

103^D CONGRESS
1ST SESSION

H. R. 377

To amend the Public Health Service Act to establish Federal standards to ensure quality assurance of drug testing programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. SOLOMON introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Education and Labor, and Post Office and Civil Service

A BILL

To amend the Public Health Service Act to establish Federal standards to ensure quality assurance of drug testing programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Quality Assurance of
5 Drug Testing Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) drug abuse in the workplace is a serious na-
9 tional problem, and

1 (2) drug testing can be an effective deterrent to
2 drug abuse when administered in a manner that pro-
3 vides for quality assurance.

4 **SEC. 3. PUBLIC HEALTH SERVICE ACT.**

5 (a) DRUG TESTING.—The Public Health Service Act
6 is amended—

7 (1) by redesignating title XXVI (42 U.S.C.
8 300cc et seq.) as title XXVII, and

9 (2) by inserting after title XXV (42 U.S.C.
10 300bb–1 et seq.) the following new title:

11 **“TITLE XXVI—QUALITY**
12 **ASSURANCE IN DRUG TESTING**

13 **“SEC. 2601. LABORATORY CERTIFICATION STANDARDS.**

14 “(a) PROHIBITION.—No individual may perform a
15 toxicological analysis in connection with any drug testing
16 program that is subject to this title unless such analysis
17 is conducted in a laboratory certified under subsection (b).

18 “(b) CERTIFICATION.—Not later than 1 year after
19 the date of enactment of this title, the Secretary shall es-
20 tablish a program for certifying laboratories that meet
21 standards for performing—

22 “(1) drug screening tests,

23 “(2) drug confirmatory tests, and

24 “(3) both drug screening and confirmatory
25 tests.

1 “(c) CRITERIA.—In establishing standards for certifi-
2 cation under subsection (b), the Secretary shall use cri-
3 teria that will maximize the predictive value of the testing
4 scheme and that take into consideration the practices, pro-
5 cedures, and experience of drug testing programs which
6 the Secretary determines are conducted in accordance with
7 appropriate standards and procedures.

8 “(d) PERIODIC REVIEW.—At least once each year,
9 the Secretary shall review, and where appropriate revise,
10 the certification criteria established under subsection (b),
11 taking into consideration the relevant scientific technical
12 advances in the area of drug testing and revisions needed
13 to reflect employer zero-drug tolerance practices.

14 **“SEC. 2602. ANTI-DRUG ABUSE POLICY.**

15 “(a) WRITTEN POLICY.—As a condition of imple-
16 menting or maintaining a drug testing program, an em-
17 ployer shall establish a written anti-drug abuse policy that
18 shall contain, at a minimum, an explanation concerning
19 the—

20 “(1) circumstances under which a drug test will
21 be administered, the procedures for notifying an em-
22 ployee of a confirmed positive result, and a state-
23 ment the policy will be administered in a consistent
24 and nondiscriminatory manner without regard to

1 whether the employee is employed in a management
2 or hourly capacity,

3 “(2) safeguards established for protecting the
4 privacy of individuals who are subject to testing, in-
5 cluding chain custody procedures and the limitations
6 on disclosure of the results of drug tests,

7 “(3) availability of any drug abuse treatment
8 program,

9 “(4) penalties that may be imposed for a viola-
10 tion of the anti-drug policy of the employer, and

11 “(5) procedures under which an applicant or
12 employee shall be given a reasonable opportunity to
13 explain a confirmed positive test result.

14 “(b) NOTICE.—An employer shall make a reasonable
15 effort to provide notice of the written anti-drug abuse pol-
16 icy to applicants and employees subject to testing using
17 whatever methods the employer determines to be appro-
18 priate.

19 **“SEC. 2603. DRUG-FREE AWARENESS PROGRAM.**

20 “In order for an employer to be permitted to imple-
21 ment or maintain a drug testing program, such employer
22 shall establish, as part of such drug testing program, a
23 drug-free awareness program designed to inform its em-
24 ployees concerning—

1 “(1) the dangers of drug abuse, both inside and
2 outside of the workplace,

3 “(2) the policy of the employer of maintaining
4 a drug-free workplace,

5 “(3) information as to the existence and avail-
6 ability of counseling, employee assistance, rehabilita-
7 tion, and other drug abuse treatment programs of
8 which the employer is aware, and

9 “(4) the penalties that may be imposed on ap-
10 plicants and employees who test positive for the use
11 of a drug, and for the manufacture, distribution, dis-
12 pensation, possession, or use of a drug in the work-
13 place of the employer.

