

HB

474

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

*J - PLS review  
and well discuss*  
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

January 6, 1992

*1/27 hold  
for mac  
info*

**SUBJECT:** Draft bill on drug and alcohol testing for school bus drivers  
(7-LS1545\A)

**TO:** Representative Gail Phillips

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

Enclosed is the draft bill you requested, requiring school districts to require school bus drivers to submit to testing for improper use of drugs and alcohol. Please be advised that the implementation of this program could be subject to legal challenge as a government-required search without having to establish probable cause or as an invasion of privacy.

A school bus driver could challenge the requirement as a government-required search without a requirement that there be probable cause for the search. Many courts have required individualized suspicion before a urinalysis is conducted. However, some courts have been willing to allow random drug searches without probable cause where the employee's expectation of privacy is lessened because of the type of employment and where the public interest was sufficiently great. In Teamsters v. Department of Transportation, CA9, No. 89-70165, April 26, 1991, the court examined a drug testing program that required commercial motor vehicle operators to submit to a pre-employment, post-accident, and biennial drug testing program for drivers operating certain interstate motor vehicles. The court considered the seriousness of harm if those vehicles were operated while the driver was impaired by drugs, the extent of government regulation already present in the industry, the extent of government monitoring of the drivers health and qualifications, which includes a required urinalysis already, the court concluded that the additional intrusion of the drug testing procedure was constitutionally tolerable.

Implementation of the drug testing program could also be challenged as an invasion of privacy. In Luedtke v. Nabors Alaska Drilling, Inc., the state supreme court considered a private company's implementation of a drug testing program and found that the invasion of the employee's privacy was outweighed by the safety considerations inherent in the work performed. The court did not rely on the constitutional

Representative Gail Phillips

January 6, 1992

Page 2

right to privacy,<sup>1/</sup> holding that the requirement applies to government action and not private action. However, the court did analyze the constitutional right when considering the public policy against invasion of privacy. The court found that urine testing was a minimal invasion of privacy, that the employer already required urine testing as part of the annual physical examination requirement, and that the seriousness of harm that could result from an accident on an oil drill rig was sufficient to outweigh the employee's privacy interest. Under this analysis, in determining whether the testing program could survive a constitutional challenge, a court would weigh how extensively school bus drivers are regulated now, the history of accidents involving school bus drivers, and the seriousness of harm that could come if a school bus were involved in a motor vehicle accident. Whether the law would survive the challenge depends on the factual information presented.

If I may be of further assistance, please advise.

TBC:pl  
92-004.plm

Enclosure

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<sup>1/</sup>Art. 1, sec. 22, Constitution of the State of Alaska, states

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

# Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

February 10, 1992

## MEMORANDUM

TO: Representative Gail Phillips

FROM: Dale O. Brandt <sup>DB</sup>  
Legislative Analyst

RE: States Requiring Drug Testing of School Bus Drivers  
Research Request 92.133

You wanted to know if any states require random drug and alcohol testing of school bus drivers. We found three states (Arizona, Illinois and Louisiana) that mention drug testing of school bus drivers in statutes; one state, Missouri, with proposed legislation; and one state, Maryland, considering different proposals.

The Maryland legislature has proposals to meet the standards established by the U.S. Department of Transportation in Section 48 CFR Part 40. Features of the Maryland proposals include mandatory pre-employment testing, and random, probable cause, and post-accident testing at the discretion of the local supervisor. Driver skills tests and yearly certification in cardio-pulmonary resuscitation (CPR) are also required of school bus operators.

Introduced December 2, 1991, Missouri Senate Bill Number 572 specifically addresses drug testing of school bus operators including a "neutral selection basis" for selecting school bus operators for drug tests and "reasonable suspicion drug testing."

Statutes from Arizona, Illinois and Louisiana are less specific regarding drug testing. Arizona statutes state that tests shall be performed to detect the presence of alcohol or the use of a drug that may adversely affect the ability of the applicant to safely operate a school bus, and Illinois statutes authorize the state Regional Transportation Authority to establish a comprehensive drug testing program in conformity with federal statutes. In Louisiana, a public employer may require, as a condition of continued employment, samples from employees to test for the presence of drugs following an accident during the course of their employment. Also in Louisiana, a public employer may implement a program of random drug testing of those employees in safety-sensitive positions.

Representative Phillips  
February 10, 1992  
Page 2

Attached are statutes from Arizona, Illinois and Louisiana, the Maryland proposal, Missouri Senate Bill No. 572 and a copy of a Congressional Research Service Report titled "Federally Mandated Drug Testing of Transportation Workers" by Charles V. Dale, 1989.

We hope this information is useful. Please contact this agency if you have questions or need additional information.

Attachments

POSITION PAPER: DEPARTMENT OF EDUCATION

Division Educational Finance and Support Services Bill Number HB 474

Bill Title Drug and alcohol tests for school bus drivers.

Sponsor Representative Gail Phillips

Position Statement: Explain briefly what the bill does, its impacts and Department's position, i.e., a) support, b) do not support, c) neutral or d) oppose.

The Department of Education supports the concept of drug and alcohol tests for school bus drivers. At a minimum we believe that all drivers should be tested prior to employment and annually. The latter test would be considered random. All drivers in a given district would be tested on the same unannounced day. Districts would be selected randomly, with each district selected sometime during each year. Additional testing would be done after an accident and when reasonable cause exists.

This frequency is consistent with mandatory testing requirements in the states of Delaware and Arizona, and comparable to federal requirements for drivers of school buses in interstate commerce. Drivers of school buses within Alaska are not currently affected by federal drug testing regulations.

APPROVED:

Director Duane Guiley Division Educational Finance and Support Services

Signature  Date 3-9-92

Commissioner/Deputy Jerry Covey/Karen R. Crane

Signature  Date 3-9-92

NORTH SLOPE BOROUGH  
ORDINANCE SERIAL NC. 91-07

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT  
OF A DRUG TESTING PROGRAM FOR NORTH SLOPE  
BOROUGH EMPLOYEES

WHEREAS, the North Slope Borough has a compelling interest in assuring the safety and security of all Borough employees and all citizens of the Borough as they go about their daily business, and

WHEREAS, the North Slope Borough, as the largest employer in the Borough and as a matter of public policy, has a critical interest in securing a safe workplace, and

WHEREAS, citizens and communities throughout the North Slope Borough have indicated that substance abuse in the workplace is a continuing and growing concern, and

WHEREAS, numerous Borough employees are currently subject to Federal regulations governing drug use in the workplace which require drug testing of said employees, and

WHEREAS, the Drug and Alcohol Policy of the North Slope Borough was adopted to address the problem of drug and alcohol abuse by Borough employees, and

WHEREAS, the ultimate concern of the Borough is the protection of workplace and public safety, it is in the best interest of the Borough and the citizens of the North Slope Borough to extend drug testing to all Borough employees to ensure the safety of all.

NOW THEREFORE, BE IT ENACTED:

SECTION 1. Classification. This ordinance is of a general and permanent nature and shall become part of the Borough code.

SECTION 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

SECTION 3. Effectiveness. This ordinance shall become effective upon adoption.

SECTION 4. Adoption of Section. Title 2, Chapter 20, Section 440 is hereby adopted as annexed hereto as part of Title 2 of the Code of Ordinances of the North Slope Borough.

INTRODUCED: August 13, 1991

ADOPTED: Sept. 10, 1991

*P. Linn Lemeth*  
PRESIDENT

Date: 9-26-91

ATTEST:

*[Signature]*  
BOROUGH CLERK

Date: 9-26-91

*[Signature]*  
MAYOR

Date: 9-26-91

2.20.440 Provision for establishment of a drug and alcohol testing program for borough employees.

A. The Mayor, with the assistance of the Law Department, shall prescribe drug and alcohol testing rules and regulations that govern all Borough employees regardless of position, classification or location of employment.

