

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2033

6 By: Sullivan

7 COMMITTEE SUBSTITUTE

8 An Act relating to labor; amending 40 O.S. 2001,  
9 Sections 551, 552, as amended by Section 5, Chapter  
10 190, O.S.L. 2005, 554, as last amended by Section 11,  
11 Chapter 132, O.S.L. 2008, 555, as last amended by  
12 Section 12, Chapter 132, O.S.L. 2008, 556, 557, as  
13 amended by Section 3, Chapter 277, O.S.L. 2006, 560,  
14 562 and 563 (40 O.S. Supp. 2010, Sections 552, 554,  
15 555 and 557), which relate to the Standards for  
16 Workplace Drug and Alcohol Testing Act; modifying  
17 reference; modifying definitions; modifying  
18 provisions related to employer testing; modifying  
19 provision related to certain damage threshold;  
20 modifying provisions related to refusal to take  
21 required tests; modifying provisions related to  
22 employer written policies; modifying certain  
23 provisions related to employee notices regarding drug  
24 testing policies; modifying provisions related to  
authorized time for testing; modifying provisions  
related to authority of the State Board of Health;  
modifying provisions related to testing facilities  
and testing standards; authorizing certain employer  
policies; modifying confidentiality provisions;  
modifying provisions related to use of test results  
and related information; modifying provisions related  
to employer actions based upon positive test results;  
modifying statute of limitations; imposing  
evidentiary standard; modifying certain remedies;  
modifying provision related to attorney fees;  
repealing 40 O.S. 2001, Sections 561, 564 and 565,  
which relate to the Standards for Workplace Drug and  
Alcohol Testing Act; and providing an effective date.

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

2 SECTION 1. AMENDATORY 40 O.S. 2001, Section 551, is  
3 amended to read as follows:

4 Section 551. ~~Sections 1 through 15 of this~~ This act shall be  
5 known and may be cited as the "Standards for Workplace Drug and  
6 Alcohol Testing Act".

7 SECTION 2. AMENDATORY 40 O.S. 2001, Section 552, as  
8 amended by Section 5, Chapter 190, O.S.L. 2005 (40 O.S. Supp. 2010,  
9 Section 552), is amended to read as follows:

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

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

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

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

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

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

21 6. "Drug" means amphetamines, cannabinoids, cocaine,  
22 phencyclidine (PCP), hallucinogens, methaqualone, opiates,  
23 barbiturates, benzodiazepines, synthetic narcotics, designer drugs,  
24 or a metabolite of any of the substances listed herein;

1 7. "Drug or alcohol test" means a chemical test administered  
2 for the purpose of determining the presence or absence of a drug or  
3 its metabolites or alcohol in a person's bodily tissue, fluids or  
4 products. Adulteration of a specimen or of a drug or alcohol test  
5 shall also be considered as a refusal to test;

6 8. "Employee" means any person who supplies a ~~service~~ labor for  
7 remuneration ~~or pursuant to any contract for hire to a private or~~  
8 ~~public~~ from his or her employer, in this state. An independent  
9 contractor is not an employee for purposes of this act, nor is an  
10 employee of an independent contractor an employee of the person or  
11 entity that is in a contractual relationship with the independent  
12 contractor;

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

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

21 ~~11. "Random selection basis" means a mechanism for selecting~~  
22 ~~employees for drug or alcohol testing that:~~

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

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

- 12           a. ~~observable phenomena, such as:~~
- 13                 ~~(1) the physical symptoms or manifestations of being~~  
14                 ~~under the influence of a drug or alcohol while at~~  
15                 ~~work or on duty, or~~
- 16                 ~~(2) the direct observation of drug or alcohol use~~  
17                 ~~while at work or on duty,~~
- 18           b. ~~a report of drug or alcohol use while at work or on~~  
19           ~~duty, provided by reliable and credible sources and~~  
20           ~~which has been independently corroborated,~~
- 21           c. ~~evidence that an individual has tampered with a drug~~  
22           ~~or alcohol test during his employment with the current~~  
23           ~~employer, or~~
- 24

1           d. ~~evidence that an employee is involved in the use,~~  
2           ~~possession, sale, solicitation or transfer of drugs~~  
3           ~~while on duty or while on the employer's premises or~~  
4           ~~operating the employer's vehicle, machinery or~~  
5           ~~equipment;~~

6           ~~13.~~ 11. "Review officer" means a person, qualified by the State  
7 Board of Health, who is responsible for receiving results from a  
8 testing facility which have been generated by an employer's drug or  
9 alcohol testing program, and who has knowledge and training to  
10 interpret and evaluate an individual's test results together with  
11 the individual's medical history and any other relevant information;

12           ~~14.~~ 12. "Sample" means tissue, fluid or product of the human  
13 body ~~chemically~~ capable of revealing the presence of drugs or  
14 alcohol in the human body; and

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

1 ~~tests are confirmed by a testing facility in accordance with the~~  
2 ~~Standards for Workplace Drug and Alcohol Testing Act.~~

3 SECTION 3. AMENDATORY 40 O.S. 2001, Section 554, as last  
4 amended by Section 11, Chapter 132, O.S.L. 2008 (40 O.S. Supp. 2010,  
5 Section 554), is amended to read as follows:

6 Section 554. Employers may conduct drug and alcohol testing in  
7 accordance with this act. Employers who choose to conduct drug or  
8 alcohol testing may only request or require an applicant or employee  
9 to undergo testing under any of the following circumstances:

10 1. Applicant testing: A public or private employer may request  
11 or require a job applicant, upon a conditional offer of employment,  
12 to undergo drug or alcohol testing and may use a refusal to undergo  
13 testing or a ~~confirmed~~ positive test result as a basis for refusal  
14 to hire, provided that such testing does not violate the provisions  
15 of the Americans with Disabilities Act of 1990, 42 U.S.C., Section  
16 12101 et seq., ~~and provided that such testing is required for all~~  
17 ~~applicants who have received a conditional offer of employment for a~~  
18 ~~particular employment classification;~~

19 2. ~~Reasonable suspicion~~ For-cause testing: A public or private  
20 employer may request or require an employee to undergo drug or  
21 alcohol testing ~~if the employer has a reasonable suspicion that the~~  
22 ~~employee has violated the employer's written policy~~ at any time it  
23 believes that the employee may be under the influence of drugs or  
24 alcohol, including, but not limited to, the following circumstances:

1 drugs or alcohol on or about the employee's person or in the  
2 employee's vicinity, conduct on the employee's part that suggests  
3 impairment or influence of drugs or alcohol, a report of drug or  
4 alcohol use while at work or on duty, information that an employee  
5 has tampered with drug or alcohol testing at any time, negative  
6 performance patterns, and/or excessive or unexplained absenteeism or  
7 tardiness;

8 3. Post-accident testing: A public or private employer may  
9 require an employee to undergo drug or alcohol testing if the  
10 employee or another person has sustained ~~a work related~~ an injury  
11 while at work or the employer's property has been damaged, including  
12 damage to equipment, ~~in an amount reasonably estimated at the time~~  
13 ~~of the accident to exceed Five Hundred Dollars (\$500.00).~~ For  
14 purposes of workers' compensation, no employee who tests positive  
15 for the presence of substances defined and consumed pursuant to  
16 Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol,  
17 illegal drugs, or illegally used chemicals or refuses to take a drug  
18 or alcohol test required by the employer shall be eligible for such  
19 compensation ~~unless the employee proves by a preponderance of the~~  
20 ~~evidence that the substances, alcohol, illegal drugs, or illegally~~  
21 ~~used chemicals were not the proximate cause of the injury or~~  
22 ~~accident;~~

23 4. Random testing: A public or private employer may request or  
24 require ~~an employee~~ all members of an employment classification or

1 group to undergo drug or alcohol testing ~~on a random selection~~  
2 basis, at random and may limit its random testing programs to  
3 particular employment classifications or groups, except that a  
4 public employer may require random testing only of employees who:

- 5 a. are police or peace officers,
- 6 b. have drug interdiction responsibilities,
- 7 c. are authorized to carry firearms,
- 8 d. are engaged in activities which directly affect the  
9 safety of others, ~~or~~
- 10 e. are working for a public hospital including city,  
11 county, and/or public trust, or
- 12 f. work in direct contact with inmates in the custody of  
13 the Department of Corrections or work in direct  
14 contact with juvenile delinquents or children in need  
15 of supervision in the custody of the Department of  
16 Human Services;

17 5. Scheduled, periodic testing: A public or private employer  
18 may request or require an employee to undergo drug or alcohol  
19 testing if the test is conducted as a routine part of a routinely  
20 scheduled employee fitness-for-duty medical examination or is  
21 scheduled routinely ~~for all members of an employment classification~~  
22 ~~or group and which is part of the employer's written policy,~~  
23 provided that such testing does not violate the provisions of the  
24 Americans with Disabilities Act of 1990, 42 U.S.,.C, Section 12101 et

1 seq., except that a public employer may require scheduled, periodic  
2 testing only of employees who:

- 3 a. are police or peace officers,
- 4 b. have drug interdiction responsibilities,
- 5 c. are authorized to carry firearms,
- 6 d. are engaged in activities which directly affect the  
7 safety of others, ~~or~~

8 e. are working for a public hospital including city,  
9 county, and/or public trust, or

10 f. work in direct contact with inmates in the custody of  
11 the Department of Corrections or work in direct  
12 contact with juvenile delinquents or children in need  
13 of supervision in the custody of the Department of  
14 Human Services; and

15 6. Post-rehabilitation testing: A public or private employer  
16 may request or require an employee to undergo drug or alcohol  
17 testing ~~without prior notice~~ for a period of up to two (2) years  
18 commencing with the employee's return to work, following a ~~confirmed~~  
19 positive test or following participation in a drug or alcohol  
20 dependency treatment program ~~under an employee benefit plan or at~~  
21 ~~the request of the employer.~~

22 SECTION 4. AMENDATORY 40 O.S. 2001, Section 555, as last  
23 amended by Section 12, Chapter 132, O.S.L. 2008 (40 O.S. Supp. 2010,  
24 Section 555), is amended to read as follows:

1 Section 555. A. ~~No~~ Any employer ~~may request that requests~~ or  
2 ~~require~~ requires an applicant or employee to undergo drug ~~or~~ and  
3 alcohol testing ~~unless the employer has~~ shall first ~~adopted~~ adopt a  
4 written, ~~detailed~~ policy setting forth the specifics of its drug or  
5 alcohol testing program. ~~The written policy shall be uniformly~~  
6 ~~applied to those covered by the policy and shall,~~ which may include,  
7 but not be limited to, the following information:

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

10 2. Which applicants and employees are subject to testing;

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

13 4. Substances which may be tested. ~~To comply with the~~  
14 ~~provisions of this paragraph, it~~ It shall be sufficient for an  
15 employer to state in the written policy that the substances tested  
16 shall be for drugs and alcohol ~~as defined in the Standards for~~  
17 ~~Workplace Drug and Alcohol Testing Act, including,~~ without  
18 limitation, controlled substances approved for testing by rule by  
19 the State Commissioner of Health. This provision shall not limit  
20 the employer's right to test, nor subject the employer to liability  
21 for taking any disciplinary action for testing, for other substances  
22 not approved by the State Commissioner of Health;

23 5. Testing methods and collection procedures to be used;

24 6. Consequences of refusing to undergo testing;

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

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

5 9. The ~~rights~~ ability of an applicant and employee to obtain  
6 copies of all information and records related to that individual's  
7 testing;

8 10. Confidentiality requirements; and

9 11. The available appeal procedures, ~~remedies and sanctions.~~

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

14 C. An employer shall ~~post~~ deliver a copy of the drug or alcohol  
15 testing policy, and any changes to the policy, ~~in a prominent~~  
16 ~~employee access area in the place of employment and shall deliver a~~  
17 ~~copy of the policy, and any changes to the policy, to each employee~~  
18 ~~and to each applicant upon his or her receipt of a conditional offer~~  
19 ~~of employment~~ to each employee. Delivery to employees and persons  
20 ~~who are offered employment~~ may be accomplished by:

21 1. Hand-delivery of a paper copy of the policy or changes to  
22 the policy;

23 2. Mailing a paper copy of the policy or changes to the policy  
24 through the U.S. Postal Service or a parcel delivery service to the

1 last address given by the employee or prospective employee to the  
2 employer; ~~or~~

3 3. Electronically transmitting a copy of the policy through an  
4 e-mail server ~~or the Internet to an electronic mail address assigned~~  
5 ~~by the employer to the employee or prospective employee with~~  
6 ~~documented receipt capability, or to an electronic mail address~~  
7 ~~provided by the employee or prospective employee to the employer for~~  
8 ~~the purpose of receiving employment related e-mails with documented~~  
9 ~~receipt capability~~ or by posting on the employer's website or  
10 intranet site; or

11 4. Posting a copy in a prominent employee access area.

