ENGROSSED SENATE
BILL NO. 374

By: Bass of the Senate

and

Dorman of the House

An Act relating to the Standards for Workplace Drug and Alcohol Testing Act; amending 40 O.S. 2001, Section 552, which relates to definitions; modifying definition; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2001, Section 552, is amended to read as follows:

Section 552. As used in the Standards for Workplace Drug and Alcohol Testing 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. ~~The administration of on-site drug screening tests to applicants or employees to screen out negative test results are not laboratory services under this paragraph, provided the on-site tests used are cleared by the federal Food and Drug Administration for commercial marketing, and all positive results of such tests are confirmed by a testing facility in accordance with the Standards for Workplace Drug and Alcohol Testing Act.~~

SECTION 2. This act shall become effective November 1, 2005.

Passed the Senate the 15th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives