

# STATE OF NEW YORK

320--B

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. SALAZAR, BRISPORT, BROUK, CLEARE, COONEY, FERNANDEZ, GOUNARDES, JACKSON, KRUEGER, MYRIE, RIVERA, SEPULVEDA, SERRANO, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Women's Issues -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to prohibiting drug, cannabis or alcohol testing and screening of pregnant or postpartum individuals and newborns

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section  
2 2509-b to read as follows:

3 § 2509-b. Drug, cannabis or alcohol testing and screening for pregnant  
4 or postpartum individuals; prohibited. 1. For purposes of this section:

5 (a) "drug" shall mean a controlled substance as that term is defined  
6 in section thirty-three hundred six of this chapter.

7 (b) "cannabis" shall mean cannabis or concentrated cannabis as those  
8 terms are defined in section 222.00 of the penal law.

9 (c) "drug, cannabis or alcohol test" shall mean a test using a biolog-  
10 ical sample, including, but not limited to, urine or hair, for the pres-  
11 ence of drugs, cannabis or alcohol.

12 (d) "drug, cannabis or alcohol screen" shall mean the use of a vali-  
13 dated verbal or written tool or questionnaire by a health care profes-  
14 sional licensed, certified, or authorized under title eight of the  
15 education law to determine use of drugs, cannabis or alcohol by a preg-  
16 nant or postpartum person.

17 2. No health care professional licensed, certified, or authorized  
18 under title eight of the education law shall:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD00489-05-3

1 (a) perform a drug, cannabis or alcohol test on a person who is preg-  
2 nant or up to one year postpartum unless:

3 (i) the pregnant or postpartum individual gives prior written and oral  
4 informed consent specific to the drug, cannabis or alcohol test; and

5 (ii) the performance of the drug, cannabis or alcohol test is within  
6 the scope of medical care being provided to the individual, cannabis.

7 (b) perform a drug, cannabis or alcohol screen in a hospital on a  
8 person who is pregnant or up to one year postpartum unless:

9 (i) the pregnant or postpartum individual gives prior written and  
10 oral informed consent specific to the drug, cannabis or alcohol screen;  
11 and

12 (ii) the performance of the drug, cannabis or alcohol screen is  
13 within the scope of medical care being provided to the individual.

14 (c) perform a drug, cannabis or alcohol screen outside a hospital on a  
15 person who is pregnant or up to one year postpartum unless:

16 (i) the pregnant or postpartum individual gives prior oral informed  
17 consent specific to the drug, cannabis or alcohol screen; and

18 (ii) the performance of the drug, cannabis or alcohol screen is  
19 within the scope of medical care being provided to the individual.

20 3. No health care professional licensed, certified or authorized under  
21 title eight of the education law shall:

22 (a) perform a drug, cannabis or alcohol test on a newborn unless:

23 (i) the individual authorized to consent for the newborn, as defined  
24 by subdivision two of section twenty-five hundred four of this title,  
25 gives prior written and oral informed consent specific to the drug,  
26 cannabis or alcohol test; and

27 (ii) the performance of the drug, cannabis or alcohol test is within  
28 the scope of medical care being provided to the newborn;

29 (b) perform a drug, cannabis or alcohol screen in a hospital on a  
30 newborn unless:

31 (i) the individual authorized to consent for the newborn, as  
32 defined by subdivision two of section twenty-five hundred four of this  
33 title, gives prior written and oral informed consent specific to the  
34 drug, cannabis or alcohol screen; and

35 (ii) the performance of the drug, cannabis or alcohol screen is  
36 within the scope of medical care being provided to the newborn;

37 (c) perform a drug, cannabis or alcohol screen outside a hospital on a  
38 newborn unless:

39 (i) the individual authorized to consent for the newborn, as  
40 defined by subdivision two of section twenty-five hundred four of this  
41 title, gives prior oral informed consent specific to the drug, cannabis  
42 or alcohol screen; and

43 (ii) the performance of the drug, cannabis or alcohol screen is  
44 within the scope of medical care being provided to the newborn.

45 4. Written and oral informed consent to a drug, cannabis or alcohol  
46 test or drug or alcohol screen shall occur at the time of testing, in  
47 language understandable to the pregnant or postpartum individual, or the  
48 individual authorized to consent for the newborn, under circumstances  
49 that provide such individual sufficient opportunity to consider whether  
50 or not to authorize the drug, cannabis or alcohol test or drug, cannabis  
51 or alcohol screen and minimize the possibility of coercion or undue  
52 influence, and shall consist of oral authorization and written authori-  
53 zation that is dated, signed and includes the following:

54 (a) a statement explaining that consenting to a drug, cannabis or  
55 alcohol test or drug, cannabis or alcohol screen is voluntary and

1 requires written and oral informed consent, except when conditions under  
2 subdivision five of this section are met;

3 (b) a statement that testing or screening positive for drugs, cannabis  
4 or alcohol could have legal consequences, including, but not limited to,  
5 a report to a local child protective services agency, and that the indi-  
6 vidual may want to consult with legal counsel prior to or after consent-  
7 ing to a drug, cannabis or alcohol test or drug, cannabis or alcohol  
8 screen;

9 (c) a statement explaining the extent of confidentiality of the test  
10 or screen results;

11 (d) a statement of the medical purpose of the test or screen; and

12 (e) a general description of the test or screen.

13 5. Drug, cannabis or alcohol testing or drug, cannabis or alcohol  
14 screening may be performed without consent of the patient or the indi-  
15 vidual authorized to consent for a newborn when, in the health care  
16 professional's judgment, an emergency exists and the patient or newborn  
17 is in immediate need of medical attention, and an attempt to secure  
18 consent would result in delay of treatment that could increase the risk  
19 to the patient's or newborn's life or health. In the case that drug,  
20 cannabis or alcohol testing or drug or alcohol screening is performed  
21 under these circumstances, the test or screen results shall be discussed  
22 with the patient or the individual authorized to consent for the  
23 newborn, in language understandable to the patient or individuals  
24 authorized to consent for the newborn and shall consist of oral notifi-  
25 cation and written notification that is dated, signed and includes the  
26 following:

27 (a) a statement that testing or screening positive for drugs, cannabis  
28 or alcohol could have legal consequences, including but not limited to a  
29 potential report to a local child protective services agency, and that  
30 the patient or individual authorized to consent for the newborn may want  
31 to consult with legal counsel;

32 (b) a statement in the medical record with a description of the emer-  
33 gency that necessitated unconsented drug, cannabis or alcohol testing or  
34 drug, cannabis or alcohol screening; and

35 (c) a statement explaining the extent of confidentiality of the test  
36 or screen results.

37 6. No health care professional licensed, certified, or authorized  
38 under title eight of the education law shall refuse to treat an individ-  
39 ual who is pregnant or up to one year postpartum or a newborn because of  
40 the patient or individuals authorized to consent for the newborn's  
41 refusal to submit to a drug, cannabis or alcohol test or drug, cannabis  
42 or alcohol screen.

43 7. Nothing in this section shall diminish any other requirement to  
44 obtain informed consent for a drug, cannabis or alcohol test or drug,  
45 cannabis or alcohol screen or any other procedure.

46 § 2. This act shall take effect immediately.