

ENROLLED SENATE
BILL NO. 143

By: Muegge of the Senate

and

Roach of the House

An Act relating to labor; amending 3A O.S. 1991, Section 204, as last amended by Section 17, Chapter 364, O.S.L. 1992 (3A O.S. Supp. 1992, Section 204), which relates to powers of Horse Racing Commission; creating Standards for Workplace Drug and Alcohol Testing Act; providing short title; defining terms; construing act; requiring employers choosing to conduct drug or alcohol testing to comply with act and rules; exempting testing pursuant to federal law or regulation; allowing negotiation of collective bargaining agreements that provide greater protection than act; stating circumstances under which employer may choose to conduct drug or alcohol testing; prohibiting drug or alcohol testing unless employer adopts written policy and stating information to be included in policy; requiring certain notice to employees; requiring policy and changes be posted and given to certain persons; requiring testing occur during certain time period and deeming such time as work time; requiring employer to pay costs of testing with certain exception; requiring State Board of Health to implement and enforce act and promulgate rules for licensure, regulation, minimum testing standards and procedures; requiring rules be consistent with certain federal laws and regulations and include certain safeguards, standards and procedures with certain exception; requiring certain testing facilities be licensed by Board and requiring promulgation of certain rules; setting maximum licensure fee; providing for administrative fine for unlicensed facilities; stating conditions for sample collection and testing; making certain records and information confidential and prohibiting their use in certain proceedings with certain exception; making certain records property of employer; limiting availability of records to certain persons under certain conditions; prohibiting disclosure of certain information; requiring employer provide drug and alcohol assistance program if providing testing under this act and specifying such program; prohibiting disciplinary action based on positive test with certain exceptions and unless certain conditions are met; allowing disciplinary action for refusal to undergo

testing; considering certain action as discharge for misconduct; stating statute of limitation; authorizing prevailing party be awarded certain relief, compensatory damages and certain costs and fees; providing penalties; prohibiting implementation of drug or alcohol testing programs after certain date unless in compliance with act and rules; providing certain date for compliance by programs currently in effect; disqualifying certain discharged employees from eligibility for unemployment compensation benefits; requiring certain testing be in compliance with act after certain date; providing for codification; and declaring an emergency.

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 551 of Title 40, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 15 of this act shall be known and may be cited as the "Standards for Workplace Drug and Alcohol Testing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 552 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Alcohol" means ethyl alcohol or ethanol;
2. "Applicant" means a person who has applied for a position with an employer;
3. "Board" means the State Board of Health;
4. "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test;
5. "Department" means the State Department of Health;
6. "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein;
7. "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily tissue, fluids or products;
8. "Employee" means any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state;
9. "Employer" means any person, firm, corporation, partnership, association, nonprofit organization or public employer, which has one or more employees within this state, or which has offered or may offer employment to one or more individuals in this state;
10. "Public employer" means the State of Oklahoma or any political subdivision thereof, including any department, agency, board, commission, institution, authority, public trust, municipality, county, district or instrumentalities thereof;
11. "Random selection basis" means a mechanism for selecting employees for drug or alcohol testing that:

- a. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and
- b. does not give an employer discretion to waive the selection of any employee selected under the mechanism;

12. "Reasonable suspicion" means a belief that an employee is using or has used drugs or alcohol in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

- a. observable phenomena, such as:
 - (1) the physical symptoms or manifestations of being under the influence of a drug or alcohol while at work or on duty, or
 - (2) the direct observation of drug or alcohol use while at work or on duty,
- b. a report of drug or alcohol use while at work or on duty, provided by reliable and credible sources and which has been independently corroborated,
- c. evidence that an individual has tampered with a drug or alcohol test during his employment with the current employer, or
- d. evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs while on duty or while on the employer's premises or operating the employer's vehicle, machinery or equipment;

13. "Review officer" means a person, qualified by the State Board of Health, who is responsible for receiving results from a testing facility which have been generated by an employer's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information;

14. "Sample" means tissue, fluid or product of the human body chemically capable of revealing the presence of drugs or alcohol in the human body; and

15. "Testing facility" means any person, including any laboratory, hospital, clinic or facility, either off or on the premises of the employer, which provides laboratory services to test for the presence of drugs or alcohol in the human body.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 553 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Standards for Workplace Drug and Alcohol Testing Act shall not be construed as requiring or encouraging employers to conduct drug or alcohol testing.

B. Except as provided in subsection C of this section, employers who choose to conduct drug or alcohol testing of job applicants or persons employed in this state shall be governed by the provisions of this act and the rules promulgated pursuant thereto.

C. Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act and the rules promulgated pursuant thereto.

D. This act shall not be construed as preventing the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 554 of Title 40, unless there is created a duplication in numbering, reads as follows:

Employers who choose to conduct drug or alcohol testing may only request or require an applicant or employee to undergo testing under the following circumstances:

1. Applicant testing: A public or private employer may request or require a job applicant, upon a conditional offer of employment, to undergo drug or alcohol testing and may use a refusal to undergo testing or a confirmed positive test result as a basis for refusal to hire, provided that such testing does not violate the provisions of the Americans with Disabilities Act of 1990, 42 U.S.C., Section 12101 et seq., and provided that such testing is required for all applicants who have received a conditional offer of employment for a particular employment classification;

2. Reasonable suspicion testing: A public or private employer may request or require an employee to undergo drug or alcohol testing if the employer has a reasonable suspicion that the employee has violated the employer's written policy;

3. Post-accident testing: A public or private employer may request or require an employee to undergo drug or alcohol testing if the employer has a reasonable suspicion that the employee or another person has sustained a work-related injury or the employer's property has been damaged as a direct result of the employee's use of drugs or alcohol;

4. Random testing: A public or private employer may request or require an employee to undergo drug or alcohol testing on a random selection basis, except that a public employer may require random testing only of employees who:

- a. are police or peace officers,
- b. have drug interdiction responsibilities,
- c. are authorized to carry firearms,
- d. are engaged in activities which directly affect the safety of others, or
- e. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services;

5. Scheduled, periodic testing: A public or private employer may request or require an employee to undergo drug or alcohol testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of an employment classification or group and which is part of the employer's written policy, except that a public employer may require scheduled, periodic testing only of employees who:

- a. are police or peace officers,
- b. have drug interdiction responsibilities,
- c. are authorized to carry firearms,
- d. are engaged in activities which directly affect the safety of others, or
- e. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services; and

6. Post-rehabilitation testing: A public or private employer may request or require an employee to undergo drug or alcohol testing without prior notice for a period of up to two (2) years

commencing with the employee's return to work, following a confirmed positive test or following participation in a drug or alcohol dependency treatment program under an employee benefit plan or at the request of the employer.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 555 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. No employer may request or require an applicant or employee to undergo drug or alcohol testing unless the employer has first adopted a written, detailed policy setting forth the specifics of its drug or alcohol testing program. The written policy shall be uniformly applied to those covered by the policy and shall include, but not be limited to, the following information:

1. A statement of the employer's policy respecting drug or alcohol use by employees;

2. Which applicants and employees are subject to testing;

3. Circumstances under which testing may be requested or required;

4. Substances which may be tested, including the brand or common name, if any, and the chemical name of any drug or its metabolite to be tested;

5. Testing methods and collection procedures to be used;

6. Consequences of refusing to undergo testing;

7. Potential adverse personnel action which may be taken as a result of a positive test result;

8. The rights of an applicant and employee to explain, in confidence, the test results;

9. The rights of an applicant and employee to obtain all information and records related to that individual's testing;

10. Confidentiality requirements; and

11. The available appeal procedures, remedies and sanctions.

B. An employer who is implementing a drug or alcohol testing policy for the first time, or is implementing changes to its policy, shall provide at least thirty (30) days' notice to its employees prior to implementation of the policy or changes to the policy.

C. An employer shall post a copy of the drug or alcohol testing policy, and any changes to the policy, in a prominent employee access area in the place of employment and shall give a copy of the policy, and any changes to the policy, to each employee and to each applicant upon his or her receipt of a conditional offer of employment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 556 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 confirmation tests required by this act and the cost of transportation if the testing of a current employee is conducted at a place other than the workplace. Provided, however, an individual who requests a retest of a sample in order to challenge the results of a positive test shall pay all costs of the retest, unless the retest reverses the findings of the challenged positive test. In such case, the employer shall reimburse the individual for the costs of the retest.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall implement and enforce the provisions of the Standards for Workplace Drug and Alcohol Testing Act. The Board shall have the power and duty to promulgate, prescribe, amend and repeal rules for the licensure and regulation of testing facilities and for the establishment and regulation of minimum testing standards and procedures, which shall include, but not be limited to, the following:

1. Qualifications of testing facilities which shall include the requirement that facilities doing urine analysis for initial or confirmation tests either be certified for forensic urine drug testing pursuant to guidelines or regulations of the federal Department of Health and Human Services or be accredited for forensic urine drug testing by the College of American Pathologists or other organizations recognized by the State Board of Health;

