

By: Senator(s) Huggins

To: Public Health and
Welfare

SENATE BILL NO. 2085

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



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 which 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 which 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



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.



(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 shall be voluntary. If an election by the employer is made to voluntarily follow this chapter, the employer shall 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;



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 (2) 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 (3) 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 (4) 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 (5) 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



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.

(6) 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.

(10) 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 which 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 a 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 hereby repealed.

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