12 SECTION 5. AMENDATORY 40 O.S. 2001, Section 556, is  
13 amended to read as follows:

14 Section 556. ~~A.~~ Any drug or alcohol testing by an employer  
15 shall ~~occur during or immediately after the regular work period of~~  
16 ~~current employees and shall be deemed work time for purposes of~~  
17 compensation and benefits for current employees.

18 ~~B.~~ An employer shall pay all costs of testing for drugs or  
19 alcohol required by the employer, ~~including confirmation tests~~  
20 ~~required by this act and the cost of transportation if the testing~~  
21 ~~of a current employee is conducted at a place other than the~~  
22 ~~workplace.~~ Provided, however, if the employer's policy so allows  
23 and an individual who employee or applicant requests a retest  
24 confirmation test of a sample in order to challenge the results of a

1 positive drug test shall, the employee or applicant may pay all  
2 costs of the ~~retest~~ confirmation test, unless the ~~retest~~  
3 confirmation test reverses the findings of the challenged positive  
4 test. In such case, the employer shall reimburse the individual for  
5 the costs of the ~~retest~~ confirmation test.

6 SECTION 6. AMENDATORY 40 O.S. 2001, Section 557, as  
7 amended by Section 3, Chapter 277, O.S.L. 2006 (40 O.S. Supp. 2010,  
8 Section 557), is amended to read as follows:

9 Section 557. A. ~~The State Board of Health shall implement and~~  
10 ~~enforce the provisions of the Standards for Workplace Drug and~~  
11 ~~Alcohol Testing Act.~~ The Board shall have the power and duty to  
12 promulgate, prescribe, amend and repeal rules for the licensure and  
13 regulation of testing facilities ~~and for the establishment and~~  
14 ~~regulation of minimum testing standards and procedures~~, which shall  
15 include, but not be limited to, the following:

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

23 2. Qualifications of testing facility personnel; and  
24

1       3. ~~Body component samples that are appropriate for drug and~~  
2 ~~alcohol testing, to include saliva, urine and hair;~~

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

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

8       6. ~~Internal review and certification process for test results;~~

9       7. ~~Security measures to preclude adulteration;~~

10      8. ~~Chain of custody procedures;~~

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

13      10. ~~Procedures for ensuring confidentiality of test results;~~

14      11. ~~Proficiency testing;~~

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

19      13. ~~Training and qualifications of collection site personnel;~~

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

22      15. ~~Sample documentation, storage and transportation to the~~  
23 ~~testing facility; and~~

24

1       ~~16.~~ Procedures for the testing facility to provide the  
2 necessary documentation of testing procedures and test results to  
3 the employer requesting testing services as may be required by a  
4 court or administrative proceeding.

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

13       Nothing in this act shall be construed as prohibiting an  
14 employer from adopting a policy which allows for testing of alcohol  
15 or drugs by another method which is reasonably calculated to detect  
16 the presence of drugs or alcohol, including, but not limited to,  
17 breathalyzer testing, testing by use of a single-use test device  
18 (also known as an on-site or quick testing device) to collect,  
19 handle, store and ship a sample collected for testing.

20       SECTION 7.       AMENDATORY       40 O.S. 2001, Section 560, is  
21 amended to read as follows:

22       Section 560. A. ~~Employers shall maintain all drug and alcohol~~  
23 ~~test results and related information, including, but not limited to,~~  
24 ~~interviews, reports, statements and memoranda, as confidential~~

1 ~~records, separate from other personnel records. Such records,~~  
2 ~~including the records of the testing facility, shall not be used in~~  
3 ~~any criminal proceeding, or any civil or administrative proceeding,~~  
4 ~~except in those actions taken by the employer or in any action~~  
5 ~~involving the individual tested and the employer or unless such~~  
6 ~~records are ordered released pursuant to a valid court order.~~

7       ~~B.~~ The records described in subsection A of this section and  
8 Records of all drug and alcohol test results and related information  
9 maintained by the employer shall be the property of the employer  
10 and, upon the request of the applicant or employee tested, shall be  
11 made available for inspection and copying to the applicant or  
12 employee. An employer shall not release such records to any person  
13 other than the applicant, employee or the employer's review officer,  
14 unless the applicant or employee, in writing following receipt of  
15 the test results, has expressly granted permission for the employer  
16 to release such records ~~or pursuant to~~ in order to comply with a  
17 valid ~~court~~ judicial or administrative order. A written record of  
18 the chain of custody of the sample shall be maintained from the time  
19 of the collection of the sample until the sample is no longer  
20 required.

