

3 Senate Bill No. 374

4 SENATE BILL NO. 374 - By: BASS of the Senate and DORMAN of the
5 House.

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

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

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

13 Section 552. As used in the Standards for Workplace Drug and
14 Alcohol Testing Act:

15 1. "Alcohol" means ethyl alcohol or ethanol;

16 2. "Applicant" means a person who has applied for a position
17 with an employer;

18 3. "Board" means the State Board of Health;

19 4. "Confirmation test" means a drug or alcohol test on a sample
20 to substantiate the results of a prior drug or alcohol test on the
21 same sample and which uses different chemical principles and is of
22 equal or greater accuracy than the prior drug or alcohol test;

23 5. "Department" means the State Department of Health;

24 6. "Drug" means amphetamines, cannabinoids, cocaine,
25 phencyclidine (PCP), hallucinogens, methaqualone, opiates,

1 barbiturates, benzodiazepines, synthetic narcotics, designer drugs,
2 or a metabolite of any of the substances listed herein;

3 7. "Drug or alcohol test" means a chemical test administered
4 for the purpose of determining the presence or absence of a drug or
5 its metabolites or alcohol in a person's bodily tissue, fluids or
6 products;

7 8. "Employee" means any person who supplies a service for
8 remuneration or pursuant to any contract for hire to a private or
9 public employer in this state;

10 9. "Employer" means any person, firm, corporation, partnership,
11 association, nonprofit organization or public employer, which has
12 one or more employees within this state, or which has offered or may
13 offer employment to one or more individuals in this state;

14 10. "Public employer" means the State of Oklahoma or any
15 political subdivision thereof, including any department, agency,
16 board, commission, institution, authority, public trust,
17 municipality, county, district or instrumentalities thereof;

18 11. "Random selection basis" means a mechanism for selecting
19 employees for drug or alcohol testing that:

20 a. results in an equal probability that any employee from
21 a group of employees subject to the selection
22 mechanism will be selected, and

1 b. does not give an employer discretion to waive the
2 selection of any employee selected under the
3 mechanism;

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

9 a. observable phenomena, such as:

10 (1) the physical symptoms or manifestations of being
11 under the influence of a drug or alcohol while at
12 work or on duty, or

13 (2) the direct observation of drug or alcohol use
14 while at work or on duty,

15 b. a report of drug or alcohol use while at work or on
16 duty, provided by reliable and credible sources and
17 which has been independently corroborated,

18 c. evidence that an individual has tampered with a drug
19 or alcohol test during his employment with the current
20 employer, or

21 d. evidence that an employee is involved in the use,
22 possession, sale, solicitation or transfer of drugs
23 while on duty or while on the employer's premises or

1 operating the employer's vehicle, machinery or
2 equipment;

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

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

12 15. "Testing facility" means any person, including any
13 laboratory, hospital, clinic or facility, either off or on the
14 premises of the employer, which provides laboratory services to test
15 for the presence of drugs or alcohol in the human body. ~~The~~
16 ~~administration of on-site drug screening tests to applicants or~~
17 ~~employees to screen out negative test results are not laboratory~~
18 ~~services under this paragraph, provided the on-site tests used are~~
19 ~~cleared by the federal Food and Drug Administration for commercial~~
20 ~~marketing, and all positive results of such tests are confirmed by a~~
21 ~~testing facility in accordance with the Standards for Workplace Drug~~
22 ~~and Alcohol Testing Act.~~

1 SECTION 2. This act shall become effective November 1, 2005.
2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-05 - DO
3 PASS, As Coauthored.