

MAR 3 1995
Place On Calendar

Reprinted

HOUSE FILE 258
BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 157)

(P. 847)
Passed House, Date 3/20/95
Vote: Ayes 77 Nays 21
Approved _____

(P. 1309)
Passed Senate, Date 4/19/95
Vote: Ayes 48 Nays 0

A BILL FOR

1 An Act relating to drug testing of certain employees and
2 applicants for employment, providing for employer defenses,
3 and making penalties applicable.

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

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HF 258

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, including
8 alcohol, in an individual.

9 b. "Employee" means employee as defined in section 85.61
10 and includes the employer, and any chief executive officer,
11 president, vice president, supervisor, manager, and officer of
12 the employer.

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

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

29 The exemption granted by this subsection relating to drug
30 testing pursuant to federal regulations ~~adopted as of July 17,~~
31 ~~1990~~ in effect on or before February 16, 1995, is of no
32 effect, as it applies to a particular regulation, upon a
33 finding by a court of competent jurisdiction, including any
34 appeal of such finding, that the particular regulation is
35 unconstitutional or otherwise invalid. The decision of a

1 court invalidating any regulation exempted by this section
2 shall not be stayed pending appeal.

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

5 a. The employer has ~~probable-cause-to-believe~~ a reasonable
6 belief that an employee's faculties are impaired ~~on-the-job~~
7 due to the use of a controlled substance or alcohol.

8 Sec. 4. Section 730.5, subsection 3, paragraph c, Code
9 1995, is amended to read as follows:

10 c. The test sample withdrawn from the employee is analyzed
11 by a laboratory or testing facility that has been approved
12 under rules adopted by the department of public health. The
13 laboratory or testing facility shall provide information,
14 which information may be both qualitative and quantitative, to
15 the employer only on the presence of alcohol or any controlled
16 substance in any test sample.

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

19 7. ~~A-drug-test-conducted-as-a-part-of-a-physical~~
20 ~~examination-performed-as-a-part-of-a-preemployment-physical-or~~
21 ~~as-a-part-of-a-regularly-scheduled-physical-is-only~~
22 ~~permissible~~ In addition to drug testing permitted by
23 subsection 3, drug testing of an employee or applicant for
24 employment shall also be permitted under the following
25 circumstances:

26 a. ~~For~~ As a part of a preemployment ~~physical~~ application
27 process, provided that the employer shall include notice that
28 a drug test will be part of a preemployment ~~physical~~
29 application process in any notice or advertisement soliciting
30 applicants for employment or in the application for
31 employment, and an applicant for employment shall be
32 personally informed of the requirement for a drug test at the
33 first interview.

34 b. For a regularly scheduled physical, the employer shall
35 give notice that a drug test will be part of the physical at

1 least thirty days prior to the date the physical is scheduled.

2 c. An employer may require an employee, as a condition of
3 employment, to undergo drug testing if the employee has been
4 referred by the employer for substance abuse evaluation
5 pursuant to subsection 3, paragraph "f", and treatment was
6 recommended by the evaluation, or if the employee has been
7 given a leave of absence or other accommodation to obtain
8 substance abuse treatment. Following the employee's
9 completion of substance abuse treatment, the employer may
10 require the employee to undergo drug testing without prior
11 notice.

12 d. An employer may require an employee to undergo drug
13 testing if the employer is investigating an accident in the
14 workplace and all of the following conditions are met:

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

18 (2) The surrounding circumstances do not reasonably
19 exclude the possibility that the employee's faculties are
20 impaired due to the use of a controlled substance or alcohol.

21 (3) The accident results in a personal injury which
22 requires medical treatment away from the workplace or damage
23 to property, including equipment, in an amount reasonably
24 estimated to exceed five hundred dollars at the time of the
25 accident.

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

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

35 Sec. 6. Section 730.5, subsection 8, Code 1995, is amended

1 to read as follows:

2 8. An employer shall protect the confidentiality of the
3 results of any drug test conducted on an employee. The
4 results of the test may be recorded in the employee's
5 personnel records, ~~however~~ or separately maintained
6 confidential medical records file, and may be presented by the
7 employer in any contractual, administrative, or judicial
8 proceeding involving the employee. However, if an employee
9 whose test indicated the employee was under the influence of
10 alcohol or a controlled substance or indicated the presence of
11 a controlled substance has undergone substance abuse
12 evaluation and, when treatment is indicated under the
13 substance abuse evaluation, successfully completed treatment
14 for substance abuse, ~~the employee's personnel records shall be~~
15 ~~expunged of any reference to the test or its results~~ the
16 employer shall not disclose to any person not otherwise
17 employed by or acting as a representative of the employer any
18 reference to the test or its results, except as provided in
19 this section, when the employee leaves employment.

20 Sec. 7. Section 730.5, subsection 9, Code 1995, is amended
21 to read as follows:

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

23 a. A person who violates this section or who aids in the
24 violation of this section is liable to an aggrieved employee
25 or applicant for employment for affirmative relief including
26 reinstatement or hiring, with or without back pay, or any
27 other equitable relief as the court deems appropriate
28 including attorney fees and court costs. An action under this
29 section shall be commenced within two years of the date of the
30 alleged violation.

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

1 for employment, the county attorney, or the attorney general.

2 In an action brought under this subsection alleging that an
3 employer has required or requested a drug test in violation of
4 this section, the employer has the burden of proving that the
5 requirements of this section were met. An employer who proves
6 that the requirements were met may recover reasonable attorney
7 fees and court costs from the person bringing the action.

8 Sec. 8. Section 730.5, Code 1995, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 12. a. Employers shall not have a legal
11 duty to request or require an employee or applicant for
12 employment to undergo drug testing as authorized in this sec-
13 tion. A cause of action shall not arise in favor of any
14 person based upon the failure of an employer to establish a
15 program or policy on substance abuse prevention, to implement
16 drug or alcohol testing, to request or require any employee or
17 applicant for employment to submit to a drug test, or to
18 require drug testing as permitted by this section.

19 b. Except as otherwise provided in paragraph "c", a cause
20 of action shall not arise against an employer for any of the
21 following:

22 (1) Actions taken by the employer in good faith based upon
23 the results of a drug test indicating the presence of alcohol
24 or a controlled substance. An employer does not act in good
25 faith if the employer knew or clearly should have known that
26 the drug test result indicating the presence of alcohol or a
27 controlled substance was in error and the employer ignores the
28 correct result in a willful and reckless manner.

29 (2) Actions taken, or not taken, by an employer based upon
30 a reported negative or inconclusive test result, whether the
31 test result is correct or incorrect.

32 (3) Failure to test for, or if tested for, failure to
33 detect alcohol or any specific controlled substance, or any
34 medical condition, including any mental or physical disorder
35 or condition.

1 (4) Not establishing, or if established, terminating or
2 suspending, a substance abuse prevention or drug testing
3 program or policy.

4 c. Except for a cause of action specifically provided by
5 this section, a separate cause of action for defamation,
6 libel, slander, damage to reputation, or other similar cause
7 of action shall not arise against an employer, including an
8 individual who is an agent or employee of the employer, which
9 has established or is maintaining a program of drug testing in
10 accordance with this section unless all of the following
11 apply:

12 (1) Except as specifically authorized by this section, the
13 employer discloses the test results to a person other than an
14 authorized employee, agent, or representative of the employer,
15 the tested employee or the tested applicant for employment, or
16 an authorized agent or representative of the tested employee
17 or applicant.

18 (2) The test results disclosed incorrectly indicate the
19 presence of alcohol or a controlled substance.

20 (3) The employer negligently or intentionally discloses
21 the results.

22 d. For the purposes of this section, the results of a drug
23 test conducted in compliance with this section are presumed to
24 be valid.

25 EXPLANATION

26 This bill makes changes in Iowa's law governing drug
27 testing of employees and applicants for employment.

28 The bill provides that an employer can require an employee
29 to submit to a drug test if the employer has a reasonable
30 belief that the employee is impaired on the job. Current law
31 requires a finding of probable cause.

32 The bill provides for drug testing as a part of a
33 preemployment application process. Current law allows
34 preemployment drug testing as a part of a preemployment
35 physical.

1 The bill further permits an employer to require an employee
2 who has been referred to substance abuse evaluation or who has
3 been given leave or other accommodation to obtain substance
4 abuse treatment to submit to random drug testing following
5 completion of substance abuse treatment without prior notice.

6 The bill provides for drug testing of an employee involved
7 in a workplace accident resulting in personal injury or damage
8 to property of over \$500 if certain conditions are met.

9 Section 6 of this bill allows an employer to use the
10 results of a drug test in any administrative, contractual, or
11 judicial proceeding involving the employee. Section 6 also
12 permits the employer to keep a record of drug tests when the
13 employee leaves employment so long as the information is not
14 disclosed to persons not employed by the employer or to
15 another employer except as provided in section 730.5,
16 subsection 8. Section 7 provides a two-year statute of
17 limitations for actions under section 730.5 and permits an
18 employer to recover attorney fees and court costs if
19 successful in defending a suit under this section.

20 The bill provides that employers are not required to
21 conduct drug tests and that the employer is not liable for
22 failing to conduct a drug test otherwise authorized by this
23 bill.

24 The bill provides that an employer is not liable for good
25 faith actions taken based on a positive drug test, unless the
26 employer knew the result was incorrect and recklessly ignored
27 the correct result. The bill also provides that an employer
28 is not liable for failing to test for certain drugs or
29 alcohol, failing to establish, or terminating or suspending, a
30 drug testing policy, or taking any action based on a test
31 correctly or incorrectly indicating the absence of drugs or a
32 test result that is inconclusive.

33 The bill also provides that an employer is not liable for
34 an action based on libel, slander, or defamation unless
35 certain additional requirements are met, generally requiring a

1 finding that an incorrect "positive" test result was disclosed
2 negligently.

3 The bill also establishes that a drug test conducted in
4 accordance with the drug testing section is presumed valid.

5 A violation of any provision of the drug testing section
6 constitutes a simple misdemeanor.

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HOUSE FILE 258

H-3289

1 Amend House File 258 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 3, paragraph a,
16 Code 1995, is amended to read as follows:

17 a. The employer has probable cause to believe that
18 an employee's faculties are impaired on the job. For
19 purposes of this paragraph, an employer that does not
20 have probable cause to believe that an employee's
21 faculties are impaired on the job shall be deemed to
22 have probable cause to drug test an employee if the
23 employer is investigating an accident in the workplace
24 and all of the following conditions are met:

25 (1) The employer has reasonable grounds to believe
26 that the employee proposed to be tested either
27 directly caused or directly contributed to the
28 accident.

29 (2) The surrounding circumstances do not
30 reasonably exclude the possibility that the employee's
31 faculties are impaired due to the use of a controlled
32 substance or alcohol.

33 (3) The accident results in a personal injury
34 which requires medical treatment away from the
35 workplace or damage to property, including equipment,
36 in an amount reasonably estimated to exceed one
37 thousand dollars at the time of the accident.

38 (4) Prior to the accident, the employer has
39 provided the employee to be tested with written notice
40 of the employer's rules or policies regarding alcohol
41 and controlled substances and testing when a workplace
42 accident or injury occurs.

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

45 c. The test sample withdrawn from the employee is
46 analyzed by a laboratory or testing facility that has
47 been approved under rules adopted by the department of
48 public health. The laboratory or testing facility
49 shall report to the employer only the presence of
50 alcohol or illegal controlled substances in any test

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1 sample.2 Sec. 4. Section 730.5, subsection 7, Code 1995, is
3 amended to read as follows:4 7. ~~A drug test conducted as a part of a physical~~
5 ~~examination performed as a part of a preemployment~~
6 ~~physical or as a part of a regularly scheduled~~
7 ~~physical is only permissible~~ In addition to drug
8 testing permitted by subsection 3, drug testing of an
9 employee or applicant for employment shall also be
10 permitted under the following circumstances:11 a. For a preemployment physical application
12 process, the employer shall include notice that a drug
13 test will be part of a preemployment physical
14 application process in any notice or advertisement
15 soliciting applicants for employment or in the
16 application for employment, and an applicant for
17 employment shall be personally informed of the
18 requirement for a drug test at the first interview.19 b. For a regularly scheduled physical, the
20 employer shall give notice that a drug test will be
21 part of the physical at least thirty days prior to the
22 date the physical is scheduled.23 c. An employer may require an employee, as a
24 condition of employment, to undergo drug testing if
25 that employee has been referred by the employer for
26 substance abuse evaluation pursuant to subsection 3,
27 paragraph "f", and treatment was recommended by the
28 evaluation. The employee may be required to undergo
29 drug testing without prior notice, but in no case
30 shall more than four tests be conducted in the twelve-
31 month period following the employee's completion of
32 substance abuse treatment if the treatment was
33 recommended by the evaluation.34 Drug testing conducted under this subsection shall
35 conform to the requirements of subsection 3,
36 paragraphs "c", "d", "e", and "f"; however, paragraph
37 "f" shall not apply to drug tests conducted as a part
38 of a preemployment physical application process."39 2. Title page, line 2, by striking the words
40 "providing for employer defenses,".

By WISE of Lee

KOENIGS of Mitchell

KREIMAN of Davis

LARKIN of Lee

MERTZ of Kossuth

NELSON of Pottawattamie

O'BRIEN of Boone

OLLIE of Clinton

SHOULTZ of Black Hawk

WITT of Black Hawk

H-3289 FILED MARCH 10, 1995

*out of order
3/20/95*

HOUSE FILE 258

H-3310

- 1 Amend House File 258 as follows:
- 2 1. By striking page 4, line 20, through page 5,
- 3 line 7.
- 4 2. By renumbering as necessary.

By RUNNING of Linn

H-3310 FILED MARCH 15, 1995

out of order 3/20/95

HOUSE FILE 258

H-3311

- 1 Amend House File 258 as follows:
- 2 1. Page 3, line 10, by striking the word
- 3 "without" and inserting the following: "with".

By RUNNING of Linn

H-3311 FILED MARCH 15, 1995

out of order 3/20/95

HOUSE FILE 258

H-3312

- 1 Amend House File 258 as follows:
- 2 1. Page 4, by striking lines 5 through 8 and
- 3 inserting the following: "personnel records; however,
- 4 if an employee".

By RUNNING of Linn

H-3312 FILED MARCH 15, 1995

out of order 3/20/95

HOUSE FILE 258

H-3313

- 1 Amend House File 258 as follows:
- 2 1. Page 3, by striking lines 6 through 8 and
- 3 inserting the following: "recommended by the
- 4 evaluation. Following the employee's".

By RUNNING of Linn

H-3313 FILED MARCH 15, 1995

out of order 3/20/95

HOUSE FILE 258

H-3314

- 1 Amend House File 258 as follows:
- 2 1. Page 2, line 27, by inserting after the word
- 3 "process" the following: "and only under the
- 4 supervision of a physician".