14 **“SEC. 2604. STANDARDS FOR DRUG TESTING.**

15 “(a) APPLICANTS.—Nothing in this title shall be con-
16 strued to prohibit an employer from requiring, as a condi-
17 tion of employment, that an applicant submit to and pass
18 a drug test based on criteria established by the employer
19 that is designed to achieve a drug-free workplace. Refusal
20 by an applicant to submit to such a test may be treated
21 in the same manner as a failure to pass a drug test.

22 “(b) EMPLOYEES.—Nothing in this title shall be con-
23 strued to prohibit an employer from requiring an employee
24 to submit to and pass a drug test—

1 “(1) where the employer has reasonable sus-
2 picion to believe that the employee is using or under
3 the influence of a drug,

4 “(2) where such test is administered as part of
5 a scheduled medical examination,

6 “(3) in the case of an accident or incident in-
7 volving the actual or potential loss of human life, se-
8 rious bodily injury, or significant property damage,

9 “(4) during and for a reasonable period of time
10 (not to exceed 5 years) after the completion of a
11 drug abuse treatment program, or

12 “(5) in the case of sensitive employee positions,
13 work units, locations, or facilities where drug abuse
14 has been identified as a problem, on a random basis.

15 “(c) DEFINITION.—As used in this title, the term
16 ‘random’ means the selection of individuals for testing
17 based on a nondiscriminatory impartial methods so that
18 no employee is harassed or treated differently from other
19 employees in similar circumstances.

20 **“SEC. 2505. EMPLOYEE PROTECTIONS.**

21 “(a) PROHIBITIONS.—In the case of an applicant or
22 employee, it shall be a violation of this title—

23 “(1) for an employer to fail to make reasonable
24 efforts to inform the applicant or employee as to the
25 drug testing policy of the employee,

1 “(2) for an employer to take any adverse action
2 based on the unconfirmed positive results of a drug
3 test, except as provided in subsection (c),

4 “(3) for an employer, on the request of an ap-
5 plicant or employee, to fail to provide such applicant
6 or employee with a reasonable opportunity to be in-
7 formed of a confirmed positive drug test result, and

8 “(4) for an employer, on the request of an ap-
9 plicant or employee, to fail to provide such applicant
10 or employee with a reasonable opportunity to explain
11 the results of a confirmed positive test result.

12 “(b) ANTIRETALIATION PROHIBITION.—It shall be a
13 violation of this title for an employer to take retaliatory
14 action against an employee because of the exercise by the
15 employee of any right granted or protected under this title.

16 “(c) EXCEPTION FOR SENSITIVE EMPLOYEES.—
17 Pending the receipt of the results of a confirmatory drug
18 test, an employer may transfer or reassign an employee
19 in a sensitive position to another area or position without
20 any loss in compensation to such employee if the initial
21 drug test result is positive. If a confirmatory test of such
22 employee is negative, such employee shall be entitled to
23 immediate reinstatement to the position from which such
24 employee has been transferred or reassigned.

1 **“SEC. 2606. CONFIDENTIALITY.**

2 “(a) IN GENERAL.—An individual, other than the ap-
3 plicant or employee who is the subject of a drug test, shall
4 not disclose information obtained as a result of a drug
5 test, except as provided in subsection (b).

6 “(b) PERMITTED DISCLOSURES.—An employer, or
7 individual conducting a drug test on behalf of an em-
8 ployer, may disclose information acquired from a drug test
9 only to—

10 “(1) the applicant or employee taking such
11 drug test or any other individual specifically des-
12 igned in writing by such applicant or employee
13 taking such drug test,

14 “(2) the employer, including the designated rep-
15 resentative of such employer, that requested such
16 test,

17 “(3) any court, governmental agency, arbitra-
18 tor, or mediator, in accordance with Federal or
19 State law, and

20 “(4) appropriate drug abuse treatment provid-
21 ers.

22 **“SEC. 2607. EMPLOYER PRACTICES.**

23 “(a) SAFE WORKPLACE.—Nothing in this title shall
24 be construed to prohibit an employer from taking action
25 necessary to ensure a safe workplace.

1 “(b) DRUG-FREE WORKPLACE.—Nothing in this title
2 shall be construed to prohibit an employer from taking ac-
3 tion necessary, up to and including termination, in the
4 case of applicant or employee—

5 “(1) whose drug test result is confirmed posi-
6 tive,

7 “(2) who refuses to take a drug test authorized
8 under this title, or

9 “(3) who tampers with or adulterates a drug
10 testing specimen.

