

1 ENGROSSED SENATE  
2 BILL NO. 1209

By: Allen of the Senate

3 and

4 Bennett of the House

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6  
7 [ Oklahoma Employment Security Commission -  
8 unemployment benefits - drug and alcohol test -  
effective date -

emergency ]

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

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SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-406.1, is

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amended to read as follows:

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Section 2-406.1. A. An employee discharged on the basis of a

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refusal to undergo drug or alcohol testing or a confirmed positive

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drug or alcohol test conducted in accordance with the provisions of

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the Standards for Workplace Drug and Alcohol Testing Act shall be

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considered to have been discharged for misconduct and shall be

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disqualified for benefits pursuant to the provisions of Section 2-

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406 of this title.

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B. In any claim brought by the discharged employee for

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compensation, a copy of the drug or alcohol test shall be accepted

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as prima facie evidence of the administration and results of the

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drug or alcohol test. Only written drug or alcohol test results

1 shall be acceptable for presentation as evidence with the chain of  
2 custody of the sample properly documented.

3 C. In any claim for compensation brought by an individual who  
4 refused to be tested pursuant to the Standards for Workplace Drug  
5 and Alcohol Testing Act, a copy of the employer's written drug or  
6 alcohol testing policy, documentation of the employer's notification  
7 to the employee requiring him or her to submit to drug or alcohol  
8 testing, and a sworn statement from the employer or testing facility  
9 personnel that the employee refused to be tested shall be accepted  
10 as prima facie evidence of misconduct and disqualification.

11 SECTION 2. AMENDATORY 40 O.S. 2011, Section 557, is  
12 amended to read as follows:

13 Section 557. A. The State Board of Health shall have the power  
14 and duty to promulgate, prescribe, amend and repeal rules for the  
15 licensure and regulation of testing facilities, which shall include,  
16 but not be limited to, the following:

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

24 2. Qualifications of testing facility personnel; and

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

5           B. Nothing in the Standards for Workplace Drug and Alcohol  
6 Testing Act shall be construed as prohibiting an employer from  
7 adopting a policy which allows for testing for drugs or alcohol by  
8 another method which is reasonably calculated to detect the presence  
9 of drugs or alcohol, including, but not limited to, breathalyzer  
10 testing, testing by use of a single-use test device, known as an on-  
11 site or quick testing device, to collect, handle, store and ship a  
12 sample collected for testing. Provided, however, a breathalyzer  
13 test result or single-use test result shall not be grounds for  
14 immediate termination of an employee absent a confirmation test, as  
15 defined in Section 552 of this title, of the original sample tested.

16           SECTION 3.           AMENDATORY           40 O.S. 2011, Section 560, is  
17 amended to read as follows:

18           Section 560. A. Records of all drug and alcohol test results  
19 and related information maintained by the employer shall be the  
20 property of the employer and, upon the request of the applicant or  
21 employee tested, shall be made available for inspection and copying  
22 to the applicant or employee. ~~An~~ Except as provided in subsection B  
23 of this section, an employer shall not release such records to any  
24 person other than the applicant, employee or the employer's review

1 officer, unless the applicant or employee, in writing following  
2 receipt of the test results, has expressly granted permission for  
3 the employer to release ~~such~~ the records in order to comply with a  
4 valid judicial or administrative order. A written record of the  
5 chain of custody of the sample shall be ~~maintained from~~ started at  
6 the time of the collection of the sample and continued until the  
7 sample is no longer required. The written record of the chain of  
8 custody shall be kept with or attached to the document of a positive  
9 drug test of an individual and retained in the employer's permanent  
10 records for the duration of the employer's customary records  
11 retention period.

12 B. Records of all drug and alcohol test results may be  
13 introduced as evidence by an employer or individual tested in a case  
14 or proceedings before a court of record or administrative agency of  
15 this state if the employer and the individual tested are both named  
16 parties in the case or proceeding.

17 C. 1. A testing facility, or any agent, representative or  
18 designee of the facility, or any review officer, shall not disclose  
19 to any employer, based on the analysis of a sample collected from an  
20 applicant or employee for the purpose of testing for the presence of  
21 drugs or alcohol, any information relating to the general health,  
22 pregnancy or other physical or mental condition of the applicant or  
23 employee.

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1        2. A testing facility shall release the results of the drug or  
2 alcohol test, and any analysis and information related thereto, to  
3 the individual tested upon request.

4        SECTION 4.        AMENDATORY        40 O.S. 2011, Section 562, is  
5 amended to read as follows:

6        Section 562. A. An employer's policy shall state the  
7 disciplinary actions that may be taken upon a refusal to undergo a  
8 drug or alcohol test or for a positive test for the presence of  
9 drugs or alcohol.

10        B. An employer may take disciplinary action, up to and  
11 including discharge, against an employee who refuses to undergo drug  
12 or alcohol testing conducted in accordance with the provisions of  
13 ~~Section 551 et seq. of this title~~ the Standards for Workplace Drug  
14 and Alcohol Testing Act or who tests positive for the presence of  
15 drugs or alcohol.

16        C. An employee discharged on the basis of a refusal to undergo  
17 drug or alcohol testing or a positive drug or alcohol test shall be  
18 considered to have been discharged for misconduct for purposes of  
19 unemployment compensation benefits as provided for in Section ~~2-406A~~  
20 2-406.1 of this title. In order to prove misconduct, the employer  
21 ~~need only~~ must provide proof of a written testing policy and either  
22 a refusal to take a drug or alcohol test or a positive test result.  
23 In addition, if a positive test result is the basis for the  
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1 discharge, the employer must submit a written record of the chain of  
2 custody of the sample.

3 D. Notwithstanding any provision of law for confidentiality of  
4 drug or alcohol testing results, nothing in the Standards for  
5 Workplace Drug and Alcohol Testing Act shall preclude an employer,  
6 contracting with another employer, from sharing drug or alcohol  
7 testing results of any tested person who works pursuant to such  
8 contractual agreement.

9 SECTION 5. This act shall become effective July 1, 2012.

10 SECTION 6. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

14 Passed the Senate the 8th day of March, 2012.

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Presiding Officer of the Senate

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18 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
19 2012.

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Presiding Officer of the House  
of Representatives

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