By RUNNING of Linn

H-3314 FILED MARCH 15, 1995

out of order 3-20-95

HOUSE FILE 258

H-3309

- 1 Amend House File 258 as follows:
- 2 1. By striking page 3, line 35, through page 4,
- 3 line 19.
- 4 2. By renumbering as necessary.

By RUNNING of Linn

H-3309 FILED MARCH 15, 1995

out of order 3/20/95

HOUSE FILE 258

H-3322

1 Amend House File 258 as follows:

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

4 "Section 1. Section 730.5, Code 1995, is amended
5 by striking the section and inserting in lieu thereof
6 the following:

7 730.5 DRUG TESTING OF EMPLOYEES OR APPLICANTS
8 REGULATED.

9 1. As used in this section, unless the context
10 otherwise requires:

11 a. "Alcohol" means ethyl alcohol, hydrated oxide
12 of ethyl, or spirits of wine, from whatever source or
13 by whatever process produced.

14 b. "Chain of custody" means the methodology of
15 tracking specified materials, specimens, or substances
16 for the purpose of maintaining control and
17 accountability from initial collection to final
18 disposition for all such materials, specimens, or
19 substances and providing for accountability at each
20 stage in handling, testing, and storing materials,
21 specimens, or substances and reporting test results.

22 c. "Confirmation test", "confirmed test", or
23 "confirmed substance abuse test" means a second
24 analytical procedure used to identify the presence of
25 a specific drug or metabolite in a specimen. The
26 confirmation test must be different in scientific
27 principle from that of the initial test procedure.
28 This confirmation method must be capable of providing
29 requisite specificity, sensitivity, and quantitative
30 accuracy.

31 d. "Drug" or "drugs" means amphetamines,
32 cannabinoids, cocaine, phencyclidine, opiates,
33 barbiturates, benzodiazepines, methadone,
34 methaqualene, propoxyphene, or a metabolite of any
35 such substances.

36 e. "Employee" means any person who works for
37 salary, wages, or other remuneration for an employer,
38 including those working part-time or as leased
39 employees. "Employee" also means employee as defined
40 in section 85.61 and includes the employer, and any
41 chief executive officer, president, vice president,
42 supervisor, manager, and officer of the employer.

43 f. "Employee assistance program (EAP)" means a
44 program designed to assist in the identification and
45 resolution of job performance problems associated with
46 employees impaired by personal concerns. A minimum
47 level of core services must include consultation and
48 training; professional, confidential, appropriate, and
49 timely problem assessment services; short-term problem
50 resolution; referrals for appropriate diagnosis,

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1 treatment, and assistance; follow-up and monitoring;
2 employee education; and quality assurance.

3 g. "Employer" means a person or entity that is
4 subject to the provisions of this section.

5 h. "Initial test" means a sensitive, rapid, and
6 reliable procedure to identify negative and
7 presumptive positive specimens. All initial tests
8 shall use an immunoassay procedure or an equivalent
9 procedure or shall use a more accurate scientifically
10 accepted method approved by the federal department of
11 health and human services national laboratory
12 certification program or the college of American
13 pathologists as such more accurate technology becomes
14 available in a cost-effective form.

15 i. "Job applicant" means a person who has applied
16 for a position and been offered employment subject to
17 passing a substance abuse test. A job applicant may
18 have begun work pending the results of the substance
19 abuse test.

20 j. "Manufacture", "sale", "distribution",
21 "solicitation", "possession with intent to sell or
22 distribute", and "use" shall have the same meaning as
23 those terms are used in chapter 124.

24 k. "Medical review officer" means a licensed
25 physician trained in the field of alcohol and other
26 drug testing who provides medical assessment of
27 positive test results, requests reanalysis if
28 necessary, and makes a determination whether or not
29 alcohol or other drug use has occurred.

30 l. "Nonprescription medication" means a drug or
31 medication authorized pursuant to federal or state law
32 for general distribution and use without a
33 prescription in the treatment of human disease,
34 ailments, or injuries.

35 m. "Prescription medication" means a drug or
36 medication lawfully prescribed by a physician for an
37 individual and taken by the individual only in
38 accordance with such prescription.

39 n. "Reasonable suspicion testing" means substance
40 abuse testing based on evidence that an employee is
41 using or has used alcohol or other drugs in violation
42 of the employer's policy drawn from specific objective
43 and articulable facts and reasonable inferences drawn
44 from those facts in light of experience. Among other
45 things, such facts and inferences may be based upon,
46 but not limited to, any one of the following:

47 (1) Observable phenomena while at work, such as
48 direct observation of alcohol or other drug use or
49 abuse or of the physical symptoms or manifestations of
50 being impaired due to alcohol or other drug use.

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1 (2) Abnormal conduct or erratic behavior while at
2 work or a significant deterioration in work
3 performance.

4 (3) A report of alcohol or other drug use provided
5 by a reliable and credible source.

6 (4) Evidence that an individual has tampered with
7 any substance abuse test during the employee's
8 employment with the current employer.

9 (5) Evidence that an employee has caused or
10 contributed to an accident while at work.

11 (6) Evidence that an employee has manufactured,
12 sold, distributed, solicited, possessed, used, or
13 transferred drugs while working or while on the
14 employer's premises or while operating the employer's
15 vehicle, machinery, or equipment.

16 o. "Rehabilitation program" means an established
17 program capable of providing expert identification,
18 assessment, and resolution of employee alcohol and
19 other drug abuse in a confidential and timely manner.
20 This service shall in all cases be provided by persons
21 certified as health professionals by the department of
22 public health to provide alcohol and other drug
23 rehabilitative services.

24 p. "Specimen" means urine, blood, breath, hair,
25 tissue, or other such sample of the human body capable
26 of revealing the presence of alcohol or other drugs or
27 their metabolites. Such tests must meet the
28 department of public health standards for scientific
29 and technical accuracy and afford the opportunity for
30 strict forensic chain of custody procedures.

31 q. "Substance" means alcohol or other drugs.

32 r. "Substance abuse test" or "test" means any
33 chemical, biological, or physical instrumental
34 analysis administered for the purpose of determining
35 the presence or absence of alcohol and other drugs or
36 their metabolites.

37 s. "Threshold detection level" means the level at
38 which the presence of alcohol or other drugs can be
39 reasonably expected to be detected by an initial and
40 confirmatory test performed by a laboratory meeting
41 the standards specified in this section. The
42 threshold detection level indicates the level at which
43 a valid conclusion can be drawn that the alcohol or
44 other drugs are present in the employee's specimen.

45 2. It is lawful for an employer to test employees
46 or prospective employees for the presence of alcohol
47 or other drugs, in accordance with the provisions of
48 this section, as a condition of continued employment
49 or hiring. However, in order to qualify for
50 protection from litigation regarding certain legal

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1 claims for acting in good faith on the results of a
2 substance abuse test, employers must implement and
3 maintain a comprehensive drug-free workplace program
4 and adhere to the procedural safeguards that demand
5 accuracy and fairness as included in this section.

6 3. a. A comprehensive drug-free workplace program
7 must contain the following elements:

8 (1) Written policy statement as provided in
9 subsection 4.

10 (2) Employee assistance programs or rehabilitation
11 resources, in accordance with subsection 5.

12 (3) Employee education as provided in subsection
13 6.

14 (4) Supervisor training in accordance with
15 subsection 7.

16 (5) Substance abuse testing as provided in
17 subsection 8.

18 b. In addition to the requirements of paragraph
19 "a" of this subsection, a comprehensive drug-free
20 workplace program must be implemented in compliance
21 with the confidentiality standards provided in
22 subsection 9.

23 4. A drug-free workplace must provide a written
24 policy statement on substance abuse, including
25 testing.

26 a. At least one time, prior to testing, and each
27 year thereafter, all employees and job applicants for
28 employment must be given a notice of testing. In
29 addition, all employees must be given a written policy
30 statement from the employer that contains:

31 (1) A general statement of the employer's policy
32 on substance abuse, including testing, that shall do
33 all of the following:

34 (a) Notify employees that the unlawful
35 manufacture, sale, distribution, possession, or use of
36 alcohol or other drugs is prohibited in the person's
37 workplace.

38 (b) Identify the types of testing to which an
39 employee or job applicant may be required to submit,
40 including the basis used to determine when such
41 testing will be required.

42 (c) Identify the actions the employer may take
43 against an employee or job applicant on the basis of a
44 positive confirmed test result.

45 (2) A statement advising an employee or job
46 applicant of the existence of this section.

47 (3) A general statement concerning
48 confidentiality.

49 (4) A statement advising the employee of the
50 consequences of a refusal to submit to a substance

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Page 5

1 abuse test.

2 (5) A statement advising an employee of the
3 employee assistance program, external employee
4 assistance program, or the employer's resource file of
5 employee assistance programs and other persons,
6 entities, or organizations designed to assist
7 employees with personal or behavioral problems.

8 (6) A statement that an employee or job applicant
9 who receives a positive confirmed test result may
10 contest or explain the result to the employer within
11 seven working days after written notification of the
12 positive test result.

13 (7) A statement informing an employee of the
14 provisions of the federal Drug-Free Workplace Act, if
15 applicable to the employer.

16 b. An employer not having a substance abuse
17 testing program shall ensure that at least sixty
18 calendar days elapse between a general notice to all
19 employees that a substance abuse testing program is
20 being implemented and the beginning of the actual
21 testing. An employer having a substance abuse testing
22 program in place prior to the enactment of this
23 legislation shall not be required to provide a sixty-
24 day notice period.

25 c. An employer shall include notice of substance
26 abuse testing on vacancy announcements for those
27 positions for which testing is required. Notices of
28 the employer's substance abuse testing policy must
29 also be posted in appropriate and conspicuous
30 locations on the employer's premises, and copies of
31 the policy must be made available for inspection by
32 the employees or job applicants of the employer during
33 regular business hours in the employer's personnel
34 office or other suitable locations.

35 5. In order for an employer's workplace to qualify
36 for the provisions of subsection 2, the following must
37 be met:

38 a. If an employer has an employee assistance
39 program, the employer must inform the employee of the
40 benefits and services of the employee assistance
41 program. An employer shall post notice of the
42 employee assistance program in conspicuous places and
43 explore alternative routine and reinforcing means of
44 publicizing such services. In addition, the employer
45 must provide the employee with notice of the policies
46 and procedures regarding access to and utilization of
47 the program.

48 b. If an employer does not have an employee
49 assistance program, the employer must maintain a
50 resource file of employee assistance services

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1 providers, alcohol and other drug abuse programs
2 certified by the department of public health, mental
3 health providers, and other persons, entities, or
4 organizations available to assist employees with
5 personal or behavioral problems. The employer shall
6 provide all employees information about the existence
7 of the resource file and a summary of the information
8 contained within the resource file. The summary
9 should contain, but need not be limited to, all
10 information necessary to access the services listed in
11 the resource file. In addition, the employer shall
12 post in conspicuous places a listing of multiple
13 employee assistance providers in the area.

14 6. An employer must provide all employees with an
15 education program on alcohol and other drug abuse
16 prior to instituting a drug-free workplace program
17 under this section. Also, an employer must provide
18 all employees with an annual education program on
19 alcohol and other drug abuse, in general, and its
20 effects on the workplace, specifically. An education
21 program for a minimum of one hour should include, but
22 is not limited to, the following information:

23 a. The explanation of the disease of addiction for
24 alcohol and other drugs.

25 b. The effects and dangers of the commonly abused
26 substances in the workplace.

27 c. The company's policies and procedures regarding
28 alcohol and other drug use or abuse in the workplace
29 and how employees who wish to obtain substance abuse
30 treatment can do so.

31 7. In order to qualify for the provisions of
32 subsection 2, and in addition to the education program
33 provided in subsection 6, an employer must provide all
34 supervisory personnel a minimum of two hours of
35 training prior to the institution of a drug-free
36 workplace program under this section, and each year
37 thereafter, which should include, but is not limited
38 to, the following:

39 a. Recognition of evidence of employee alcohol and
40 other drug abuse.

41 b. Documentation and corroboration of employee
42 alcohol and other drug abuse.

43 c. Referral of alcohol and other drug-abusing
44 employees to the proper treatment providers.

45 d. Recognition of the benefits of referring
46 alcohol and other drug-abusing employees to treatment
47 programs, in terms of employee health and safety and
48 company savings.

49 e. Explanation of any employee health insurance or
50 health maintenance organization coverage for alcohol

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1 and other drug problems.

2 8. In order to qualify for the provisions of
3 subsection 2:

4 a. All testing conducted by an employer shall be
5 in conformity with the standards and procedures
6 established in this section and all applicable rules
7 adopted pursuant thereto. This section does not
8 establish a legal duty for employers to conduct drug
9 tests of employees or job applicants. However, if an
10 employer fails to maintain a drug-free workplace
11 program in accordance with the standards, procedures,
12 and rules established in or pursuant to this section,
13 the employer shall not qualify for protection from
14 litigation regarding certain legal claims for acting
15 in good faith on the results of a confirmed substance
16 abuse test, as provided in subsection 2.

17 b. An employer is required to conduct the
18 following types of tests in order to qualify for the
19 provisions of subsection 2:

20 (1) An employer must require job applicants to
21 submit to a substance abuse test after extending an
22 offer of employment and may use a refusal to submit or
23 a positive confirmed test as a basis for not hiring
24 the job applicant.

25 (2) An employer must require an employee to submit
26 to reasonable suspicion testing.

27 (3) An employer must require an employee to submit
28 to a substance abuse test if the test is conducted as
29 part of a routinely scheduled employee fitness-for-
30 duty medical examination that is part of the
31 employer's established policy or that is scheduled
32 routinely for all members of an employment classi-
33 fication or group.

34 (4) If the employee in the course of employment
35 enters an employee assistance program or
36 rehabilitation program as a result of a positive test
37 or if the employee has been mandatorily referred to an
38 employee assistance program as a result of a positive
39 test, the employer must require the employee to submit
40 to a substance abuse test as a follow-up to such
41 program. However, if an employee voluntarily entered
42 the program, follow-up testing is not required. If
43 follow-up testing is conducted, the frequency of such
44 testing shall be after completion of the program and
45 advance notice of the testing date shall not be given
46 to the employee and shall be conducted no more than
47 four times in the first year following completion of
48 the program and no more than three times in the second
49 year following completion of the program.

50 (5) If the employee has caused or contributed to

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1 an accident during the course of employment, the
2 employer must conduct post-accident testing.

3 c. Nothing in this section shall prohibit an
4 employer from conducting lawful testing of employees.

5 d. All specimen collection and testing under this
6 subsection shall be performed in accordance with the
7 following procedures:

8 (1) A specimen shall be collected in accordance
9 with the specimen collection procedures described in
10 regulations approved by the federal department of
11 health and human services, the college of American
12 pathologists, or the United States department of
13 transportation regulations for alcohol testing.

14 (2) A specimen shall be collected with due regard
15 to the privacy of the individual providing the
16 specimen, and in a manner reasonably calculated to
17 prevent substitution or contamination of the specimen.

