

4/30/93 Motion to R/C by Noon

FILED APR 29 1993

SENATE FILE 424
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO LSB 2726XC)

Passed Senate, Date 4/30/93 (p. 1479) Passed House, Date _____

Vote: Ayes 37 Nays 12 Vote: Ayes _____ Nays _____

Approved _____

Motion to R/C (p. 1482)

A BILL FOR

1 An Act establishing employment parameters for drug testing and a
2 study of the privatization of state functions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 424

1 Section 1. PRIVATIZATION STUDY. The legislative council
2 shall authorize a study committee on privatization of state
3 functions. The committee shall consider the recommendations
4 of the Fisher commission and the senate appropriations
5 subcommittee on privatization, receive information and
6 testimony from other sources, and make recommendations.

7 The committee membership shall be as follows:

8 1. Five senators, three appointed by the majority leader
9 of the senate, two appointed by the minority leader of the
10 senate.

11 2. Five representatives, three appointed by the speaker of
12 the house of representatives, two appointed by the minority
13 leader of the house of representatives.

14 3. Two ex officio, nonvoting members, one representing the
15 department of management and one representing the department
16 of personnel and two other ex officio, nonvoting members
17 representing two other departments, to be chosen by the
18 governor.

19 4. Four public members, two representing private business
20 and two representing labor organizations. One member from
21 each category shall be appointed by the majority leader of the
22 senate and one member from each category shall be appointed by
23 the speaker of the house of representatives. Members
24 appointed under this subsection shall be entitled to receive
25 their actual expenses for attending meetings of the committee.

26 The committee shall present its recommendations by November
27 15, 1993.

28 Sec. 2. PRIVATIZATION -- STATE EMPLOYEE CONSULTATION. A
29 state agency or department shall consult with and consider
30 alternatives proposed by employees of the department or
31 organizations representing state employees prior to
32 privatizing functions provided by the agency or department.

33 Sec. 3. Section 730.5, subsection 1, Code 1993, is amended
34 to read as follows:

35 1. As used in this section, unless the context otherwise

1 requires:

2 a. "drug Drug test" means any blood, urine, saliva,
3 chemical, or skin tissue test conducted for the purpose of
4 detecting the presence of a chemical substance in an
5 individual.

6 b. "Preemployment" means that period of time between when
7 a bona fide offer of employment is made and when employment
8 begins.

9 Sec. 4. Section 730.5, subsection 3, paragraph a, Code
10 1993, is amended to read as follows:

11 a. The employer has probable cause to believe that an
12 employee's faculties are impaired on the job. A drug test
13 shall not be required of an employee upon probable cause, as
14 set forth in this paragraph, unless the employer has
15 previously provided the employee to be tested with written
16 notice of its rules or policies regarding alcohol, controlled
17 substances, and circumstances under which testing may be
18 required. For purposes of this paragraph, probable cause
19 exists if the employer has credible evidence of any of the
20 following:

21 (1) The employee has admitted to being under the influence
22 of an illegal controlled substance or alcoholic beverage in
23 the work place or immediately prior to commencing work.

24 (2) The employee has been observed in possession of an
25 illegal controlled substance or alcoholic beverage in the work
26 place or immediately prior to commencing work.

27 (3) The employee exhibits physical symptoms or effects of
28 having been exposed to or of being under the influence of an
29 illegal controlled substance or alcoholic beverage during
30 employment only if there has not been an employment-related
31 incident.

32 (4) There has been an employment-related incident which
33 resulted from the probable negligence or intentional
34 misconduct of the employee to be tested and in which a person
35 has suffered an injury requiring medical treatment away from

1 the work place or in which damage to property and equipment is
2 reasonably estimated to exceed one thousand dollars and the
3 employee to be tested exhibits physical symptoms or effects of
4 having been exposed to or of being under the influence of an
5 illegal controlled substance or alcoholic beverage at the time
6 of the incident.

7 Sec. 5. Section 730.5, subsection 3, paragraph c, Code
8 1993, is amended to read as follows:

9 c. The test sample withdrawn from the employee is analyzed
10 by a laboratory or testing facility that has been approved
11 under rules adopted by the department of public health. The
12 laboratory or testing facility shall report to the employer
13 only the presence of alcohol or illegal controlled substances
14 in any test sample. The rules adopted by the department of
15 public health shall provide for all of the following:

16 (1) The initial screening test may utilize immunoassay,
17 thin layer, high performance liquid or gas chromatography, or
18 an equivalent technology. If the initial test utilizes
19 immunoassay, the test kit must meet the requirements of the
20 United States food and drug administration.

21 (2) Samples which have tested positive by initial testing,
22 with the exception of alcohol, shall be confirmed by gas
23 chromatography-mass spectrometry or by a scientifically
24 equivalent technique approved by the department.

25 (3) All initial positive drug test results with the
26 exception of alcohol shall be confirmed by gas chromatography-
27 mass spectrometry or an equivalent test approved by the
28 department before being reported as positive or negative.

29 (4) All initial positive test results for alcohol shall be
30 confirmed by gas chromatography, or a test that is recognized
31 by the department as an equivalent test before being reported
32 as positive or negative.