B. The drug and alcohol testing rules and regulations shall:

1. Become effective upon approval by the Mayor and review and ratification by the North Slope Borough Assembly.

2. Be comprehensive in nature and contain provisions covering the following:

a. Development of an employee handbook incorporating the drug and alcohol policy statements, testing requirements and detailed penalties for violation of the drug and alcohol testing rules and regulations.

b. Assessment of local drug and alcohol rehabilitation programs and existing policies relating to Employee Assistance Programs as described in the North Slope Borough Drug and Alcohol Policy.

c. Provide for professional services contract(s) for drug and alcohol testing and analyses of specimens. Specific services to include:

1. Confirmatory testing by gas chromatography/mass spectrometry when initial screenings are positive.

2. Documented procedures for chain of custody.

3. Timeliness of analyses of specimens and report of results.

4. Computer based random number generator or similar system to ensure true random selection.

5. Competitive price for services.

d. Establish procedures for taking specimens.

e. Develop a supervisory report form for drug and alcohol incidents.

f. Establish a filing system for all drug and alcohol testing information and incident reports, confidential and separate from regular personnel files.

g. Notify and train supervisors on the drug and alcohol policy and train supervisors in recognizing the symptoms of drug and alcohol abuse.

h. Notify employees and prospective employees of the drug and alcohol testing policy of the North Slope Borough.

i. Organize a drug and alcohol testing policy orientation for all employees to be held prior to implementation of the testing program, and thereafter as part of the orientation of new employees.

j. Notify all contractors and other service providers by ordinance that compliance with the Drug and Alcohol testing policy will be a contractual condition for performing work for the North Slope Borough.

D. Notwithstanding any provision in this chapter or any personnel rule and regulation adopted under it, the rules and procedures prescribed and approved under this section shall apply to all Borough employees and if in conflict with any existing provision shall supersede it.

ord\91-07.clk

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: 3/6/92 Department Affected: Education  
 Title: Drug/Alcohol Tests for School BRU: K-12 Support  
Bus Drivers Component: Pupil Transportation  
 Sponsor: Rep. Gail Phillips  
 Requestor: (H) Transportation COMPONENT SERIAL NO. 

	1	4	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	135.6	135.6	135.6	135.6	135.6	135.6
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	135.6	135.6	135.6	135.6	135.6	135.6
CAPITAL						
REVENUE	GF	GF	GF	GF	GF	GF
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	135.6	135.6	135.6	135.6	135.6	135.6
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	135.6	135.6	135.6	135.6	135.6	135.6

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Romayne Kareen Phone: 465-2865  
 Division: Education Finance & Support Services Date: 3/6/92  
 Approved by Commissioner: Jerry Covey  
 Agency: Education Date: 3/6/92

STATE OF ALASKA  
DEPARTMENT OF EDUCATION

No. 1

HB 474  
Revised Fiscal Note - 3/6/92

\$135,600 Annual Cost

ASSUMPTIONS:

1. Each driver would receive an alcohol/drug test prior to his/her employment as a school bus driver.
2. An alcohol/drug test would be required annually for each individual employed as a school bus driver. All drivers in a district would be tested. Selection of districts would be random, with each district selected sometime during each year.
3. Post-accident and reasonable cause testing could also be conducted.
4. The alcohol/drug test would be a urine test.
5. The estimated cost for one test is \$80 to cover initial testing, shipping to lab, recordkeeping, and follow-up testing if results come back positive. A more accurate estimate of actual cost could be made after the question listed below is answered and quotations are obtained from laboratories.

CALCULATION OF \$135,600 ANNUAL COST:

Pre-Hire Tests:

Estimated Number of Pre-Hires Based on  
Number of Original School Bus Driver Permits  
Issued Annually by Department of Public  
Safety, Division of Motor Vehicles: 480

Random Tests:

Estimated Number of Individuals Employed  
as School Bus Drivers on any Day of the  
School Year: + 840

Estimated Total Number of Annual Alcohol/  
Drug Tests to be Conducted: 1,320

X Estimated Cost for Test x \$80

Estimated Annual Cost for Tests \$ 105,600

Estimated Annual Cost to Contract for  
Administration of Program 30,000

TOTAL ESTIMATED ANNUAL COST TO STATE \$ 135,600

QUESTION:

What constitutes "improper use of drugs and alcohol"? The answer is needed to determine: (a) what we are testing for, such as illegal use of drugs, blood alcohol content above a certain level, presence of any kind of medication that would have an adverse effect on psycho-motor skills to safely operate a school bus, etc.; (b) the method of testing required, such as blood, urine, saliva or combination thereof; (c) regulations that would need to be promulgated; and (d) determination of cost to state for tests conducted and administration of program.

COMMITTEE COPY

COMMITTEE COPY



# Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE GAIL PHILLIPS

STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

Official Business  
PHONE: (907) 465-2689  
FAX: (907) 465-3472

HOUSE BILL 474

PRESENTED TO THE HOUSE HESS COMMITTEE

House Bill 474 is titled "An Act requiring drug and alcohol tests for school bus drivers." At the request of several constituents of mine, and as a result of some incidents we had on the Kenai Peninsula, I introduced this bill to help assure the safe transportation of our children to school.

HB 474 is a brief, straight-forward, bill that would require a school district or regional educational attendance area providing for the transportation of pupils to set up a drug and alcohol testing program which would include random testing. Under current law testing for "probable cause" and in the event of an accident is already allowed.

In addition, this bill directs the Department of Education to adopt regulations to implement this program and to include provisions for a hearing before discipline is imposed.

If passed into law, HB 474 will go into effect 90 days after it is signed by the Governor.

In the packet before you, you will find a memo from Theresa Cramer, the legislative counsel who drafted this bill. In it she mentions that "A school bus driver could challenge the requirement as a government-required search without a requirement that there be probable cause for the search." Her concern addresses the random testing aspect of this bill. However, as she also mentions, there is precedence for a court ruling that a random test is acceptable where the employee's expectation of privacy is lessened because of the type of employment and where the public interest is sufficiently great.

However, I do not see that there could be a greater public interest than the safety of our children? In addition, if the law already provides for commercial transporters, pilots, train engineers, etc. to be tested -- why wouldn't we require testing for school bus drivers?

Several other states (Arizona, Illinois, and Louisiana) already require drug testing of school bus drivers and other states have proposed legislation. Also in your packets are copies of other states' statutes and the results of some research done by our Legislative Research Agency. You may find this information a good resource for questions you may have.

The Department of Education has provided a fiscal note to accompany this bill which includes a random testing program in which school districts are randomly selected and 100% of the drivers in the district are tested. In addition the proposed DOE fiscal note includes 100% pre-hire testing, testing in the event of accidents and for "probable cause", as well as administrative costs.

Thank you for the opportunity to present this bill before your committee today.

(7)

Date Referred: February 13, 1992

FURTHER REFERRALS:

HES  
Finance

Date of Committee Action: 2/10/92

The TRANSPORTATION Committee considered:

HB 474

HOUSE BILL NO. 474

DRUG TESTING FOR SCHOOL BUS DRIVERS

"An Act requiring drug and alcohol tests for school bus drivers."

RECOMMENDATIONS:  the same title  
be replaced with \_\_\_\_\_  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact NOF

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Louis Phillips</i>	<input checked="" type="checkbox"/>	<i>Eugene A. Kubera</i>		<input checked="" type="checkbox"/>	
<i>Loren A. Roman</i>	<input checked="" type="checkbox"/>				
<i>Richard [unclear]</i>	<input checked="" type="checkbox"/>				
<i>[unclear]</i>	<input checked="" type="checkbox"/>				

*[Signature]*  
CHAIRMAN'S SIGNATURE

HB 474 "An Act requiring drug and alcohol tests for school bus  
drivers. "

Sponsor Statement (gold)

Fiscal Note (blue) - Department of Education - \$135.6

Department of Education Position Paper (pale yellow)

1. ALCOPRO Drug Screening Products
2. Memorandum from Teresa B. Cramer, Legislative Counsel
3. Memorandum from Dale O. Brandt, Legislative Analyst
4. Legislation from other states.

Formerly Beverage Products Company

Fall 1991

# ALCO

## DRUG AND ALCOHOL SCREENING PRODUCTS

*New!*

### DRUG SCREENS

accuPINCH™  
THC



Post-It™ brand fax transmittal memo 7671 # of pages 1

To <i>Rep. Gerald Phillips</i>	From <i>Lynn White</i>
Co. <i>State Capitol</i>	Co. <i>Supern Recovery Unit</i>
Dept.	Phone # <i>586-5369</i>
Fax # <i>465-2294</i>	Fax # <i>586-5605</i>

accuPINCH™ DRUG SCREEN KIT

# accuPINCH™ DRUG SCREEN KIT

## NEW! accuPINCH

Accurate drug screening in just 7 minutes.

Imagine getting results from your drug screening right away—in exactly seven minutes. No more sending every urine specimen to your laboratory and waiting days for results. Imagine having a discussion with your client about the results of their drug screen immediately after they have given their specimen, and being able to take appropriate action promptly.