11 “(c) PARTICIPATION IN DRUG ABUSE TREATMENT
12 PROGRAM.—Nothing in this title shall be construed to
13 prohibit an employer from requiring an employee to par-
14 ticipate in, and satisfactorily complete, a drug treatment
15 program as a condition of continued employment where
16 the employee has tested confirmed positive for drugs, has
17 refused to submit to a drug test, or has tampered with
18 or adulterated a drug test specimen.

19 “(d) SENSITIVE POSITION.—Nothing in this title
20 shall be construed to prohibit an employer from refusing
21 to place an employee in, or reinstate such employee, to
22 a sensitive position if such employee has tested confirmed
23 positive for drug use.

1 **“SEC. 2608. DRUG ABUSE TREATMENT PROGRAMS.**

2 “As part of the drug-free awareness program estab-
3 lished pursuant to section 2603, employers shall provide
4 information to employees concerning the existence and
5 availability of public and private drug counseling, em-
6 ployee assistance, rehabilitation, and other drug abuse
7 treatment programs of which the employer is aware.

8 **“SEC. 2609. REGULATIONS.**

9 “Not later than 1 year after the date of enactment
10 of this title, the Secretary shall—

11 “(1) establish a program for the certification of
12 laboratories for the performance of toxicological uri-
13 nalysis conducted for drug testing programs as de-
14 scribed in this title, and

15 “(2) issue such other rules and regulations as
16 may be necessary or appropriate to carry out this
17 title.

18 **“SEC. 2610. ENFORCEMENT AND RELIEF.**

19 “(a) LABORATORY CERTIFICATION STANDARDS.—
20 The certification program established pursuant to section
21 2601(b) shall be enforced in accordance with the proce-
22 dures and sanctions contained in subsections (g), (h), (i),
23 (j), (k), and (l) of section 353.

24 “(b) EMPLOYEE COMPLAINTS CHARGING UNLAWFUL
25 DISCHARGE OR DISCRIMINATION, INVESTIGATION ORDER.

1 “(1) COMPLAINT.—An employee who believes
2 that such employee has been charged or otherwise
3 discriminated against by an employer in violation of
4 this title may, not later than 30 days after such ac-
5 tion occurs, file (or have any individual file on behalf
6 of such employee) a complaint with the Secretary of
7 Labor (hereinafter referred to in this subsection as
8 the ‘Secretary’) alleging that such discharge or dis-
9 crimination violates this title. On receipt of such
10 complaint, the Secretary shall notify the individual
11 named in the complaint of such filing.

12 “(2) INVESTIGATION AND ORDER.—

13 “(A) INVESTIGATION.—On receipt of a
14 complaint filed under paragraph (1), the Sec-
15 retary shall conduct an investigation of the vio-
16 lation alleged in such complaint. Not later than
17 30 days after the receipt of such complaint, the
18 Secretary shall complete such investigation and
19 shall notify in writing the employer (and any in-
20 dividual acting on behalf of the employer) as to
21 the results of such investigation.

22 “(B) ORDER.—Not later than 30 days
23 after the completion of such investigation, the
24 Secretary shall, unless the proceeding on the
25 complaint is terminated by the Secretary on the

1 basis of a settlement entered into by the Sec-
2 retary and the employer alleged to have com-
3 mitted such violation, issue an order either pro-
4 viding the relief prescribed in this section or de-
5 nying the complaint. An order of the Secretary
6 issued under this subparagraph shall be made
7 on the record after notice and opportunity for
8 public hearing.

9 “(3) RELIEF.—If, in response to a complaint
10 filed under paragraph (1), the Secretary determines
11 that a violation of this title has occurred, the Sec-
12 retary shall order the employer who committed such
13 violation to provide such suitable relief as the Sec-
14 retary determines appropriate, including reinstatement,
15 promotion, and the payment of lost wages and
16 benefits.

17 “(4) REVIEW OR ORDER.—An employee or em-
18 ployer adversely affected or aggrieved by an order is-
19 sued under paragraph (2) may obtain review of such
20 order in the United States Court of Appeals for the
21 circuit in which the violation, with respect to which
22 the order was issued, allegedly occurred. The peti-
23 tion for review shall be filed not later than 60 days
24 after the issuance of the order of the Secretary
25 under paragraph (2). Review by the Court of Ap-

1 peals shall conform to chapter 7 of Title 5, United
2 States Code.

