and alcohol test, but shall be taken into account in interpreting any positive confirmed results.

(4) Specimen collection, storage and transportation to the testing site will be performed in a manner which will reasonably preclude specimen contamination or adulteration, and specimen testing for drugs shall conform to scientifically accepted analytical methods and procedures.

(5) Each confirmation test conducted under this chapter, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory.

(6) A specimen for a drug and alcohol test may be taken or collected by any of the following persons:
(a) A physician, a registered nurse or a licensed practical nurse;
(b) A qualified person employed by a laboratory;
or
(c) Any person deemed qualified by the State Board of Health.

(7) A person who collects or takes a specimen for a drug and alcohol test conducted pursuant to this chapter shall collect an amount sufficient for at least two (2) drug and alcohol tests as defined by federal statutes and regulations.

(8) Any drug and alcohol testing conducted or requested by an employer shall occur during or immediately after the regular
work period of current employees, and shall be deemed to be
performed during work time for purposes of determining
compensation and benefits for current employees.

(9) Every specimen that produces a positive confirmed result
shall be preserved in a frozen state by the *** laboratory that
conducts the confirmation test for a period of ninety (90) days
from the time the results of the positive confirmed test are
mailed or otherwise delivered to the employer. During this
period, the employee who has provided the specimen shall be
permitted by the employer to have a portion of the specimen
retested, at the employee's expense, at a *** laboratory chosen
by the employee. The *** laboratory that has performed the test
for the employer shall be responsible for the transfer of the
portion of the specimen to be retested, and for the integrity of
the chain of custody during such transfer.

(10) Within five (5) working days after receipt of a
positive confirmed test result report from the *** laboratory
that conducted the test, an employer shall, in writing, inform an
employee of such positive test result and inform the employee in
writing of the consequences of such a report and the options
available to him.

(11) An employee may request and receive from the employer a
copy of the test result report.

(12) Within ten (10) working days after receiving notice of
a positive confirmed test result, the employee may submit
information to an employer explaining the test results, and why
the results do not constitute a violation of the employer's
policy. If an employee's explanation of the positive test results
is not satisfactory to the employer, a written explanation
submitted by the employer as to why the employee's explanation is
unsatisfactory, along with the report of positive results, shall
be made part of the employee's medical and personnel records.
(13) Except as otherwise provided in Section 71-7-13(10), an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test.

(14) An employer may not discharge, discipline, discriminate against or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to this chapter unless the employee had an affirmative obligation to provide such information before, upon or after hire.

(15) An employer who performs on-site drug and alcohol tests or specimen collection shall establish chain-of-custody procedures to ensure proper record keeping, handling, labeling and identification of all specimens to be tested.

(16) The employer shall pay the costs of all drug and alcohol tests to which he requires, or requests, an employee or job applicant to submit. The employee or job applicant shall pay the costs of any additional drug and alcohol tests requested by the employee or job applicant.

SECTION 4. Section 71-7-11, Mississippi Code of 1972, is amended as follows:

71-7-11. Only *** laboratories shall conduct confirmation drug and alcohol tests. All confirmation tests shall use an alternate method of equal or greater sensitivity than that used on the initial drug and alcohol test. If an initial drug and alcohol test is negative, there shall be no confirmation drug and alcohol test.

SECTION 5. Section 71-7-17, Mississippi Code of 1972, which provides certain standards for laboratories conducting drug and alcohol confirmation tests, is repealed.

SECTION 6. This act shall take effect and be in force from and after July 1, 2002.