All this is possible with the accuPINCH™ Drug Screen kits just released by HYCOR Biomedical, Inc. The accuPINCH™ kits meet all the guidelines from the National Institute of Drug Abuse (NIDA), and have received approval from the Federal Food and Drug Administration. The kits utilize the proven immunoassay technology to detect the five major drugs of abuse. Best of all, the accuPINCH™ is specifically designed to be used in the field by non-medical staff.

In order to make the accuPINCH™ kits available for use by non-medical staff, HYCOR had to make the procedure as simple as possible. They accomplished this by using unique tools, such as the pipettes provided with each kit that automatically apply the exact amount of urine for the sample; with the design of the test modules, which have a test well to apply the urine specimen and are color coded to identify the kit for each drug; and by making the procedure identical for each of the five kits.

- Results on the spot in 7 minutes.
- Positive results indicated by distinct color change.
- State-of-the-art immunoassay technology.
- Conforms to NIDA cutoff levels.
- FDA approved.
- One year shelf life: must be refrigerated.



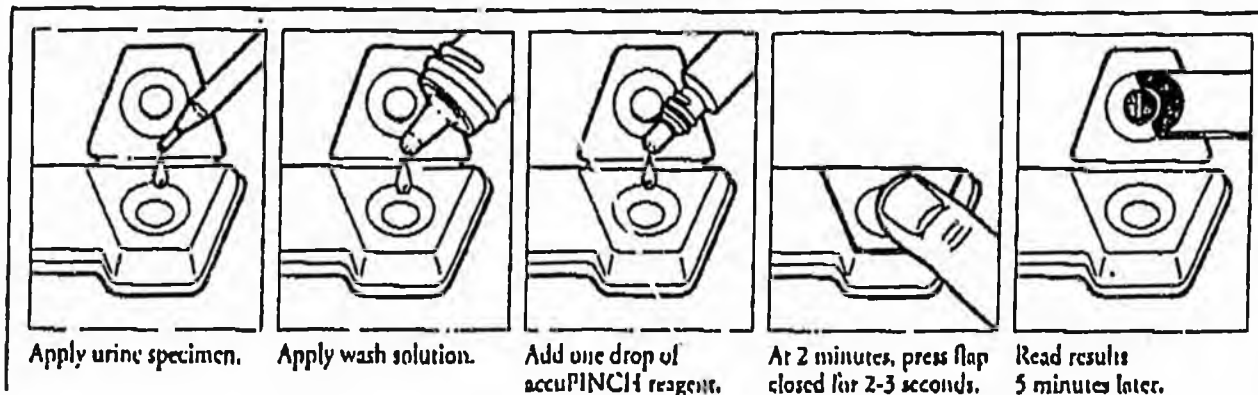
## accuPINCH™ DRUG SCREEN KIT

Cocaine	Cat. #85000	\$225.00 per box of 50 tests
Opiates	Cat. #85005	\$225.00 per box of 50 tests
PCP	Cat. #85010	\$225.00 per box of 50 tests
THC (Marijuana)	Cat. #85015	\$225.00 per box of 50 tests
Amphetamines	Cat. #85020	\$225.00 per box of 50 tests
Timer	Cat. #50433	\$12.00

(Urine collection containers not provided with kits.)

# Accurate Drug Screening in Just 7 Minutes

## It's easy to see that accuPINCH is easy to use.



The accuPINCH™ kits come with all the supplies and equipment needed to analyze a urine specimen, and set up as a complete work station. The box of test modules, which must be refrigerated when not in use, fits into the base of the station. Pipettes, Wash Solution, Reagent Solution, and Color Reference Standards are all conveniently stored in the work station.

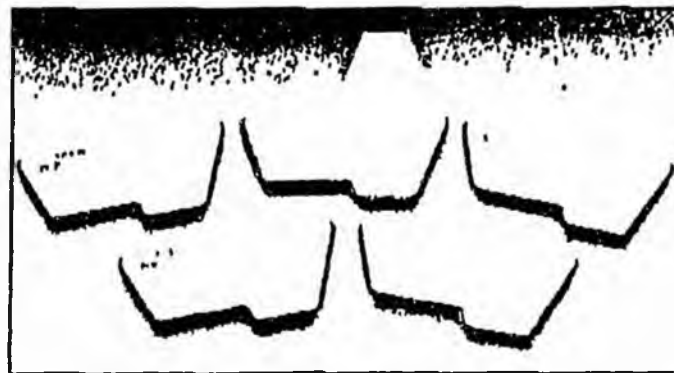
The test procedure begins by applying the urine specimen to the test module using the special pipette. The Wash Solution is then applied, as is the Reagent Solution. After 2 minutes, the upper flap is closed for several seconds, allowing the upper reagent disk to contact the lower disk in the test well. Results are read 5 minutes later.

The accuPINCH™ kit indicates positive results with a green color. The darkness of the green color is compared to the two Reference Color Standards to determine if the drug is present at or above the NIDA cutoff level, or at a lower concentration.

HYCOR has included a Positive Drug Control with each kit which allows the user to confirm that the kits are working properly. The Positive Drug Control contains the drug at a level above the NIDA cutoff level. When a sample of the Positive Drug Control is tested with an accuPINCH™ kit, it should yield a positive result.

HYCOR provides toll free technical assistance to accuPINCH™ users. Courteous, trained staff are available during regular business hours to assist with questions and problems users may encounter when using the accuPINCH™ kits.

Additional information on the accuPINCH™ kits is available upon request. Please use the response card enclosed with this catalog, or call our toll free number below to make your request or to discuss any questions you may have about the accuPINCH™ kit.



ORDER TOLL FREE 800-227-9890 • FAX 615-546-7872

P.O. BOX 10954 • KNOXVILLE, TN 37939 • 615/546-8327 • 800/227-9890 • FAX 615/546-7872

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SMITH-HURD  
ILLINOIS ANNOTATED  
STATUTES

Chapters 111 $\frac{2}{3}$  to 119

Chapter 111 $\frac{2}{3}$   
Public Utilities  
¶ 601 to End  
to  
Records

1991  
Cumulative Annual Pocket Part

*For Use In 1991-1992*

Replacing 1990 Pocket Part in back of volume

Under same classification as  
ILLINOIS REVISED STATUTES  
STATE BAR ASSOCIATION EDITION

Includes laws through P.A. 86-1490,  
approved Jan. 14, 1991

ST. PAUL, MINN.  
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# ARIZONA REVISED STATUTES

ANNOTATED

1991

Cumulative Pocket Part

*For Use In 1991-1992*

Replacing 1990 Pocket Part in back of volume

Volume 9A

Title 28

NOV 10 1991

LEGISLATIVE AFFAIRS §§ 28-101 to 28-1300  
Reference Library

Including Legislation Enacted In The First Regular  
And The First and Second Special Sessions Of  
The Fortieth Legislature (1991)

ST. PAUL, MINN.

WEST PUBLISHING CO.

§ 28-413. What persons shall not be licensed

A. The department shall not issue a license:

1. To a person, for a class D or M license, who is under the age of sixteen years, except that the department may issue a restricted class D license as provided by this chapter to a person who is at least fifteen years of age.
2. To a person, for a class A, B or C license, who is under the age of twenty-one years, except that the department may issue a class A, B or C license which is restricted to intrastate driving only to a person who is at least eighteen years of age.
3. To a person whose license has been suspended, during such suspension, nor to a person whose license has been revoked; except as provided in § 28-448.
4. To a person, for a class A, B or C license, who has been disqualified from obtaining a commercial driver's license.
5. To a person who is an habitual drunkard or is addicted to the use of narcotic drugs.
6. To a person who has previously been adjudged to be incapacitated pursuant to § 14-5304 and who has not at the time of application obtained a termination of incapacity by the methods provided by law.
7. To a person who is required by the provisions of this chapter to take an examination, unless the person has successfully passed the examination.
8. To a person who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof.
9. To a person when the department has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare.

B. The department shall not issue to or renew a driver's license for any person when the department has been notified by a court that the licensee has violated his written promise to appear in court when charged with a violation of the motor vehicle code until the department has received notification in a manner approved by the motor vehicle division that the person has appeared either voluntarily or involuntarily, or the case has been adjudicated, is being appealed or has otherwise been disposed of as provided by law. If notified pursuant to § 28-1080, the department shall not issue a driver's license to or renew the license of any person who has failed to pay a civil sanction as provided in § 28-1080, except a parking violation, until the department receives notification in a manner approved by the motor vehicle division that the person has paid the sanction or the case is being appealed or has otherwise been disposed of as provided by law. The magistrate or the clerk of the court shall provide such notification to the department in all cases affected by this subsection.