18 (3) Specimen collection, storage, and
19 transportation to the testing site shall be performed
20 in a manner that will reasonably preclude specimen
21 contamination or adulteration.

22 (4) An employee or prospective employee shall have
23 an opportunity to provide notification of any
24 information that may be considered as relevant to the
25 test, including identification of currently or
26 recently used prescriptions or nonprescription drugs,
27 or other relevant medical information. This may be
28 accomplished by providing procedures for review by a
29 qualified medical professional in the case of a sample
30 that tests "positive" in a confirmatory test.

31 (5) Each initial and confirmation test conducted
32 under this section, not including the taking or
33 collecting of a specimen to be tested, shall be
34 conducted by a laboratory certified by the federal
35 department of health and human services' national
36 laboratory certification program or the college of
37 American pathologists as described in paragraph (e) of
38 this subsection, or, for alcohol, handled in
39 accordance with United States department of
40 transportation regulations relating to alcohol
41 testing.

42 (6) A specimen for a test may be taken or
43 collected by any of the following persons:

44 (a) A physician, a physician's assistant, a
45 registered professional nurse, a licensed practical
46 nurse, a nurse practitioner, or a certified paramedic
47 who is present at the scene of an accident for the
48 purpose of rendering emergency medical service or
49 treatment.

50 (b) A qualified person certified or employed by a

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1 laboratory certified by the federal department of
2 health and human services' national laboratory
3 certification program.

4 (c) A qualified person certified or employed by a
5 specimen collection company.

6 (7) Within seven working days after receipt of a
7 positive confirmed test result from the laboratory, an
8 employer shall inform an employee or job applicant in
9 writing of such positive test result, the consequences
10 of such results, and the options available to the
11 employee or job applicant.

12 (8) The employer shall provide to the employee or
13 job applicant, upon request, a copy of the test
14 results.

15 (9) An initial test having a positive result must
16 be verified by a confirmation test, or it shall be
17 certified as a negative result.

18 (10) An employer who performs drug testing or
19 specimen collection shall use chain of custody
20 procedures to ensure proper recordkeeping, handling,
21 labeling, and identification of all specimens to be
22 tested.

23 (11) An employer shall pay the cost of all initial
24 and confirmation substance abuse tests that the
25 employer requires of job applicants or employees.

26 (12) An employee or job applicant shall pay the
27 cost of any additional tests that the employee or job
28 applicant requests.

29 (13) If test is conducted based on reasonable
30 suspicion, the employer shall promptly detail in
31 writing the circumstances that formed the basis of the
32 determination that reasonable suspicion existed to
33 warrant the testing. A copy of this documentation
34 shall be given to the employee and the original
35 documentation shall be kept confidential by the
36 employer pursuant to subsection 9 and retained by the
37 employer for at least one year, or maintained
38 throughout the duration of any legal proceedings
39 resulting from the testing.

40 e. No laboratory may analyze initial or
41 confirmation drug specimens unless:

42 (1) The laboratory is approved by the national
43 laboratory certification program or the college of
44 American pathologists.

45 (2) The laboratory has written procedures to
46 ensure the chain of custody.

47 (3) The laboratory follows proper quality control
48 procedures including, but not limited to:

49 (a) The use of internal quality controls including
50 the use of samples of known concentrations that are

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1 used to check the performance and calibration of
2 testing equipment, and periodic use of blind samples
3 for overall accuracy.

4 (b) An internal review and certification process
5 for substance abuse test results, conducted by a
6 person qualified to perform that function in the
7 testing laboratory.

8 (c) Security measures implemented by the testing
9 laboratory to preclude adulteration of specimens and
10 test results.

11 (d) Other necessary and proper actions taken to
12 ensure reliable and accurate test results.

13 f. A laboratory shall disclose to the employer a
14 written test result report within seven working days
15 after receipt of the sample. All laboratory reports
16 of a substance abuse test result shall, at a minimum,
17 state:

18 (1) The name and address of the laboratory that
19 performed the test and the positive identification of
20 the person tested.

21 (2) Positive results on confirmation tests only,
22 or negative results, as applicable.

23 (3) A list of the drugs for which the drug
24 analyses were conducted.

25 (4) The type of tests conducted for both initial
26 and confirmation tests and the minimum cutoff levels
27 to establish a positive substance abuse test result.
28 No report shall disclose the presence or absence of
29 any drug other than a specific drug and its
30 metabolites listed pursuant to this section.

31 g. Laboratories shall provide technical assistance
32 to the employer, employee, or job applicant for the
33 purpose of interpreting any positive confirmed test
34 results which could have been caused by prescription
35 or nonprescription medication taken by the employee or
36 job applicant.

37 h. All positive initial tests shall be confirmed
38 using the gas chromatography/mass spectrometry method
39 or an equivalent or more accurate and scientifically
40 accepted method approved by the national laboratory
41 certification program or the college of American
42 pathologists as such technology becomes available in a
43 cost-effective form.

44 9. a. All information, interviews, reports,
45 statements, memoranda, and test results, written or
46 otherwise, received by the employer through a
47 substance abuse testing program are confidential
48 communications as they pertain to the employee only
49 and may not be used or received in evidence, obtained
50 in discovery, or disclosed in any public or private

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1 proceedings, except in accordance with this section.

2 b. Employers, laboratories, medical review

3 officers, and their agents who receive or have access
4 to information concerning test results shall keep all
5 information confidential. Release of such information
6 under any other circumstances shall be solely pursuant
7 to a written consent form signed voluntarily by the
8 person tested, unless such release is compelled by an
9 agency of the state or a court of competent

10 jurisdiction or unless deemed appropriate by a pro-
11 fessional or occupational licensing board in a related
12 disciplinary proceeding. The consent form must
13 contain at a minimum:

14 (1) The name of the person who is authorized to
15 obtain the information.

16 (2) The purpose of the disclosure.

17 (3) The precise information to be disclosed.

18 (4) The duration of the consent.

19 (5) The signature of the person authorizing
20 release of the information.

21 c. Nothing in this section shall be construed to
22 call for actions that may violate federal or state
23 confidentiality statutes for employee assistance
24 professionals and alcohol and other drug abuse
25 counseling or treatment providers.

26 d. Information on test results shall not be
27 released or used in any criminal proceeding against
28 the employee or job applicant. Information released
29 contrary to this subsection shall be inadmissible as
30 evidence in any such criminal proceeding.

31 e. Nothing contained in this section shall be
32 construed to prohibit the employer, agent of the
33 employer, or laboratory conducting a test from having
34 access to employee test information when consulting
35 with legal counsel in connection with actions related
36 to this section or when the information is relevant to
37 its defense in a civil or administrative matter.

38 10. Upon receipt of a confirmed "positive"
39 substance abuse test result that indicates a violation
40 of the employer's written policy, or upon the refusal
41 of an employee or prospective employee to provide a
42 testing sample, an employer may use that confirmed
43 test result or test refusal as a valid basis for
44 rehabilitative or disciplinary actions, which may
45 include, among other actions, any of the following:

46 a. A requirement that the employee enroll in an
47 employee assistance program, or an employer-provided
48 or approved rehabilitation, treatment, or a counseling
49 program certified by the department of public health
50 as discussed in subsection 5. These may include

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1 additional substance abuse testing, participation in
2 which may be a condition of continued employment, and
3 the costs of which may or may not be covered by the
4 employer's health plan or policies.

5 b. Suspension of the employee, with or without
6 pay, for a designated period of time.

7 c. Termination of employment.

8 d. Refusal to hire a prospective employee.

9 e. Other action in conformance with the employer's
10 written policy and procedures, including any
11 applicable collective bargaining agreement provisions.

12 11. a. Nothing in this section shall be construed
13 to prevent an employer from establishing reasonable
14 work rules relating to employee manufacture, sale,
15 distribution, possession, or use of drugs, including
16 convictions for drug-related offenses, and taking
17 action based upon a violation of any of those rules.

18 b. Nothing in this section shall be construed to
19 prohibit an employer from conducting medical screening
20 or other tests required, permitted, or not disallowed
21 by any statute, rule, or regulation for the purpose of
22 monitoring exposure of employees to lead, asbestos, or
23 other toxic or unhealthy materials in the workplace or
24 in the performance of job responsibilities. Such
25 screening or tests shall be limited to any rule or
26 regulation issued pursuant thereto, unless prior
27 written consent of the employee is obtained for other
28 tests.

29 12. a. Employers shall not have a legal duty to
30 request or require an employee or applicant for
31 employment to undergo drug testing as authorized in
32 this section. A cause of action shall not arise in
33 favor of any person based upon the failure of an
34 employer to establish a program or policy on substance
35 abuse prevention, to implement drug or alcohol
36 testing, to request or require any employee or
37 applicant for employment to submit to a drug test, or
38 to require drug testing as permitted by this section.

39 b. Except as otherwise provided in paragraph "c",
40 a cause of action shall not arise against an employer
41 for any of the following:

42 (1) Actions taken by the employer in good faith
43 based upon the results of a drug test indicating the
44 presence of alcohol or a controlled substance. An
45 employer does not act in good faith if the employer
46 knew or clearly should have known that the drug test
47 result indicating the presence of alcohol or a
48 controlled substance was in error and the employer
49 ignores the correct result in a willful and reckless
50 manner.

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1 (2) Actions taken, or not taken, by an employer
2 based upon a reported negative or inconclusive test
3 result, whether the test result is correct or
4 incorrect.

5 (3) Failure to test for, or if tested for, failure
6 to detect alcohol or any specific controlled
7 substance, or any medical condition, including any
8 mental or physical disorder or condition.

9 (4) Not establishing, or if established,
10 terminating or suspending, a substance abuse
11 prevention or drug testing program or policy.

12 c. Except for a cause of action specifically
13 provided by this section, a separate cause of action
14 for defamation, libel, slander, damage to reputation,
15 or other similar cause of action shall not arise
16 against an employer, including an individual who is an
17 agent or employee of the employer, which has
18 established or is maintaining a program of drug
19 testing in accordance with this section unless all of
20 the following apply:

21 (1) Except as specifically authorized by this
22 section, the employer discloses the test results to a
23 person other than an authorized employee, agent, or
24 representative of the employer, the tested employee or
25 the tested applicant for employment, or an authorized
26 agent or representative of the tested employee or
27 applicant.

28 (2) The test results disclosed incorrectly
29 indicate the presence of alcohol or a controlled
30 substance.

31 (3) The employer negligently or intentionally
32 discloses the results.

33 d. For the purposes of this section, the results
34 of a drug test conducted in compliance with this
35 section are presumed to be valid.

36 13. No physician-patient relationship is created
37 between an employee or job applicant and an employer,
38 medical review officer, or substance abuse testing
39 laboratory performing or evaluating a substance abuse
40 test solely by the establishment, implementation, or
41 administration of a substance abuse testing program.

42 14. Nothing in this section shall be construed to
43 infringe on, contradict, preempt, or otherwise
44 conflict with the valid provisions of any existing
45 collective bargaining agreement, or to otherwise
46 abridge or infringe on the rights and responsibilities
47 of all parties in the collective bargaining process to
48 negotiate to agreement on any collective bargaining
49 agreement provision. Such contract provisions are
50 fully valid and enforceable, notwithstanding the

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1 provisions of this section."

By JOCHUM of Dubuque

HARPER of Black Hawk

BELL of Jasper

O'BRIEN of Boone

NELSON of Pottawattamie

WISE of Lee

H-3322 FILED MARCH 15, 1995

(P. 847) *Adopted 3/20/95*

HOUSE FILE 258

H-3225

1 Amend House File 258 as follows:

2 1. Page 2, line 6, by striking the words "on-the

3 job" and inserting the following: "on the job".

By O'BRIEN of Boone

H-3225 FILED MARCH 6, 1995

(P. 847) *3-20-95 out of order*

HOUSE FILE 258

H-3323

1 Amend House File 258 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 3, paragraph c,
16 Code 1995, is amended to read as follows:

17 c. The test sample withdrawn from the employee is
18 analyzed by a laboratory or testing facility that has
19 been approved under rules adopted by the department of
20 public health. The laboratory or testing facility
21 shall report to the employer only the presence of
22 alcohol or illegal controlled substances in any test
23 sample. The rules adopted by the department of public
24 health shall provide for all of the following:

25 (1) The initial screening test may utilize
26 immunoassay, thin layer, high performance liquid or
27 gas chromatography, or an equivalent technology. If
28 the initial test utilizes immunoassay, the test kit
29 must meet the requirements of the United States food
30 and drug administration.

31 (2) Samples which have tested positive by initial
32 testing, with the exception of alcohol, shall be
33 confirmed by gas chromatography-mass spectrometry or
34 by a scientifically equivalent technique approved by
35 the department.

36 (3) All initial positive drug test results with
37 the exception of alcohol shall be confirmed by gas
38 chromatography-mass spectrometry or an equivalent test
39 approved by the department before being reported as
40 positive or negative.

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

45 (5) Preliminary reports for drugs other than
46 alcohol shall not be issued in the absence of
47 confirmation by gas chromatography-mass spectrometry
48 or a scientifically equivalent test approved by the
49 department.

50 (6) Complete chain of custody procedures shall be

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1 used for referred specimens. When sample volumes
2 permit, it is recommended that only an aliquot of the
3 original specimen be sent to a reference laboratory.

4 Sec. 3. Section 730.5, subsection 7, Code 1995, is
5 amended to read as follows:

6 ~~7. A drug test conducted as a part of a physical~~
7 ~~examination performed as a part of a preemployment~~
8 ~~physical or as a part of a regularly scheduled~~
9 ~~physical is only permissible~~ In addition to drug

10 testing permitted by subsection 3, drug testing of an
11 employee or applicant for employment shall also be
12 permitted under the following circumstances:

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

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

24 c. An employer may require an employee, as a
25 condition of employment, to undergo drug testing if
26 that employee has been referred by the employer for
27 substance abuse evaluation pursuant to subsection 3,
28 paragraph "f", and treatment, if recommended by the
29 evaluation. The employee may be required to undergo
30 drug testing without prior notice, but in no case
31 shall more than two tests be conducted in the twelve-
32 month period following the employee's completion of
33 substance abuse treatment if the treatment was
34 recommended by the evaluation. No drug test shall be
35 required of an employee by an employer during drug
36 treatment of the employee, if such testing would
37 duplicate testing of the employee conducted in the
38 course of treatment and the employee has waived
39 confidentiality as to the employer of the results of
40 such testing. No employer shall require an employee
41 to submit to drug testing under this paragraph if more
42 than six months have elapsed since the employee
43 successfully completed drug treatment and the employee
44 has not had a drug test indicating the presence of
45 alcohol or an illegal controlled substance during that
46 six-month period.

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

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1 of a preemployment physical.

2 Sec. 4. EMPLOYMENT DRUG TESTING STUDY. The
3 legislative council is requested to establish a study
4 committee on drug testing of employees and applicants
5 for employment."

6 2. Title page, line 2, by striking the words
7 "employer defenses" and inserting the following: "a
8 study of employment drug testing".

