

**NEW SUBSECTION. 13.** Adopt policies and procedures for the use of telecommunications as an instructional tool at the area school. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

Sec. 8. This Act, being deemed of immediate importance, takes effect upon its enactment.

Approved June 5, 1987

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## CHAPTER 208

### DRUG TESTING OF EMPLOYEES AND APPLICANTS

*H.F. 469*

**AN ACT** to regulate the circumstance and procedure under which an employer may request a drug test of an employee or an applicant for employment and providing a penalty.

*Be It Enacted by the General Assembly of the State of Iowa:*

**Section 1. NEW SECTION. 730.5 DRUG TESTING OF EMPLOYEES OR APPLICANTS REGULATED.**

1. As used in this section, "drug test" means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual.

2. Except as provided in subsection 7, an employer shall not require or request employees or applicants for employment to submit to a drug test as a condition of employment, preemployment, promotion, or change in status of employment. An employer shall not request, require, or conduct random or blanket drug testing of employees. However, this section does not apply to preemployment drug tests authorized for peace officers or correctional officers of the state, or to drug tests required under federal statutes, or to drug tests conducted pursuant to a nuclear regulatory commission policy statement, or to drug tests conducted to determine if an employee is ineligible to receive workers' compensation under section 85.16, subsection 2.

3. This section does not prohibit an employer from requiring a specific employee to submit to a drug test if all of the following conditions are met:

a. The employer has probable cause to believe that an employee's faculties are impaired on the job.

b. The employee is in a position where such impairment presents a danger to the safety of the employee, another employee, a member of the public, or the property of the employer, or when impairment due to the effects of a controlled substance is a violation of a known rule of the employer.

c. The test sample withdrawn from the employee is analyzed by a laboratory or testing facility that has been approved under rules adopted by the department of public health.

d. If a test is conducted and the results indicate that the employee is under the influence of alcohol or a controlled substance or indicate the presence of alcohol or a controlled substance, a second test using an alternative method of analysis shall be conducted. When possible and practical, the second test shall use a portion of the same test sample withdrawn from the employee for use in the first test.

e. An employee shall be accorded a reasonable opportunity to rebut or explain the results of a drug test.

f. The employer shall provide substance abuse evaluation, and treatment if recommended by the evaluation, with costs apportioned as provided under the employee benefit plan or at employer expense, if there is no employee benefit plan, the first time an employee's drug test

indicates the presence of alcohol or a controlled substance. An employer shall take no disciplinary action against an employee due to the employee's drug involvement the first time the employee's drug test indicates the presence of alcohol or a controlled substance if the employee undergoes a substance abuse evaluation, and if the employee successfully completes substance abuse treatment if treatment is recommended by the evaluation. However, if an employee fails to undergo substance abuse evaluation when required under the results of a drug test, or fails to successfully complete substance abuse treatment when recommended by an evaluation, the employee may be disciplined up to and including discharge. The substance abuse evaluation and treatment provided by the employer shall take place under a program approved by the department of public health or accredited by the joint commission on accreditation of hospitals.

4. In conducting those tests designed to identify the presence of chemical substances in the body, the employer shall ensure to the extent feasible that the tests only measure and that the records of the tests only show or make use of information regarding chemical substances in the body which are likely to affect the ability of the employee to perform safely the employee's duties while on the job.

5. This section does not restrict an employer's ability to prohibit the use of alcohol or controlled substances during work hours or to discipline employees for being under the influence of alcohol or controlled substances during work hours.

6. This section does not prevent an employer from conducting medical screening in order to monitor exposure to toxic or other unhealthy substances encountered in the workplace or in the performance of their job responsibilities. Any such screening must be limited to the specific substances required to be monitored.

7. A drug test conducted as a part of a physical examination performed as a part of a preemployment physical or as a part of a regularly scheduled physical is only permissible under the following circumstances:

a. For a preemployment physical, the employer shall include notice that a drug test will be part of a preemployment physical in any notice or advertisement soliciting applicants for employment or in the application for employment, and an applicant for employment shall be personally informed of the requirement for a drug test at the first interview.

b. For a regularly scheduled physical, the employer shall give notice that a drug test will be part of the physical at least thirty days prior to the date the physical is scheduled.

Drug testing conducted under this subsection shall conform to the requirements of subsection 3, paragraphs "c", "d", "e", and "f"; however, paragraph "f" shall not apply to drug tests conducted as a part of a preemployment physical.

8. An employer shall protect the confidentiality of the results of any drug test conducted on an employee. The results of the test may be recorded in the employee's personnel records; however, if an employee whose test indicated the employee was under the influence of alcohol or a controlled substance or indicated the presence of a controlled substance has undergone substance abuse evaluation and, when treatment is indicated under the substance abuse evaluation, successfully completed treatment for substance abuse, the employee's personnel records shall be expunged of any reference to the test or its results when the employee leaves employment.

9. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee or applicant for employment for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or applicant for employment, the county attorney, or the attorney general.

In an action brought under this subsection alleging that an employer has required or requested a drug test in violation of this section, the employer has the burden of proving that the requirements of this section were met.

10. An employee shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer in the amount of any loss of wages and benefits arising out of the discrimination and shall be restored to the employee's previous position of employment.

11. A person who violates this section is, upon conviction, guilty of a simple misdemeanor.

Approved June 5, 1987

## CHAPTER 209

### ENERGY CONSERVATION ASSISTANCE

*H.F. 654*

AN ACT relating to the funding of the energy bank program.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 93.19, Code 1987, is amended to read as follows:

#### 93.19 ENERGY BANK PROGRAM.

The energy bank program is established by the department. The energy bank program consists of the following forms of assistance for school districts, area education agencies, cities, counties, and merged area schools:

1. Providing moneys from the petroleum overcharge fund for conducting energy audits under section 279.44.

2. Providing loans, leases, and other methods of alternative financing from the energy loan fund established in section 93.20 and section 93.20A for school districts ~~and~~ area schools, area education agencies, cities and counties to implement energy conservation measures.

3. Serving as a source of technical support for energy conservation management.

4. Providing assistance for obtaining insurance on the energy savings expected to be realized from the implementation of energy conservation measures.

5. Providing self-liquidating financing for school districts, area schools, area education agencies, cities, and counties, pursuant to section 93.20A.

For the purpose of this section, and section 93.20, and section 93.20A, "energy conservation measure" means construction, rehabilitation, acquisition, or modification of an installation in a building which is intended to reduce energy consumption, or energy costs, or both, or allow the use of an alternative energy source, which may contain integral control and measurement devices.

Sec. 2. Section 93.20, Code 1987, is amended to read as follows:

#### 93.20 ENERGY LOAN FUND.

An energy loan fund is established in the office of the treasurer of state to be administered by the department. The department may make loans to school districts, ~~and~~ area schools, area education agencies, cities, and counties for implementation of energy conservation measures identified in a comprehensive engineering analysis. Loans shall not be made for energy conservation measures that require more than an average of six years for the school district, area school, area education agency, city and county as an entity to recoup the actual or projected cost of construction and acquisition of the improvements; ~~and cost of the engineering analysis, plans, and specifications; and cost of the surety bonds securing the operation of the energy~~