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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 3791

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to labor; authorizing on-site testing for alcohol use by employees;
1.3 amending Minnesota Statutes 2006, sections 181.950, subdivisions 5, 8, 10;
1.4 181.951, subdivision 1; 181.953, subdivisions 1, 7, 9, by adding a subdivision;
1.5 181.954, subdivisions 1, 2; 181.956, subdivisions 2, 3; 181.957, subdivision 2.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 181.950, subdivision 5, is amended to read:

1.8 Subd. 5. **Drug and alcohol testing.** "Drug and alcohol testing," "drug or alcohol
1.9 testing," and "drug or alcohol test" mean analysis of a body component sample according
1.10 to the standards established under one of the programs or protocols listed in section
1.11 181.953, subdivision 1 or 3a, for the purpose of measuring the presence or absence of
1.12 drugs, alcohol, or their metabolites in the sample tested.

1.13 Sec. 2. Minnesota Statutes 2006, section 181.950, subdivision 8, is amended to read:

1.14 Subd. 8. **Initial screening test.** "Initial screening test" means a drug or alcohol test
1.15 which uses a method of analysis under one of the programs or protocols listed in section
1.16 181.953, subdivision 1 or 3a.

1.17 Sec. 3. Minnesota Statutes 2006, section 181.950, subdivision 10, is amended to read:

1.18 Subd. 10. **Positive test result.** "Positive test result" means a finding of the presence
1.19 of drugs, alcohol, or their metabolites in the sample tested in levels at or above the
1.20 threshold detection levels contained in the standards of one of the programs or protocols
1.21 listed in section 181.953, subdivision 1 or 3a.

1.22 Sec. 4. Minnesota Statutes 2006, section 181.951, subdivision 1, is amended to read:

2.1 Subdivision 1. **Limitations on testing.** (a) An employer may not request or require
2.2 an employee or job applicant to undergo drug and alcohol testing except as authorized
2.3 in this section.

2.4 (b) An employer may not request or require an employee or job applicant to undergo
2.5 drug or alcohol testing unless the testing is done pursuant to a written drug and alcohol
2.6 testing policy that contains the minimum information required in section 181.952; and, is
2.7 conducted by a testing laboratory which participates in one of the programs listed in section
2.8 181.953, subdivision 1, or is conducted according to section 181.953, subdivision 3a.

2.9 (c) An employer may not request or require an employee or job applicant to undergo
2.10 drug and alcohol testing on an arbitrary and capricious basis.

2.11 Sec. 5. Minnesota Statutes 2006, section 181.953, subdivision 1, is amended to read:

2.12 Subdivision 1. **Use of licensed, accredited, or certified laboratory required.** (a)
2.13 Except as provided in subdivision 3a, an employer who requests or requires an employee
2.14 or job applicant to undergo drug or alcohol testing shall use the services of a testing
2.15 laboratory that meets one of the following criteria for drug testing:

2.16 (1) is certified by the National Institute on Drug Abuse as meeting the mandatory
2.17 guidelines published at 53 Federal Register 11970 to 11989, April 11, 1988;

2.18 (2) is accredited by the College of American Pathologists, 325 Waukegan Road,
2.19 Northfield, Illinois, 60093-2750, under the forensic urine drug testing laboratory program;
2.20 or

2.21 (3) is licensed to test for drugs by the state of New York, Department of Health,
2.22 under Public Health Law, article 5, title V, and rules adopted under that law.

2.23 (b) Except as provided in subdivision 3a, for alcohol testing, the laboratory must
2.24 either be:

2.25 (1) licensed to test for drugs and alcohol by the state of New York, Department of
2.26 Health, under Public Health Law, article 5, title V, and the rules adopted under that law; or

2.27 (2) accredited by the College of American Pathologists, 325 Waukegan Road,
2.28 Northfield, Illinois, 60093-2750, in the laboratory accreditation program.

2.29 Sec. 6. Minnesota Statutes 2006, section 181.953, is amended by adding a subdivision
2.30 to read:

2.31 Subd. 3a. **On-site alcohol testing.** (a) In lieu of conducting an initial screening test
2.32 for alcohol under subdivision 3, an employer may conduct an initial screening test for
2.33 alcohol using the procedures in paragraphs (b) and (c). On-site testing may not be used

3.1 for substances other than alcohol. All other provisions of sections 181.950 to 181.957
3.2 apply to on-site alcohol testing.

3.3 (b) On-site alcohol testing must be conducted by a screening test technician or
3.4 breath alcohol technician who is trained using procedures equivalent to those in Code of
3.5 Federal Regulations, title 49, subpart J, sections 40.211 to 40.217. The technician may
3.6 be an employee of the employer or of an outside contractor. Testing must be conducted
3.7 using procedures equivalent to those in Code of Federal Regulations, title 49, subparts K,
3.8 sections 40.221 to 40.235, and L, sections 40.241 to 40.247.

