

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 COMMITTEE SUBSTITUTE
4 FOR
5 SENATE BILL NO. 1716

By: Newberry

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7 COMMITTEE SUBSTITUTE

8 An Act relating to workplace drug and alcohol
9 testing; transferring all workplace drug and alcohol
10 testing from the State Department of Health to the
11 Department of Labor; establishing authority to
12 transfer records, contracts, obligations, equipment,
13 funds and responsibilities; transferring certain
14 funds; prohibiting use of transferred funds or
15 property for purposes unrelated to workplace drug and
16 alcohol testing; restricting the State Department of
17 Health from entering into certain contracts without
18 approval; transferring licenses, registrations and
19 certifications; directing the Director of the Office
20 of Management and Enterprise Services to coordinate
21 transfer of funds and financial obligations;
22 transferring certain administrative rules; amending
23 40 O.S. 2011, Sections 552, as amended by Section 17,
24 Chapter 196, O.S.L. 2012, 557, as amended by Section
19, Chapter 196, O.S.L. 2012, 558, and 559 (40 O.S.
Supp. 2013, Sections 552 and 557), which relate to
the Workplace Drug and Alcohol Testing Act; modifying
definitions; modifying language; providing for
noncodification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law not to be
23 codified in the Oklahoma Statutes to read as follows:
24

1 A. All powers, duties, responsibilities, records and equipment
2 of the State Board of Health, the State Department of Health, and
3 the State Commissioner of Health relating exclusively to the
4 regulation of workplace drug and alcohol testing are hereby
5 transferred and shall be placed under the authority of the
6 Department of Labor. To the extent practicable, this shall include
7 all computer hardware and software used in regulating the functions
8 listed in this subsection. The State Commissioner of Health, the
9 Commissioner of Labor and the Director of the Office of Management
10 and Enterprise Services may contract for additional legal and
11 administrative services as necessary to effectuate the transfer.

12 B. 1. All unexpended funds, property, furnishings, equipment,
13 supplies, records, and outstanding financial obligations and
14 encumbrances relating to the designated transfer of the workplace
15 drug and alcohol testing are hereby transferred to the Department of
16 Labor for the continuing performance of duties relating to the
17 workplace drug and alcohol testing. No funds, property,
18 furnishings, equipment, supplies or records may be expended or used
19 for any purpose other than the performance of duties and
20 responsibilities as directed and required in this act.

21 2. Any funds, properties, furnishings, equipment, supplies, or
22 records related in any manner to the Workplace Drug and Alcohol
23 Testing Act which may not be in the current possession of the State
24 Department of Health on the effective date of this act, but which

1 | come into the possession of the State Department of Health after the
2 | transfer of authority of the Workplace Drug and Alcohol Testing Act
3 | to the Department of Labor as provided in this act, shall
4 | immediately be transferred to the Department of Labor. Subject to
5 | the immediate transfer shall include, but not be limited to, any
6 | misdirected licensing fees or payments of outstanding administrative
7 | fines.

8 | C. The State Board of Health, the State Department of Health
9 | and the State Commissioner of Health shall not enter into any
10 | contract or agreement relating to the regulations of workplace drug
11 | and alcohol testing extending beyond the effective date of the
12 | transfer without approval by the Commissioner of Labor and the
13 | Office of Management and Enterprise Services.

14 | D. All licenses, registrations, certifications and
15 | accreditations subject to the transfer provided in subsection A of
16 | this section shall remain in full force and effect upon transfer to
17 | the Commissioner of Labor.

18 | E. The Director of the Office of Management and Enterprise
19 | Services is hereby directed to coordinate the transfer of funds,
20 | allotments, purchase orders and outstanding financial obligations
21 | and encumbrances relating to the transfer of workplace drug and
22 | alcohol testing subject to transfer pursuant to the provisions of
23 | this act.

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1 F. Upon the effective date of this act, all administrative
2 rules promulgated by the State Board of Health relating to the
3 workplace drug and alcohol testing shall be transferred to and
4 become a part of the administrative rules of the Commissioner of
5 Labor. The Office of Administrative Rules in the Secretary of
6 State's office shall provide adequate notice in the Oklahoma
7 Register of the transfer of such rules, and shall place the
8 transferred rules under the Administrative Code section of the
9 Department of Labor. Such rules shall continue in force and effect
10 as rules of the Department of Labor from and after the effective
11 date of this act, and any amendment, repeal or addition to the
12 transferred rules shall be under the jurisdiction of the Department
13 of Labor.

14 G. No employee of the State Department of Health relating to
15 duties of the Workplace Drug and Alcohol Testing Act shall be
16 required to transfer to the Department of Labor. On the effective
17 date of this act, the Department of Labor shall have authority for
18 the duties and responsibilities of the Workplace Drug and Alcohol
19 Testing Act within its current full-time-equivalent personnel limits
20 and appropriations.

21 SECTION 2. AMENDATORY 40 O.S. 2011, Section 552, as
22 amended by Section 17, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2013,
23 Section 552) is amended to read as follows:

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

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

4 2. "Applicant" means a person who has applied for a position
5 with an employer and received a conditional offer of employment;

6 3. "~~Board~~" "Commissioner" means the ~~State Board of Health~~
7 Commissioner of Labor;

8 4. "Confirmation test" means a drug or alcohol test on a sample
9 to substantiate the results of a prior drug or alcohol test on the
10 same sample and which uses different chemical principles and is of
11 equal or greater accuracy than the prior drug or alcohol test.