2. Qualifications of testing facility personnel;

3. Body component samples that are appropriate for drug and alcohol testing;

4. The drugs in addition to marihuana, cocaine, opiates, amphetamines and phencyclidine, and their metabolites, for which testing may be conducted;

5. Methods of analysis and internal quality control procedures to ensure reliable test results;

6. Internal review and certification process for test results;

7. Security measures to preclude adulteration;

8. Chain-of-custody procedures;

9. Retention and storage procedures and durations to ensure availability of samples for retesting;

10. Procedures for ensuring confidentiality of test results;

11. Proficiency testing;

12. Training and qualifications of review officers which shall include, but not be limited to, licensure to practice medicine and surgery or osteopathic medicine or holding a doctorate in clinical chemistry, forensic toxicology, or a similar biomedical science;

13. Training and qualifications of collection site personnel;

14. Sample collection procedures that ensure the privacy of the individual and prevent and detect tampering with the sample; and

15. Sample documentation, storage and transportation to the testing facility.

B. The rules promulgated by the State Board of Health pursuant to the provisions of this act shall in all applicable respects be consistent with any federal laws and regulations for drug and alcohol testing in the workplace and shall include safeguards, standards and procedures not less stringent than those applicable to federally regulated drug and alcohol testing in the workplace, except where to do so would create a conflict with a provision of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 558 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. On and after July 1, 1994, no testing facility shall provide laboratory services to an employer to test for the presence or absence of drugs or alcohol unless it meets the qualifications established for testing facilities pursuant to Section 7 of this act and is licensed by the State Department of Health to perform such tests. The State Board of Health shall promulgate rules relating to the issuance of such license, including rules governing license revocation, suspension and nonrenewal.

B. The fees for licensure of testing facilities by the State Department of Health shall be set by the State Board of Health and shall not be more than One Hundred Fifty Dollars (\$150.00) annually.

C. Any testing facility providing laboratory services to an employer to test for the evidence of drugs or alcohol which is not licensed by the State Department of Health pursuant to this section shall be subject to an administrative fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each test performed by the unlicensed testing facility in violation of this section shall constitute a separate offense.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 559 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 provisions of this act shall be conducted in accordance with the following conditions:

1. Samples shall be collected and tested only by individuals deemed qualified by the State Board of Health and may be collected on the premises of the employer;

2. Only samples deemed appropriate by the State Board of Health for drug and alcohol testing shall be collected;

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

4. A sample shall be collected in sufficient quantity for splitting into two separate specimens, pursuant to rules of the State Board of Health, to provide for any subsequent independent analysis in the event of challenge of the test results of the main specimen;

5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the instances of urinalysis, no employer or representative, agent or designee of the employer shall directly observe an applicant or employee in the process of producing a urine sample; provided, however, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;

6. 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 applicant or employee to provide notification of any information which the applicant or employee considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;

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

8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by Board rule, at the cutoff levels as determined by Board rule, before the result of any test may be used as a basis for refusal to hire a job applicant or any action by an employer pursuant to Section 12 of this act; and

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 560 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Employers shall maintain all drug and alcohol test results and related information, including, but not limited to, interviews, reports, statements and memoranda, as confidential records, separate from other personnel records. Such records, including the records of the testing facility, shall not be used in any criminal proceeding, or any civil or administrative proceeding, except in those actions taken by the employer or in any action involving the individual tested and the employer or unless such records are ordered released pursuant to a valid court order.

B. The records described in subsection A of this section and maintained by the employer shall be the property of the employer and, upon the request of the applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. An employer shall not release such records to any person other than the applicant, employee or the employer's review officer, unless the applicant or employee, in writing following receipt of the test results, has expressly granted permission for the employer to release such records or pursuant to a valid court order.

C. A testing facility, or any agent, representative or designee of the facility, or any review officer, shall not disclose to any employer, based on the analysis of a sample collected from an applicant or employee for the purpose of testing for the presence of drugs or alcohol, any information relating to:

1. The general health, pregnancy or other physical or mental condition of the applicant or employee; or

2. The presence of any drug other than the drug or its metabolites that the employer requested be identified and for which a medically acceptable explanation of the positive result, other than the use of drugs, has not been forthcoming from the applicant or employee.

