

By: Senator(s) Nunnelee

To: Public Health and
Welfare; Judiciary, Division
A

SENATE BILL NO. 2441
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 71-7-3, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT EMPLOYERS COMPLIANCE WITH THE DRUG AND ALCOHOL
3 TESTING STATUTES IS VOLUNTARY; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 71-7-3, Mississippi Code of 1972, is
6 amended as follows:

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

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

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

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

25 (c) A general statement concerning confidentiality;

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

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

33 (f) The consequences of refusing to submit to a drug
34 and alcohol test;

35 (g) Information on opportunities for assessment and
36 rehabilitation if an employee has a positive confirmed test result
37 and the employer determines that discipline or discharge are not
38 necessary or appropriate;

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

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

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

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

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

56 (5) An employer who conducts job applicant drug and alcohol
57 testing shall notify the applicant, in writing, upon application
58 and prior to the collection of the specimen for the drug and

59 alcohol test, that the applicant may be tested for the presence of
60 drugs or their metabolites.

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

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

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

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

91 **SECTION 2.** This act shall take effect and be in force from
92 and after July 1, 2004.