21       ~~C.~~ B. A testing facility, or any agent, representative or  
22 designee of the facility, or any review officer, shall not disclose  
23 to any employer, based on the analysis of a sample collected from an  
24

1 applicant or employee for the purpose of testing for the presence of  
2 drugs or alcohol, any information relating to:

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

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

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

14 SECTION 8. AMENDATORY 40 O.S. 2001, Section 562, is  
15 amended to read as follows:

16 Section 562. A. ~~No disciplinary action, except for a temporary~~  
17 ~~suspension or a temporary transfer to another position, may be taken~~  
18 ~~by an employer against an employee based on a positive test result~~  
19 ~~unless the test result has been confirmed by a second test using gas~~  
20 ~~chromatography, gas chromatography mass spectroscopy, or an~~  
21 ~~equivalent scientifically accepted method of equal or greater~~  
22 ~~accuracy as approved by rule of the State Board of Health, at the~~  
23 ~~cutoff levels determined by Board rule~~ An employer's policy shall  
24 state the disciplinary actions that may be taken upon a refusal to

1 undergo a drug or alcohol test or a positive test for the presence  
2 of drugs or alcohol.

3 B. An employer may take disciplinary action, up to and  
4 including discharge, against an employee who refuses to undergo drug  
5 or alcohol testing conducted in accordance with the provisions of  
6 this act or who tests positive for the presence of drugs or alcohol.

7 C. An employee discharged on the basis of a refusal to undergo  
8 drug or alcohol testing or a ~~confirmed~~ positive drug or alcohol test  
9 ~~conducted in accordance with the provisions of this act~~ shall be  
10 considered to have been discharged for misconduct for purposes of  
11 unemployment compensation benefits as provided for in Section ~~16~~ 2-  
12 406A of this ~~act~~ title. In order to prove misconduct, the employer  
13 need only provide proof of a testing policy and either a refusal to  
14 take a drug test or a positive test result.

15 D. Notwithstanding any other language in this act, nothing in  
16 this act shall preclude an employer, contracting with another  
17 employer, from sharing drug or alcohol testing results with that  
18 other contracting employer for any worker working on the employer's  
19 property.

20 SECTION 9. AMENDATORY 40 O.S. 2001, Section 563, is  
21 amended to read as follows:

22 Section 563. A. Any person aggrieved by a willful violation of  
23 ~~the Standards for Workplace Drug and Alcohol Testing Act~~ this act  
24 may institute a civil action in a court of competent jurisdiction

1 within ~~two (2) years~~ one (1) year of the ~~person's discovery of the~~  
2 ~~alleged willful violation or of the exhaustion of any internal~~  
3 ~~administrative remedies available to the person,~~ or be barred from  
4 obtaining the relief provided for in subsection B of this section.  
5 A willful violation of this act requires proof by the preponderance  
6 of the evidence that the employer had a specific intent to violate  
7 this act.

8 B. A prevailing party may be awarded ~~declaratory or injunctive~~  
9 ~~relief and compensatory damages which may include, but not be~~  
10 ~~limited to, employment, reinstatement, promotion, the payment of~~  
11 ~~lost wages and other remuneration~~ to which the person would have  
12 been entitled and ~~payment of and reinstatement to full benefits and~~  
13 ~~seniority rights~~ an additional equal amount as liquidated damages.  
14 Interim earnings or amounts earnable with reasonable diligence by  
15 the aggrieved person shall operate to reduce the back pay otherwise  
16 allowable. Reasonable costs and attorney fees may be awarded to the  
17 prevailing party, whether plaintiff or defendant.

18 SECTION 10. REPEALER 40 O.S. 2001, Section 561, is  
19 hereby repealed.

20 SECTION 11. REPEALER 40 O.S. 2001, Section 564, is  
21 hereby repealed.

22 SECTION 12. REPEALER 40 O.S. 2001, Section 565, is  
23 hereby repealed.

24

SECTION 13. This act shall become effective November 1, 2011.

53-1-7057 EK 03/02/11

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24