12 Where a breathalyzer test is utilized, a confirmation test means a
13 second sample test that confirms the prior result. Where a single-
14 use test is utilized, a confirmation test means a second test
15 confirmed by a testing facility;

16 5. "Department" means the ~~State~~ Department of ~~Health~~ Labor;

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

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

3 8. "Employee" means any person who supplies labor for
4 remuneration to his or her employer in this state and shall not
5 include an independent contractor, subcontractor or employees of an
6 independent contractor; provided, however, an independent
7 contractor, subcontractor, or employees of an independent
8 contractor, may be subject to a workplace drug or alcohol testing
9 policy under the terms of the contractual agreement when the drug or
10 alcohol testing policy applies to other workers at the job site or
11 workers who are in the same or similar classification or group;

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

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

20 11. "Review officer" means a person, qualified by the ~~State~~
21 ~~Board of Health~~ Department of Labor, who is responsible for
22 receiving results from a testing facility which have been generated
23 by an employer's drug or alcohol testing program, and who has
24 knowledge and training to interpret and evaluate an individual's

1 test results together with the individual's medical history and any
2 other relevant information;

3 12. "Sample" means tissue, fluid or product of the human body
4 chemically capable of revealing the presence of drugs or alcohol in
5 the human body; and

6 13. "Testing facility" means a facility which provides
7 laboratory services to test samples for the presence of drugs or
8 alcohol.

9 SECTION 3. AMENDATORY 40 O.S. 2011, Section 557, as
10 amended by Section 19, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2013,
11 Section 557), is amended to read as follows:

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

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.

13 SECTION 4. AMENDATORY 40 O.S. 2011, Section 558, is
14 amended to read as follows:

15 Section 558. A. On and after July 1, 1994, no testing facility
16 shall provide laboratory services to an employer to test for the
17 presence or absence of drugs or alcohol unless it meets the
18 qualifications established for testing facilities pursuant to
19 Section 7 557 of this ~~act~~ title and is licensed by the ~~State~~
20 Department of ~~Health~~ Labor to perform such tests. The ~~State Board~~
21 ~~of Health~~ Commissioner of Labor shall promulgate rules relating to
22 the issuance of such license, including rules governing license
23 revocation, suspension and nonrenewal.

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1 B. The fees for licensure of testing facilities by the ~~State~~
2 Department of ~~Health~~ Labor shall be set by the ~~State Board of Health~~
3 Commissioner and shall not be more than One Hundred Fifty Dollars
4 (\$150.00) annually.

5 C. Any testing facility providing laboratory services to an
6 employer to test for the evidence of drugs or alcohol which is not
7 licensed by the ~~State Department of Health~~ pursuant to this section
8 shall be subject to an administrative fine of not more than Five
9 Hundred Dollars (\$500.00) for each offense. Each test performed by
10 the unlicensed testing facility in violation of this section shall
11 constitute a separate offense.

12 SECTION 5. AMENDATORY 40 O.S. 2011, Section 559, is
13 amended to read as follows:

14 Section 559. All sample collection and testing for drugs and
15 alcohol pursuant to the provisions of ~~this act~~ the Workplace Drug
16 and Alcohol Testing Act shall be conducted in accordance with the
17 following conditions:

18 1. Samples shall be collected and tested only by individuals
19 deemed qualified by the ~~State Board of Health~~ Department of Labor
20 and may be collected on the premises of the employer;

21 2. Only samples deemed appropriate by the ~~State Board of Health~~
22 Department of Labor for drug and alcohol testing shall be collected;

23 3. The collection of samples shall be performed under
24 reasonable and sanitary conditions;

1 4. A sample shall be collected in sufficient quantity for
2 splitting into two separate specimens, pursuant to rules of the
3 ~~State Board of Health~~ Department of Labor, to provide for any
4 subsequent independent analysis in the event of challenge of the
5 test results of the main specimen;

6 5. Samples shall be collected and tested with due regard to the
7 privacy of the individual being tested. In the instances of
8 urinalysis, no employer or representative, agent or designee of the
9 employer shall directly observe an applicant or employee in the
10 process of producing a urine sample; provided, however, collection
11 shall be in a manner reasonably calculated to prevent substitutions
12 or interference with the collection or testing of reliable samples;

13 6. Sample collection shall be documented, and the documentation
14 procedures shall include:

- 15 a. labeling of samples so as reasonably to preclude the
16 probability of erroneous identification of test
17 results, and
- 18 b. an opportunity for the applicant or employee to
19 provide notification of any information which the
20 applicant or employee considers relevant to the test,
21 including identification of currently or recently used
22 prescription or nonprescription drugs, or other
23 relevant information;

1 7. Sample collection, storage, and transportation to the
2 testing facility shall be performed so as reasonably to preclude the
3 probability of sample contamination or adulteration;

4 8. Sample testing shall conform to scientifically accepted
5 analytical methods and procedures. Testing shall include
6 confirmation of any positive test result by gas chromatography, gas
7 chromatography-mass spectroscopy, or an equivalent scientifically
8 accepted method of equal or greater accuracy as approved by ~~Board~~
9 rule, at the cutoff levels as determined by ~~Board~~ rule, before the
10 result of any test may be used as a basis for refusal to hire a job
11 applicant or any action by an employer pursuant to Section ~~42~~ 562 of
12 this ~~act~~ title; and

13 9. A written record of the chain of custody of the sample shall
14 be maintained from the time of the collection of the sample until
15 the sample is no longer required.

16 SECTION 6. This act shall become effective November 1, 2014.

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