By NELSON of Pottawattamie
JOCHUM of Dubuque

HARPER of Black Hawk
COHOON of Des Moines

H-3323 FILED MARCH 15, 1995

(p. 830) 3/20/95

HOUSE FILE 258

H-3318

1 Amend House File 258 as follows:

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

4 "Section 1. NEW SECTION. 730.6 IMPAIRMENT
5 TESTING OF EMPLOYEES OR APPLICANTS REGULATED.

6 1. As used in this section, "impairment testing"
7 means a noninvasive, computer-assisted test of hand-
8 eye coordination conducted to detect impairment by
9 comparing an employee's current performance level with
10 the employee's previously established baseline level
11 of performance, but not conducted to determine the
12 cause of impairment.

13 2. An employer shall not require or request
14 applicants for employment to submit to an impairment
15 test as a condition of preemployment.

16 3. An employer may require an employee to submit
17 to an impairment test as a condition of employment if
18 the test is administered equitably to all employees in
19 safety-sensitive positions where impairment represents
20 a danger to the safety of the employee, another
21 employee, a member of the public, or the property of
22 the employer.

23 4. An employee shall not be discharged from
24 employment solely because the results from an
25 impairment test indicate that an employee's faculties
26 are impaired.

27 5. Impairment test results are not sufficient
28 probable cause to request or require an employee to
29 submit to a drug test.

30 6. An employer shall protect the confidentiality
31 of the results of any impairment test conducted on an
32 employee. The results of the test may be recorded in
33 the employee's personnel records.

34 Sec. 2. PILOT PROJECT. The labor commissioner
35 shall determine by September 1, 1995, the procedures
36 and guidelines for the establishment of a one-year
37 pilot project, to be administered by the division of
38 labor services of the department of employment
39 services and by a qualifying private business
40 operating in this state, to study impairment testing.
41 Representatives from private businesses employing one
42 hundred or more persons in safety-sensitive positions,
43 where impairment represents a danger to the safety of
44 the employee, another employee, a member of the
45 public, or the property of the employer, may submit a
46 proposal for a pilot project to study computer-
47 assisted impairment testing to the labor commissioner.
48 Guidelines established by the labor commissioner shall
49 include, but are not limited to, requirements to
50 protect the confidentiality of employees tested, and

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1 shall prohibit testing to determine cause of
 2 impairment. The business chosen by the labor
 3 commissioner to implement the pilot project must agree
 4 to pay fifty percent of the costs of the program. The
 5 labor commissioner shall submit a report to the
 6 general assembly outlining and describing the proposed
 7 pilot project, including the proposed pilot project
 8 guidelines, by January 1, 1996. If the general
 9 assembly appropriates moneys, the labor commissioner
 10 shall authorize implementation of the pilot project.
 11 At the conclusion of the pilot project, the labor
 12 commissioner shall submit a report, along with any
 13 recommendations, to the general assembly."

14 2. Title page, line 1, by striking the word
 15 "drug" and inserting the following: "impairment".

16 3. Title page, by striking lines 2 through 3 and
 17 inserting the following: "establishing a pilot
 18 project concerning impairment testing."

By RUNNING of Linn

H-3318 FILED MARCH 15, 1995

Out of order 3/20/95

HOUSE FILE 258

H-3319

1 Amend House File 258 as follows:

2 1. Page 2, line 16, by inserting after the word
 3 "sample." the following: "The employer shall provide
 4 to the employee or applicant for employment, upon
 5 request, a copy of the test results provided to the
 6 employer."

By NELSON of Pottawattamie
WISE of Lee

H-3319 FILED MARCH 15, 1995

Out of Order 3/20/95

HOUSE FILE 258

H-3320

1 Amend House File 258 as follows:

2 1. Page 3, line 11, by inserting after the word
 3 "notice" the following: ", but not more than four
 4 tests shall be conducted in the twelve-month period
 5 following the employee's completion of substance abuse
 6 treatment and not more than two tests shall be
 7 conducted in the second twelve-month period following
 8 the employee's completion of substance abuse treat-
 9 ment".

By BELL of Jasper
CONNORS of Polk
WISE of Lee

H-3320 FILED MARCH 15, 1995

Out of Order 3/20/95

HOUSE FILE 258

H-3315

- 1 Amend House File 258 as follows:
2 1. Page 4, by striking lines 14 through 19 and
3 inserting the following: "for substance abuse, the
4 employee's personnel records shall be expunged of any
5 reference to the test or its results when the employee
6 leaves employment."

By RUNNING of Linn

H-3315 FILED MARCH 15, 1995

out of order 3/20/95

HOUSE FILE 258

H-3316

- 1 Amend House File 258 as follows:
2 1. Page 2, line 7, by inserting after the word
3 "alcohol." the following: "For the purposes of this
4 paragraph, a pattern of errors of judgment or mistakes
5 involving the performance of a supervisor's,
6 manager's, or officer's job shall constitute a
7 reasonable belief that a supervisor's, manager's, or
8 officer's faculties are impaired on the job. This
9 determination shall be made by a committee of
10 employees at the time of the supervisor's, manager's,
11 or officer's annual job performance review."
12 2. Page 2, by inserting after line 16, the
13 following:
14 "Sec. ____ . Section 730.5, Code 1993, is amended by
15 adding the following new subsection:
16 NEW SUBSECTION. 3A. If an employer subjects one
17 group of employees to drug tests as provided in
18 subsection 3, 5, or 7, all employees, supervisors,
19 managers, officers, and directors shall be subject to
20 drug tests on the same conditions."
21 3. By renumbering as necessary.

By RUNNING of Linn

H-3316 FILED MARCH 15, 1995

*out of order
3/20/95*

HOUSE FILE 258

H-3317

- 1 Amend House File 258 as follows:
2 1. Page 3, lines 16 and 17, by striking the words
3 "either caused or contributed to" and inserting the
4 following: "was the proximate cause of".
5 2. Page 3, line 24, by striking the words "five
6 hundred" and inserting the following: "one thousand".
7 3. By striking page 5, line 10, through page 6,
8 line 22 and inserting the following:
9 "NEW SUBSECTION. 12. For purposes of this
10 section, the results of a drug".

By RUNNING of Linn

H-3317 FILED MARCH 15, 1995

Out of Order 3/20/95

HOUSE FILE 258

H-3329

- 1 Amend the amendment, H-3322, to House File 258 as
 2 follows:
 3 1. Page 1, by inserting after line 3 the
 4 following:
 5 ""Section 1. NEW SECTION. 2.40A GENERAL ASSEMBLY
 6 -- DRUG TESTING.
 7 On the first session day during every week the
 8 general assembly is in session, the chief clerk of the
 9 house and the secretary of the senate shall each
 10 select, by random drawing, the names of ten members of
 11 their respective chambers for purposes of submission
 12 to a drug test. The members selected shall submit to
 13 a drug test conducted pursuant to the requirements of
 14 section 730.5, subsection 8, paragraphs "d", "e", "f",
 15 "g", and "h". The results of the drug test shall be a
 16 public record."
 17 2. Page 14, by inserting after line 1 the
 18 following:
 19 "2. Title page, line 1, by inserting after the
 20 word "employees" the following: ", public
 21 officials,".
 22 3. By renumbering as necessary.

H-3329 FILED MARCH 16, 1995

By FALLON of Polk

WITHDRAWN
3/20/95

(P.843)

HOUSE FILE 258

H-3330

- 1 Amend the amendment, H-3322, to House File 258 as
 2 follows:
 3 1. Page 1, by inserting after line 3 the
 4 following:
 5 ""Section 1. Section 2.43, Code 1995, is amended
 6 by adding the following new unnumbered paragraph:
 7 NEW UNNUMBERED PARAGRAPH. The pastor of the day
 8 for the general assembly shall submit to a drug test
 9 conducted pursuant to the requirements of section
 10 730.5, subsection 8, paragraphs "d", "e", "f", "g" and
 11 "h", on the date the pastor is the pastor of the day.
 12 Failure to submit to a drug test as required by this
 13 section or a test indicating the presence of alcohol
 14 or a controlled substance shall result in the pastor
 15 of the day being denied compensation for being pastor
 16 of the day. The results of the drug test shall be a
 17 public record."
 18 2. Page 14, by inserting after line 1 the
 19 following:
 20 "____. Title page, line 1, by inserting after the
 21 word "employees" the following: ", pastors,".
 22 3. By renumbering as necessary.

H-3330 FILED MARCH 16, 1995

By FALLON of Polk

WITHDRAWN

3/20/95 (P.843)

H-3328

- 1 Amend the amendment, H-3323, to House File 258 as
 2 follows:
 3 1. Page 1, by inserting after line 3 the
 4 following:
 5 "Section 1. Section 2.43, Code 1995, is amended
 6 by adding the following new unnumbered paragraph:
 7 NEW UNNUMBERED PARAGRAPH. The pastor of the day
 8 for the general assembly shall submit to a drug test
 9 conducted pursuant to the requirements of section
 10 730.5, subsection 3, paragraphs "c" and "d", on the
 11 date the pastor is the pastor of the day. Failure to
 12 submit to a drug test as required by this section or a
 13 test indicating the presence of alcohol or a
 14 controlled substance shall result in the pastor of the
 15 day being denied compensation for being pastor of the
 16 day. The results of the drug test shall be a public
 17 record."
 18 2. Page 3, by inserting after line 5 the
 19 following:
 20 "_____. Title page, line 1, by inserting after the
 21 word "employees" the following: ", pastors,"."
 22 3. By renumbering as necessary.

By FALLON of Polk

H-3328 FILED MARCH 16, 1995

(p. 829) Lost 3/20/95

H-3348

- 1 Amend the amendment, H-3322, to House File 258 as
 2 follows:
 3 1. Page 4, by inserting after line 22 the
 4 following:
 5 "c. In addition to the requirements of paragraph
 6 "a", an employer shall, in order to maintain a
 7 comprehensive drug-free workplace program that
 8 qualifies for the protections of this section, submit
 9 a report annually to the Iowa department of public
 10 health documenting the number of tests conducted, the
 11 results of the tests conducted, and the direct costs
 12 associated with the testing."
 13 2. By renumbering as necessary.

By SCHRADER of Marion

H-3348 FILED MARCH 20, 1995

ADOPTED

(p. 843)

H-3353

- 1 Amend the Amendment, H-3347 to amendment H-3322, to
 2 House File 258 as follows:
 3 1. Page 1, line 33, by striking the word "an" and
 4 inserting the word "grievance".
 5 2. Page 1, line 40, by inserting after the word
 6 "the" the word "grievance".

By HOLVECK of Polk

H-3353 FILED MARCH 20, 1995

ADOPTED BY UNANIMOUS CONSENT

(p. 845)

HOUSE FILE 258

H-3324

1 Amend House File 258 as follows:

2 1. Page 1, by inserting after line 12 the
3 following:

4 "c. "Reasonable suspicion" means evidence that an
5 employee is using or has used alcohol or other drugs
6 in violation of the employer's policy drawn from
7 specific objective and articulable facts and
8 reasonable inferences drawn from those facts in light
9 of experience. Among other things, such facts and
10 inferences may be based upon, but not limited to, any
11 one or more of the following:

12 (1) Observable phenomena while at work such as
13 direct observation of alcohol or other drug use or
14 abuse or of the physical symptoms or manifestations of
15 being impaired due to alcohol or other drug use.

16 (2) Abnormal conduct or erratic behavior while at
17 work or a significant deterioration in work
18 performance.

19 (3) A report of alcohol or other drug use provided
20 by a reliable and credible source.

21 (4) Evidence that an employee has tampered with
22 any substance abuse test during the course of
23 employment with the current employer.

24 (5) Evidence that an employee has caused or
25 contributed to an accident while at work.

26 (6) Evidence that an employee has manufactured,
27 sold, distributed, solicited, possessed, used, or
28 transferred drugs while working or while on the
29 employer's premises or while operating in the
30 employer's vehicle, machinery, or equipment."

31 2. Page 2, line 6, by striking the word "belief"
32 and inserting the following: "suspicion".

By MURPHY of Dubuque

O'BRIEN of Boone

JOCHUM of Dubuque

BELL of Jasper

MORELAND of Wapello

WISE of Lee

H-3324 FILED MARCH 15, 1995

Out of Order 3/20/95

HOUSE FILE 258

H-3321

1 Amend House File 258 as follows:

2 1. Page 2, by inserting after line 16 the
3 following:

4 "Sec. _____. Section 730.5, Code 1995, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 3A. An employer shall establish
7 the following training programs prior to instituting
8 drug testing as allowed by this section.

9 a. An employer shall provide all employees with an
10 educational program on alcohol and drug abuse. An
11 employer shall provide all employees with an annual
12 educational program on alcohol and drug abuse, in
13 general, and the effects of alcohol and drug abuse on
14 the workplace, specifically. An educational program
15 shall include a minimum of one hour of instruction
16 which shall include, but is not limited to, an
17 explanation of the disease of addiction for alcohol
18 and other drugs, the effects and dangers of the
19 commonly abused substances in the workplace, and the
20 employer's policies and procedures regarding alcohol
21 and drug use or abuse in the workplace and how
22 employees may obtain substance abuse treatment.

23 b. An employer shall provide all supervisory
24 personnel with a minimum of two hours of training each
25 year on alcohol and drug abuse. The training shall
26 include, but is not limited to, information on
27 recognition of evidence of employee alcohol and other
28 drug abuse, documentation and corroboration of
29 employee alcohol and other drug abuse, referral of
30 alcohol and other drug-abusing employees to the proper
31 treatment providers, and the recognition of the
32 benefits of referring alcohol and other drug-abusing
33 employees to treatment programs, in terms of employee
34 health and safety and employer savings.

35 The governor's alliance on substance abuse shall
36 develop educational programs to meet the requirements
37 of this subsection and shall make the programs
38 available to businesses upon request. The governor's
39 alliance on substance abuse shall monitor the
40 effectiveness of these programs and provide an annual
41 report to the general assembly."

42 2. By renumbering as necessary.

By NELSON of Pottawattamie

HARPER of Black Hawk

O'BRIEN of Boone

BELL of Jasper

CONNORS of Polk

COHOON of Des Moines

H-3321 FILED MARCH 15, 1995

*Out of Order
3/20/95*

HOUSE FILE 258

H-3347

1 Amend the amendment, H-3322, to House File 258 as
2 follows:

3 1. Page 7, line 17, by striking the words "is
4 required to conduct" and inserting the following:
5 "must conduct at least one of".

6 2. Page 7, line 20, by striking the word "must"
7 and inserting the following: "may".

8 3. Page 7, line 24, by inserting after the word
9 "applicant." the following: "An employer may request
10 or require a particular job applicant to submit to a
11 substance abuse test pursuant to this subparagraph
12 only if that employer requests or requires the same
13 test of all job applicants or entering employees in
14 the same job category."

15 4. Page 7, line 25, by striking the word "must"
16 and inserting the following: "may".