Amended by Laws 1989, Ch. 220, § 21, eff. Jan. 1, 1990.

Historical and Statutory Notes

The 1989 amendment, in subsec. A, rewrote par. 1, inserted new pars. 2 and 4 and renumbered other paragraphs accordingly.

Laws 1989, Ch. 220, § 64 provides:

"This act is effective from and after December 31, 1989."

The 1989 amendment of this section by Ch. 220 explicitly amended the 1987 amendment of this section by Ch. 148.

1989 Reviser's Note:

In subsection A, paragraph 4 a comma following "C" was transposed to follow "license" pursuant to authority of § 41-1304.02.

§ 28-414.01. School bus drivers; requirements

A. A person shall not operate a school bus transporting school children unless he possesses the appropriate license class for the size of school bus being operated, a bus endorsement and a school bus certificate issued by the department.

B. In order to be certified as a school bus driver a person shall do all of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department.

2. Complete an initial instructional course on school bus driver safety and training including behind the wheel training.

C. The department shall, by rule, establish minimum standards for the certification of school bus drivers and provide, in cooperation with local school districts or the department of education, for school bus driver safety and training courses. The standards established shall include requirements concerning moral character, knowledge of school bus operation, pupil and motor vehicle safety, physical impairments which might affect the applicant's ability to safely operate a school bus or which might endanger the health or safety of school bus passengers, knowledge of first aid, establishment of school bus safety and training courses and a refresher course to be completed on at least a biennial basis, and such other matters as the department may prescribe for the protection of the public. The standards shall provide that tests shall be performed to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34<sup>1</sup> that may adversely affect the ability of the applicant to safely operate a school bus and that hearing tests may be performed with or without the use of a hearing aid and that the hearing tests be performed as provided in title 49, code of federal regulations, part 391.41.

D. In carrying out the provisions of this section the department shall require applicants to furnish fingerprints, and the department shall obtain criminal history record information pursuant to § 41-1750. The applicant for certification for the purposes of this subsection shall pay a fee which is payable to the department of public safety to reimburse the department of public safety for the cost of obtaining the applicant's criminal history record information required by this section. The fee which is payable to the department of public safety shall not exceed the actual cost of obtaining the applicant's criminal history record information.

E. The department shall issue a school bus driver certificate to an applicant who fully meets the requirements of this section which is valid if the applicant maintains the minimum standards established by this section. The department may cancel the certificate if the person's license to drive is suspended, cancelled, revoked or disqualified. The department shall cancel the certificate if the person fails to maintain minimum standards established pursuant to subsection C of this section. A person whose application for a certificate is refused or whose certificate is cancelled for failure to meet or maintain minimum standards may request and receive a hearing.

Amended by Laws 1989, Ch. 220, § 22, eff. Jan. 1, 1990; Laws 1990, Ch. 324, § 2.

<sup>1</sup> Section 13-3401 et seq.

Historical and Statutory Notes  
The 1989 amendment, effective January 1, 1990, rewrote subssecs. A and E (redesignated from "F"); and deleted former subsec. E.

Laws 1989, Ch. 220, § 64 provides:

"This act is effective from and after December 31, 1989."

The 1989 amendment of this section by Ch. 220 explicitly amended the 1987 amendment of this section by Ch. 148.

The 1990 amendment inserted provisions relating to alcohol or drug tests in the last sentence of subsec. C.

#### § 28-415. Instruction permits and temporary licenses

A. Any person who is at least fifteen years and seven months of age may apply to the department for an instruction permit for a class D license. The department may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having the permit in his immediate possession, to drive a motor vehicle requiring a class D license upon the public highways for a period of twelve months when accompanied by a person who possesses the same class or higher class of license and who is occupying a seat beside the driver, except in the event the permittee is operating a motorcycle.

B. The department upon receiving proper application may in its discretion issue a restricted instruction permit for a class D license effective for a school year or more restricted period to an applicant who is enrolled in a driver training program approved by the department and is at least fifteen years of age. After the applicant has successfully

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WEST'S  
LOUISIANA STATUTES  
ANNOTATED

REVISÉD STATUTES

*Official Classification*

Sections 49:1 to 51:470

Volume 27A

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Cumulative Annual Pocket Part

Replacing 1990 pocket part in back of volume

**Includes laws through the 1990  
Regular Session**

ST. PAUL, MINN.  
WEST PUBLISHING CO.

B. No cause of action for defamation of character, libel, slander, or damage to reputation or privacy arises in favor of any person against an employer or testing entity who has established a program of drug or alcohol testing in accordance with this Chapter, unless:

(1) The results of that test were disclosed to any person other than the employer or testing entity, an authorized employee or agent of the employer or testing entity, the tested employee, or the tested prospective employee;

(2) The information disclosed was based on a false test result or a failure to comply with the provisions of this Chapter;

(3) All elements of an action for defamation of character, libel, slander, or damage to reputation or privacy as established by statute or civil law, are satisfied.

C. Any provision of this Chapter held to be prohibited by the laws of the state of Louisiana shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Chapter.

Added by Acts 1990, No. 1036, § 1, eff. Jan. 1, 1991.

**Historical and Statutory Notes**

This section, enacted as R.S. 49:1122 by Acts 1990, No. 1036, § 1 effective January 1, 1991,

was redesignated as R.S. 49:1012; and in subsec. C, "Act" was twice changed to "Chapter", both on authority of R.S. 24:253.

**PART IV. PUBLIC EMPLOYEE DRUG TESTING**

★ § 1015. Public employee drug testing

A. A public employer may require, as a condition of continued employment, samples from his employees to test for the presence of drugs following an accident during the course and scope of his employment, under other circumstances which result in reasonable suspicion that drugs are being used, or as a part of a monitoring program established by the employer to assure compliance with terms of a rehabilitation agreement.

B. A public employer may require samples from prospective employees, as a condition of hiring, to test for the presence of drugs.

C. A public employer may implement a program of random drug testing of those employees who occupy safety-sensitive or security-sensitive positions.

D. Any public employee drug testing shall occur pursuant to a written policy, duly promulgated, and shall comply with the provisions of this Chapter.

E. In the event the Louisiana State Racing Commission shall require or conduct drug testing on its employees, agents, and representatives, the Commission shall comply with the provisions of this Part and the Louisiana Administrative Procedure Act as well as seek prior approval of the procedures of the drug testing by the appropriate legislative oversight committee. The failure of the State Racing Commission to receive the required legislative approval shall negate all test results conducted under the non-approved procedures. Any drug testing program or procedure required or conducted by the State Racing Commission shall be applicable and include the members of the State Racing Commission.

Added by Acts 1990, No. 1036, § 1, eff. Jan. 1, 1991.

**Historical and Statutory Notes**

This section, enacted as R.S. 49:1125 by Acts 1990, No. 1036, § 1, effective January 1, 1991,

was redesignated as R.S. 49:1015 on authority of R.S. 24:253.

**CHAPTER 16. NAMING STATE STATUTORY ENTITIES, AGENCIES, DEPARTMENTS, OFFICES AND BUDGET UNITS**

§ 1101. Naming state statutory entities, agencies, departments, offices, or budget units

A. Except as designated by the Constitution of Louisiana or as provided in R.S. 49:215(E) or Subsection B of this Section, no statutory entity, as defined in R.S. 49:190, or

Subtitle 17 MOTOR VEHICLE  
ADMINISTRATION — DRIVER LICENSING AND  
IDENTIFICATION DOCUMENTS

11.17.13 Point System: Definition of Moving  
Violation and Assessment of Points

Authority: Transportation Article, §16-402,  
Annotated Code of Maryland

Notice of Proposed Action  
(92-019-P)

The Administrator of the Motor Vehicle Administration proposes to amend Regulation .02 under COMAR 11.17.13 Point System: Definition of Moving Violation and Assessment of Points.

Statement of Purpose

When COMAR 11.17.13 was originally promulgated, the violation "failing to yield to an emergency vehicle" was a one point violation. Chapter 431 of the Acts of 1981 changed this to a two-point offense, "passing an emergency or police vehicle", so the original offense is being deleted from these regulations. In addition, Chapter 179 of the Acts of 1991 establishes a new offense "exceeding speed limit within highway work zone", and exceeding this limit by 1 — 9 miles per hour automatically becomes a 1-point violation under Transportation Article, §16-402(a)(1), Annotated Code of Maryland. Speeds in excess of 9 miles per hour over the limit are also assigned points under Transportation Article, §16-402, Annotated Code of Maryland.

Estimate of Economic Impact

The proposed action has no economic impact.