Provided, however, a testing facility shall release the results of the drug or alcohol test, and any analysis and information related thereto, to the individual tested upon his request.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 561 of Title 40, unless there is created a duplication in numbering, reads as follows:

Drug or alcohol testing governed by the Standards for Workplace Drug and Alcohol Testing Act shall not be requested or required of an employee by an employer unless the employer provides an employee assistance program. For the purposes of this section, "employee assistance program" means an in-house or contracted program which at a minimum provides drug and alcohol dependency evaluation and referral services for substance abuse counseling, treatment or rehabilitation.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 562 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. No disciplinary action, except for a temporary suspension or a temporary transfer to another position, may be taken by an employer against an employee based on a positive test result unless the test result has been confirmed by a second test using gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by rule of the State Board of Health, at the cutoff levels determined by Board rule.

B. An employer may take disciplinary action against an employee who refuses to undergo drug or alcohol testing conducted in accordance with the provisions of this act.

C. An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a confirmed positive drug or alcohol test conducted in accordance with the provisions of this act shall be considered to have been discharged for misconduct for purposes of unemployment compensation benefits as provided for in Section 16 of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 563 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any person aggrieved by a willful violation of the Standards for Workplace Drug and Alcohol Testing Act may institute a civil action in a court of competent jurisdiction within two (2) years of the person's discovery of the alleged willful violation or of the exhaustion of any internal administrative remedies available to the person, or be barred from obtaining the relief provided for in subsection B of this section.

B. A prevailing party may be awarded declaratory or injunctive relief and compensatory damages which may include, but not be limited to, employment, reinstatement, promotion, the payment of lost wages and other remuneration to which the person would have been entitled and payment of and reinstatement to full benefits and seniority rights. Reasonable costs and attorney fees may be awarded to the prevailing party.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 564 of Title 40, unless there is created a duplication in numbering, reads as follows:

On and after the effective date of this act no employer shall implement a drug or alcohol testing program subject to the provisions of this act unless the program is in compliance with the provisions of this act and the rules promulgated pursuant thereto. Provided, a drug or alcohol testing program subject to the provisions of this act which is in effect prior to the effective date of this act shall be in compliance with the provisions of this act and the rules promulgated pursuant thereto no later than July 1, 1994.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 565 of Title 40, unless there is created a duplication in numbering, reads as follows:

Any person who willfully and knowingly violates the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be guilty of a misdemeanor and, upon conviction, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

SECTION 16. 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 employee discharged on the basis of a refusal to undergo drug or alcohol testing or a confirmed positive drug or alcohol test conducted in accordance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for benefits pursuant to the provisions of Section 2-406 of Title 40 of the Oklahoma Statutes.

SECTION 17. AMENDATORY 3A O.S. 1991, Section 204, as last amended by Section 17, Chapter 364, O.S.L. 1992 (3A O.S. Supp. 1992, Section 204), is amended to read as follows:

Section 204. A. The Oklahoma Horse Racing Commission shall:

1. Have supervision of:
 - a. all race meetings held in this state; provided, for non-pari-mutuel race meetings and training races held at non-pari-mutuel tracks jurisdiction of the Commission shall be limited to a period of time beginning twelve (12) hours before the commencement of the first race on a race day and ending four (4) hours after the finish of the last race on a race day,
 - b. all occupation and organization licensees in this state, and
 - c. all persons on the property of an organization licensee; provided, for non-pari-mutuel race meetings and training races held at non-pari-mutuel tracks supervision of such persons shall be limited to the period set out in subparagraph a of this paragraph;
2. Have the authority to promulgate rules and regulations for the purpose of administering the provisions of the Oklahoma Horse Racing Act;
3. Administer and enforce the provisions of the Oklahoma Horse Racing Act and the rules and regulations of the Commission;
4. Adjudicate controversies arising from the enforcement of the provisions of the Oklahoma Horse Racing Act and the rules and regulations of the Commission;
5. Allocate racing days of not to exceed six (6) days per calendar week, dates, and hours which are in the best interests of the people of this state to organization licensees;
6. Promulgate rules and regulations for the granting or refusing and the suspension or revoking of licenses;
7. Promulgate rules and regulations for the holding, conducting, and operating of all race meetings held in this state; provided, the rules of the American Quarter Horse Association for regulation of the holding, conducting and operating of non-pari-mutuel race meetings and training races held at non-pari-mutuel tracks shall serve as the rules for the holding, conducting and operating of non-pari-mutuel race meetings and training races held at non-pari-mutuel tracks, except that appeals from decisions of the stewards shall be to the Commission, until such time as the Commission has promulgated substantially similar rules for regulation of the holding, conducting and operating of non-pari-mutuel race meetings and training races held at non-pari-mutuel tracks;
8. Have supervision and control of the pari-mutuel machines and all other equipment at all race meetings held in this state;
9. Check the making of pari-mutuel pools and the distribution of such pools and be authorized to contract with the Office of the State Auditor and Inspector to cause the places where race meetings are held to be inspected at reasonable intervals;
10. Promulgate rules and regulations governing:
 - a. bids on leases, and
 - b. the rate charged by an organization licensee for admission to races, and
 - c. the rate charged for the performance of any service or for the sale of any article on the premises of an organization licensee;
11. Approve all contracts and agreements for the payment of money and all salaries, fees, and compensations by any organization licensee;
12. Have the authority to exclude, or compel the exclusion, from any race meeting:

