

3/25/96 Referred to Local Gov

FEB 27 1996  
Place On Calendar

HOUSE FILE **2345**  
BY COMMITTEE ON LOCAL  
GOVERNMENT

(SUCCESSOR TO HF 493)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for drug testing of public safety employees,  
2 prosecuting attorneys, employees of the department of justice,  
3 judicial officers and employees of the judicial department,  
4 and making penalties applicable.

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

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**HF 2345**

1 Section 1. Section 730.5, subsection 1, Code 1995, is  
2 amended to read as follows:

3 1. As used in this section, unless the context otherwise  
4 requires:

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

9 b. "Neutral selection basis" means a mechanism for  
10 selecting employees for drug testing that results in an equal  
11 probability that any employee from a group of employees  
12 subject to the selection mechanism will be selected and that  
13 does not give an employer discretion to waive the selection of  
14 any employee selected under the mechanism.

15 c. "Public safety employee" means an employee of the state  
16 or a political subdivision of the state who is a fire fighter,  
17 peace officer as defined in section 801.4, an employee of the  
18 department of justice performing duties specified in section  
19 13.2, subsections 1 through 3, a prosecuting attorney as  
20 defined in section 13A.1, or an employee of the judicial  
21 department or a judicial officer as defined in section  
22 602.1101.

23 Sec. 2. Section 730.5, subsection 3, paragraph a, Code  
24 1995, is amended to read as follows:

25 a. The employer has probable cause to believe that an  
26 employee's faculties are impaired on the job. However, an  
27 employer may require a public safety employee to submit to a  
28 drug test on a neutral selection basis.

29 Sec. 3. Section 730.5, subsection 3, paragraph f, Code  
30 1995, is amended by adding the following new unnumbered  
31 paragraph:

32 NEW UNNUMBERED PARAGRAPH. However, an employer of a public  
33 safety employee whose drug test indicates the presence of  
34 alcohol or a controlled substance may discipline the employee,  
35 up to and including discharge, and shall require, as a

1 condition of employment, that the employee undergo substance  
2 abuse evaluation and treatment at the employee's expense,  
3 unless evaluation and treatment are provided under an employee  
4 benefit plan.

5 EXPLANATION

6 This bill provides for random drug testing of public safety  
7 employees. The bill defines "public safety employee" as a  
8 fire fighter, peace officer, prosecuting attorney, employee of  
9 the department of justice, judicial officer, or employee of  
10 the judicial department, and establishes the requirements of a  
11 random drug test. The bill also provides that a public safety  
12 employee who tests positive for drugs or alcohol may be  
13 disciplined, including discharge, and shall be required, as a  
14 condition of employment, to complete substance abuse  
15 evaluation and treatment at the employee's expense unless such  
16 treatment is provided under an employee benefit plan.

17 A violation of the section concerning drug testing of  
18 employees constitutes a simple misdemeanor.

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## HOUSE FILE 2345

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1 Amend House File 2345 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. Section 730.5, subsection 1, Code  
5 1995, is amended to read as follows:

6 1. As used in this section, unless the context  
7 otherwise requires:

8 a. "drug Drug test" means any blood, urine,  
9 saliva, chemical, or skin tissue test conducted for  
10 the purpose of detecting the presence of a chemical  
11 substance in an individual.

12 b. "Preemployment" means that period of time  
13 between when a bona fide offer of employment is made  
14 and when employment begins.

15 Sec. 2. Section 730.5, subsection 2, Code 1995, is  
16 amended to read as follows:

17 2. Except as provided in subsection 7, an employer  
18 shall not require or request employees or applicants  
19 for employment to submit to a drug test as a condition  
20 of employment, preemployment, promotion, or change in  
21 status of employment. An employer shall not request,  
22 require, or conduct random or blanket drug testing of  
23 employees. However, this section does not apply to  
24 preemployment drug tests authorized for peace officers  
25 or correctional officers of the state, or to drug  
26 tests required under federal statutes or under federal  
27 regulations adopted-as-of-July-17-1990 in effect on or  
28 before February 16, 1995, or to drug tests conducted  
29 pursuant to a nuclear regulatory commission  
30 regulation, or to drug tests conducted to determine if  
31 an employee is ineligible to receive workers'  
32 compensation under section 85.16, subsection 2.

33 The exemption granted by this subsection relating  
34 to drug testing pursuant to federal regulations  
35 adopted-as-of-July-17-1990 in effect on or before  
36 February 16, 1995, is of no effect, as it applies to a  
37 particular regulation, upon a finding by a court of  
38 competent jurisdiction, including any appeal of such  
39 finding, that the particular regulation is  
40 unconstitutional or otherwise invalid. The decision  
41 of a court invalidating any regulation exempted by  
42 this section shall not be stayed pending appeal.

43 Sec. 3. Section 730.5, subsection 3, paragraph a,  
44 Code 1995, is amended to read as follows:

45 a. The employer has probable cause to believe that  
46 an employee's faculties are impaired on the job. For  
47 purposes of this paragraph, an employer has probable  
48 cause to believe that an employee's faculties are  
49 impaired on the job if the employer is investigating  
50 an accident in the workplace and all of the following

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1 conditions are met:

2 (1) The employer has reasonable grounds to believe  
3 that the employee proposed to be tested either  
4 directly caused or directly contributed to the  
5 accident.

6 (2) The employer has reasonable grounds to believe  
7 that the employee's faculties were impaired and that  
8 the impairment was likely a substantial factor in  
9 causing the accident.

