

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1468

BY: ROACH

AS INTRODUCED

AN ACT RELATING TO LABOR; ENACTING THE UNIFORM STANDARDS FOR DRUG TESTING ACT; PROVIDING SHORT TITLE; PROVIDING LEGISLATIVE INTENT; DEFINING TERMS; PROVIDING FOR EMPLOYER TO REQUIRE TESTING OF GENERAL EMPLOYEES AND MANAGEMENT PERSONNEL; PROVIDING FOR TIME, TRANSPORTATION AND COSTS OF TESTING; PROVIDING PROCEDURES FOR TESTING AND SAMPLE COLLECTION; PROVIDING FOR POSITIVE SAMPLE PRESERVATION AND A WRITTEN CHAIN OF CUSTODY; REQUIRING WRITTEN POLICY AND NOTICE OF DRUG TESTING BY THE EMPLOYER; PROVIDING DISCIPLINARY AND REHABILITATION ACTIONS OF AN EMPLOYER; PROVIDING FOR CONFIDENTIALITY OF THE INFORMATION; REQUIRING CERTAIN LICENSING FOR DRUG AND ALCOHOL TESTING; REQUIRING PROMULGATION OF RULES AND REGULATIONS FOR LICENSURE; REQUIRING FEES FOR LICENSURE; PROVIDING FINES FOR UNLICENSED TESTING; PROVIDING FOR EMPLOYER TO CONDUCT DRUG TESTS WITH CERTAIN RESTRICTIONS; PROVIDING FOR DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS UPON CERTAIN CONDITIONS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 500 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Standards for Drug Testing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 501 of Title 40, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature to establish procedures, standards, and safeguards so as to provide a consistent framework that serves and protects the interests of all parties. This act does not require drug testing in the work place but does seek to provide a means to achieve a safe, drug-free, and equitable work environment for employers, employees, and the general public.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 502 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Standards for Drug Testing Act:

1. "Alcohol" means ethyl alcohol or ethanol;
2. "Drugs" means any substance specified in Section 2-101 of Title 63 of the Uniform Controlled Dangerous Substances Act;
3. "Employer" means any person, firm, or corporation, including any public utility or transit district, which has one or more workers or operators employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written. "Employer" does include the state government and other local political subdivisions;
4. "Employee" means any person in the service of an employer for compensation;

5. "Prospective employee" means any person who has made application to an employer, whether written or oral, to become an employee; and

6. "Sample" means urine, blood, breath, saliva, or hair.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 503 of Title 40, unless there is created a duplication in numbering, reads as follows:

Unless federal laws or federal regulations or the laws of another state provide otherwise, it is lawful for an employer to test employees or prospective employees not covered by a collective bargaining agreement for the presence of drugs or alcohol, if the testing is done in accordance with the provisions of the Uniform Standards for Drug Testing Act, such testing can be performed as a condition of hiring after an individual has been offered employment or continued employment. Collective bargaining agreements may use and incorporate the procedures of this act. If random drug testing is utilized, employers and management in general must submit to the testing themselves on the same periodic basis.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 504 of Title 40, unless there is created a duplication in numbering, reads as follows:

In order to test reliably for the presence of drugs or alcohol, an employer may require samples from the employees and prospective employees of the employer, and may require presentation of reliable identification to the person collecting the samples. Collection of the sample shall be in conformance with the requirements of Section 7 of this act. The employer may designate the type of sample to be used for testing.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 505 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any drug or alcohol testing by an employer shall occur during or immediately after the regular work period of current employees and shall be deemed work time for purposes of compensation and benefits for current employees.

B. An employer shall pay all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a place other than the workplace.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 506 of Title 40, unless there is created a duplication in numbering, reads as follows:

All sample collection and testing for drugs and alcohol pursuant to the Uniform Standards for Drug Testing Act shall be performed in accordance with the following conditions:

1. The collection of samples shall be performed under reasonable and sanitary conditions;

2. Samples shall be collected and tested with due regard to the privacy of the individual being tested and in the instances of urinalysis the samples shall not be collected where the tester or employer, except for a qualified health professional, is in direct visual sight of the employee. Collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;

3. Sample collection shall be documented, and the documentation procedures shall include:

- a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
- b. an opportunity for the employee or prospective employee to provide notification of any information which the employee or prospective employee considers relevant to the test, including identification of

currently or recently used prescription or nonprescription drugs, or other relevant medical information;

4. Sample collection, storage, and transportation to the place of testing shall be performed so as reasonably to preclude the probability of sample contamination or adulteration;

5. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any action by an employer pursuant to Section 10 of this act; and

6. Two samples for each test shall be collected. The employee has the right to cause a second independent analysis to be conducted if the results from the first test are positive.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 507 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. All specimens which result in a finding of drugs or alcohol shall be refrigerated and preserved in a sufficient quantity for retesting for a period of at least three hundred sixty (360) days.

