

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1083

By: Muegge

AS INTRODUCED

An Act relating to labor; amending Sections 2, 7 and 9, Chapter 355, O.S.L. 1993 (40 O.S. Supp. 1999, Sections 552, 557 and 559), which relate to Standards for Workplace Drug and Alcohol Testing Act; modifying certain definitions; modifying scope of certain agency rulemaking authority; prohibiting use of hair as sample for drug and alcohol testing; modifying conditions for sample collection and testing; updating statutory reference; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 355, O.S.L. 1993 (40 O.S. Supp. 1999, Section 552), is amended to read as follows:

Section 552. 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" or "testing" 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, excluding hair, 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 2. AMENDATORY Section 7, Chapter 355, O.S.L. 1993 (40 O.S. Supp. 1999, Section 557), is amended to read as follows:

Section 557. 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; provided that hair shall not be an appropriate sample 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 3. AMENDATORY Section 9, Chapter 355, O.S.L. 1993 (40 O.S. Supp. 1999, Section 559), is amended to read as follows:

Section 559. 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, and not prohibited by law, 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 ~~42~~ 562 of this ~~act~~ title; 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 4. 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.

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