Opportunity for Public Comment

Written comments may be sent to Victoria D. Whitlock, Director, Division of Driver Control and Records, 6801 Ritchie Highway, N.E., Glen Burnie, Maryland, 21062 or by telephoning (410) 768-7681, Monday through Friday, 8:30 a.m. to 4:30 p.m. These comments must be received by February 11, 1992. No public hearing has been scheduled.

.02 Assessment of Points.

A. (text unchanged)

B. Section Moving Violation

(1) — (25) (text unchanged)

[(26) 21-405 Failure to yield right-of-way to emergency vehicle]

[(27) (26) — [(46) (45) (text unchanged)

(46) 21-802.1 Exceeding maximum speed limit by 1 — 9 miles per hour in a highway work zone

(47) — (73) (text unchanged)

C. (text unchanged)

W. MARSHALL RICKERT  
Administrator  
Motor Vehicle Administration

Title 13A

STATE BOARD OF EDUCATION

Subtitle 06 SUPPORTING PROGRAMS

13A.06.07 Student Transportation

Authority: Education Article, §§2-203(i), 5-201, 5-203, 9-411 — 8-412,  
Annotated Code of Maryland

Notice of Proposed Action  
(92-012-P)

The State Board of Education proposes to repeal current Regulations .01 — .12 and to adopt new Regulations .01 — .17 under COMAR 13A.06.07 Student Transportation.

Statement of Purpose

These new regulations govern the safe transportation of students by the local school systems. Many of the current regulations have been in effect since 1981. Language throughout the chapter has been changed to reflect the current terminology in use in specific areas ("handicapped student" replaced with "student with disabilities," "Level V" replaced with "Intensity V," etc.). Regulations that were considered redundant to other State or federal regulations have been repealed.

The proposed new regulations include drug testing requirements for school vehicle drivers. The tests include mandatory pre-service, random, and probable cause testing, and post-accident testing at the discretion of the local supervisor.

The psychophysical tests for school bus drivers have been replaced by performance tests for both drivers and attendants. Most of the equipment used to perform and score the psychophysical tests is old and no longer available from the manufacturers; the one piece that is still available has been modified so that the former method of scoring the tests is no longer valid. The new scoring requires scaling for age and sex of the individual taking the test. The performance tests are more objective, clearly demonstrating that the driver and attendant either can or cannot perform the tasks required by the job.

In the instructional area, the proposed new regulations require that each school bus driver and attendant be certified each year in cardio-pulmonary resuscitation (CPR).

Estimate of Economic Impact

I. Summary of Economic Impact. These proposed new regulations are expected to result in increased expenditures by the local school systems ranging from negligible to moderate. A slight to moderate benefit to medical laboratories is expected to result from the drug testing requirement. Although difficult to quantify, a moderate to significant benefit should accrue to the public through increased confidence in the drug-free status of the school bus drivers and attendants who have responsibility for the daily transportation of the public school students.

II. Types of Economic Impacts.	Revenue (+) Expense (-)	Magnitude
A. On issuing agency:	NONE	
B. On other State or local agencies:		
Local school systems:		
1. Driver skills tests	(-)	Slight
2. CPR for school bus drivers and attendants	(-)	\$1,059,336
3. Drug testing for school bus drivers	(-)	\$167,126

	Benefit (+) Cost (-)	Magnitude
C. On regulated industries or trade groups:		
1. Drug testing laboratories	(+)	Moderate
2. American Red Cross	(-)	\$35,000
D. On other industries or trade groups:	NONE	
E. Direct and indirect effects on public:	(-)	Moderate

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

E.1. The driver skill tests are expected to impact negligibly on the local school systems. The equipment needed to perform these tests will likely cost less than \$50 per local school system, and no more time will be required to perform these tests than is currently used to perform the psychophysical tests.

B.2. Certification in CPR for school bus drivers and attendants will require a considerable expenditure for the local school systems. The figure shown includes the training of one or more school bus driver instructors to become certified CPR instructors, training time and costs for all regular and substitute school bus drivers; and training time and costs for all regular and substitute school bus attendants. The cost to certify school bus driver instructors to become CPR instructors is a one-time cost; as long as they continue teaching the course, they retain the certification. For school bus drivers and attendants, however, the certification is only good for one year; thus, it must be given to every individual every year.

Costs were calculated as follows: For a school bus driver instructor to become a certified CPR instructor, 25 hours of instruction is necessary. An average of \$15 per hour was used times 25 hours; the number of school bus driver instructors to be certified was determined by using one instructor for each 50 classes (number of classes determined by dividing the total number of regular and substitute drivers and regular and substitute attendants by 10, the maximum allowed per class). The cost to certify instructors was \$12,480.

CPR instruction for school bus drivers and attendants requires an 8-hour course every year. Costs for this instruction were calculated by assuming an average hourly salary of \$12 for drivers and \$10 for attendants. This provided a cost of \$762,336 for driver instruction and \$135,200 for attendant instruction.

Also included in the cost is \$36,000 for purchase of "Rescue Annie" mannequins necessary to CPR instruction. The American Red Cross recommends 1 mannequin for every 3 students in a class, therefore, 3 mannequins have been assumed for each local school system based on a maximum class size of 10.

B.3. The expense shown for drug testing for school bus drivers includes only the actual amount necessary to perform the preservice and random tests. It does not include the cost for probable cause tests, since it would be impossible to quantify these; nor does it include the cost for post-accident testing, since this type of test is left to the supervisor's discretion. It also does not include the administrative costs involved in establishing a drug testing program in the school systems. The calculations were derived by calculating the total number of regular and substitute drivers, dividing it in half (since the regulation requires that 50 percent be tested every year), and adding 10 percent to allow for turnover. This figure was then multiplied by \$35, the anticipated cost per test.

C.1. The laboratories certified to perform drug tests will benefit from the regulation.

C.2. The American Red Cross is the sole source for the "Rescue Annie" mannequin used for CPR training and would be the beneficiary of this amount of money for purchasing the mannequins.

E. With an additional 7,000 people trained in CPR as a result of these regulations, there could be a nonquantifiable benefit to the public in the event of an emergency requiring the presence of someone so trained. There should be improved public confidence in the school bus drivers and school bus attendants as a result of the drug testing regulation.

Opportunity for Public Comment

Pursuant to State Government Article, §10-506(c), Annotated Code of Maryland, the State Board of Education will hold a hearing concerning the repeal and new regulations on January 28, 1992 at 1:30 p.m. in the Maryland State Education Building, 200 West Baltimore Street, Baltimore, Maryland. All interested persons are invited to attend and give their views.

Written comments may be sent to Nancy S. Gramick, State Superintendent of Schools, Maryland State Education Building, 200 West Baltimore Street, Baltimore, Maryland 21201. These comments must be received not later than February 11, 1992.

Open Meeting

Action on the repeal and new regulations proposed below will be considered by the State Board of Education during a public meeting to be held February 26, 1992, in the Maryland State Education Building, 200 West Baltimore Street, Baltimore, Maryland, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

§1 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Accident" means an occurrence or action involving a driver of a school vehicle operated by or under contract to a local school system which results in an injury or fatality to an individual or damage to a motor vehicle or property. Buses not registered as school buses or school charter vehicles are excluded from this definition.

(2) "Appreciable damage" means property damage in excess of \$500.

(3) "Incapacitating injury" means an injury, other than fatal, that prevents the injured individual from walking, driving, or normally continuing the activities that the individual was capable of performing prior to the accident.

(4) "Loading zone" means an area on or adjacent to a highway, but not on the roadway, where a school vehicle stops to load or unload passengers.

(5) "Personal injury" means an injury treated by a physician, dentist, or nurse, or in a hospital.

(6) "Preventable accident" means an accident in which the driver failed to do everything the driver reasonably could have done to prevent it according to accepted standards of the National Safety Council.

(7) "School charter vehicle" means a vehicle as described in Transportation Article, §18-420(c), Annotated Code of Maryland.

(8) "School vehicle" means a vehicle as defined in Transportation Article, §11-154, Annotated Code of Maryland.

(9) "Type I vehicle" means a vehicle as described in Transportation Article, §11-173, Annotated Code of Maryland.

§2 Program.

Each local school system is responsible for the safe operation of its student transportation system and shall conform to the regulations promulgated by the State Board of Education and the procedures and guidelines established by the State Department of Education. Local school systems may adopt policies and procedures which do not conflict with existing federal and State rules, regulations, policies, and procedures. Local policies and procedures may exceed the minimum requirements established in these regulations.

