SENATE FLOOR VERSION
February 22, 2012
As Amended

SENATE BILL NO. 1209 By: Allen of the Senate

and

Bennett of the House

[Oklahoma Employment Security Commission - unemployment benefits - drug and alcohol test - effective date - emergency]

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

SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-406.1, is amended to read as follows:

Section 2-406.1. A. An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a confirmed positive drug or alcohol test conducted in accordance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for benefits pursuant to the provisions of Section 2-406 of this title.

B. In any claim brought by the discharged employee for compensation, a copy of the drug or alcohol test shall be accepted as prima facie evidence of the administration and results of the

drug or alcohol test. Only written drug or alcohol test results shall be acceptable for presentation as evidence with the chain of custody of the sample properly documented.

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

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

Section 557. A. The State Board of Health shall have the power and duty to promulgate, prescribe, amend and repeal rules for the licensure and regulation of testing facilities, 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 tests 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; and

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

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

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

Section 560. A. Records of all drug and alcohol test results and related information maintained by the employer shall be the property of the employer and, upon the request of the applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. ~~An~~ Except as provided in subsection B of this section, an employer shall not release such records to any

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

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

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

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

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

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

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

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

discharge, the employer must submit a written record of the chain of custody of the sample.

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

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

SECTION 6. 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.

COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & COMMERCE, dated 2-16-12 - DO PASS, As Amended and Coauthored.