3.9 (c) A positive test must be confirmed using a confirmatory retest.

3.10 Sec. 7. Minnesota Statutes 2006, section 181.953, subdivision 7, is amended to read:

3.11 Subd. 7. **Notice of test results.** Within three working days after receipt of a test
3.12 result report from ~~the~~ a testing laboratory or from on-site testing under subdivision 3a, an
3.13 employer shall inform in writing an employee or job applicant who has undergone drug or
3.14 alcohol testing of (1) a negative test result on an initial screening test or of a negative or
3.15 positive test result on a confirmatory test and (2) the right provided in subdivision 8. In the
3.16 case of a positive test result on a confirmatory test, the employer shall also, at the time
3.17 of this notice, inform the employee or job applicant in writing of the rights provided in
3.18 subdivisions 6, paragraph (b), 9, and either subdivision 10 or 11, whichever applies.

3.19 Sec. 8. Minnesota Statutes 2006, section 181.953, subdivision 9, is amended to read:

3.20 Subd. 9. **Confirmatory retests.** An employee or job applicant may request a
3.21 confirmatory retest of the original sample at the employee's or job applicant's own expense
3.22 after notice of a positive test result on a confirmatory test. Within five working days
3.23 after notice of the confirmatory test result, the employee or job applicant shall notify the
3.24 employer in writing of the employee's or job applicant's intention to obtain a confirmatory
3.25 retest. Within three working days after receipt of the notice, the employer shall conduct a
3.26 retest under subdivision 3 if the test was conducted under subdivision 3a. If the initial
3.27 test was conducted under subdivision 1, the employer must notify the original testing
3.28 laboratory that the employee or job applicant has requested the laboratory to conduct the
3.29 confirmatory retest or transfer the sample to another laboratory licensed under subdivision
3.30 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that the
3.31 chain-of-custody procedures in subdivision 3 are followed during transfer of the sample to
3.32 the other laboratory. The confirmatory retest must use the same drug or alcohol threshold
3.33 detection levels as used in the original confirmatory test. If the confirmatory retest does

4.1 not confirm the original positive test result, no adverse personnel action based on the
4.2 original confirmatory test may be taken against the employee or job applicant.

4.3 Sec. 9. Minnesota Statutes 2006, section 181.954, subdivision 1, is amended to read:

4.4 Subdivision 1. **Privacy limitations.** A laboratory or outside contractor under
4.5 subdivision 3a may only disclose to the employer test result data regarding the presence or
4.6 absence of drugs, alcohol, or their metabolites in a sample tested.

4.7 Sec. 10. Minnesota Statutes 2006, section 181.954, subdivision 2, is amended to read:

4.8 Subd. 2. **Confidentiality limitations.** Test result reports and other information
4.9 acquired in the drug or alcohol testing process are, with respect to private sector
4.10 employees and job applicants, private and confidential information, and, with respect to
4.11 public sector employees and job applicants, private data on individuals as that phrase is
4.12 defined in chapter 13, and may not be disclosed by an employer, outside contractor, or
4.13 laboratory to another employer or to a third-party individual, governmental agency, or
4.14 private organization without the written consent of the employee or job applicant tested.

4.15 Sec. 11. Minnesota Statutes 2006, section 181.956, subdivision 2, is amended to read:

4.16 Subd. 2. **Damages.** In addition to any other remedies provided by law, an employer,
4.17 outside contractor, or laboratory that violates sections 181.950 to 181.954 is liable to
4.18 an employee or job applicant injured by the violation in a civil action for any damages
4.19 allowable at law. If a violation is found and damages awarded, the court may also award
4.20 reasonable attorney fees for a cause of action based on a violation of sections 181.950
4.21 to 181.954 if the court finds that the employer knowingly or recklessly violated sections
4.22 181.950 to 181.954.

4.23 Sec. 12. Minnesota Statutes 2006, section 181.956, subdivision 3, is amended to read:

4.24 Subd. 3. **Injunctive relief.** An employee or job applicant, a state, county, or city
4.25 attorney, or a collective bargaining agent who fairly and adequately represents the interests
4.26 of the protected class has standing to bring an action for injunctive relief requesting the
4.27 district court to enjoin an employer, outside contractor, or laboratory that commits or
4.28 proposes to commit an act in violation of sections 181.950 to 181.954.

4.29 Sec. 13. Minnesota Statutes 2006, section 181.957, subdivision 2, is amended to read:

4.30 Subd. 2. **Exclusion limited.** Employers, outside contractors, and testing laboratories
4.31 must comply with the employee and job applicant protections provided under sections

- 5.1 181.950 to 181.956, with respect to employees or job applicants otherwise excluded under
- 5.2 subdivision 1 from those protections, to the extent that the provisions of sections 181.950
- 5.3 to 181.956 are not inconsistent with or specifically preempted by the federal regulations,
- 5.4 contract, or requirements applicable to drug and alcohol testing.