17 5. Page 7, line 27, by striking the word "must"
18 and inserting the following: "may".

19 6. Page 8, line 1, by inserting after the word
20 "employment," the following: "which accident results
21 in a personal injury requiring medical treatment away
22 from the workplace or in damage to property, including
23 equipment, in an amount reasonably estimated at the
24 time of the accident to exceed one thousand dollars".

25 7. Page 8, line 2, by striking the word "must"
26 and inserting the following: "may".

27 8. Page 11, by inserting after line 37 the
28 following:

29 "f. Notwithstanding the provisions of this
30 section, information on a confirmed positive substance
31 abuse test result may be used under any of the
32 following circumstances:

33 (1) In an arbitration or other proceeding pursuant
34 to a collective bargaining agreement, an
35 administrative hearing or proceeding under chapter 85,
36 96, or 216 or other applicable state or local law, or
37 in a judicial proceeding, provided that the
38 information is relevant to and concerns the specific
39 tested employee or applicant for employment involved
40 in the arbitration, hearing, or proceeding.

41 (2) The information may be disclosed to any
42 federal agency or other unit of the federal government
43 as required by federal law, regulation, or order, or
44 in accordance with compliance requirements of a
45 contract with the federal government.

46 (3) The information may be disclosed to a
47 substance abuse treatment facility for the purpose of
48 evaluation or treatment of the employee."

By SIEGRIST of Pottawattamie

H-3347 FILED MARCH 20, 1995
ALL DIVISIONS ADOPTED

(P. 845-846)

HOUSE FILE 258

H-3331

- 1 Amend the amendment, H-3323, to House File 258 as
 2 follows:
 3 1. Page 1, by inserting after line 3 the
 4 following:
 5 "Section 1. NEW SECTION. 2.40A GENERAL ASSEMBLY
 6 -- DRUG TESTING.
 7 On the first session day during every week the
 8 general assembly is in session, the chief clerk of the
 9 house and the secretary of the senate shall each
 10 select, by random drawing, the names of ten members of
 11 their respective chambers for purposes of submission
 12 to a drug test. The members selected shall submit to
 13 a drug test conducted pursuant to the requirements of
 14 section 730.5, subsection 3, paragraphs "c" and "d".
 15 The results of the drug test shall be a public
 16 record."
 17 2. Page 3, by inserting after line 5 the
 18 following:
 19 "_____. Title page, line 1, by inserting after the
 20 word "employees" the following: ", public
 21 officials,"."
 22 3. By renumbering as necessary.

By FALLON of Polk

H-3331 FILED MARCH 16, 1995

p. 829 Lost 3/20/95

HOUSE FILE 258

H-3333

- 1 Amend the amendment, H-3225, to House File 258 as
 2 follows:
 3 1. Page 1, by striking lines 2 and 3 and
 4 inserting the following:
 5 "_____. Page 2, line 7, by inserting after the word
 6 "alcohol" the following: "based on specific and
 7 articulable observations made on the job."
 By SUKUP of Franklin

H-3333 FILED MARCH 16, 1995

Out of Order 3/20/95

HOUSE FILE 258

H-3346

- 1 Amend the amendment, H-3322, to House File 258 as
 2 follows:
 3 1. Page 6, by inserting after line 13 the
 4 following:
 5 "c. Any employer with fifty or more employees must
 6 have an employee assistance program."

By SCHRADER of Marion

H-3346 FILED MARCH 20, 1995

LOST

(p. 844)

1/21, 5 Summary
d Lopez
S-4/6/95 Amend & Do Pass
S 4/13/95 Placed on unperfected
business calendar

HOUSE FILE 258 S-4/19/95 Motion to R/c
BY COMMITTEE ON LABOR AND *by Senate*
INDUSTRIAL RELATIONS
S-5/4/95 Motion to
R/c Withdrawn
(SUCCESSOR TO HSB 157)

(As Amended and Passed by the House March 20, 1995)

Passed House, Date 2-19-96 (p.370) Passed Senate, Date 4/19/95 (p.1309)
Vote: Ayes 77 Nays 18 Vote: Ayes 48 Nays 0
Approved _____

A BILL FOR

1 An Act relating to drug testing of certain employees and
2 applicants for employment, providing for employer defenses,
3 and making penalties applicable.

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

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ALL NEW LANGUAGE BY THE HOUSE

1 Section 1. Section 730.5, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 730.5 DRUG TESTING OF EMPLOYEES OR APPLICANTS REGULATED.

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

7 a. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl,
8 or spirits of wine, from whatever source or by whatever
9 process produced.

10 b. "Chain of custody" means the methodology of tracking
11 specified materials, specimens, or substances for the purpose
12 of maintaining control and accountability from initial
13 collection to final disposition for all such materials,
14 specimens, or substances and providing for accountability at
15 each stage in handling, testing, and storing materials,
16 specimens, or substances and reporting test results.

17 c. "Confirmation test", "confirmed test", or "confirmed
18 substance abuse test" means a second analytical procedure used
19 to identify the presence of a specific drug or metabolite in a
20 specimen. The confirmation test must be different in
21 scientific principle from that of the initial test procedure.
22 This confirmation method must be capable of providing
23 requisite specificity, sensitivity, and quantitative accuracy.

24 d. "Drug" or "drugs" means amphetamines, cannabinoids,
25 cocaine, phencyclidine, opiates, barbiturates,
26 benzodiazepines, methadone, methaqualene, propoxyphene, or a
27 metabolite of any such substances.

28 e. "Employee" means any person who works for salary,
29 wages, or other remuneration for an employer, including those
30 working part-time or as leased employees. "Employee" also
31 means employee as defined in section 85.61 and includes the
32 employer, and any chief executive officer, president, vice
33 president, supervisor, manager, and officer of the employer.

34 f. "Employee assistance program (EAP)" means a program
35 designed to assist in the identification and resolution of job

1 performance problems associated with employees impaired by
2 personal concerns. A minimum level of core services must
3 include consultation and training; professional, confidential,
4 appropriate, and timely problem assessment services; short-
5 term problem resolution; referrals for appropriate diagnosis,
6 treatment, and assistance; follow-up and monitoring; employee
7 education; and quality assurance.

8 g. "Employer" means a person or entity that is subject to
9 the provisions of this section.

10 h. "Initial test" means a sensitive, rapid, and reliable
11 procedure to identify negative and presumptive positive
12 specimens. All initial tests shall use an immunoassay
13 procedure or an equivalent procedure or shall use a more
14 accurate scientifically accepted method approved by the
15 federal department of health and human services national
16 laboratory certification program or the college of American
17 pathologists as such more accurate technology becomes
18 available in a cost-effective form.

19 i. "Job applicant" means a person who has applied for a
20 position and been offered employment subject to passing a
21 substance abuse test. A job applicant may have begun work
22 pending the results of the substance abuse test.

23 j. "Manufacture", "sale", "distribution", "solicitation",
24 "possession with intent to sell or distribute", and "use"
25 shall have the same meaning as those terms are used in chapter
26 124.

27 k. "Medical review officer" means a licensed physician
28 trained in the field of alcohol and other drug testing who
29 provides medical assessment of positive test results, requests
30 reanalysis if necessary, and makes a determination whether or
31 not alcohol or other drug use has occurred.

32 l. "Nonprescription medication" means a drug or medication
33 authorized pursuant to federal or state law for general
34 distribution and use without a prescription in the treatment
35 of human disease, ailments, or injuries.

1 m. "Prescription medication" means a drug or medication
2 lawfully prescribed by a physician for an individual and taken
3 by the individual only in accordance with such prescription.

4 n. "Reasonable suspicion testing" means substance abuse
5 testing based on evidence that an employee is using or has
6 used alcohol or other drugs in violation of the employer's
7 policy drawn from specific objective and articulable facts and
8 reasonable inferences drawn from those facts in light of
9 experience. Among other things, such facts and inferences may
10 be based upon, but not limited to, any one of the following:

11 (1) Observable phenomena while at work, such as direct
12 observation of alcohol or other drug use or abuse or of the
13 physical symptoms or manifestations of being impaired due to
14 alcohol or other drug use.

15 (2) Abnormal conduct or erratic behavior while at work or
16 a significant deterioration in work performance.

17 (3) A report of alcohol or other drug use provided by a
18 reliable and credible source.

19 (4) Evidence that an individual has tampered with any
20 substance abuse test during the employee's employment with the
21 current employer.

22 (5) Evidence that an employee has caused or contributed to
23 an accident while at work.

24 (6) Evidence that an employee has manufactured, sold,
25 distributed, solicited, possessed, used, or transferred drugs
26 while working or while on the employer's premises or while
27 operating the employer's vehicle, machinery, or equipment.

28 o. "Rehabilitation program" means an established program
29 capable of providing expert identification, assessment, and
30 resolution of employee alcohol and other drug abuse in a
31 confidential and timely manner. This service shall in all
32 cases be provided by persons certified as health professionals
33 by the department of public health to provide alcohol and
34 other drug rehabilitative services.

35 p. "Specimen" means urine, blood, breath, hair, tissue, or

1 other such sample of the human body capable of revealing the
2 presence of alcohol or other drugs or their metabolites. Such
3 tests must meet the department of public health standards for
4 scientific and technical accuracy and afford the opportunity
5 for strict forensic chain of custody procedures.

6 q. "Substance" means alcohol or other drugs.

7 r. "Substance abuse test" or "test" means any chemical,
8 biological, or physical instrumental analysis administered for
9 the purpose of determining the presence or absence of alcohol
10 and other drugs or their metabolites.

11 s. "Threshold detection level" means the level at which
12 the presence of alcohol or other drugs can be reasonably
13 expected to be detected by an initial and confirmatory test
14 performed by a laboratory meeting the standards specified in
15 this section. The threshold detection level indicates the
16 level at which a valid conclusion can be drawn that the
17 alcohol or other drugs are present in the employee's specimen.

18 2. It is lawful for an employer to test employees or
19 prospective employees for the presence of alcohol or other
20 drugs, in accordance with the provisions of this section, as a
21 condition of continued employment or hiring. However, in
22 order to qualify for protection from litigation regarding
23 certain legal claims for acting in good faith on the results
24 of a substance abuse test, employers must implement and
25 maintain a comprehensive drug-free workplace program and
26 adhere to the procedural safeguards that demand accuracy and
27 fairness as included in this section.

28 3. a. A comprehensive drug-free workplace program must
29 contain the following elements:

30 (1) Written policy statement as provided in subsection 4.

31 (2) Employee assistance programs or rehabilitation
32 resources, in accordance with subsection 5.

33 (3) Employee education as provided in subsection 6.

34 (4) Supervisor training in accordance with subsection 7.

35 (5) Substance abuse testing as provided in subsection 8.

1 b. In addition to the requirements of paragraph "a" of
2 this subsection, a comprehensive drug-free workplace program
3 must be implemented in compliance with the confidentiality
4 standards provided in subsection 9.

5 c. In addition to the requirements of paragraph "a", an
6 employer shall, in order to maintain a comprehensive drug-free
7 workplace program that qualifies for the protections of this
8 section, submit a report annually to the Iowa department of
9 public health documenting the number of tests conducted, the
10 results of the tests conducted, and the direct costs
11 associated with the testing.

12 4. A drug-free workplace must provide a written policy
13 statement on substance abuse, including testing.

14 a. At least one time, prior to testing, and each year
15 thereafter, all employees and job applicants for employment
16 must be given a notice of testing. In addition, all employees
17 must be given a written policy statement from the employer
18 that contains:

19 (1) A general statement of the employer's policy on
20 substance abuse, including testing, that shall do all of the
21 following:

22 (a) Notify employees that the unlawful manufacture, sale,
23 distribution, possession, or use of alcohol or other drugs is
24 prohibited in the person's workplace.

25 (b) Identify the types of testing to which an employee or
26 job applicant may be required to submit, including the basis
27 used to determine when such testing will be required.

28 (c) Identify the actions the employer may take against an
29 employee or job applicant on the basis of a positive confirmed
30 test result.

31 (2) A statement advising an employee or job applicant of
32 the existence of this section.

33 (3) A general statement concerning confidentiality.

34 (4) A statement advising the employee of the consequences
35 of a refusal to submit to a substance abuse test.

1 (5) A statement advising an employee of the employee
2 assistance program, external employee assistance program, or
3 the employer's resource file of employee assistance programs
4 and other persons, entities, or organizations designed to
5 assist employees with personal or behavioral problems.

6 (6) A statement that an employee or job applicant who
7 receives a positive confirmed test result may contest or
8 explain the result to the employer within seven working days
9 after written notification of the positive test result.

10 (7) A statement informing an employee of the provisions of
11 the federal Drug-Free Workplace Act, if applicable to the
12 employer.

13 b. An employer not having a substance abuse testing
14 program shall ensure that at least sixty calendar days elapse
15 between a general notice to all employees that a substance
16 abuse testing program is being implemented and the beginning
17 of the actual testing. An employer having a substance abuse
18 testing program in place prior to the enactment of this
19 legislation shall not be required to provide a sixty-day
20 notice period.

21 c. An employer shall include notice of substance abuse
22 testing on vacancy announcements for those positions for which
23 testing is required. Notices of the employer's substance
24 abuse testing policy must also be posted in appropriate and
25 conspicuous locations on the employer's premises, and copies
26 of the policy must be made available for inspection by the
27 employees or job applicants of the employer during regular
28 business hours in the employer's personnel office or other
29 suitable locations.

30 5. In order for an employer's workplace to qualify for the
31 provisions of subsection 2, the following must be met:

32 a. If an employer has an employee assistance program, the
33 employer must inform the employee of the benefits and services
34 of the employee assistance program. An employer shall post
35 notice of the employee assistance program in conspicuous

1 places and explore alternative routine and reinforcing means
2 of publicizing such services. In addition, the employer must
3 provide the employee with notice of the policies and
4 procedures regarding access to and utilization of the program.

5 b. If an employer does not have an employee assistance
6 program, the employer must maintain a resource file of
7 employee assistance services providers, alcohol and other drug
8 abuse programs certified by the department of public health,
9 mental health providers, and other persons, entities, or
10 organizations available to assist employees with personal or
11 behavioral problems. The employer shall provide all employees
12 information about the existence of the resource file and a
13 summary of the information contained within the resource file.
14 The summary should contain, but need not be limited to, all
15 information necessary to access the services listed in the
16 resource file. In addition, the employer shall post in
17 conspicuous places a listing of multiple employee assistance
18 providers in the area.

19 6. An employer must provide all employees with an
20 education program on alcohol and other drug abuse prior to
21 instituting a drug-free workplace program under this section.
22 Also, an employer must provide all employees with an annual
23 education program on alcohol and other drug abuse, in general,
24 and its effects on the workplace, specifically. An education
25 program for a minimum of one hour should include, but is not
26 limited to, the following information:

27 a. The explanation of the disease of addiction for alcohol
28 and other drugs.

29 b. The effects and dangers of the commonly abused
30 substances in the workplace.

