

Sec. 2. EFFECTIVE DATE.

This act is effective August 1, 1988, and applies to unauthorized releases committed on or after that date.

Approved April 14, 1988

CHAPTER 536—S.F.No. 2117

An act relating to employment; allowing certain nonlicensed facilities to perform breath tests for alcohol; amending Minnesota Statutes 1987 Supplement, sections 181.951, subdivision 1; 181.953, subdivisions 1 and 2.

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

Section 1. Minnesota Statutes 1987 Supplement, section 181.951, subdivision 1, is amended to read:

Subdivision 1. **LIMITATIONS ON TESTING.** (a) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing except as authorized in this section.

(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, is conducted by a testing laboratory licensed under section 181.953, subdivision 1, except as otherwise permitted under that subdivision, or by a nonlicensed laboratory as transitionally allowed under section 181.953, subdivision 2.

(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. 2. Minnesota Statutes 1987 Supplement, section 181.953, subdivision 1, is amended to read:

Subdivision 1. **USE OF LICENSED LABORATORY REQUIRED.** (a) An employer who requests or requires an employee or job applicant to undergo drug or alcohol testing shall use the services of a testing laboratory licensed by the commissioner under this subdivision, except that, a breath test as an initial screening test for alcohol may be performed by a medical clinic, hospital, or other medical facility not owned or operated by the employer that does not meet the licensing requirements of this section, provided that the breath test meets the standards or requirements adopted by rule under paragraph (b), except clause (1), and any confirmatory test is performed according to the requirements of sections 181.950 to 181.957 and the rules adopted thereunder.

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(b) The commissioner shall adopt rules by January 1, 1988, governing:

- (1) standards for licensing, suspension, and revocation of a license;
- (2) body component samples that are appropriate for drug and alcohol testing;
- (3) procedures for taking a sample that ensure privacy to employees and job applicants to the extent practicable, consistent with preventing tampering with the sample;
- (4) methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial screening tests and confirmatory tests;
- (5) threshold detection levels for drugs, alcohol, or their metabolites for purposes of determining a positive test result;
- (6) chain-of-custody procedures to ensure proper identification, labeling, and handling of the samples being tested; and
- (7) retention and storage procedures to ensure reliable results on confirmatory tests or confirmatory retests of original samples.

(c) With respect to paragraph (b), clause (4), the rules must allow testing for alcohol by breath test as an initial screening test, provided that the results are confirmed by blood analysis.

~~(d)~~ (d) The commissioner shall also grant licenses to laboratories conducting drug and alcohol testing that are located in another state, provided that either: (1) the laboratory is licensed by the other state or by a federal agency to conduct drug and alcohol testing and the other state's or federal agency's rules governing standards, methods, and procedures meet or exceed those adopted under this subdivision; or (2) the laboratory has agreed in writing with the commissioner to comply with the rules adopted under this subdivision. A laboratory licensed under this paragraph must also, as a condition of obtaining and retaining a license, agree in writing with the commissioner to comply with the other requirements for laboratories set forth in sections 181.950 to 181.954 and to be subject to the remedies set forth in section 181.956.

~~(e)~~ (e) The commissioner shall charge laboratories an annual license fee. The fee may vary depending on the number of Minnesota employee samples tested annually at a laboratory. Fee receipts must be deposited in the state treasury and credited to a special account and are appropriated to the commissioner to administer this subdivision and to purchase or lease laboratory equipment as accumulated fee receipts make equipment purchases or leases possible. Notwithstanding section 144.122, the commissioner shall set the license fee at an amount so that the total fees collected will recover the costs of administering this subdivision and allow an additional amount to be credited to the special account each year sufficient to allow the commissioner to obtain appropriate laboratory equipment for use in administering this subdivision by July 1, 1994.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 3. Minnesota Statutes 1987 Supplement, section 181.953, subdivision 2, is amended to read:

Subd. 2. **TRANSITIONAL LABORATORY REQUIREMENTS.** Before rules are adopted and licenses issued under subdivision 1, an employer may use the services of a nonlicensed testing laboratory that agrees in writing with the commissioner to comply with the following requirements:

(1) The director of the laboratory must be a full-time employee of the laboratory and must possess a doctoral or master's degree in biological or medical science and have at least three years experience in an analytical toxicology laboratory.

