

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 3638

(SENATE AUTHORS: MARTY)

DATE	D-PG	OFFICIAL STATUS
02/15/2024	11589	Introduction and first reading Referred to Labor

1.1A bill for an act

1.2relating to employment; authorizing oral fluid testing procedures as a

1.3preemployment alternative for drug, alcohol, and cannabis testing by employers;

1.4amending Minnesota Statutes 2022, sections 181.950, by adding a subdivision;

1.5181.951, subdivision 1; Minnesota Statutes 2023 Supplement, section 181.953,

1.6subdivisions 1, 3, by adding a subdivision.

1.7BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8Section 1. Minnesota Statutes 2022, section 181.950, is amended by adding a subdivision

1.9to read:

1.10Subd. 9a. **Oral fluid test.** "Oral fluid test" means analysis of a saliva sample for the

1.11purpose of measuring the presence of the same substances as drug and alcohol testing and

1.12cannabis testing that:

1.13(1) is approved by the commissioner of labor and industry;

1.14(2) can detect drugs, alcohol, cannabis, or their metabolites in levels at or above the

1.15threshold detection levels contained in the standards of one of the programs listed in section

1.16181.953, subdivision 1; and

1.17(3) does not require the services of a testing laboratory under section 181.953, subdivision

1.181.

1.19Sec. 2. Minnesota Statutes 2022, section 181.951, subdivision 1, is amended to read:

1.20Subdivision 1. **Limitations on testing.** (a) An employer may not request or require an

1.21employee or job applicant to undergo drug and alcohol testing except as authorized in this

1.22section.

(b) An employer may not request or require an employee or job applicant to undergo drug or alcohol testing unless the testing is done pursuant to a written drug and alcohol testing policy that contains the minimum information required in section 181.952; and, either: (1) is conducted by a testing laboratory which participates in one of the programs listed in section 181.953, subdivision 1; or (2) complies with the oral fluid test procedures under section 181.953, subdivision 5a.

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

Sec. 3. Minnesota Statutes 2023 Supplement, section 181.953, subdivision 1, is amended to read:

Subdivision 1. **Use of licensed, accredited, or certified laboratory required.** (a) Except as provided under subdivision 5a, an employer who requests or requires an employee or job applicant to undergo drug or alcohol testing or cannabis testing shall use the services of a testing laboratory that meets one of the following criteria for drug testing:

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

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

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

(b) For alcohol testing, the laboratory must either be:

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

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

Sec. 4. Minnesota Statutes 2023 Supplement, section 181.953, subdivision 3, is amended to read:

Subd. 3. **Laboratory testing, reporting, and sample retention requirements.** (a) A testing laboratory that is not certified by the National Institute on Drug Abuse according to subdivision 1 shall follow the chain-of-custody procedures prescribed for employers in

subdivision 5. A testing laboratory shall conduct a confirmatory test on all samples that produced a positive test result on an initial screening test. A laboratory shall disclose to the employer a written test result report for each sample tested within three working days after a negative test result on an initial screening test or, when the initial screening test produced a positive test result, within three working days after a confirmatory test. A test report must indicate the drugs, alcohol, drug or alcohol metabolites, or cannabis or cannabis metabolites tested for and whether the test produced negative or positive test results. A laboratory shall retain and properly store for at least six months all samples that produced a positive test result.

(b) This subdivision and the chain-of-custody procedures under subdivision 5 do not apply to oral fluid testing under subdivision 5a.

Sec. 5. Minnesota Statutes 2023 Supplement, section 181.953, is amended by adding a subdivision to read:

Subd. 5a. **Oral fluid testing.** (a) An employer may elect to comply with the oral fluid testing procedures under this subdivision as an alternative to the drug and alcohol testing or cannabis testing procedures for job applicants in this section.

(b) An employer may request or require a job applicant to undergo oral fluid testing. If the oral fluid test indicates a positive test result or the test is inconclusive or invalid, the job applicant must undergo drug or alcohol testing or cannabis testing using the services of a testing laboratory under subdivision 1 within 48 hours of the oral fluid test to remain eligible for the job. The rights, notice, retest procedures, and limitations on withdrawal of a job offer in subdivisions 6 to 11 apply to the job applicant and a laboratory test conducted pursuant to this paragraph.