31 c. The company's policies and procedures regarding alcohol
32 and other drug use or abuse in the workplace and how employees
33 who wish to obtain substance abuse treatment can do so.

34 7. In order to qualify for the provisions of subsection 2,
35 and in addition to the education program provided in

1 subsection 6, an employer must provide all supervisory
2 personnel a minimum of two hours of training prior to the
3 institution of a drug-free workplace program under this
4 section, and each year thereafter, which should include, but
5 is not limited to, the following:

6 a. Recognition of evidence of employee alcohol and other
7 drug abuse.

8 b. Documentation and corroboration of employee alcohol and
9 other drug abuse.

10 c. Referral of alcohol and other drug-abusing employees to
11 the proper treatment providers.

12 d. Recognition of the benefits of referring alcohol and
13 other drug-abusing employees to treatment programs, in terms
14 of employee health and safety and company savings.

15 e. Explanation of any employee health insurance or health
16 maintenance organization coverage for alcohol and other drug
17 problems.

18 8. In order to qualify for the provisions of subsection 2:

19 a. All testing conducted by an employer shall be in
20 conformity with the standards and procedures established in
21 this section and all applicable rules adopted pursuant
22 thereto. This section does not establish a legal duty for
23 employers to conduct drug tests of employees or job
24 applicants. However, if an employer fails to maintain a drug-
25 free workplace program in accordance with the standards,
26 procedures, and rules established in or pursuant to this
27 section, the employer shall not qualify for protection from
28 litigation regarding certain legal claims for acting in good
29 faith on the results of a confirmed substance abuse test, as
30 provided in subsection 2.

31 b. An employer must conduct at least one of the following
32 types of tests in order to qualify for the provisions of
33 subsection 2:

34 (1) An employer may require job applicants to submit to a
35 substance abuse test after extending an offer of employment

1 and may use a refusal to submit or a positive confirmed test
2 as a basis for not hiring the job applicant. An employer may
3 request or require a particular job applicant to submit to a
4 substance abuse test pursuant to this subparagraph only if
5 that employer requests or requires the same test of all job
6 applicants or entering employees in the same job category.

7 (2) An employer may require an employee to submit to
8 reasonable suspicion testing.

9 (3) An employer may require an employee to submit to a
10 substance abuse test if the test is conducted as part of a
11 routinely scheduled employee fitness-for-duty medical
12 examination that is part of the employer's established policy
13 or that is scheduled routinely for all members of an
14 employment classification or group.

15 (4) If the employee in the course of employment enters an
16 employee assistance program or rehabilitation program as a
17 result of a positive test or if the employee has been
18 mandatorily referred to an employee assistance program as a
19 result of a positive test, the employer must require the
20 employee to submit to a substance abuse test as a follow-up to
21 such program. However, if an employee voluntarily entered the
22 program, follow-up testing is not required. If follow-up
23 testing is conducted, the frequency of such testing shall be
24 after completion of the program and advance notice of the
25 testing date shall not be given to the employee and shall be
26 conducted no more than four times in the first year following
27 completion of the program and no more than three times in the
28 second year following completion of the program.

29 (5) If the employee has caused or contributed to an
30 accident during the course of employment, which accident
31 results in a personal injury requiring medical treatment away
32 from the workplace or in damage to property, including
33 equipment, in an amount reasonably estimated at the time of
34 the accident to exceed one thousand dollars the employer may
35 conduct post-accident testing.

1 c. Nothing in this section shall prohibit an employer from
2 conducting lawful testing of employees.

3 d. All specimen collection and testing under this
4 subsection shall be performed in accordance with the following
5 procedures:

6 (1) A specimen shall be collected in accordance with the
7 specimen collection procedures described in regulations
8 approved by the federal department of health and human
9 services, the college of American pathologists, or the United
10 States department of transportation regulations for alcohol
11 testing.

12 (2) A specimen shall be collected with due regard to the
13 privacy of the individual providing the specimen, and in a
14 manner reasonably calculated to prevent substitution or
15 contamination of the specimen.

16 (3) Specimen collection, storage, and transportation to
17 the testing site shall be performed in a manner that will
18 reasonably preclude specimen contamination or adulteration.

19 (4) An employee or prospective employee shall have an
20 opportunity to provide notification of any information that
21 may be considered as relevant to the test, including
22 identification of currently or recently used prescriptions or
23 nonprescription drugs, or other relevant medical information.
24 This may be accomplished by providing procedures for review by
25 a qualified medical professional in the case of a sample that
26 tests "positive" in a confirmatory test.

27 (5) Each initial and confirmation test conducted under
28 this section, not including the taking or collecting of a
29 specimen to be tested, shall be conducted by a laboratory
30 certified by the federal department of health and human
31 services' national laboratory certification program or the
32 college of American pathologists as described in paragraph (e)
33 of this subsection, or, for alcohol, handled in accordance
34 with United States department of transportation regulations
35 relating to alcohol testing.

1 (6) A specimen for a test may be taken or collected by any
2 of the following persons:

3 (a) A physician, a physician's assistant, a registered
4 professional nurse, a licensed practical nurse, a nurse
5 practitioner, or a certified paramedic who is present at the
6 scene of an accident for the purpose of rendering emergency
7 medical service or treatment.

8 (b) A qualified person certified or employed by a
9 laboratory certified by the federal department of health and
10 human services' national laboratory certification program.

11 (c) A qualified person certified or employed by a specimen
12 collection company.

13 (7) Within seven working days after receipt of a positive
14 confirmed test result from the laboratory, an employer shall
15 inform an employee or job applicant in writing of such
16 positive test result, the consequences of such results, and
17 the options available to the employee or job applicant.

18 (8) The employer shall provide to the employee or job
19 applicant, upon request, a copy of the test results.

20 (9) An initial test having a positive result must be
21 verified by a confirmation test, or it shall be certified as a
22 negative result.

23 (10) An employer who performs drug testing or specimen
24 collection shall use chain of custody procedures to ensure
25 proper recordkeeping, handling, labeling, and identification
26 of all specimens to be tested.

27 (11) An employer shall pay the cost of all initial and
28 confirmation substance abuse tests that the employer requires
29 of job applicants or employees.

30 (12) An employee or job applicant shall pay the cost of
31 any additional tests that the employee or job applicant
32 requests.

33 (13) If test is conducted based on reasonable suspicion,
34 the employer shall promptly detail in writing the
35 circumstances that formed the basis of the determination that

1 reasonable suspicion existed to warrant the testing. A copy
2 of this documentation shall be given to the employee and the
3 original documentation shall be kept confidential by the
4 employer pursuant to subsection 9 and retained by the employer
5 for at least one year, or maintained throughout the duration
6 of any legal proceedings resulting from the testing.

7 e. No laboratory may analyze initial or confirmation drug
8 specimens unless:

9 (1) The laboratory is approved by the national laboratory
10 certification program or the college of American pathologists.

11 (2) The laboratory has written procedures to ensure the
12 chain of custody.

13 (3) The laboratory follows proper quality control
14 procedures including, but not limited to:

15 (a) The use of internal quality controls including the use
16 of samples of known concentrations that are used to check the
17 performance and calibration of testing equipment, and periodic
18 use of blind samples for overall accuracy.

19 (b) An internal review and certification process for
20 substance abuse test results, conducted by a person qualified
21 to perform that function in the testing laboratory.

22 (c) Security measures implemented by the testing
23 laboratory to preclude adulteration of specimens and test
24 results.

25 (d) Other necessary and proper actions taken to ensure
26 reliable and accurate test results.

27 f. A laboratory shall disclose to the employer a written
28 test result report within seven working days after receipt of
29 the sample. All laboratory reports of a substance abuse test
30 result shall, at a minimum, state:

31 (1) The name and address of the laboratory that performed
32 the test and the positive identification of the person tested.

33 (2) Positive results on confirmation tests only, or
34 negative results, as applicable.

35 (3) A list of the drugs for which the drug analyses were

1 conducted.

2 (4) The type of tests conducted for both initial and
3 confirmation tests and the minimum cutoff levels to establish
4 a positive substance abuse test result. No report shall
5 disclose the presence or absence of any drug other than a
6 specific drug and its metabolites listed pursuant to this
7 section.

8 g. Laboratories shall provide technical assistance to the
9 employer, employee, or job applicant for the purpose of
10 interpreting any positive confirmed test results which could
11 have been caused by prescription or nonprescription medication
12 taken by the employee or job applicant.

13 h. All positive initial tests shall be confirmed using the
14 gas chromatography/mass spectrometry method or an equivalent
15 or more accurate and scientifically accepted method approved
16 by the national laboratory certification program or the
17 college of American pathologists as such technology becomes
18 available in a cost-effective form.

19 9. a. All information, interviews, reports, statements,
20 memoranda, and test results, written or otherwise, received by
21 the employer through a substance abuse testing program are
22 confidential communications as they pertain to the employee
23 only and may not be used or received in evidence, obtained in
24 discovery, or disclosed in any public or private proceedings,
25 except in accordance with this section.

26 b. Employers, laboratories, medical review officers, and
27 their agents who receive or have access to information
28 concerning test results shall keep all information
29 confidential. Release of such information under any other
30 circumstances shall be solely pursuant to a written consent
31 form signed voluntarily by the person tested, unless such
32 release is compelled by an agency of the state or a court of
33 competent jurisdiction or unless deemed appropriate by a pro-
34 fessional or occupational licensing board in a related
35 disciplinary proceeding. The consent form must contain at a

1 minimum:

2 (1) The name of the person who is authorized to obtain the
3 information.

4 (2) The purpose of the disclosure.

5 (3) The precise information to be disclosed.

6 (4) The duration of the consent.

7 (5) The signature of the person authorizing release of the
8 information.

9 c. Nothing in this section shall be construed to call for
10 actions that may violate federal or state confidentiality
11 statutes for employee assistance professionals and alcohol and
12 other drug abuse counseling or treatment providers.

13 d. Information on test results shall not be released or
14 used in any criminal proceeding against the employee or job
15 applicant. Information released contrary to this subsection
16 shall be inadmissible as evidence in any such criminal
17 proceeding.

18 e. Nothing contained in this section shall be construed to
19 prohibit the employer, agent of the employer, or laboratory
20 conducting a test from having access to employee test
21 information when consulting with legal counsel in connection
22 with actions related to this section or when the information
23 is relevant to its defense in a civil or administrative
24 matter.

25 f. Notwithstanding the provisions of this section,
26 information on a confirmed positive substance abuse test
27 result may be used under any of the following circumstances:

28 (1) In grievance arbitration or other proceeding pursuant
29 to a collective bargaining agreement, an administrative
30 hearing or proceeding under chapter 85, 96, or 216 or other
31 applicable state or local law, or in a judicial proceeding,
32 provided that the information is relevant to and concerns the
33 specific tested employee or applicant for employment involved
34 in the grievance arbitration, hearing, or proceeding.

35 (2) The information may be disclosed to any federal agency

1 or other unit of the federal government as required by federal
2 law, regulation, or order, or in accordance with compliance
3 requirements of a contract with the federal government.

4 (3) The information may be disclosed to a substance abuse
5 treatment facility for the purpose of evaluation or treatment
6 of the employee.

7 10. Upon receipt of a confirmed "positive" substance abuse
8 test result that indicates a violation of the employer's
9 written policy, or upon the refusal of an employee or
10 prospective employee to provide a testing sample, an employer
11 may use that confirmed test result or test refusal as a valid
12 basis for rehabilitative or disciplinary actions, which may
13 include, among other actions, any of the following:

14 a. A requirement that the employee enroll in an employee
15 assistance program, or an employer-provided or approved
16 rehabilitation, treatment, or a counseling program certified
17 by the department of public health as discussed in subsection
18 5. These may include additional substance abuse testing,
19 participation in which may be a condition of continued
20 employment, and the costs of which may or may not be covered
21 by the employer's health plan or policies.

22 b. Suspension of the employee, with or without pay, for a
23 designated period of time.

24 c. Termination of employment.

25 d. Refusal to hire a prospective employee.

26 e. Other action in conformance with the employer's written
27 policy and procedures, including any applicable collective
28 bargaining agreement provisions.

29 11. a. Nothing in this section shall be construed to
30 prevent an employer from establishing reasonable work rules
31 relating to employee manufacture, sale, distribution,
32 possession, or use of drugs, including convictions for drug-
33 related offenses, and taking action based upon a violation of
34 any of those rules.

35 b. Nothing in this section shall be construed to prohibit

1 an employer from conducting medical screening or other tests
2 required, permitted, or not disallowed by any statute, rule,
3 or regulation for the purpose of monitoring exposure of
4 employees to lead, asbestos, or other toxic or unhealthy
5 materials in the workplace or in the performance of job
6 responsibilities. Such screening or tests shall be limited to
7 any rule or regulation issued pursuant thereto, unless prior
8 written consent of the employee is obtained for other tests.

9 12. a. Employers shall not have a legal duty to request
10 or require an employee or applicant for employment to undergo
11 drug testing as authorized in this section. A cause of action
12 shall not arise in favor of any person based upon the failure
13 of an employer to establish a program or policy on substance
14 abuse prevention, to implement drug or alcohol testing, to
15 request or require any employee or applicant for employment to
16 submit to a drug test, or to require drug testing as permitted
17 by this section.

18 b. Except as otherwise provided in paragraph "c", a cause
19 of action shall not arise against an employer for any of the
20 following:

21 (1) Actions taken by the employer in good faith based upon
22 the results of a drug test indicating the presence of alcohol
23 or a controlled substance. An employer does not act in good
24 faith if the employer knew or clearly should have known that
25 the drug test result indicating the presence of alcohol or a
26 controlled substance was in error and the employer ignores the
27 correct result in a willful and reckless manner.

28 (2) Actions taken, or not taken, by an employer based upon
29 a reported negative or inconclusive test result, whether the
30 test result is correct or incorrect.

31 (3) Failure to test for, or if tested for, failure to
32 detect alcohol or any specific controlled substance, or any
33 medical condition, including any mental or physical disorder
34 or condition.

35 (4) Not establishing, or if established, terminating or

1 suspending, a substance abuse prevention or drug testing
2 program or policy.

3 c. Except for a cause of action specifically provided by
4 this section, a separate cause of action for defamation,
5 libel, slander, damage to reputation, or other similar cause
6 of action shall not arise against an employer, including an
7 individual who is an agent or employee of the employer, which
8 has established or is maintaining a program of drug testing in
9 accordance with this section unless all of the following
10 apply:

11 (1) Except as specifically authorized by this section, the
12 employer discloses the test results to a person other than an
13 authorized employee, agent, or representative of the employer,
14 the tested employee or the tested applicant for employment, or
15 an authorized agent or representative of the tested employee
16 or applicant.

17 (2) The test results disclosed incorrectly indicate the
18 presence of alcohol or a controlled substance.

19 (3) The employer negligently or intentionally discloses
20 the results.

21 d. For the purposes of this section, the results of a drug
22 test conducted in compliance with this section are presumed to
23 be valid.

