

1 S.160

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Labor; employment practices; drug testing of employees; probable
6 cause

7 Statement of purpose: This bill proposes to clarify the meaning of probable
8 cause for the purposes of employee drug testing.

9 An act relating to probable cause to administer an employee drug test

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 21 V.S.A. § 513 is amended to read:

12 § 513. DRUG TESTING OF EMPLOYEES; PROHIBITIONS;

13 EXCEPTIONS

14 (a) General prohibition. Except as provided in subsection (c) of this
15 section, an employer shall not, as a condition of employment, promotion, or
16 change of status of employment, or as an expressed or implied condition of a
17 benefit or privilege of employment, do any of the following:

18 (1) Request or require that an employee take or submit to a drug test.

19 (2) Administer or attempt to administer a drug test to an employee.

1 (3) Request or require that an employee consent, directly or indirectly,
2 to a practice prohibited under this subchapter.

3 (b) Random or company-wide tests. An employer shall not request,
4 require, or conduct random or company-wide drug tests except when such
5 testing is required by federal law or regulation.

6 (c) Exception. Notwithstanding the prohibition in subsection (a) of this
7 section, an employer may require an individual employee to submit to a drug
8 test if all the following conditions are met:

9 (1) Probable cause. The employer or an agent of the employer has
10 probable cause to believe the employee is using or is under the influence of a
11 drug on the job. For purposes of this subdivision, probable cause includes any
12 of the following while on the job:

13 (A) Visual physical indications of drug use by the employee.

14 (B) Erratic or unusual behavior that is symptomatic of drug use.

15 (C) The possession of drugs or unambiguous drug paraphernalia by
16 the employee.

17 (D) A credible report by a named fellow employee that an employee
18 is under the influence of drugs.

19 (2) Employee assistance program. The employer has available for the
20 employee tested a bona fide rehabilitation program for alcohol or drug abuse
21 and such program is provided by the employer or is available to the extent

1 provided by a policy of health insurance or under contract by a nonprofit
2 hospital service corporation.

3 (3) Employee may not be terminated. The employee may not be
4 terminated if the test result is positive and the employee agrees to participate in
5 and then successfully completes the employee assistance program; however,
6 the employee may be suspended only for the period of time necessary to
7 complete the program, but in no event longer than three months. The
8 employee may be terminated if, after completion of an employee assistance
9 program, the employer subsequently administers a drug test in compliance with
10 subdivisions (1) and (4) of this subsection and the test result is positive.

11 (4) Administration of test. The drug test is administered in accordance
12 with section 514 of this title.