- (a) At least 1 hour shall be instruction in first aid;
- (b) 8 hours shall be for certification in CPR; and
- (c) 1 hour shall be instruction appropriate to the duties of the school vehicle attendant.

(2) In-service. A school vehicle attendant shall complete 10 hours of in-service instruction annually, as follows:

- (a) 8 hours shall be for certification in CPR; and
- (b) 2 hours shall be in topics appropriate to the duties of the school vehicle attendant.

(3) At least 1 hour of instruction in first aid shall be provided every 3 years.

D. *Instructional Records.* Each local school system shall maintain attendance records of all pre-service and in-service instructional sessions. The attendance school records shall contain all of the following information:

- (1) Name of trainee, driver, or attendant;
- (2) Name of instructor;
- (3) Dates of instruction;
- (4) Number of hours of classroom instruction and topics of instruction; and
- (5) Number of hours of behind-the-wheel instruction.

#### .08 Drug Testing Program.

A. Each local school system shall implement a drug testing program for school vehicle drivers by July 1, 1993. The drug testing procedures shall meet or exceed the standards established by the U.S. Department of Transportation in 48 CFR Part 40, which is incorporated by reference. A local school system may also adopt the guidelines for testing conditions established by the U.S. Department of Transportation in 49 CFR §§301.81-391.116, so long as they also meet the requirements of this regulation.

##### B. Conditions for Testing for Illegal Use of Drugs.

(1) A school bus driver trainee shall pass a drug test before being permitted to transport any student in a school vehicle.

(2) Random drug tests shall be administered to school vehicle drivers as follows:

(a) The number of tests administered annually shall equal at least 50 percent of the total number of driver names provided by the local school system to the Motor Vehicle Administration on its October roster;

(b) During each of the testing time periods in §527(c), the pool of names from which the selection is made shall include the names of all drivers, including those previously tested; and

(c) Approximately 20 percent of the tests are to be administered in each of the following periods:

- (i) July - October,
- (ii) November - December,
- (iii) January - February,
- (iv) March - April, and
- (v) May - June.

(3) A drug test is to be administered as soon as practicable when a supervisor of transportation has reasonable cause to believe that a school vehicle driver is using an illegal drug.

(4) A drug test may be administered following any school vehicle accident.

C. A school vehicle driver may not be given more than 24 hours notification of the drug test. A driver who fails to take a drug test within 24 hours of notification is permanently disqualified from operating a school vehicle unless the supervisor of transportation determines and documents in writing that the driver had good and sufficient reason not to take the test within 24 hours. In this case, the driver may not operate a school vehicle until the driver has passed a drug test, which is to be administered at a time determined by the supervisor of transportation.

D. A school vehicle driver or trainee who tests positive for illegal drugs is permanently disqualified from operating a school vehicle.

#### .09 General Standards.

A. A school vehicle or school charter vehicle may not be used to transport students unless a Vehicle Acceptance Sheet as required by the State Department of Education has been completed by the supervisor of transportation and is on file in the local transportation office.

B. Type 1 vehicles shall be used to transport students to and from school. Vehicles other than Type 1 shall be used only when special approval in writing has been given by the Chief of Pupil Transportation, State Department of Education, unless:

- (1) The vehicle is a taxicab; or
- (2) Only one student is transported.

C. Vehicles used to transport students on regular routes shall be:

- (1) New; or
- (2) Previously registered school vehicles originally used to transport Maryland public school students.

##### D. Spare Vehicles.

(1) Spare vehicles shall be available during the time route vehicles are in operation.

(2) Spare vehicles shall be either:

- (a) New;
- (b) Previously registered regular route vehicles; or
- (c) Vehicles purchased new after July 6, 1983, and verified in writing by the Motor Vehicle Administration as originally used in Maryland to transport private or parochial school students.

E. An electricpowered wheelchair may be transported in a school vehicle if it meets all of the following conditions:

- (1) The battery is not of the liquid-acid type;
- (2) The battery is enclosed in an impact-resistant container;
- (3) The battery container is securely fastened to the wheelchair;

(4) The battery container lid is securely fastened to the battery container; and

(5) All electrical terminals not inside the battery container are protected from accidental contact.

F. At least twice during each school year, each student who is transported in a school vehicle shall participate in emergency school vehicle evacuation drills.

#### .10 Vehicle Inspections.

A. Three safety inspections and a preventive maintenance inspection shall be conducted on each public school vehicle annually in accordance with Motor Vehicle Administration regulations and inspection standards.

B. The supervisor of transportation or the Chief of Pupil Transportation, State Department of Education, may require additional inspections of individual vehicles at any time.

C. A preoperational check of each vehicle shall be performed at a designated time each day the vehicle is operated.

D. A vehicle that is found at any time to be mechanically unsafe shall be immediately discontinued from use until made safe and authorized to be placed in service again by the supervisor of transportation.

#### .11 Routing and Scheduling.

A. The prime consideration is the safety of riders.

B. Stops shall be approximately 1/4 mile apart. This does not apply to routes exclusively designated for students with disabilities.

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SECOND REGULAR SESSION  
**SENATE BILL NO. 572**  
86TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR TREPTLER

Pre-filed December 2, 1993, and 1,000 copies ordered printed.

TERRY L. SPITLER, Secretary

2125-LSR

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**AN ACT**

Relating to drug testing of school bus operators.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section 1. As used in this act, the following words and  
2 phrases shall mean:

3 (1) "Approved laboratory," a facility approved by the  
4 department of health for the taking and collecting of specimens  
5 to be tested pursuant to this act;

6 (2) "Confirmation test," a drug test on a specimen to  
7 substantiate the results of an initial drug test on the specimen.  
8 The confirmation test shall use an alternate method of equal or  
9 greater sensitivity than that used in the previous drug test;

10 (3) "Drug," for the purposes of this act only, any controlled  
11 substance as defined in section 195.010, RSMo, or ethyl alcohol  
12 in a concentration in a person's blood or breath of eight-  
13 hundredths of one percent or more by weight of alcohol in the  
14 blood;

15 (4) "Drug test," a chemical test administered for the

16 purpose of determining the presence or absence of a drug or drug  
17 metabolites in a person's blood, urine, saliva or breath;

18 (5) "Employer," for the purposes of this act only, any board  
19 of education of a local school district, the state board of  
20 education or any corporation, partnership, proprietorship or  
21 association which provides transportation for pupils pursuant to  
22 contract or agreement with any local board of education or the  
23 state board of education;

24 (6) "Initial test," the first drug test to determine the  
25 presence or absence of drugs or drug metabolites in test  
26 specimens;

27 (7) "Job applicant," a person seeking employment from an  
28 employer as defined in this act, for a position in which the duties  
29 involve the operation of a school bus. Such job applicant may  
30 or may not possess a school bus operator's permit pursuant to  
31 section 302.272, RSMo;

32 (8) "Neutral selection basis," a mechanism for selecting  
33 school bus operators for drug tests that:

34 (a) Results in an equal probability that any operator from  
35 a group of operators subject to the selection mechanism will be  
36 selected; and

37 (b) Does not give an employer discretion to waive the  
38 selection of any operator selected under the mechanism;

39 (9) "Prescription or non-prescription medication," a drug  
40 prescribed for use by a duly licensed physician, dentist or other  
41 medical practitioner licensed to issue prescriptions or a drug  
42 that is authorized pursuant to federal or state law for general  
43 distribution and use without a prescription in the treatment of  
44 human diseases, ailments or injuries;

45 (10) "Reasonable suspicion drug testing," drug testing based  
46 on a belief that a school bus operator is using or has used drugs  
47 in violation of the employer's policy drawn from specific,  
48 objective and articulable facts and reasonable inferences drawn  
49 from those facts in light of experience, and may be based upon,  
50 among other things:

51 (a) Observable phenomena, such as: direct observation of  
52 drug use or the physical symptoms or manifestations of being  
53 under the influence of a drug;

54 (b) Abnormal conduct or erratic behavior while at work or  
55 deterioration in work performance;

56 (c) A report of drug use provided by reliable and credible  
57 sources and which has been independently corroborated;

58 (d) Evidence that an individual has tampered with a drug  
59 test, during his employ with the current employer;

60 (e) Information that a school bus operator has caused or  
61 contributed to an accident while at work;

62 (f) Evidence that a school bus operator is involved in the  
63 use, possession, sale, solicitation or transfer of drugs while  
64 working or while on the employer's premises or operating the  
65 employer's school bus;

66 (11) "School bus operator," a person who holds a school bus  
67 operator's permit pursuant to section 302.272, RSMo;

68 (12) "Specimen," human blood, urine, saliva or breath in a  
69 quantity capable of chemically revealing the presence of drugs  
70 in the human body.