24 13. No physician-patient relationship is created between
25 an employee or job applicant and an employer, medical review
26 officer, or substance abuse testing laboratory performing or
27 evaluating a substance abuse test solely by the establishment,
28 implementation, or administration of a substance abuse testing
29 program.

30 14. Nothing in this section shall be construed to infringe
31 on, contradict, preempt, or otherwise conflict with the valid
32 provisions of any existing collective bargaining agreement, or
33 to otherwise abridge or infringe on the rights and
34 responsibilities of all parties in the collective bargaining
35 process to negotiate to agreement on any collective bargaining

1 agreement provision. Such contract provisions are fully valid
2 and enforceable, notwithstanding the provisions of this
3 section.

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HOUSE FILE 258

S-3371

1 Amend House File 258, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "Section 1. Section 730.5, subsection 1, Code
6 1995, is amended to read as follows:

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

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

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

16 Sec. 2. Section 730.5, subsection 3, paragraph c,
17 Code 1995, is amended to read as follows:

18 c. The test sample withdrawn from the employee is
19 analyzed by a laboratory or testing facility that has
20 been approved under rules adopted by the department of
21 public health. The laboratory or testing facility
22 shall test for and report to the employer only the
23 presence of alcohol or illegal controlled substances
24 in any test sample. The rules adopted by the
25 department of public health shall provide for all of
26 the following:

27 (1) The initial screening test may utilize
28 immunoassay, thin layer, high performance liquid or
29 gas chromatography, or an equivalent technology. If
30 the initial test utilizes immunoassay, the test kit
31 must meet the requirements of the United States food
32 and drug administration.

33 (2) Samples which have tested positive by initial
34 testing, with the exception of alcohol, shall be
35 confirmed by gas chromatography-mass spectrometry or
36 by a scientifically equivalent technique approved by
37 the department.

38 (3) All initial positive drug test results with
39 the exception of alcohol shall be confirmed by gas
40 chromatography-mass spectrometry or an equivalent test
41 approved by the department before being reported as
42 positive or negative.

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

47 (5) Preliminary reports for drugs other than
48 alcohol shall not be issued in the absence of
49 confirmation by gas chromatography-mass spectrometry
50 or a scientifically equivalent test approved by the

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1 department.

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

6 Sec. 3. Section 730.5, subsection 7, Code 1995, is
7 amended 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~~
10 ~~physical or as a part of a regularly scheduled~~
11 ~~physical is only permissible~~ In addition to drug
12 testing permitted by subsection 3, drug testing of an
13 employee or applicant for employment shall also be
14 permitted under the following circumstances:

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

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

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

49 Drug testing conducted under this subsection shall
50 conform to the requirements of subsection 3,

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1 paragraphs "c", "d", "e", and "f"; however, paragraph
2 "f" shall not apply to drug tests conducted as a part
3 of a preemployment physical.

4 Sec. 4. Section 730.5, Code 1995, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 12. An employer who conducts a
7 drug test pursuant to this section shall, on a
8 quarterly basis, file a written report with the labor
9 division of the department of employment services
10 consisting of the following information:

11 a. The number of drug tests conducted by the
12 employer.

13 b. The number of drug tests conducted as part of a
14 preemployment drug test, a regularly scheduled
15 physical, or as a result of a drug test conducted
16 pursuant to a finding of probable cause as provided by
17 subsection 3, paragraph "a". Of the drug tests
18 conducted pursuant to a finding of probable cause, the
19 employer shall indicate the number of drug tests
20 conducted as a result of a workplace accident that
21 resulted in personal injury, property damage, or both
22 personal injury and property damage.

23 c. The number of drug tests that resulted in a
24 confirmed positive test result indicating the presence
25 of alcohol or an illegal controlled substance.

26 Sec. 5. EMPLOYMENT DRUG TESTING STUDY. The
27 legislative council is requested to establish a study
28 committee on drug testing of employees and applicants
29 for employment."

30 2. Title page, line 2, by striking the word
31 "defenses" and inserting the following: "reporting of
32 drug tests, establishing a study of employment drug
33 testing".

By COMMITTEE ON BUSINESS AND
LABOR RELATIONS
DICK L. DEARDEN, Chairperson

S-3371 FILED APRIL 6, 1995

Adopted
4-19-95
(R1309)

HOUSE FILE 258

S-3441

1 Amend the amendment, S-3371, to House File 258, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 3, through page 3,
5 line 33, and inserting the following:

6 "____. By striking everything after the enacting
7 clause and inserting the following:

8 "Section 1. Section 730.5, subsection 1, Code
9 1995, is amended to read as follows:

10 1. As used in this section, unless the context
11 otherwise requires:

12 a. "drug Drug test" means any blood, urine,
13 saliva, chemical, or skin tissue test conducted for
14 the purpose of detecting the presence of a chemical
15 substance in an individual.

16 b. "Preemployment" means that period of time
17 between when a bona fide offer of employment is made
18 and when employment begins.

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

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

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

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

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

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1 purposes of this paragraph, an employer has probable
2 cause to believe that an employee's faculties are
3 impaired on the job if the employer is investigating
4 an accident in the workplace and all of the following
5 conditions are met:

6 (1) The employer has reasonable grounds to believe
7 that the employee proposed to be tested either
8 directly caused or directly contributed to the
9 accident.

10 (2) The employer has reasonable grounds to believe
11 that the employee's faculties were impaired and that
12 the impairment was likely a substantial factor in
13 causing the accident.

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

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

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

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

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

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

48 (3) All initial positive drug test results with
49 the exception of alcohol shall be confirmed by gas
50 chromatography-mass spectrometry or an equivalent test

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1 approved by the department before being reported as
2 positive or negative.

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

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

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

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

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

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

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

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

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1 confidentiality as to the employer of the results of
2 such testing. An employer shall not require an
3 employee to submit to drug testing under this
4 paragraph if more than twelve months have elapsed
5 since the employee successfully completed drug
6 treatment and the employee has not had a drug test
7 conducted indicating the presence of alcohol or an
8 illegal controlled substance during that twelve-month
9 period.

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

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

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

23 a. The number of drug tests conducted by the
24 employer and the number of employees employed by the
25 employer.

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

36 c. The number of drug tests that resulted in a
37 confirmed positive test result indicating the presence
38 of alcohol and the number of drug tests that resulted
39 in a confirmed positive test result indicating the
40 presence of an illegal controlled substance.

41 d. The number of personal injuries, and the dollar
42 loss for property damage, arising out of the use of
43 alcohol and illegal controlled substances by
44 employees.

45 e. The cost of substance abuse evaluation and
46 treatment for employees."

47 _____. Title page, line 2, by striking the word
48 "defenses" and inserting the following: "reporting of
49 drug tests".

50 2. By renumbering as necessary.

By TOM VILSACK

DICK L. DEARDEN

RANDAL J. GIANNETTO

DERRYL MCLAREN

MARY KRAMER

JIM LIND

S-3441 FILED APRIL 13, 1995

adopted 4/19/95 (p. 13A)

SEVENTY-SIXTH GENERAL ASSEMBLY
1995 REGULAR SESSION

DAILY
HOUSE CLIP SHEET

MAY 5, 1995

SENATE AMENDMENT TO HOUSE FILE 258

H-4229

1 Amend House File 258, as amended, passed, and
2 reprinted by the House, as follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. Section 730.5, subsection 1, Code
6 1995, is amended to read as follows:
7 1. As used in this section, unless the context
8 otherwise requires:
9 a. "~~drug~~ Drug test" means any blood, urine,
10 saliva, chemical, or skin tissue test conducted for
11 the purpose of detecting the presence of a chemical
12 substance in an individual.
13 b. "Preemployment" means that period of time
14 between when a bona fide offer of employment is made
15 and when employment begins.
16 Sec. 2. Section 730.5, subsection 2, Code 1995, is
17 amended to read as follows:
18 2. Except as provided in subsection 7, an employer
19 shall not require or request employees or applicants
20 for employment to submit to a drug test as a condition
21 of employment, preemployment, promotion, or change in
22 status of employment. An employer shall not request,
23 require, or conduct random or blanket drug testing of
24 employees. However, this section does not apply to
25 preemployment drug tests authorized for peace officers
26 or correctional officers of the state, or to drug
27 tests required under federal statutes or under federal
28 regulations ~~adopted as of July 17, 1990~~ in effect on or
29 before February 16, 1995, or to drug tests conducted
30 pursuant to a nuclear regulatory commission
31 regulation, or to drug tests conducted to determine if
32 an employee is ineligible to receive workers'
33 compensation under section 85.16, subsection 2.
34 The exemption granted by this subsection relating
35 to drug testing pursuant to federal regulations
36 ~~adopted as of July 17, 1990~~ in effect on or before
37 February 16, 1995, is of no effect, as it applies to a
38 particular regulation, upon a finding by a court of
39 competent jurisdiction, including any appeal of such
40 finding, that the particular regulation is
41 unconstitutional or otherwise invalid. The decision
42 of a court invalidating any regulation exempted by
43 this section shall not be stayed pending appeal.
44 Sec. 3. Section 730.5, subsection 3, paragraph a,
45 Code 1995, is amended to read as follows:
46 a. The employer has probable cause to believe that
47 an employee's faculties are impaired on the job. For
48 purposes of this paragraph, an employer has probable
49 cause to believe that an employee's faculties are
50 impaired on the job if the employer is investigating

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1 an accident in the workplace and all of the following
2 conditions are met:

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

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

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

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

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

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

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

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

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

50 (4) All initial positive test results for alcohol

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1 shall be confirmed by gas chromatography, or a test
2 that is recognized by the department as an equivalent
3 test before being reported as positive or negative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 _____. Title page, line 2, by striking the word
 45 "defenses" and inserting the following: "reporting of
 46 drug tests".

47 2. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-4229 FILED MAY 4, 1995

*1 June Concurred
 2-19-96
 (p. 370)*

H-5078

1 Amend the amendment, H-4229, to House File 258, as
2 amended, passed, and reprinted by the House, as
3 follows:

- 4 1. Page 1, line 8, by striking the word
- 5 "requires:" and inserting the following: "requires,".
- 6 2. Page 1, line 9, by striking the words
- 7 "a. "drug Drug test"" and inserting the following:
- 8 ""drug test"".
- 9 3.. Page 1, by striking lines 13 through 15.
- 10 4. Page 1, lines 28 and 29, by striking the words
- 11 and figures "in effect on or before February 16,
- 12 1995".
- 13 5. Page 1, lines 36 and 37, by striking the words
- 14 and figures "in effect on or before February 16,
- 15 1995".
- 16 6. Page 2, by striking lines 7 through 10.
- 17 7. Page 2, line 11, by striking the figure "(3)"
- 18 and inserting the following: "(2)".
- 19 8. Page 2, line 14, by striking the word "five"
- 20 and inserting the following: "one".
- 21 9. Page 2, line 16, by striking the figure "(4)"
- 22 and inserting the following: "(3)".
- 23 10. Page 2, line 29, by inserting after the word
- 24 "sample." the following: "The report and information
- 25 provided the employer may be both qualitative and
- 26 quantitative but only concerning the presence of
- 27 alcohol or an illegal controlled substance in any test
- 28 sample."
- 29 11. By striking page 2, line 32, through page 3,
- 30 line 12, and inserting the following: "test."
- 31 12. Page 3, line 22, by striking the words "For a
- 32 preemployment physical, the" and inserting the
- 33 following: "For-a-preemployment-physical,-the During
- 34 a preemployment application process. The".
- 35 13. Page 3, line 24, by striking the word
- 36 "physical" and inserting the following: "physical
- 37 application process".
- 38 14. Page 3, line 29, by striking the words "For a
- 39 regularly scheduled physical, the" and inserting the
- 40 following: "For-a-regularly-scheduled-physical,-the
- 41 During a regularly scheduled physical. The".
- 42 15. Page 3, line 40, by striking the word "two"
- 43 and inserting the following: "four".
- 44 16. Page 3, line 40, by striking the word
- 45 "twelve-" and inserting the following: "twenty-four-
- 46 "".
- 47 17. Page 4, line 1, by striking the word "twelve"
- 48 and inserting the following: "twenty-four".
- 49 18. Page 4, line 5, by striking the word "twelve-
- 50 month" and inserting the following: "twenty-four-

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1 month".

- 2 19. Page 4, line 11, by striking the word
- 3 "physical" and inserting the following: "physical
- 4 application process".
- 5 20. Page 4, by striking lines 15 through 43 and
- 6 inserting the following: "drug test pursuant to this
- 7 section shall submit a report annually to the labor
- 8 division of the department of employment services,
- 9 documenting the number of drug tests conducted, the
- 10 results of the tests conducted, and the direct costs
- 11 associated with the testing."

By SUKUP of Franklin

H-5078 FILED FEBRUARY 15, 1996

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B

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A

*A. A. Admitted 3-19-96
B. Adopted 2-19-96
(118.37)*

HOUSE FILE 258

H-5091

1 Amend the amendment, H-5078, to the amendment, H-
2 4229, to House File 258, as amended, passed, and
3 reprinted by the House, as follows:

4 1. Page 1, by inserting after line 41 the
5 following:

6 "____. Page 3, by striking lines 33 through 38 and
7 inserting the following:

8 "c. An employer may require an employee, as a
9 condition of employment to undergo drug testing, if
10 the employer has provided substance abuse evaluation,
11 and treatment, if recommended by the evaluation, which
12 have been paid for in whole or in part by the employer
13 or its insurance carrier. The employee may be
14 required to undergo."

15 2. Page 2, by inserting after line 4 the
16 following:

17 "____. Page 4, by inserting after line 11 the
18 following:

19 "Sec. ____ . Section 730.5, subsection 11, Code
20 1995, is amended by striking the subsection."

21 3. By renumbering as necessary.

By NELSON of Marshall

H-5091 FILED FEBRUARY 19, 1996

Adopted 2-19-96
(p. 368)

HOUSE FILE 258

H-5092

1 Amend the amendment, H-5078, to the amendment, H-
2 4229, to House File 258, as amended, passed, and
3 reprinted by the House, as follows:

4 1. Page 1, by striking lines 4 through 9 and
5 inserting the following:

6 "____. Page 1, by striking lines 13 through 15 and
7 inserting the following:

8 "b. "Employee" means employee as defined in
9 section 85.61 and includes the employer, and any chief
10 executive officer, president, vice president,
11 supervisor, manager, and officer of the employer."

12 2. By renumbering as necessary.

By SUKUP of Franklin

H-5092 FILED FEBRUARY 19, 1996

Adopted 2-19-96
(p. 367)

HOUSE FILE 258

H-5090

1 Amend the amendment, H-5078, to the amendment, H-
2 4229, to House File 258, as amended, passed, and
3 reprinted by the House, as follows:

4 1. Page 1, by striking lines 4 through 9 and
5 inserting the following:

6 "____. Page 1, by striking lines 13 through 15 and
7 inserting the following:

8 "b. "Employee" means any person who works for
9 salary, wages, or other remuneration for an employer,
10 including those working part-time or as leased
11 employees. "Employee" also means employee as defined
12 in section 85.61 and includes the employer, and any
13 chief executive officer, president, vice president,
14 supervisor, manager, and officer of the employer."

