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SPECIAL ORDER CALENDAR

February 27, 1997

HOUSE FILE 299
BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 105)

Passed House, Date ^(P.452) 2-27-97 Passed Senate, Date ^{P.452} 2-27-97
Vote: Ayes 54 Nays 44 Vote: Ayes 26 Nays 22
Approved March 17, 1998

A BILL FOR

1 An Act concerning drug and alcohol testing of private sector
2 employees and prospective employees and providing remedies and
3 an effective date.

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

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HF 299

1 Section 1. Section 730.5, Code 1997, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

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

7 a. "Alcohol" means ethanol, isopropanol, or methanol.

8 b. "Drug" means a substance considered unlawful under the
9 federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

10 c. "Employee" means a person in the service of an employer
11 and includes the employer, and any chief executive officer,
12 president, vice president, supervisor, manager, and officer of
13 the employer.

14 d. "Employer" means a person, firm, company, corporation,
15 labor organization, employment agency, or joint labor-
16 management committee, including any public utility or public
17 transportation entity, which has one or more full-time
18 employees employed in the same business, or in or about the
19 same establishment, under any contract of hire, express or
20 implied, oral or written, in this state. "Employer" does not
21 include the state, a political subdivision of the state,
22 including a city, county, or school district, the United
23 States, the United States postal service, or a Native-American
24 tribe.

25 e. "Good faith" means reasonable reliance on facts, or
26 that which is held out to be factual, without the intent to be
27 deceived, and without reckless, malicious, or negligent
28 disregard for the truth.

29 f. "Medical review officer" means a physician licensed to
30 practice medicine and surgery or osteopathic medicine and
31 surgery in any state of the United States, responsible for
32 receiving laboratory results generated by an employer's drug
33 testing program, who has knowledge of substance abuse
34 disorders and has appropriate medical training to interpret
35 and evaluate an individual's confirmed positive test result

1 together with the individual's medical history and any other
2 relevant biomedical information.

3 g. "Prospective employee" means a person who has made
4 application, whether written or oral, to an employer to become
5 an employee.

6 h. "Reasonable suspicion drug or alcohol testing" means
7 testing for the purposes of detecting drugs or alcohol which
8 is conducted on an individual based on a criterion or criteria
9 that would suggest to a reasonable person that the individual
10 may have engaged in illicit drug use or alcohol abuse, or has
11 a substance abuse problem.

12 i. "Safety-sensitive position" means a job wherein an
13 accident could cause loss of human life, serious bodily
14 injury, or significant property or environmental damage,
15 including a job with duties that include immediate supervision
16 of a person in a job that meets the requirement of this
17 paragraph.

18 j. "Sample" means such sample from the human body capable
19 of revealing the presence of alcohol or other drugs, or their
20 metabolites.

21 k. "Unannounced drug or alcohol testing" means testing for
22 the purposes of detecting drugs or alcohol which is conducted
23 on a periodic basis, without advance notice of the test, and
24 without individualized suspicion, and with a neutral and
25 objective selection process, operated by an entity independent
26 from the employer, in which each member of the employee
27 population subject to testing has an equal chance of selection
28 for initial testing.

29 2. TESTING OPTIONAL. This section does not require an
30 employer to conduct drug or alcohol testing and the
31 requirements of this section shall not be construed to
32 encourage, discourage, restrict, limit, prohibit, or require
33 such testing.

34 3. TESTING AS CONDITION OF EMPLOYMENT -- REQUIREMENTS. To
35 the extent provided in subsection 7, an employer may test

1 employees and prospective employees for the presence of drugs
2 or alcohol as a condition of continued employment or hiring.
3 An employer shall adhere to the requirements of this section
4 concerning the conduct of such testing and the use and
5 disposition of the results of such testing.

6 4. COLLECTION OF SAMPLES. In conducting drug or alcohol
7 testing, an employer may require the collection of samples
8 from its employees and prospective employees, and may require
9 presentation of reliable individual identification from the
10 person being tested to the person collecting the samples.
11 Collection of a sample shall be in conformance with the
12 requirements of this section. The employer may designate the
13 type of sample to be used for this testing.

14 5. SCHEDULING OF TESTS.

15 a. Drug or alcohol testing of employees conducted by an
16 employer shall normally occur during, or immediately before or
17 after, a regular work period. The time required for such
18 testing by an employer shall be deemed work time for the
19 purposes of compensation and benefits for employees.

