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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4761

03/07/2024 Authored by Stephenson
The bill was read for the first time and referred to the Committee on Labor and Industry Finance and Policy
03/21/2024 Adoption of Report: Re-referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to labor; clarifying workplace testing for cannabis; amending Minnesota
1.3 Statutes 2022, sections 181.950, subdivision 10; 181.952, as amended; Minnesota
1.4 Statutes 2023 Supplement, sections 181.951, subdivisions 4, 5, 8; 181.954,
1.5 subdivision 1.

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

1.7 Section 1. Minnesota Statutes 2022, section 181.950, subdivision 10, is amended to read:

1.8 Subd. 10. Positive test result. "Positive test result" means a finding of the presence of
1.9 drugs, cannabis, alcohol, or their metabolites in the sample tested in levels at or above the
1.10 threshold detection levels contained in the standards of one of the programs listed in section
1.11 181.953, subdivision 1.

1.12 Sec. 2. Minnesota Statutes 2023 Supplement, section 181.951, subdivision 4, is amended
1.13 to read:

1.14 Subd. 4. Random testing. An employer may request or require employees to undergo
1.15 cannabis testing ~~or~~ and drug and alcohol testing on a random selection basis only if (1) they
1.16 are employed in safety-sensitive positions, or (2) they are employed as professional athletes
1.17 if the professional athlete is subject to a collective bargaining agreement permitting random
1.18 testing but only to the extent consistent with the collective bargaining agreement.

2.1 Sec. 3. Minnesota Statutes 2023 Supplement, section 181.951, subdivision 5, is amended  
2.2 to read:

2.3 Subd. 5. **Reasonable suspicion testing.** An employer may request or require an employee  
2.4 to undergo cannabis testing and drug and alcohol testing if the employer has a reasonable  
2.5 suspicion that the employee:

2.6 (1) is under the influence of drugs, cannabis, or alcohol;

2.7 (2) has violated the employer's written work rules prohibiting the use, possession,  
2.8 impairment, sale, or transfer of drugs or alcohol, cannabis flower, cannabis products,  
2.9 lower-potency hemp edibles, or hemp-derived consumer products while the employee is  
2.10 working or while the employee is on the employer's premises or operating the employer's  
2.11 vehicle, machinery, or equipment, provided the work rules are in writing and contained in  
2.12 the employer's written cannabis testing or drug and alcohol testing policy;

2.13 (3) has sustained a personal injury, as that term is defined in section 176.011, subdivision  
2.14 16, or has caused another employee to sustain a personal injury; or

2.15 (4) has caused a work-related accident or was operating or helping to operate machinery,  
2.16 equipment, or vehicles involved in a work-related accident.

2.17 Sec. 4. Minnesota Statutes 2023 Supplement, section 181.951, subdivision 8, is amended  
2.18 to read:

2.19 Subd. 8. **Limitations on cannabis testing.** (a) An employer must not request or require  
2.20 a job applicant to undergo cannabis testing ~~solely for the purpose of determining the presence~~  
2.21 ~~or absence of cannabis~~ as a condition of employment unless otherwise required by state or  
2.22 federal law.

2.23 (b) Unless otherwise required by state or federal law, an employer must not refuse to  
2.24 hire a job applicant solely because the job applicant submits to a cannabis test or a drug and  
2.25 alcohol test authorized by this section and the results of the test indicate the presence of  
2.26 cannabis.

2.27 (c) An employer must not request or require an employee or job applicant to undergo  
2.28 cannabis testing on an arbitrary or capricious basis.

2.29 (d) Cannabis testing authorized under ~~paragraph (d)~~ this section must comply with the  
2.30 safeguards for testing employees provided in sections 181.953 and 181.954.

3.1 Sec. 5. Minnesota Statutes 2022, section 181.952, as amended by Laws 2023, chapter 63,  
3.2 3.2 article 6, section 38, is amended to read:

3.3 **181.952 POLICY CONTENTS; PRIOR WRITTEN NOTICE.**

3.4 Subdivision 1. **Contents of the policy.** An employer's drug and alcohol and cannabis  
3.5 testing policy must, at a minimum, set forth the following information:

3.6 (1) the employees or job applicants subject to testing under the policy;

3.7 (2) the circumstances under which drug or alcohol and cannabis testing may be requested  
3.8 or required;

3.9 (3) the right of an employee or job applicant to refuse to undergo drug and alcohol and  
3.10 cannabis testing and the consequences of refusal;

3.11 (4) any disciplinary or other adverse personnel action that may be taken based on a  
3.12 confirmatory test verifying a positive test result on an initial screening test;

3.13 (5) the right of an employee or job applicant to explain a positive test result on a  
3.14 confirmatory test or request and pay for a confirmatory retest; and

3.15 (6) any other appeal procedures available.

3.16 Subd. 2. **Notice.** An employer shall provide written notice of its drug and alcohol testing  
3.17 and cannabis testing policy to all affected employees upon adoption of the policy, to a  
3.18 previously nonaffected employee upon transfer to an affected position under the policy, and  
3.19 to a job applicant upon hire and before any testing of the applicant if the job offer is made  
3.20 contingent on the applicant passing drug and alcohol testing. An employer shall also post  
3.21 notice in an appropriate and conspicuous location on the employer's premises that the  
3.22 employer has adopted a drug and alcohol testing and cannabis testing policy and that copies  
3.23 of the policy are available for inspection during regular business hours by its employees or  
3.24 job applicants in the employer's personnel office or other suitable locations.

3.25 Subd. 3. **Cannabis ~~policy~~ work rules.** (a) Unless otherwise provided by state or federal  
3.26 law, an employer is not required to permit or accommodate cannabis flower, cannabis  
3.27 product, lower-potency hemp edible, or hemp-derived consumer product use, possession,  
3.28 impairment, sale, or transfer while an employee is working or while an employee is on the  
3.29 employer's premises or operating the employer's vehicle, machinery, or equipment.

3.30 (b) An employer may only enact and enforce written work rules prohibiting cannabis  
3.31 flower, cannabis product, lower-potency hemp edible, and hemp-derived consumer product  
3.32 use, possession, impairment, sale, or transfer while an employee, is working or while an

4.1 employee is on the employer's premises or operating the employer's vehicle, machinery, or  
4.2 equipment in a written policy that contains the minimum information required by this section.

4.3 Sec. 6. Minnesota Statutes 2023 Supplement, section 181.954, subdivision 1, is amended  
4.4 to read:

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