

House Study Bill 157

Conference Committee Text

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

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

1 7 Sec. 2. Section 730.5, subsection 3, paragraph a, Code
1 8 1995, is amended to read as follows:

1 9 a. The employer has

~~probable cause to believe~~

~~a reasonable~~

1 10 belief that an employee's faculties are impaired

~~on the job~~

1 11 due to the use of a controlled substance or alcohol.

1 12 Sec. 3. Section 730.5, subsection 3, paragraph c, Code
1 13 1995, is amended to read as follows:

1 14 c. The test sample withdrawn from the employee is analyzed
1 15 by a laboratory or testing facility that has been approved
1 16 under rules adopted by the department of public health. The
1 17 laboratory or testing facility, when reporting the results of
1 18 a drug test to the employer, shall indicate whether alcohol or
1 19 a controlled substance is present in any test sample and, if
1 20 applicable, provide information on the level of the controlled
1 21 substance or alcohol that is present in the test sample.

1 22 Sec. 4. Section 730.5, subsection 7, Code 1995, is amended
1 23 to read as follows:

1 24 7.

~~A drug test conducted as a part of a physical~~

1 25

~~examination performed as a part of a preemployment physical or~~

1 26

~~as a part of a regularly scheduled physical is only~~

1 27

~~permissible~~

~~In addition to drug testing permitted by~~

1 28 subsection 3, drug testing of an employee or applicant for

1 29 employment shall also be permitted under the following

1 30 circumstances:

1 31 a.

~~For~~

~~As a part of a preemployment~~

~~physical~~

~~application~~

1 32 process, provided that the employer shall include notice that

1 33 a drug test will be part of a preemployment

~~physical~~

1 34 application process in any notice or advertisement soliciting
1 35 applicants for employment or in the application for
2 1 employment, and an applicant for employment shall be
2 2 personally informed of the requirement for a drug test at the
2 3 first interview.

2 4 b. For a regularly scheduled physical, the employer shall
2 5 give notice that a drug test will be part of the physical at
2 6 least thirty days prior to the date the physical is scheduled.

2 7 c. An employer may require an employee, as a condition of
2 8 employment, to undergo drug testing if the employee has been
2 9 referred by the employer for substance abuse evaluation
2 10 pursuant to subsection 3, paragraph "f", and treatment was
2 11 recommended by the evaluation, or if the employee has been
2 12 given a leave of absence or other accommodation to obtain
2 13 substance abuse treatment. Following the employee's
2 14 completion of substance abuse treatment, the employer may
2 15 require the employee to undergo drug testing without prior
2 16 notice.

2 17 d. An employer may require an employee to undergo drug
2 18 testing if the employer is investigating an accident in the
2 19 workplace and all of the following conditions are met:

2 20 (1) The employer has reasonable grounds to believe that
2 21 the employee proposed to be tested either caused or
2 22 contributed to the accident.

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

2 26 (3) The accident results in a personal injury which
2 27 requires medical treatment away from the workplace or damage
2 28 to property, including equipment, in an amount reasonably
2 29 estimated to exceed five hundred dollars at the time of the
2 30 accident.

2 31 (4) Prior to the accident, the employer has provided the
2 32 employee to be tested with written notice of the employer's
2 33 rules or policies regarding alcohol and controlled substances
2 34 and testing when a workplace accident occurs.

2 35 Drug testing conducted under this subsection shall conform
3 1 to the requirements of subsection 3, paragraphs "c", "d", "e",
3 2 and "f"; however, paragraph "f" shall not apply to drug tests
3 3 conducted as a part of a preemployment

~~physical~~

~~application~~

3 4 process, or conducted under paragraph "c" of this subsection.

3 5 Sec. 5. Section 730.5, subsection 8, Code 1995, is amended
3 6 to read as follows:

3 7 8. An employer shall protect the confidentiality of the
3 8 results of any drug test conducted on an employee. The
3 9 results of the test may be recorded in the employee's
3 10 personnel records

~~;~~ ~~however~~

~~or separately maintained~~

3 11 confidential medical records file, and may be presented by the
3 12 employer in any contractual, administrative, or judicial
3 13 proceeding involving the employee. However, if an employee
3 14 whose test indicated the employee was under the influence of
3 15 alcohol or a controlled substance or indicated the presence of
3 16 a controlled substance has undergone substance abuse
3 17 evaluation and, when treatment is indicated under the
3 18 substance abuse evaluation, successfully completed treatment
3 19 for substance abuse,

~~the employee's personnel records shall be~~

3 20

~~expunged of any reference to the test or its results~~
~~the~~

3 21 employer shall not disclose to any person not otherwise
3 22 employed by or acting as a representative of the employer any
3 23 reference to the test or its results, except as provided in
3 24 this section, when the employee leaves employment.

3 25 Sec. 6. Section 730.5, subsection 9, Code 1995, is amended
3 26 to read as follows:

3 27 9. This section may be enforced through a civil action.