33 (5) Preliminary reports for drugs other than alcohol shall
34 not be issued in the absence of confirmation by gas
35 chromatography-mass spectrometry or a scientifically

1 equivalent test approved by the department.

2 (6) Complete chain of custody procedures shall be used for
3 referred specimens. When sample volumes permit, it is
4 recommended that only an aliquot of the original specimen be
5 sent to a reference laboratory.

6 Sec. 6. Section 730.5, subsection 7, Code 1993, is amended
7 to read as follows:

8 ~~7. A drug test conducted as a part of a physical~~
9 ~~examination performed as a part of a preemployment physical or~~
10 ~~as a part of a regularly scheduled physical is only~~
11 ~~permissible~~ In addition to drug testing permitted by
12 subsection 3, drug testing of an employee or applicant for
13 employment shall also be permitted under the following
14 circumstances:

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

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

25 c. An employer may require an employee, as a condition of
26 employment, to undergo drug testing if that employee has been
27 referred by the employer for substance abuse evaluation
28 pursuant to subsection 3, paragraph "f", and treatment, if
29 recommended by the evaluation. The employee may be required
30 to undergo drug testing without prior notice, but in no case
31 shall more than one test be conducted in the six-month period
32 following the employee's completion of substance abuse
33 treatment if the treatment was recommended by the evaluation.
34 No drug test shall be required of an employee by an employer
35 during drug treatment of the employee, if such testing would

1 duplicate testing of the employee conducted in the course of
2 treatment and the employee has waived confidentiality as to
3 the employer of the results of such testing. No employer
4 shall require an employee to submit to drug testing under this
5 paragraph if more than six months have elapsed since the
6 employee successfully completed drug treatment and the
7 employee has not had a drug test indicating the presence of
8 alcohol or an illegal controlled substance during that six-
9 month period.

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

14 EXPLANATION

15 The bill provides that the legislative council shall
16 authorize a study committee on privatization of state
17 functions. The bill establishes the members of the study
18 committee and requires a presentation of committee
19 recommendations by November 15, 1993. The bill also requires
20 a state agency or department to consult with its employees
21 prior to the state agency or department privatizing functions.

22 The bill also provides additional guidelines concerning
23 drug testing in employment. The bill defines what constitutes
24 preemployment for purposes of the drug testing section and
25 provides distinct examples of what constitutes probable cause
26 to conduct a drug test. The bill also provides for limited
27 random drug testing of an employee who has completed substance
28 abuse treatment under the drug testing section.

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SENATE FILE 424

S-3776

- 1 Amend Senate File 424 as follows:
2 1. By striking page 2, line 9 through page 3,
3 line 6.
4 2. Page 4, by striking line 31 and inserting the
5 following: "shall more than two tests be conducted in
6 the twelve-month period".
7 3. Page 5, line 5, by striking the word "six" and
8 inserting the following: "twelve".
9 4. Page 5, lines 8 and 9, by striking the word
10 "six-month" and inserting the following: "twelve-
11 month".
12 5. Page 5, by inserting after line 13 the
13 following:
14 "Sec. ____ . EMPLOYMENT DRUG TESTING STUDY. The
15 legislative council is requested to establish a study
16 committee on drug testing of employees and applicants
17 for employment."
18 6. Title page, line 2, by inserting after the
19 word "functions" the following: "and a study of
20 employment drug testing".
21 7. By renumbering as necessary.

By DON E. GETTINGS
AL STURGEON

S-3776 FILED MAY 2, 1993
ADOPTED

SENATE FILE 424

S-3719

1 Amend Senate File 424 as follows:

2 1. By striking page 2, line 9, through page 5,
3 line 13, and inserting the following:

4 "Sec. ____ . Section 730.5, subsection 3, paragraph
5 a, Code 1993, is amended to read as follows:

6 a. The employer has probable cause to believe that
7 an employee's faculties are impaired on the job. For
8 purposes of this paragraph, an employer that does not
9 have probable cause to believe that the employee's
10 faculties are impaired on the job shall be deemed to
11 have probable cause to test an employee if the
12 employer is investigating an accident in the workplace
13 and all of the following conditions are met:

14 (1) The employer has reasonable grounds to believe
15 that the employee proposed to be tested either
16 directly caused or directly contributed to the
17 accident.

18 (2) The surrounding circumstances do not
19 reasonably indicate that the employee was not
20 impaired.

21 (3) The accident results in a situation where a
22 person has suffered an injury which requires medical
23 treatment away from the workplace or which involves
24 damage to property and equipment in an amount
25 reasonably estimated to exceed one thousand dollars at
26 the time of the accident.

27 (4) Prior to the accident, the employer has
28 provided the employee to be tested with written notice
29 of the employer's rules or policies regarding alcohol
30 and controlled substances and testing when a workplace
31 accident or injury occurs.

32 Sec. ____ . Section 730.5, subsection 3, paragraph
33 c, Code 1993, is amended to read as follows:

34 c. The test sample withdrawn from the employee is
35 analyzed by a laboratory or testing facility that has
36 been approved under rules adopted by the department of
37 public health. The laboratory or testing facility
38 shall report to the employer only the presence of
39 alcohol or illegal controlled substances in any test
40 sample.