20 b. An employer shall pay all actual costs for drug or
21 alcohol testing of employees and prospective employees
22 required by the employer.

23 c. An employer shall provide transportation or pay
24 reasonable transportation costs to employees if drug or
25 alcohol sample collection is conducted at a location other
26 than the employee's normal work site.

27 6. TESTING PROCEDURES. All sample collection and testing
28 for drugs or alcohol under this section shall be performed in
29 accordance with the following conditions:

30 a. The collection of samples shall be performed under
31 sanitary conditions and with regard for the privacy of the
32 individual from whom the specimen is being obtained and in a
33 manner reasonably calculated to preclude contamination or
34 substitution of the specimen.

35 b. Sample collections shall be documented, and the

1 procedure for documentation shall include the following:

2 (1) Samples shall be labeled so as to reasonably preclude
3 the possibility of misidentification of the person tested in
4 relation to the test result provided, and samples shall be
5 handled and tracked in a manner such that control and
6 accountability are maintained from initial collection to each
7 stage in handling, testing, and storage, through final
8 disposition.

9 (2) An employee or prospective employee shall be provided
10 an opportunity to provide any information which may be
11 considered relevant to the test, including identification of
12 prescription or nonprescription drugs currently or recently
13 used, or other relevant medical information.

14 c. Sample collection, storage, and transportation to the
15 place of testing shall be performed so as to reasonably
16 preclude the possibility of sample contamination,
17 adulteration, or misidentification.

18 d. Confirmatory drug testing shall be conducted at a
19 laboratory certified by the United States department of health
20 and human services' substance abuse and mental health services
21 administration, approved by the United States department of
22 health and human services under the federal Clinical
23 Laboratory Improvement Act, or approved under rules adopted by
24 the Iowa department of public health.

25 e. Drug or alcohol testing shall include confirmation of
26 any initial positive test results. For drug testing,
27 confirmation shall be by use of a different chemical process
28 than was used in the initial drug screen. The confirmatory
29 drug test shall be a chromatographic technique such as gas
30 chromatography or mass spectrometry, or another comparably
31 reliable analytical method. An employer may take adverse
32 employment action, including refusal to hire a prospective
33 employee, based on a confirmed positive drug or alcohol test.

34 f. A medical review officer shall, prior to the results
35 being reported to an employer, review and interpret any

1 confirmed positive test results, including both quantitative
2 and qualitative test results, to ensure that the chain of
3 custody is complete and sufficient on its face and that any
4 information provided by the individual pursuant to paragraph
5 "b", subparagraph (2), is considered.

6 7. DRUG OR ALCOHOL TESTING. Employers may conduct drug or
7 alcohol testing as provided in this subsection:

8 a. Employers may conduct unannounced drug or alcohol
9 testing of the employee population at large.

10 b. Employers may conduct drug or alcohol testing of
11 employees in a safety-sensitive position.

12 c. Employers may conduct drug or alcohol testing of
13 employees during, and after completion of, drug or alcohol
14 rehabilitation.

15 d. Employers may conduct reasonable suspicion drug or
16 alcohol testing if there is reasonable suspicion to believe,
17 based on the employee's performance, behavior, attendance, or
18 other observable criterion or criteria, that the employee has
19 engaged in illicit drug use, or may be under the influence of
20 alcohol, or may be otherwise impaired by drugs or alcohol, or
21 if an employer believes, in good faith, that the employee may
22 have violated the employer's written substance abuse
23 prevention policy.

24 e. Employers may conduct drug or alcohol testing of
25 prospective employees.

26 f. Employers may conduct drug or alcohol testing as
27 required by federal law or regulation.

28 g. Employers may conduct drug or alcohol testing in
29 investigating accidents in the workplace.

30 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

31 a. Drug or alcohol testing or retesting by an employer
32 shall be carried out within the terms of a written policy
33 which has been provided to every employee subject to testing,
34 and is available for review by employees and prospective
35 employees.

1 b. Employers shall comply with the following requirements
2 in order to conduct drug or alcohol testing under this
3 section:

4 (1) If an employer has an employee assistance program, the
5 employer must inform the employee of the benefits and services
6 of the employee assistance program. An employer shall post
7 notice of the employee assistance program in conspicuous
8 places and explore alternative routine and reinforcing means
9 of publicizing such services. In addition, the employer must
10 provide the employee with notice of the policies and
11 procedures regarding access to and utilization of the program.