B. A written record of the chain of custody of the specimen shall be maintained from the time of the collection of the specimen until the specimen is no longer required.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 508 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy which has been distributed to employees at least thirty (30)

days before testing and is available for review by prospective employees.

B. Within the terms of the written policy, an employer may require the collection and testing of samples for the following purposes:

1. Investigation of possible individual employee impairment;
  2. Investigation of accidents in the workplace or incidents of workplace theft;
  3. Maintenance of safety for employees or the general public;
- or
4. Maintenance of productivity, quality of products or services, or security of property or information.

C. The collection and testing of samples not limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee may only be undertaken if explicitly stated according to subsections A and D of this section.

D. The use and disposition of all drug or alcohol test results by the employer are subject to the disciplinary and rehabilitative limitations of Section 10 of this act and the evidential and discovery limitations of Section 11 of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 509 of Title 40, unless there is created a duplication in numbering, reads as follows:

Upon receipt of a verified or confirmed second positive drug or alcohol test result from an independent organization which indicates a violation of the written policy of the employer, or upon the refusal of an employee or prospective employee to provide a sample, an employer may use that test result or refusal as the basis for disciplinary or rehabilitative actions, which may include the following:

1. A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;

2. Suspension of the employee with or without pay for a period of time;

3. Termination of employment;

4. Refusal to hire a prospective employee; or

5. Other disciplinary measures in conformance with the usual procedures of the employer.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 510 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. All information, interviews, reports, statements, memoranda, or test results received by the employer through the drug or alcohol testing program of the employer are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer in a rehabilitative and disciplinary action against an employee pursuant to Section 10 of this act.

B. The information described in subsection A of this section shall be the property of the employer.

C. An employer is entitled to use a drug or alcohol test result as a basis for rehabilitative and disciplinary action pursuant to Section 10 of this act.

D. An employer may not be examined as a witness with regard to the information described in subsection A of this section, except in a proceeding related to an action taken by the employer in rehabilitative and disciplinary actions pursuant to Section 10 of this act.

E. No information on general health, pregnancy, legal prescription drugs, or other information not related to determining alcohol and drug use as previously described shall be transmitted to the employer.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2550.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise licensed by the State Department of Health, on and after January 1, 1992, no laboratory or hospital, clinic, pathologist, physician or facility providing laboratory services to test for the evidence of drugs or alcohol shall provide such laboratory services unless it is licensed by the State Department of Health to perform such tests. The State Department of Health shall promulgate rules and regulations necessary for such license, including license revocation, suspension and nonrenewal. The rules and regulations shall include, but not be limited to quality control, the number and qualifications of personnel, proficiency tests, number of tests and record keeping.

B. The fees for licensure of the laboratory facilities by the State Department of Health shall be set by the State Board of Health and shall not be less than One Hundred Dollars (\$100.00) per year nor more than One Hundred Fifty Dollars (\$150.00). Such licenses shall be renewed annually.

C. Any laboratory or hospital, clinic, pathologist, physician or facility providing laboratory services to test for the evidence of drugs or alcohol which is not licensed by the State Department of Health pursuant to this section, upon conviction, shall be guilty of a misdemeanor, punishable by a fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each test performed by the unlicensed laboratory facility in violation of this section shall constitute a separate offense. Provided however, companies may utilize their own facilities to conduct prescreening tests if the

results are not used in any disciplinary manner and all of the protections of confidentiality and privacy of this act are followed.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-406A of Title 40, unless there is created a duplication in numbering, reads as follows:

An individual shall be disqualified for benefits if he has been discharged for a violation of the written policy of the employer adopted in conformity with the Uniform Standards for Drug Testing Act, provided that the test or tests conducted pursuant to the written policy of the employer are conducted as required by the Uniform Standards for Drug Testing Act.

SECTION 14. This act shall become effective September 1, 1991.

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