10 (3) The accident results in a personal injury  
11 which requires medical treatment away from the  
12 workplace or damage to property, including equipment,  
13 in an amount reasonably estimated to exceed five  
14 thousand dollars at the time of the accident.

15 (4) Prior to the accident, the employer has  
16 provided the employee to be tested with written notice  
17 of the employer's rules or policies regarding alcohol  
18 and controlled substances and testing when a workplace  
19 accident or injury occurs.

20 Sec. 4. Section 730.5, subsection 3, paragraph c,  
21 Code 1995, is amended to read as follows:

22 c. The test sample withdrawn from the employee is  
23 analyzed by a laboratory or testing facility that has  
24 been approved under rules adopted by the department of  
25 public health. The laboratory or testing facility  
26 shall test for and report to the employer only the  
27 presence of alcohol or illegal controlled substances  
28 in any test sample. Upon request by an employee or  
29 applicant for employment, the employer shall provide  
30 to the employee or applicant the results of any drug  
31 test. The rules adopted by the department of public  
32 health shall provide for all of the following:

33 (1) The initial screening test may utilize  
34 immunoassay, thin layer, high performance liquid or  
35 gas chromatography, or an equivalent technology. If  
36 the initial test utilizes immunoassay, the test kit  
37 must meet the requirements of the United States food  
38 and drug administration.

39 (2) Samples which have tested positive by initial  
40 testing, with the exception of alcohol, shall be  
41 confirmed by gas chromatography-mass spectrometry or  
42 by a scientifically equivalent technique approved by  
43 the department.

44 (3) All initial positive drug test results with  
45 the exception of alcohol shall be confirmed by gas  
46 chromatography-mass spectrometry or an equivalent test  
47 approved by the department before being reported as  
48 positive or negative.

49 (4) All initial positive test results for alcohol  
50 shall be confirmed by gas chromatography, or a test

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1 that is recognized by the department as an equivalent  
2 test before being reported as positive or negative.

3 (5) Preliminary reports for drugs other than  
4 alcohol shall not be issued in the absence of  
5 confirmation by gas chromatography-mass spectrometry  
6 or a scientifically equivalent test approved by the  
7 department.

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

12 Sec. 5. Section 730.5, subsection 7, Code 1995, is  
13 amended to read as follows:

14 7. A drug test conducted as a part of a physical  
15 examination performed as a part of a preemployment  
16 physical or as a part of a regularly scheduled  
17 physical is only permissible. In addition to drug  
18 testing permitted by subsection 3, drug testing of an  
19 employee or applicant for employment shall also be  
20 permitted under the following circumstances:

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

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

32 c. An employer may require an employee, as a  
33 condition of employment, to undergo drug testing if  
34 that employee has been referred by the employer for  
35 substance abuse evaluation pursuant to subsection 3,  
36 paragraph "f", and treatment, if recommended by the  
37 evaluation. The employee may be required to undergo  
38 drug testing without prior notice, but in no case  
39 shall more than two tests be conducted in the twelve-  
40 month period following the employee's completion of  
41 substance abuse treatment if the treatment was  
42 recommended by the evaluation. A drug test shall not  
43 be required of an employee by an employer during drug  
44 treatment of the employee, if such testing would  
45 duplicate testing of the employee conducted in the  
46 course of treatment and the employee has waived  
47 confidentiality as to the employer of the results of  
48 such testing. An employer shall not require an  
49 employee to submit to drug testing under this  
50 paragraph if more than twelve months have elapsed

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1 since the employee successfully completed drug  
2 treatment and the employee has not had a drug test  
3 conducted indicating the presence of alcohol or an  
4 illegal controlled substance during that twelve-month  
5 period.

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

11 Sec. 6. Section 730.5, Code 1995, is amended by  
12 adding the following new subsection:

13 NEW SUBSECTION. 12. An employer who conducts a  
14 drug test pursuant to this section shall, for each  
15 fiscal year beginning on or after July 1, 1995, file  
16 an annual written report with the labor division of  
17 the department of employment services consisting of  
18 the following information:

19 a. The number of drug tests conducted by the  
20 employer and the number of employees employed by the  
21 employer.

22 b. The number of drug tests conducted as part of a  
23 preemployment application process, a regularly  
24 scheduled physical, or as a result of a drug test  
25 conducted pursuant to a finding of probable cause as  
26 provided by subsection 3, paragraph "a". Of the drug  
27 tests conducted pursuant to a finding of probable  
28 cause, the employer shall indicate the number of drug  
29 tests conducted as a result of a workplace accident  
30 that resulted in personal injury, property damage, or  
31 both personal injury and property damage.

32 c. The number of drug tests that resulted in a  
33 confirmed positive test result indicating the presence  
34 of alcohol and the number of drug tests that resulted  
35 in a confirmed positive test result indicating the  
36 presence of an illegal controlled substance.

37 d. The number of personal injuries, and the dollar  
38 loss for property damage, arising out of the use of  
39 alcohol and illegal controlled substances by  
40 employees.

41 e. The cost of substance abuse evaluation and  
42 treatment for employees."

43 2. Title page, by striking lines 1 through 4 and  
44 inserting the following: "An Act relating to drug  
45 testing of certain employees and applicants for  
46 employment, providing for employer reporting of drug  
47 tests, and making penalties applicable."

By NELSON of Pottawattamie

H-5233 FILED MARCH 6, 1996