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

26 c. Within the terms of the written policy, an employer may
27 require the collection and testing of samples for, among other
28 legitimate drug or alcohol abuse prevention and treatment
29 purposes, any of the following:

30 (1) Deterrence and detection of possible illicit drug use,
31 possession, sale, conveyance, distribution, or manufacture of
32 drugs, intoxicants, or controlled substances in any amount or
33 in any manner, whether or not the employee is at work, or
34 deterrence and detection of possible abuse of alcohol or
35 prescription drugs.

1 (2) Investigation of possible individual employee
2 impairment.

3 (3) Investigation of accidents in the workplace.

4 (4) Maintenance of safety for employees, customers,
5 clients, or the general public.

6 (5) Maintenance of productivity, quality of products or
7 services, or security of property or information.

8 d. An employee or prospective employee whose drug or
9 alcohol test results are confirmed as positive in accordance
10 with this section shall not, by virtue of those results alone,
11 be considered as a person with a disability for purposes of
12 any state or local law or regulation.

13 e. If the written policy provides for alcohol testing, the
14 employer shall establish in the written policy a standard for
15 alcohol concentration which shall be deemed to violate the
16 policy. Except for employees in safety sensitive positions,
17 the standard for alcohol concentration shall not be less than
18 .02, expressed in terms of grams of alcohol per two hundred
19 ten liters of breath, or its equivalent.

20 9. DISCIPLINARY PROCEDURES. Upon receipt of a confirmed
21 positive drug or alcohol test result which indicates a
22 violation of the employer's written policy, or upon the
23 refusal of an employee or prospective employee to provide a
24 testing sample, an employer may use that test result or test
25 refusal as a valid basis for disciplinary or rehabilitative
26 actions consistent with the employer's written policy, which
27 may include, among other actions, the following:

28 a. A requirement that the employee enroll in an employer-
29 provided or approved rehabilitation, treatment, or counseling
30 program, which may include additional drug or alcohol testing,
31 participation in and successful completion of which may be a
32 condition of continued employment, and the costs of which may
33 or may not be covered by the employer's health plan or
34 policies.

35 b. Suspension of the employee, with or without pay, for a

1 designated period of time.

2 c. Termination of employment.

3 d. Refusal to hire a prospective employee.

4 e. Other adverse employment action in conformance with the
5 employer's written policy and procedures, including any
6 relevant collective bargaining agreement provisions.

7 10. EMPLOYER IMMUNITY. A cause of action shall not arise
8 against an employer who has established a policy and initiated
9 a testing program in accordance with the testing and policy
10 safeguards provided for under this section, for any of the
11 following:

12 a. Testing or taking action based on the results of a
13 positive drug or alcohol test result, indicating the presence
14 of drugs or alcohol, in good faith, or the refusal of an
15 employee or prospective employee to submit to a drug or
16 alcohol test.

17 b. Failure to test for drugs or alcohol, or failure to
18 test for a specific drug or controlled substance.

19 c. Failure to test for, or if tested for, failure to
20 detect, any specific drug or other controlled substance.

21 d. Termination or suspension of any substance abuse
22 prevention or testing program or policy.

23 e. Any action taken related to a false negative drug or
24 alcohol test result.

25 11. EMPLOYER LIABILITY -- FALSE POSITIVE TEST RESULTS.

26 a. Except as otherwise provided in paragraph "b", a cause
27 of action shall not arise against an employer who has
28 established a program of drug or alcohol testing in accordance
29 with this section, unless all of the following conditions
30 exist:

31 (1) The employer's action was based on a false positive
32 test result.

33 (2) The employer knew or clearly should have known that
34 the test result was in error and ignored the correct test
35 result because of reckless, malicious, or negligent disregard

1 for the truth, or the willful intent to deceive or to be
2 deceived.

3 b. A cause of action for defamation, libel, slander, or
4 damage to reputation shall not arise against an employer
5 establishing a program of drug or alcohol testing in
6 accordance with this section unless all of the following
7 apply:

8 (1) The employer discloses the test results to a person
9 other than the employer, an authorized employee, agent, or
10 representative of the employer, the tested employee or the
11 tested applicant for employment, or an authorized agent or
12 representative of the tested employee or applicant.

13 (2) The test results disclosed incorrectly indicate the
14 presence of alcohol or drugs.

15 (3) The employer negligently discloses the results.