Section 2. 1. Any employer, as defined in this act, may  
2 test or cause to be tested for the presence of drugs a specimen  
3 obtained from any school bus operator holding a permit under  
4 the provisions of section 302.272, RSMo, or from a job applicant  
5 as defined in section 1 of this act.

6 2. Any local board of education or the state board of  
7 education in contracting with any corporation, partnership,  
8 proprietorship or association for the provision of pupil  
9 transportation services may require as part of the contract or  
10 agreement the implementation of a drug testing program as  
11 provided by sections 1 to 15 of this act.

Section 3. 1. Any school bus operator who may be  
2 required to submit to a drug test pursuant to sections 1 to 15  
3 of this act shall be provided, at least thirty days prior to the  
4 implementation of a drug testing program, a written policy

5 statement from the employer which contains:

- 6 (1) A general statement of the policy on school bus operator
- 7 drug use which will include identifying both the grounds on
- 8 which a school bus operator may be required to submit to a drug
- 9 test and the actions which may be taken on the basis of a
- 0 positive confirmed drug test result;
- 1 (2) A statement advising the school bus operator of the
- 2 existence of sections 1 to 15 of this act;
- 3 (3) A general statement concerning confidentiality;
- 4 (4) Procedures for school bus operators to confidentially
- 5 report the use of prescription or non-prescription medications
- 6 prior to being tested;
- 7 (5) Circumstances under which drug testing may occur, and
- 8 a description of which operators will be subject to testing on a
- 9 reasonable suspicion, neutral selection or other basis;
- 0 (6) The consequences of refusing to submit to a drug test;
- 1 (7) A statement that a school bus operator who receives a
- 2 positive confirmed drug test result may contest the accuracy of
- 3 that result or explain it;
- 4 (8) A list of all drugs for which the test may be conducted.
- 5 Each drug shall be described by its brand name or common
- 6 name, as applicable, as well as its chemical name;
- 7 (9) A statement regarding any applicable collective
- 8 bargaining agreement or contract.

2. An employer shall post the notice in an appropriate and conspicuous location on the employer's premises and copies of the policy will be available for inspection during regular business hours by school bus operators in the employer's personnel office or other suitable locations.

3. The department of health shall develop standard language for those sections of drug testing notices described in subsection 1 of this section.

4. An employer who conducts job applicant drug testing shall notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug test, that the

40 applicant may be tested for the presence of drugs or drug  
41 metabolites.

42 5. A school bus operator or job applicant required to submit  
43 to a drug test may be requested by an employer to sign a  
44 statement indicating that he has read and understands the  
45 employer's drug testing policy and notice. A school bus operator's  
46 or job applicant's refusal to sign such a statement shall not  
47 invalidate the results of any drug test, or bar the employer from  
48 administering the drug test or from taking action consistent  
49 with the terms of an applicable collective bargaining agreement  
50 or the employer's drug testing policy, or from refusing to hire  
51 the job applicant.

Section 4. 1. All drug testing conducted by employers  
2 shall be in conformity with the standards established in this  
3 section, other applicable provisions of sections 1 to 15 of this act,  
4 and all applicable regulations promulgated pursuant to sections  
5 1 to 15 of this act.

6 2. An employer may require that the following types of drug  
7 tests be administered to school bus operators or job applicants:

8 (1) Employers may require job applicants to submit to a  
9 drug test as a condition of the employment application and may  
10 use a refusal to submit to a test or may use a positive confirmed  
11 test result as a basis for refusal to hire;

12 (2) An employer may require all school bus operators to  
13 submit to reasonable suspicion drug testing;

14 (3) An employer may require a school bus operator to  
15 submit to a drug test on a neutral selection basis;

16 (4) An employer may require a school bus operator to  
17 submit to a drug test if the test is conducted as part of a  
18 routinely scheduled employee fitness for duty medical  
19 examination that is part of the employer's established policy and  
20 which is scheduled routinely for all school bus operators  
21 employed by the employer;

22 (5) An employer may require a school bus operator to  
23 submit to neutral selection or routine drug tests if the test is

24 conducted in accordance with the terms of an applicable  
 25 collective bargaining agreement or contract that permits the  
 26 employer to administer drug tests on a neutral selection or  
 27 routine basis.

Section 5. All specimen collection and testing for drugs  
 2 under this act shall be performed in accordance with the  
 3 regulations promulgated by the department of health. Such  
 4 regulations shall provide standards and procedures with respect  
 5 to the following:

6 (1) The collection of specimens shall be performed under  
 7 reasonable and sanitary conditions. Individual dignity shall be  
 8 preserved to the extent practicable;

9 (2) Specimens shall be collected in a manner reasonably  
 10 calculated to prevent substitution of specimens and interference  
 11 with the collection or testing of specimens;

12 (3) Specimen collection shall be documented, and the  
 13 documentation procedures shall include:

14 (a) Labeling of specimen containers so as to reasonably  
 15 preclude the likelihood of erroneous identification of test results;  
 16 and

17 (b) An opportunity for the school bus operator or job  
 18 applicant to provide any information that he considers relevant  
 19 to the test, including identification of currently or recently used  
 20 prescription or non-prescription drugs, or other relevant medical  
 21 information. The provision of this information shall not preclude  
 22 the administration of the drug test, but shall be taken into  
 23 account in interpreting any positive confirmed results;

24 (4) Specimen collection, storage and transportation to the  
 25 testing site shall be performed in a manner which shall  
 26 reasonably preclude specimen contamination or adulteration;

27 (5) Specimen testing for drugs shall conform to scientifically  
 28 accepted analytical methods and procedures;

29 (6) Each confirmation test conducted under sections 1 to 15  
 30 of this act, not including the taking or collecting of a specimen  
 31 to be tested, shall be conducted by a laboratory approved by the

32 department of health for this purpose;

33 (7) A specimen for a drug test may be taken or collected  
 34 by any of the following persons:

35 (a) A physician, a registered professional nurse or a licensed  
 36 practical nurse;

37 (b) Any person deemed qualified by the department of  
 38 health;

39 (8) The department of health may establish a program to  
 40 train and certify persons to collect specimens and conduct on-  
 41 site drug tests in the workplace. Employers may designate  
 42 employees for this training and certification, or may utilize any  
 43 person so trained and certified;

44 (9) A person who collects or takes a specimen for a drug  
 45 test conducted pursuant to sections 1 to 15 of this act shall  
 46 collect an amount sufficient for three drug tests as defined by  
 47 the department of health;

48 (10) Any drug testing conducted or requested by an  
 49 employer shall occur during the regular work period of current  
 50 school bus operators and shall be deemed to be performed during  
 51 work time for purposes of determining compensation and  
 52 benefits for current school bus operators;

53 (11) Every specimen that produces a positive confirmed  
 54 result shall be preserved by the approved laboratory that  
 55 conducts the confirmation test for a period of ninety days from  
 56 the time the results of the positive confirmed test are mailed  
 57 or otherwise delivered to the employer. During this period, the  
 58 school bus operator or job applicant who has provided the  
 59 specimen shall be permitted by the employer to have a portion  
 60 of the specimen retested, at the school bus operator's or  
 61 applicant's expense, at an approved laboratory chosen by the  
 62 school bus operator or applicant. The approved laboratory that  
 63 has performed the test for the employer shall be responsible for  
 64 the transfer of the portion of the specimen to be retested, and  
 65 for the integrity of the chain of custody during such transfer;

66 (12) Within five working days after receipt of a positive

67 confirmed test result report from the testing laboratory, an  
 68 employer shall, in writing, inform a school bus operator or job  
 69 applicant of such positive confirmed test result and inform the  
 70 school bus operator or applicant, in writing, of the consequences  
 71 of such a report and the options available to him;

72 (13) A school bus operator or job applicant may request and  
 73 receive from the employer a copy of the test result report;

74 (14) An employer may not discharge, discipline, refuse to  
 75 hire or discriminate against a school bus operator or job  
 76 applicant on the basis of a positive test result that has not been  
 77 verified by a confirmatory test; and

78 (15) An employer who performs on-site drug tests or  
 79 specimen collection shall establish chain-of-custody procedures  
 80 to ensure proper recordkeeping, handling, labeling and  
 81 identification of all specimens to be tested.

Section 6. 1. The employer shall pay the costs of all drug  
 82 tests required, or requested, of a school bus operator or job  
 83 applicant. The school bus operator or job applicant shall pay the  
 84 costs of any additional drug tests requested by the school bus  
 85 operator or job applicant.