15 2. Page 1, by inserting after line 37 the
16 following:

17 "____. Page 3, line 28, by inserting after the
18 word "interview." the following: "However, in order
19 to conduct a drug test pursuant to this paragraph, the
20 employer shall provide that a preemployment
21 application process which includes a drug test shall
22 be required in the same manner for all job
23 classifications of the employer in which applicants
24 for employment are sought."

25 3. Page 1, by inserting after line 41 the
26 following:

27 "____. Page 3, line 32, by inserting after the
28 word "scheduled." the following: "However, in order
29 to conduct a drug test pursuant to this paragraph, the
30 employer shall provide that a regularly scheduled
31 physical which includes a drug test shall be required
32 in the same manner for all classifications of
33 employees of the employer."

34 4. By renumbering as necessary.

By CONNORS of Polk

H-5090 FILED FEBRUARY 19, 1996

Out of Order
2-19-96
(p. 367)

H-5084

1 Amend the amendment, H-5078, to the amendment, H-
2 4229, to House File 258, as amended, passed, and
3 reprinted by the House, as follows:

4 1. Page 1, by inserting after aline 37 the
5 following:

6 "____. Page 3, line 28, by inserting after the
7 word "interview." the following: "However, in order
8 to conduct a drug test pursuant to this paragraph, the
9 employer shall provide that a preemployment
10 application process which includes a drug test shall
11 be required in the same manner for all job
12 classifications of the employer in which applicants
13 for employment are sought."

14 2. Page 1, by inserting after line 41 the
15 following:

16 "____. Page 3, line 32, by inserting after the
17 word "scheduled." the following: "However, in order
18 to conduct a drug test pursuant to this paragraph, the
19 employer shall provide that a regularly scheduled
20 physical which includes a drug test shall be required
21 in the same manner for all classifications of
22 employees of the employer."

23 3. By renumbering as necessary.

By CONNORS of Polk

H-5084 FILED FEBRUARY 19, 1996

Adopted 2-19-96

(P. 367)

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 258

5085

Amend the amendment, H-4229, to House File 258, as amended, passed, and reprinted by the House, as follows:

1. Page 1, by striking lines 13 through 15 and inserting the following:

"b. "Employee" means employee as defined in section 85.61 and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer."

2. Page 1, lines 28 and 29, by striking the words and figures "in effect on or before February 16, 1995".

3. Page 1, lines 36 and 37, by striking the words and figures "in effect on or before February 16, 1995".

4. Page 2, by striking lines 7 through 10.

5. Page 2, line 11, by striking the figure "(3)" and inserting the following: "(2)".

6. Page 2, line 14, by striking the word "five" and inserting the following: "one".

7. Page 2, line 16, by striking the figure "(4)" and inserting the following: "(3)".

8. Page 2, line 29, by inserting after the word "sample." the following: "The report and information provided the employer may be both qualitative and quantitative but only concerning the presence of alcohol or an illegal controlled substance in any test sample."

9. By striking page 2, line 32, through page 3, line 12, and inserting the following: "test."

10. Page 3, line 22, by striking the words "For a preemployment physical, the" and inserting the following: "~~For a preemployment physical, the~~ During a preemployment application process. The".

11. Page 3, line 24, by striking the word "physical" and inserting the following: "~~physical~~ application process".

12. Page 3, line 28, by inserting after the word "interview." the following: "However, in order to conduct a drug test pursuant to this paragraph, the employer shall provide that a preemployment application process which includes a drug test shall be required in the same manner for all job classifications of the employer in which applicants for employment are sought."

13. Page 3, line 29, by striking the words "For a regularly scheduled physical, the" and inserting the following: "~~For a regularly scheduled physical, the~~ During a regularly scheduled physical. The".

14. Page 3, line 32, by inserting after the word

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1 "scheduled." the following: "However, in order to
2 conduct a drug test pursuant to this paragraph, the
3 employer shall provide that a regularly scheduled
4 physical which includes a drug test shall be required
5 in the same manner for all classifications of
6 employees of the employer."

7 15. Page 3, by striking lines 33 through 38 and
8 inserting the following:

9 "c. An employer may require an employee, as a
10 condition of employment to undergo drug testing, if
11 the employer has provided substance abuse evaluation,
12 and treatment, if recommended by the evaluation, which
13 have been paid for in whole or in part by the employer
14 or its insurance carrier. The employee may be
15 required to undergo".

16 16. Page 3, line 40, by striking the word "two"
17 and inserting the following: "four".

18 17. Page 3, line 40, by striking the word
19 "twelve-" and inserting the following: "twenty-four-
20 "."

21 18. Page 4, line 1, by striking the word "twelve"
22 and inserting the following: "twenty-four".

23 19. Page 4, line 5, by striking the word "twelve-
24 month" and inserting the following: "twenty-four-
25 month".

26 20. Page 4, line 11, by striking the word
27 "physical" and inserting the following: "physical
28 application process".

29 21. Page 4, by inserting after line 11 the
30 following:

31 "Sec. ____ . Section 730.5, subsection 11, Code
32 1995, is amended by striking the subsection."

33 22. Page 4, by striking lines 15 through 43 and
34 inserting the following: "drug test pursuant to this
35 section shall submit a report annually to the labor
36 division of the department of employment services,
37 documenting the number of drug tests conducted, the
38 results of the tests conducted, and the direct costs
39 associated with the testing."

RECEIVED FROM THE HOUSE

S-5085 FILED FEBRUARY 20, 1996

*Message to Senate
2/20/96 P. ST 375*

Sukup, Chair
Millage
Running

HSB 157

LABOR & INDUSTRIAL RELATIONS
Succeeded by

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON LABOR
AND INDUSTRIAL RELATIONS BILL
BY CHAIRPERSON TYRRELL)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to drug testing of certain employees and
2 applicants for employment, providing for employer defenses,
3 and making penalties applicable.

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

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

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

7 Sec. 2. Section 730.5, subsection 3, paragraph a, Code
8 1995, is amended to read as follows:

9 a. The employer has ~~probable-cause-to-believe~~ a reasonable
10 belief that an employee's faculties are impaired ~~on-the-job~~
11 due to the use of a controlled substance or alcohol.

12 Sec. 3. Section 730.5, subsection 3, paragraph c, Code
13 1995, is amended to read as follows:

14 c. The test sample withdrawn from the employee is analyzed
15 by a laboratory or testing facility that has been approved
16 under rules adopted by the department of public health. The
17 laboratory or testing facility, when reporting the results of
18 a drug test to the employer, shall indicate whether alcohol or
19 a controlled substance is present in any test sample and, if
20 applicable, provide information on the level of the controlled
21 substance or alcohol that is present in the test sample.

22 Sec. 4. Section 730.5, subsection 7, Code 1995, is amended
23 to read as follows:

24 ~~7. A drug test conducted as a part of a physical~~
25 ~~examination performed as a part of a preemployment physical or~~
26 ~~as a part of a regularly scheduled physical is only~~
27 ~~permissible~~ In addition to drug testing permitted by
28 subsection 3, drug testing of an employee or applicant for
29 employment shall also be permitted under the following
30 circumstances:

31 a. For As a part of a preemployment physical application
32 process, provided that the employer shall include notice that
33 a drug test will be part of a preemployment physical
34 application process in any notice or advertisement soliciting
35 applicants for employment or in the application for

1 employment, and an applicant for employment shall be
2 personally informed of the requirement for a drug test at the
3 first interview.

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

7 c. An employer may require an employee, as a condition of
8 employment, to undergo drug testing if the employee has been
9 referred by the employer for substance abuse evaluation
10 pursuant to subsection 3, paragraph "f", and treatment was
11 recommended by the evaluation, or if the employee has been
12 given a leave of absence or other accommodation to obtain
13 substance abuse treatment. Following the employee's
14 completion of substance abuse treatment, the employer may
15 require the employee to undergo drug testing without prior
16 notice.

17 d. An employer may require an employee to undergo drug
18 testing if the employer is investigating an accident in the
19 workplace and all of the following conditions are met:

20 (1) The employer has reasonable grounds to believe that
21 the employee proposed to be tested either caused or
22 contributed to the accident.

23 (2) The surrounding circumstances do not reasonably
24 exclude the possibility that the employee's faculties are
25 impaired due to the use of a controlled substance or alcohol.

26 (3) The accident results in a personal injury which
27 requires medical treatment away from the workplace or damage
28 to property, including equipment, in an amount reasonably
29 estimated to exceed five hundred dollars at the time of the
30 accident.

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

35 Drug testing conducted under this subsection shall conform

S.F. _____ H.F. _____

1 to the requirements of subsection 3, paragraphs "c", "d", "e",
2 and "f"; however, paragraph "f" shall not apply to drug tests
3 conducted as a part of a preemployment ~~physical~~ application
4 process, or conducted under paragraph "c" of this subsection.

5 Sec. 5. Section 730.5, subsection 8, Code 1995, is amended
6 to read as follows:

7 8. An employer shall protect the confidentiality of the
8 results of any drug test conducted on an employee. The
9 results of the test may be recorded in the employee's
10 personnel records, ~~however~~ or separately maintained
11 confidential medical records file, and may be presented by the
12 employer in any contractual, administrative, or judicial
13 proceeding involving the employee. However, if an employee
14 whose test indicated the employee was under the influence of
15 alcohol or a controlled substance or indicated the presence of
16 a controlled substance has undergone substance abuse
17 evaluation and, when treatment is indicated under the
18 substance abuse evaluation, successfully completed treatment
19 for substance abuse, the-employee's-personnel-records-shall-be
20 expunged-of-any-reference-to-the-test-or-its-results the
21 employer shall not disclose to any person not otherwise
22 employed by or acting as a representative of the employer any
23 reference to the test or its results, except as provided in
24 this section, when the employee leaves employment.

25 Sec. 6. Section 730.5, subsection 9, Code 1995, is amended
26 to read as follows:

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

28 a. A person who violates this section or who aids in the
29 violation of this section is liable to an aggrieved employee
30 or applicant for employment for affirmative relief including
31 reinstatement or hiring, with or without back pay, or any
32 other equitable relief as the court deems appropriate
33 including attorney fees and court costs. An action under this
34 section shall be commenced within two years of the date of the
35 alleged violation.

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

7 In an action brought under this subsection alleging that an
8 employer has required or requested a drug test in violation of
9 this section, the employer has the burden of proving that the
10 requirements of this section were met. An employer who proves
11 that the requirements were met may recover reasonable attorney
12 fees and court costs from the person bringing the action.

13 Sec. 7. Section 730.5, Code 1995, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 12. a. Employers shall not have a legal
16 duty to request or require an employee or applicant for
17 employment to undergo drug testing as authorized in this sec-
18 tion. A cause of action shall not arise based upon the
19 failure of an employer to establish a program or policy on
20 substance abuse prevention, to implement drug or alcohol
21 testing, to request or require any employee or applicant for
22 employment to submit to a drug test, or to require drug
23 testing as permitted by this section.

24 b. Except as otherwise provided in paragraph "c", a cause
25 of action shall not arise against an employer for any of the
26 following:

27 (1) Actions taken by the employer in good faith based upon
28 the results of a drug test indicating the presence of alcohol
29 or a controlled substance. An employer does not act in good
30 faith if the employer knew or clearly should have known that
31 the drug test result indicating the presence of alcohol or a
32 controlled substance was in error and the employer ignores the
33 correct result in a willful and reckless manner.

34 (2) Actions taken, or not taken, by an employer based upon
35 a reported negative or inconclusive test result, whether the

1 test result is correct or incorrect.

2 (3) Failure to test for, or if tested for, failure to
3 detect alcohol or any specific controlled substance, or any
4 medical condition, including any mental or physical disorder
5 or condition.

6 (4) Failure to establish, or terminating or suspending, a
7 substance abuse prevention or drug testing program or policy.

8 c. A cause of action for defamation, libel, slander, or
9 damage to reputation shall not arise against an employer
10 establishing a program of drug testing in accordance with this
11 section unless all of the following apply:

12 (1) The employer discloses the test results to a person
13 other than an authorized employee, agent, or representative of
14 the employer, the tested employee or the tested applicant for
15 employment, or an authorized agent or representative of the
16 tested employee or applicant.

17 (2) The test results disclosed incorrectly indicate the
18 presence of alcohol or a controlled substance.

19 (3) The employer negligently discloses the results.

20 d. For the purposes of this section, the results of a drug
21 test conducted in compliance with this section are presumed to
22 be valid.

23 EXPLANATION

24 This bill makes changes in Iowa's law governing drug
25 testing of employees and applicants for employment.

26 The bill provides that an employer can require an employee
27 to submit to a drug test if the employer has a reasonable
28 belief that the employee is impaired on the job. Current law
29 requires a finding of probable cause.

30 The bill provides for drug testing as a part of a
31 preemployment application process. Current law allows
32 preemployment drug testing as a part of a preemployment
33 physical.

34 The bill further permits an employer to require an employee
35 who has been referred to substance abuse evaluation or who has

1 been given leave or other accommodation to obtain substance
2 abuse treatment to submit to random drug testing following
3 completion of substance abuse treatment without prior notice.

4 The bill provides for drug testing of an employee involved
5 in a workplace accident resulting in personal injury or damage
6 to property of over \$500 if certain conditions are met.

7 Section 5 of this bill allows an employer to use the
8 results of a drug test in any administrative, contractual, or
9 judicial proceeding involving the employee. Section 5 also
10 permits the employer to keep a record of drug tests when the
11 employee leaves employment so long as the information is not
12 disclosed to persons not employed by the employer or to
13 another employer except as provided in section 730.5,
14 subsection 8. Section 6 provides a two-year statute of
15 limitations for actions under section 730.5 and permits an
16 employer to recover attorney fees and court costs if
17 successful in defending a suit under this section.

18 The bill provides that employers are not required to
19 conduct drug tests and that the employer is not liable for
20 failing to conduct a drug test otherwise authorized by this
21 bill.

22 The bill provides that an employer is not liable for good
23 faith actions taken based on a positive drug test, unless the
24 employer knew the result was incorrect and recklessly ignored
25 the correct result. The bill also provides that an employer
26 is not liable for failing to test for certain drugs or
27 alcohol, failing to establish, or terminating or suspending, a
28 drug testing policy, or taking any action based on a test
29 correctly or incorrectly indicating the absence of drugs or a
30 test result that is inconclusive.

31 The bill also provides that an employer is not liable for
32 an action based on libel, slander, or defamation unless
33 certain additional requirements are met, generally requiring a
34 finding that an incorrect "positive" test result was disclosed
35 negligently.

1 The bill also establishes that a drug test conducted in
2 accordance with the drug testing section is presumed valid.

3 A violation of any provision of the drug testing section
4 constitutes a simple misdemeanor.

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