3 “(5) FAILURE TO COMPLY.—If an employee or
4 employer fails to comply with an order issued under
5 paragraph (2), the Secretary may file a civil action
6 in the United States court for the district in which
7 the violation was found to occur to enforce such
8 order. Such court, in issuing any final order under
9 this subsection, may award the costs of litigation
10 (including reasonable attorney and expert witness
11 fees) to the prevailing party.

12 “(c) AFFIRMATIVE DEFENSE.—The good faith com-
13 pliance of an employer with the standards and procedures
14 established under this title shall constitute an affirmative
15 defense against any complaint filed under subsection (b).

16 “(d) CONSTRUCTION.—Nothing in this title shall be
17 construed to require an employer to establish a drug test-
18 ing program for applicants or employees or make employ-
19 ment decisions based on such test results.

20 **“SEC. 2611. EFFECT ON OTHER LAWS.**

21 “(a) STATE LAW, SUPERSEDURE.—This title shall
22 preempt any State or local law, rule, regulation, order or
23 standard that applies to the drug testing of an applicant
24 or employee, or that relates to any matter addressed under
25 this title. No State or local government shall adopt or en-

1 force any law, rule, regulation, ordinance, standard or
2 order relating to—

3 “(1) the certification of laboratories that per-
4 form drug testing analysis with respect to such anal-
5 ysis,

6 “(2) requirements for the conduct of drug test-
7 ing under the certification program established
8 under this title,

9 “(3) the conducting of employee or applicant
10 drug testing programs, or

11 “(4) any other matter relating to this title.

12 “(b) OTHER FEDERAL LAWS.—Nothing in this title
13 shall be construed to prohibit the Secretary of Transpor-
14 tation or the Nuclear Regulatory Commission from issuing
15 regulations with respect to drug and alcohol testing.

16 **“SEC. 2612. EFFECTIVE DATE.**

17 “This title shall become effective 2 years after the
18 date of enactment of this title, except that the prohibition
19 contained in section 2601(a) shall not take effect less than
20 1 year after establishment of the certification program re-
21 quired under section 2601(b).

22 **“SEC. 2613. DEFINITIONS.**

23 “As used in this title:

24 “(1) APPLICANT.—The term ‘applicant’ means
25 any individual who has submitted an application to

1 an employer, whether written or oral, for employ-
2 ment with such employer.

3 “(2) DRUG.—The term ‘drug’ means any con-
4 trolled substance listed in Scheduled I through V of
5 section 202 of the Controlled Substances Act (21
6 U.S.C. 812), alcohol, steroids, and any other drug or
7 medication that can interfere with employment per-
8 formance.

9 “(3) DRUG ABUSE TREATMENT PROGRAM.—
10 The term ‘drug abuse treatment program’ means a
11 program, such as an employee assistance program,
12 designed to assist an individual in dealing with prob-
13 lems caused by drug abuse.

14 “(4) DRUG TEST.—The term ‘drug test’ means
15 any test procedure used to take and analyze blood,
16 breath, hair, urine or other body fluids or materials
17 for the purpose of detecting the presence or absence
18 of a drug or its metabolites.

19 “(5) EMPLOYEE.—The term ‘employee’ means
20 an individual employed by an employer.

21 “(f) EMPLOYER.—The term ‘employer’ means an in-
22 dividual, partnership, corporation, association, or other
23 entity (including the Federal Government), that employs
24 one or more employees, and that is engaged in an industry
25 affecting commerce.

1 “(g) SENSITIVE EMPLOYEE.—The term ‘sensitive
2 employee’ means an individual employed in a position
3 whose duties, as defined by the employer, involve respon-
4 sibilities affecting such matters as national security,
5 health, or safety, environment, or other responsibilities re-
6 quiring a high degree of trust and confidence.

7 **“SEC. 2614. PROFESSIONAL ATHLETES.**

8 “For purposes of this title, professional athletes may
9 be treated in the same manner as employees who meet
10 the definition of section 2614(g), except that professional
11 athletes shall not be covered by section 2606(a).”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Sections 2601 through 2614 of the Public
14 Health Service Act (42 U.S.C. 300cc through
15 300cc–15) are redesignated as sections 2701
16 through 2714, respectively.

17 (2)(A) Sections 465(f) and 497 of such Act (42
18 U.S.C. 286(f) and 289(f)) are each amended by
19 striking out “2601” and inserting “2701”.

20 (B) Section 305(i) of such Act (42 U.S.C.
21 242c(i)) is amended by striking out “2611” each
22 place it appears and inserting “2711”.

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HR 377 IH—2