86 2. Any local board of education which undertakes a drug  
 87 testing program or which pays an employer's drug testing costs  
 88 shall pay for such program out of local revenues and shall not  
 89 be reimbursed by the state.

Section 7. Only approved laboratories shall conduct  
 90 confirmation drug tests. All confirmation tests shall use an  
 91 alternate method of equal or greater sensitivity than that used  
 92 on the initial drug test. If an initial drug test is negative, there  
 93 shall be no confirmation drug test.

Section 8. 1. A school bus operator or job applicant whose  
 94 drug test result is confirmed as positive in accordance with the  
 95 provisions of sections 1 to 15 of this act shall not, by virtue of  
 96 the result alone, be defined as a person with a "handicap."

97 2. An employer who discharges or disciplines a school bus  
 98 operator on the basis of a positive confirmed drug test in

99 7 accordance with sections 1 to 15 of this act shall be considered  
 100 8 to have discharged or disciplined the employee for good cause.

9 3. A physician-patient relationship is not created between  
 10 a school bus operator or job applicant, and an employer or any  
 11 person performing or evaluating the drug test, solely by the  
 12 establishment or implementation of a drug testing program.

13 4. Sections 1 to 15 of this act shall not prevent an employer  
 14 from establishing reasonable work rules related to employee  
 15 possession, use, sale or solicitation of drugs, including  
 16 convictions for drug-related offenses and from taking action  
 17 based upon a violation of any of those rules.

18 5. Sections 1 to 15 of this act shall not be retroactive and  
 19 shall not abrogate any right of an employer under state law to  
 20 conduct drug tests prior to the effective implementation date  
 21 sections 1 to 15 of this act. A drug test conducted by an employer  
 22 before the effective date is not subject to sections 1 to 15 of this  
 23 act.

24 6. An employer may temporarily suspend a school bus  
 25 operator or may transfer a school bus operator to another  
 26 position which does not involve operation of a school bus after  
 27 obtaining the results of a positive on-site initial test or positive  
 28 confirmed test.

Section 9. 1. All information, interviews, reports,  
 2 statements, memoranda and test results, written or otherwise  
 3 received by the employer through its drug testing program are  
 4 confidential communications and may not be used or received  
 5 in evidence, obtained in discovery, or disclosed in any public or  
 6 private proceedings, except in accordance with sections 1 to 15  
 7 of this act.

8 2. Any information obtained by an employer pursuant to  
 9 sections 1 to 15 of this act shall be the property of the employer.

10 3. An employer shall not release to any person other than  
 11 the school bus operator or job applicant, except as provided by  
 12 section 14 of this act, information related to drug test results  
 13 unless:

14 (1) The school bus operator or job applicant has expressly,  
15 in writing, subsequent to the testing and with knowledge of its  
16 results, granted permission for the employer to release such  
17 information; or

18 (2) It is necessary to introduce a positive confirmed test  
19 result into an arbitration proceeding pursuant to a collective  
20 bargaining agreement, an administrative hearing under  
21 applicable state law, or a judicial proceeding, provided that  
22 information is relevant to the hearing or proceeding to cancel  
23 the school bus operator's permit, or the information must be  
24 disclosed to a federal agency or other unit of United States  
25 government as required under law, regulation or order, or in  
26 accordance with compliance requirements of a federal  
27 government contract.

Section 10. No laboratory may be approved by the  
2 department of health for confirmation drug tests unless the  
3 laboratory follows proper quality control procedures, including,  
4 but not limited to:

5 (1) The use of internal quality controls including the use of  
6 samples of known concentrations which are used to check the  
7 performance and calibration of testing equipment, and periodic  
8 use of blind samples for overall accuracy;

9 (2) An internal review and certification process for test  
0 results, conducted by a person qualified to perform that function  
1 in the testing laboratory;

2 (3) Security measures implemented by the testing  
3 laboratory to preclude adulteration of specimens and test  
4 results; and

5 (4) Other necessary and proper actions are taken to ensure  
6 reliable and accurate test results.

Section 11. 1. A laboratory shall disclose to the employer  
2 a written test result report within five working days after the  
3 test.

4 2. All laboratory reports of a test result shall, at a  
5 minimum, state:

6 (1) The name and address of the laboratory that performed  
7 the test and the positive identification of the person tested;

8 (2) Any positive confirmed drug test results on a specimen  
9 which tested positive on an initial test, or a negative drug test  
10 result on a specimen. Reports should not refer to initial or  
11 confirmatory tests when reporting positive or negative results;

12 (3) A list of the drugs tested for;

13 (4) The type of tests conducted for both initial and  
14 confirmation tests and the cutoff levels of the tests;

15 (5) The report shall not disclose the presence or absence of  
16 any physical or mental condition or of any drug other than the  
17 specific drug and its metabolites that an employer requests to  
18 be identified.

Section 12. The department of health shall adopt rules  
2 concerning:

3 (1) Standards for approval of drug testing laboratories;

4 (2) Methods of analysis and procedures to ensure reliable  
5 drug testing results, including standards for initial tests and  
6 confirmatory tests;

7 (3) Guidelines on how to establish cutoff detection levels for  
8 drugs or their metabolites for the purposes of determining a  
9 positive test result;

10 (4) Chain-of-custody procedures to ensure proper  
11 identification, labeling and handling of specimens being tested;  
12 and

13 (5) Retention and storage procedures to ensure reliable  
14 results on confirmation tests and retests.

Section 13. 1. Any employer who exercises the provisions  
2 of sections 1 to 15 of this act shall be without liability from all  
3 civil actions arising from any drug testing programs or  
4 procedures performed in compliance with sections 1 to 15 of this  
5 act.

6 2. No cause of action for defamation of character, libel,  
7 slander or damage to reputation arises in favor of any person  
8 against an employer who has established a program of drug

9 testing in accordance with sections 1 to 15 of this act, unless:

10 (1) Information regarded as confidential is released not in  
11 accordance with an information release form signed by the  
12 person or otherwise not in accordance with sections 1 to 15 of  
13 this act; and

14 (2) The incorrect test result was disclosed with malice; and

15 (3) All other elements of an action for defamation of  
16 character, libel, slander or damage to reputation as established  
17 by statute or common law, are satisfied.

18 3. No cause of action shall arise in favor of any person based  
19 upon the failure of an employer to establish a program or policy  
20 for drug testing.

Section 14. 1. Any local board of education and the state  
2 board of education shall report to the director of revenue any  
3 confirmed positive drug test result for any school bus operator  
4 employed by the board or for any job applicant.

5 2. Any corporation, partnership, proprietorship or  
6 association which provides transportation for pupils pursuant to  
7 contract or agreement with any local board of education or the  
8 state board of education shall report to the director of revenue  
9 and to the board with whom it has a contract or agreement any  
10 confirmed positive drug test result for any school bus operator  
11 whom it employs if that school bus operator transports pupils  
12 for that board. Any such corporation, partnership,  
13 proprietorship, or association shall report to the director of  
14 revenue the confirmed positive drug test result of any job  
15 applicant.

Section 15. 1. The director of the department of revenue  
2 shall immediately cancel the school bus operator's permit held  
3 by any person upon receipt of notice that such person has had  
4 a confirmed positive drug test according to the provisions of  
5 sections 1 to 15 of this act. The cancellation shall be in effect  
6 for a one-year period, after which the operator may re-apply for  
7 a permit if he or she has successfully completed a drug  
8 rehabilitation program approved by the director of revenue. A

9 second cancellation for a confirmed positive drug test shall be  
10 permanent.

11 2. Whenever the director of revenue becomes aware that a  
12 holder of a school bus operator's permit is not eligible for  
13 issuance or renewal of such permit pursuant to section 302.272,  
14 RSMo, the director shall immediately cancel such permit.

15 3. The director of revenue shall notify by registered mail  
16 any such school bus operator of such cancellation.

17 4. Upon notice of such cancellation, if any such school bus  
18 operator shall neglect or refuse to surrender his school bus  
19 operator's permit, the director shall direct the state highway  
20 patrol or any police officer to secure possession thereof and  
21 return it to the director.

22 5. In the event that the permit of any school bus operator  
23 is canceled pursuant to this section, the school bus operator may  
24 appeal to the circuit court of the county of his residence as  
25 provided in section 302.311, RSMo.

26 6. Any person who wishes to re-apply for a permit under  
27 subsection 1 shall pay the director a reinstatement fee of twenty  
28 dollars in addition to all other fees provided by law.