- a. any person who violates the provisions of any rule, regulation, or order of the Commission or any law of this state, any other state, or the United States, or
- b. any person who has been previously convicted of violating any law of this state, any other state, or the United States, or
- c. any other person, licensed or unlicensed, whose conduct or reputation is such that his presence at the race meeting may, in the opinion of the Commission reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of the race meeting. No person shall be excluded or ejected from a race meeting solely on the grounds of race, color, creed, sex, national origin, or ancestry;

13. Have investigatory powers and authority to place attendants and such other persons as may be deemed necessary by the Commission in the offices, on the tracks, or in places of business of any organization licensee for the purpose of determining whether an organization or occupation licensee is complying with the provisions of the Oklahoma Horse Racing Act and the rules and regulations of the Commission;

14. Have authority to acquire or contract with, or establish, maintain, and operate testing laboratories and related facilities for the purpose of conducting:

- a. human substance abuse testing on occupation licensees who may affect the outcome of race results. Human substance abuse tests and the laboratories performing such tests must meet the nationally recognized standards specified in the Mandatory Guidelines for Federal Workplace Drug Testing Programs adopted by the United States Department of Health and Human Services. The Commission may require any occupation licensee to submit to a human substance abuse test if the Commission has probable cause to believe that such licensee is possessing or using any controlled dangerous substance or any other drug in violation of any federal or state law. Provided, on and after July 1, 1994, such testing shall be in compliance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act, and
- b. a saliva test, a blood test, a urine test, or other tests or combinations of tests on the horses run or to be run in any race meeting. Prior to the Commission entering into any contract pursuant to this paragraph, the Attorney General shall review and approve the contract. Any contract entered into pursuant to this paragraph shall contain the specifications that were in the request for bid for the contract;

15. Approve of all proposed construction on property owned or leased by an organization licensee;

16. Have authority to require that all financial, employment, or other records of an organization licensee shall be kept in such manner as prescribed by the Commission and shall be subject to inspection by the Commission. The organization licensee shall submit to the Commission an annual balance sheet, profit-and-loss statement, and any other information the Commission deems necessary in order to administer the provisions of the Oklahoma Horse Racing Act;

17. Have the authority to suspend or revoke a license or impose fines in amounts not to exceed Ten Thousand Dollars (\$10,000.00)

against individuals for each violation and in amounts not to exceed Twenty Thousand Dollars (\$20,000.00) against organization licensees for each violation of any provision of the Oklahoma Horse Racing Act, any rules or regulations adopted by the Commission, or any order of the Commission, or for any other action which, in the discretion of the Commission, is a detriment or impediment to horse racing or both such suspension or revocation and fine. Each day upon which such violation or other action by the organization licensee occurs shall constitute a separate offense;

18. Have authority to suspend a horse from participating in races if the horse has been involved in any violation of the rules promulgated by the Commission or the provisions of the Oklahoma Horse Racing Act; and

19. Prepare and submit an annual report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate. The report shall include an account of the operations, actions, and orders of the Commission, and an accounting of all revenue received by the Commission.

B. 1. The Commission may delegate to stewards or the Executive Director, those of its powers and duties as it deems necessary to fully implement and effectuate the purposes of the Oklahoma Horse Racing Act.

2. The Commission, upon appeal or due consideration, may overrule any decision of a steward except decisions regarding disqualifications for interference during the running of a race if a preponderance of evidence indicates:

- a. the stewards mistakenly interpreted the law; or
- b. new evidence of a convincing nature is produced; or
- c. the best interests of racing and the state may be better served.

3. Any decision pertaining to the finish of a race, as used for purposes of pari-mutuel pool distribution to winning ticket holders, may not be overruled. Any decision pertaining to the distribution of purses may be changed only if a claim is made in writing to the Commission by one of the involved owners or trainers, and a preponderance of evidence clearly indicates to the Commission that one or more of the grounds for protest, as provided for in the rules and regulations prepared by the Commission, has been substantiated.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 13th day of May, 1993.

President of the Senate

Passed the House of Representatives the 24th day of May, 1993.

Speaker of the House of Representatives