41 Sec. ____ . Section 730.5, subsection 7, Code 1993,
42 is amended to read as follows:

43 7. ~~A drug test conducted as a part of a physical~~
44 ~~examination performed as a part of a preemployment~~
45 ~~physical or as a part of a regularly scheduled~~
46 ~~physical is only permissible~~ In addition to drug
47 testing permitted by subsection 3, drug testing of an
48 employee or applicant for employment shall also be
49 permitted under the following circumstances:

50 a. For a preemployment ~~physical~~ application

S-3719

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S-3719

Page 2

1 process, the employer shall include notice that a drug
2 test will be part of a preemployment physical
3 application process in any notice or advertisement
4 soliciting applicants for employment or in the
5 application for employment, and an applicant for
6 employment shall be personally informed of the
7 requirement for a drug test at the first interview.

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

12 c. An employer may require an employee, as a
13 condition of employment, to undergo drug testing if
14 that employee has been referred by the employer for
15 substance abuse evaluation pursuant to subsection 3,
16 paragraph "f", and treatment was recommended by the
17 evaluation. The employee may be required to undergo
18 drug testing without prior notice, but in no case
19 shall more than four tests be conducted in the twelve-
20 month period following the employee's completion of
21 substance abuse treatment if the treatment was
22 recommended by the evaluation.

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

28 2. By renumbering as necessary.

By MARY E. KRAMER

LINN FUHRMAN

S-3719 FILED APRIL 30, 1993

LOST (p. 1479)

SENATE FILE 424

S-3721

1 Amend Senate File 424, as follows:

2 1. Page 5, by inserting after line 13 the
3 following:

4 "Sec. ____ . REPEAL PROVISION. If the Lennox plant
5 in Marshalltown, Iowa, is closed within two years of
6 the effective date of this Act, chapter 731 is
7 repealed on the date of the closing of the plant."

8 2. Title page, line 1, by inserting after the
9 word "testing" the following: ", providing a repeal
10 provision for the labor union membership law,".

11 3. By renumbering as necessary.

By JIM RIORDAN

S-3721 FILED APRIL 30, 1993

WITHDRAWN (p. 1479)

1 Section 1. PRIVATIZATION STUDY. The legislative council
2 shall authorize a study committee on privatization of state
3 functions. The committee shall consider the recommendations
4 of the Fisher commission and the senate appropriations
5 subcommittee on privatization, receive information and
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14 3. Two ex officio, nonvoting members, one representing the
15 department of management and one representing the department
16 of personnel and two other ex officio, nonvoting members
17 representing two other departments, to be chosen by the
18 governor.

19 4. Four public members, two representing private business
20 and two representing labor organizations. One member from
21 each category shall be appointed by the majority leader of the
22 senate and one member from each category shall be appointed by
23 the speaker of the house of representatives. Members
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19 thin layer, high performance liquid or gas chromatography, or
20 an equivalent technology. If the initial test utilizes
21 immunoassay, the test kit must meet the requirements of the
22 United States food and drug administration.

23 (2) Samples which have tested positive by initial testing,
24 with the exception of alcohol, shall be confirmed by gas
25 chromatography-mass spectrometry or by a scientifically
26 equivalent technique approved by the department.

27 (3) All initial positive drug test results with the
28 exception of alcohol shall be confirmed by gas chromatography-
29 mass spectrometry or an equivalent test approved by the
30 department before being reported as positive or negative.

31 (4) All initial positive test results for alcohol shall be
32 confirmed by gas chromatography, or a test that is recognized
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35 (5) Preliminary reports for drugs other than alcohol shall

1 not be issued in the absence of confirmation by gas
2 chromatography-mass spectrometry or a scientifically
3 equivalent test approved by the department.

4 (6) Complete chain of custody procedures shall be used for
5 referred specimens. When sample volumes permit, it is
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21 employment, and an applicant for employment shall be
22 personally informed of the requirement for a drug test at the
23 first interview.

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

27 c. An employer may require an employee, as a condition of
28 employment, to undergo drug testing if that employee has been
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32 to undergo drug testing without prior notice, but in no case
33 shall more than two tests be conducted in the twelve-month
34 period following the employee's completion of substance abuse
35 treatment if the treatment was recommended by the evaluation.

1 No drug test shall be required of an employee by an employer
2 during drug treatment of the employee, if such testing would
3 duplicate testing of the employee conducted in the course of
4 treatment and the employee has waived confidentiality as to
5 the employer of the results of such testing. No employer
6 shall require an employee to submit to drug testing under this
7 paragraph if more than twelve months have elapsed since the
8 employee successfully completed drug treatment and the
9 employee has not had a drug test indicating the presence of
10 alcohol or an illegal controlled substance during that twelve-
11 month period.

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

16 Sec. 6. EMPLOYMENT DRUG TESTING STUDY. The legislative
17 council is requested to establish a study committee on drug
18 testing of employees and applicants for employment.

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