

By: Representative Moody

To: Public Health and Welfare

HOUSE BILL NO. 905

1 AN ACT TO AMEND SECTIONS 71-7-1, 71-7-3, 71-7-9 AND 71-7-11,
2 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS AND CLARIFY
3 STATUTES RELATING TO DRUG AND ALCOHOL TESTING LABORATORIES IN
4 CONFORMITY WITH THE FEDERAL CLINICAL LABORATORY IMPROVEMENT ACT
5 AND REGULATIONS; TO REPEAL SECTION 71-7-17, MISSISSIPPI CODE OF
6 1972, WHICH PROVIDES CERTAIN STANDARDS FOR LABORATORIES CONDUCTING
7 DRUG AND ALCOHOL CONFIRMATION TESTS; AND FOR RELATED PURPOSES.

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

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

11 71-7-1. As used in this chapter, the following terms shall
12 have the meaning ascribed to them herein unless the context
13 requires otherwise:

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

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

21 (c) "Alcohol" means ethyl alcohol.

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

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

28 (f) "Employee assistance program" means a program
29 provided by an employer offering assessment, short-term counseling



30 and referral services to employees, including drug, alcohol and
31 mental health programs.

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

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

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

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

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



63 an employer discretion to waive the selection of any employee
64 selected under the mechanism.

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

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

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

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

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

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

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

90 (vi) Evidence that an employee is involved in the
91 use, possession, sale, solicitation or transfer of drugs while
92 working or while on the employer's premises or operating the
93 employer's vehicle, machinery or equipment.



94 (n) "Specimen" means a tissue or product of the human
95 body chemically capable of revealing the presence of drugs in the
96 human body.

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

99 71-7-3. (1) For the purposes of this chapter, the election
100 of a public or private employer to conduct alcohol testing is
101 voluntary. If an employer elects voluntarily to follow this
102 chapter, the employer must follow all the terms of this chapter
103 without exception.

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

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

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

117 (c) A general statement concerning confidentiality;

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

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

125 (f) The consequences of refusing to submit to a drug
126 and alcohol test;



127 (g) Information on opportunities for assessment and
128 rehabilitation if an employee has a positive confirmed test result
129 and the employer determines that discipline or discharge are not
130 necessary or appropriate;

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

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

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

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

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

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

153 (6) An employee or job applicant required to submit to a
154 drug and alcohol test may be requested by an employer to sign a
155 statement indicating that he has read and understands the
156 employer's drug and alcohol testing policy and/or notice. An
157 employee's or job applicant's refusal to sign such a statement
158 shall not invalidate the results of any drug and alcohol test, or
159 bar the employer from administering the drug and alcohol test or



160 from taking action consistent with the terms of an applicable
161 collective bargaining agreement or the employer's drug and alcohol
162 testing policy, or from refusing to hire the job applicant.

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

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

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

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

185 71-7-9. (1) The collection of specimens shall be performed
186 under reasonable and sanitary conditions. Individual dignity
187 shall be preserved to the extent practicable.

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

191 (3) Specimen collection shall be documented, and the
192 documentation procedures shall include:



193 (a) Labeling of specimen containers so as to reasonably
194 preclude the likelihood of erroneous identification of test
195 results; and

196 (b) An opportunity for the employee or applicant to
197 provide any information that he considers relevant to the test,
198 including identification of currently or recently used
199 prescription or nonprescription drugs, or other relevant medical
200 information. The provision of this information shall not preclude
201 the administration of the drug and alcohol test, but shall be
202 taken into account in interpreting any positive confirmed results.

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

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

211 (6) A specimen for a drug and alcohol test may be taken or
212 collected by any of the following persons:

213 (a) A physician, a registered nurse or a licensed
214 practical nurse;

215 (b) A qualified person employed by a * * * laboratory;
216 or

217 (c) Any person deemed qualified by the State Board of
218 Health.

219 * * *

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

224 (8) Any drug and alcohol testing conducted or requested by
225 an employer shall occur during or immediately after the regular



226 work period of current employees, and shall be deemed to be
227 performed during work time for purposes of determining
228 compensation and benefits for current employees.

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

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

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

249 (12) Within ten (10) working days after receiving notice of
250 a positive confirmed test result, the employee may submit
251 information to an employer explaining the test results, and why
252 the results do not constitute a violation of the employer's
253 policy. If an employee's explanation of the positive test results
254 is not satisfactory to the employer, a written explanation
255 submitted by the employer as to why the employee's explanation is
256 unsatisfactory, along with the report of positive results, shall
257 be made a part of the employee's medical and personnel records.



258 (13) Except as otherwise provided in Section 71-7-13(10), an
259 employer may not discharge, discipline, refuse to hire,
260 discriminate against, or request or require rehabilitation of an
261 employee on the basis of a positive test result that has not been
262 verified by a confirmatory test.

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

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

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

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

279 71-7-11. Only * * * laboratories shall conduct confirmation
280 drug and alcohol tests. All confirmation tests shall use an
281 alternate method of equal or greater sensitivity than that used on
282 the initial drug and alcohol test. If an initial drug and alcohol
283 test is negative, there shall be no confirmation drug and alcohol
284 test.

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

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