3 28 a. A person who violates this section or who aids in the
3 29 violation of this section is liable to an aggrieved employee
3 30 or applicant for employment for affirmative relief including
3 31 reinstatement or hiring, with or without back pay, or any
3 32 other equitable relief as the court deems appropriate
3 33 including attorney fees and court costs. An action under this
3 34 section shall be commenced within two years of the date of the
3 35 alleged violation.

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

4 7 In an action brought under this subsection alleging that an
4 8 employer has required or requested a drug test in violation of
4 9 this section, the employer has the burden of proving that the
4 10 requirements of this section were met. An employer who proves
4 11 that the requirements were met may recover reasonable attorney
4 12 fees and court costs from the person bringing the action.

4 13 Sec. 7. Section 730.5, Code 1995, is amended by adding the
4 14 following new subsection:

4 15 NEW SUBSECTION. 12. a. Employers shall not have a legal
4 16 duty to request or require an employee or applicant for
4 17 employment to undergo drug testing as authorized in this sec-
4 18 tion. A cause of action shall not arise based upon the
4 19 failure of an employer to establish a program or policy on
4 20 substance abuse prevention, to implement drug or alcohol
4 21 testing, to request or require any employee or applicant for
4 22 employment to submit to a drug test, or to require drug
4 23 testing as permitted by this section.

4 24 b. Except as otherwise provided in paragraph "c", a cause
4 25 of action shall not arise against an employer for any of the
4 26 following:

4 27 (1) Actions taken by the employer in good faith based upon
4 28 the results of a drug test indicating the presence of alcohol
4 29 or a controlled substance. An employer does not act in good
4 30 faith if the employer knew or clearly should have known that
4 31 the drug test result indicating the presence of alcohol or a
4 32 controlled substance was in error and the employer ignores the
4 33 correct result in a willful and reckless manner.

4 34 (2) Actions taken, or not taken, by an employer based upon
4 35 a reported negative or inconclusive test result, whether the
5 1 test result is correct or incorrect.

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

5 6 (4) Failure to establish, or terminating or suspending, a
5 7 substance abuse prevention or drug testing program or policy.

5 8 c. A cause of action for defamation, libel, slander, or
5 9 damage to reputation shall not arise against an employer
5 10 establishing a program of drug testing in accordance with this
5 11 section unless all of the following apply:

5 12 (1) The employer discloses the test results to a person
5 13 other than an authorized employee, agent, or representative of
5 14 the employer, the tested employee or the tested applicant for
5 15 employment, or an authorized agent or representative of the
5 16 tested employee or applicant.

5 17 (2) The test results disclosed incorrectly indicate the
5 18 presence of alcohol or a controlled substance.

5 19 (3) The employer negligently discloses the results.

5 20 d. For the purposes of this section, the results of a drug
5 21 test conducted in compliance with this section are presumed to
5 22 be valid.

5 23

EXPLANATION

5 24 This bill makes changes in Iowa's law governing drug
5 25 testing of employees and applicants for employment.

5 26 The bill provides that an employer can require an employee
5 27 to submit to a drug test if the employer has a reasonable
5 28 belief that the employee is impaired on the job. Current law
5 29 requires a finding of probable cause.

5 30 The bill provides for drug testing as a part of a
5 31 preemployment application process. Current law allows
5 32 preemployment drug testing as a part of a preemployment
5 33 physical.

5 34 The bill further permits an employer to require an employee
5 35 who has been referred to substance abuse evaluation or who has
6 1 been given leave or other accommodation to obtain substance
6 2 abuse treatment to submit to random drug testing following
6 3 completion of substance abuse treatment without prior notice.

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

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

6 18 The bill provides that employers are not required to
6 19 conduct drug tests and that the employer is not liable for
6 20 failing to conduct a drug test otherwise authorized by this
6 21 bill.

6 22 The bill provides that an employer is not liable for good
6 23 faith actions taken based on a positive drug test, unless the
6 24 employer knew the result was incorrect and recklessly ignored
6 25 the correct result. The bill also provides that an employer
6 26 is not liable for failing to test for certain drugs or
6 27 alcohol, failing to establish, or terminating or suspending, a
6 28 drug testing policy, or taking any action based on a test
6 29 correctly or incorrectly indicating the absence of drugs or a
6 30 test result that is inconclusive.

6 31 The bill also provides that an employer is not liable for
6 32 an action based on libel, slander, or defamation unless
6 33 certain additional requirements are met, generally requiring a
6 34 finding that an incorrect "positive" test result was disclosed
6 35 negligently.

7 1 The bill also establishes that a drug test conducted in
7 2 accordance with the drug testing section is presumed valid.

7 3 A violation of any provision of the drug testing section
7 4 constitutes a simple misdemeanor.

7 5 LSB 2036HC 76

7 6 ec/jw/5.1