(2) The laboratory must be participating in and continuing to demonstrate satisfactory performance in the drug proficiency testing program of the college of American pathology or American association for clinical chemists.

(3) The drug and alcohol testing must be limited to analysis of a sample of blood or urine from the employer or job applicant subject to testing; except that testing for alcohol may include a breath test as an initial screening test, provided that the results are confirmed by blood analysis. A breath test may be performed by a laboratory that does not meet the requirements of this subdivision, as allowed under subdivision 1.

(4) The methods of analysis for drug and alcohol testing are limited to any combination of methods using immuno-chemical technology or chromatography for initial screening tests, ~~confirmed~~ except as otherwise allowed under clause (3). Confirmation must be by gas chromatography/mass spectrometry; except that, where gas ~~chromatography/mass chromatography/mass spectrometry~~ chromatography/mass spectrometry is not the scientifically accepted method of choice, the test must be confirmed by a method using some form of chromatography. ~~Testing for alcohol may include a breath test as an initial screening test, provided that the results are confirmed by blood analysis.~~

(5) The laboratory must have in writing and use laboratory chain-of-custody procedures that ensure reliable and properly handled and identified testing results.

(6) All initial screening test, confirmatory test, and confirmatory retest results must be reviewed and certified as accurate by a qualified scientist.

(7) A test report must indicate the drugs, alcohol, or their metabolites tested for and whether the test produced negative or positive test results.

(8) The laboratory must provide the commissioner with information requested by the commissioner regarding the laboratory's current operations and activities relating to drug and alcohol testing.

(9) The laboratory must agree to comply with the requirements for laboratories set forth in sections 181.950 to 181.954 and to be subject to the remedies set forth in section 181.956.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 4. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Approved April 14, 1988

CHAPTER 537—S.F.No. 2191

An act relating to animals; modifying regulations of kennels and dealers of certain animals used for research purposes; amending Minnesota Statutes 1987 Supplement, sections 347.31, subdivision 4; and 347.37.

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

Section 1. Minnesota Statutes 1987 Supplement, section 347.31, subdivision 4, is amended to read:

Subd. 4. **DEALER.** "Dealer" means a public or private agency, person, society, or corporation that is licensed or is required to be licensed as a "Class B dealer" under United States Code, title 7, sections 2131 to 2155, as amended through December 31, 1986, who sells or transfers dogs or cats to institutions or to other dealers who sell or transfer to institutions.

Sec. 2. Minnesota Statutes 1987 Supplement, section 347.37, is amended to read:

347.37 PUBLIC ACCESS; NOTICE; INSPECTION; ENFORCEMENT.

The board of animal health shall cause to be inspected from time to time all kennels and dealers licensed hereunder and all records required by sections 347.31 to 347.40 to be kept by the licensees.

Any duly authorized agent of the board, any sheriff, or sheriff's deputy, or police officer, or humane agent appointed pursuant to section 343.01 is granted the power and the authority to enter upon the premises of any kennel or dealer at any time during the daylight hours for the purposes herein set forth, and for the purposes of inspecting the compliance with the provisions of sections 346.55, 347.31 to 347.40 and the rules issued pursuant thereto, and for the purposes of enforcing sections 346.55, or 347.31 to 347.40; except that humane agents shall not enter upon the premises of a licensed veterinarian acting as a kennel.

Each ~~kennel and~~ dealer shall post a conspicuous notice in a format no less than 24 by 36 inches and easily readable by the general public, that states: (1) that the person is a licensed ~~kennel or~~ dealer in dogs and cats; (2) that dogs and cats left with the ~~kennel or~~ dealer may be used for research purposes; and (3) the hours the ~~kennel or~~ dealer is open to the public. The notice must be placed in at least two locations on the premises, one of which must be on or near the

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