16 c. In any cause of action based upon a false positive test
17 result, all of the following conditions apply:

18 (1) The results of a drug or alcohol test conducted in
19 compliance with this section are presumed to be valid.

20 (2) An employer shall not be liable for monetary damages
21 if the employer's reliance on the false positive test result
22 was reasonable and in good faith.

23 12. CONFIDENTIALITY OF RESULTS - EXCEPTION.

24 a. Except as provided in paragraph "b", all communications
25 received by an employer relevant to employee or prospective
26 employee drug or alcohol test results, or otherwise received
27 through the employer's drug or alcohol testing program, are
28 confidential communications and shall not be used or received
29 in evidence, obtained in discovery, or disclosed in any public
30 or private proceeding, except in a proceeding related to an
31 action taken by an employer under this section or by an
32 employee under subsection 11.

33 b. An employee who is the subject of a drug or alcohol
34 test conducted under this section pursuant to an employer's
35 written policy and for whom a confirmed positive test result

1 is reported shall, upon written request, have access to any
2 records relating to the employee's drug or alcohol test,
3 including records of the laboratory where the testing was
4 conducted and any records relating to the results of any
5 relevant certification or review by a medical review officer.

6 13. CIVIL PENALTY. This section may be enforced through a
7 civil action.

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

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

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

24 Sec. 2. EFFECTIVE DATE. This Act takes effect on the
25 thirtieth day following enactment.

26 EXPLANATION

27 This bill makes changes to Iowa's law governing drug and
28 alcohol testing of employees and prospective employees by
29 repealing current law and replacing it with a new Code
30 section.

31 The bill provides that the drug and alcohol testing
32 requirements established by the bill apply only to private
33 sector employers and excludes the state and its political
34 subdivisions, as well as Native-American tribes and the
35 federal government, from the definition of employer.

1 The bill governs the procedures for conducting a drug or
2 alcohol test and provides for the collection of samples, the
3 scheduling of tests, and the conduct of the drug or alcohol
4 test. The bill provides that the results of drug testing
5 shall be confirmed by a laboratory certified by the United
6 States department of health and human services under federal
7 law, by the department's substance abuse and mental health
8 services administration, or by the Iowa department of public
9 health. The bill also provides that any positive drug or
10 alcohol test shall be confirmed by a second test. The bill
11 also requires an employer to establish a written policy,
12 available to employees and prospective employees, governing
13 drug or alcohol testing. The written policy shall provide, if
14 applicable, a minimum level for a positive alcohol test result
15 and information about the employer's employee assistance
16 program, if applicable, or community services concerning
17 alcohol and drug abuse.

18 The bill allows unannounced drug or alcohol testing, and
19 testing for prospective employees, employees in safety-
20 sensitive positions, and employees both during and after drug
21 or alcohol rehabilitation. The bill also permits drug or
22 alcohol testing if there exists a reasonable suspicion that
23 the employee has engaged in illicit drug use or alcohol abuse,
24 has a substance abuse problem, or has violated the employer's
25 written substance abuse prevention policy. The bill allows
26 testing as provided by federal law and in response to work
27 accidents.

28 The bill also allows testing of samples collected for
29 deterrence and detection of possible illicit drug use or abuse
30 of alcohol or prescription drugs, the investigation of
31 possible individual employee impairment, the investigation of
32 workplace accidents, the maintenance of employee and public
33 safety, and the maintenance of productivity or security of
34 property or information of the employer.

35 The bill provides that an employer, as a result of a

1 positive drug or alcohol test, can take several employment
2 actions consistent with the employer's written policy. The
3 employer can require the employee to enroll in rehabilitation
4 or counseling, suspend the employee with or without pay,
5 terminate the employee, refuse to hire a prospective employee,
6 or take any other adverse employment action based on the
7 employer's written policy, including any collective bargaining
8 agreement. The bill does not require that the cost of any
9 rehabilitation services be covered by an employer's health
10 plan.

11 The bill also makes provisions governing the liability of
12 an employer. The bill provides that an employer shall not be
13 liable for actions taken in good faith based on a positive
14 drug or alcohol test, for failing to test for drugs and
15 alcohol or for failing to detect any specific drug or other
16 controlled substance or medical condition, for terminating or
17 suspending a drug and alcohol testing program or policy, or
18 for failing to take action relating to a false negative test
19 result. The bill provides that an employer shall be liable
20 for actions taken based upon a false positive test only if the
21 employer knew or clearly should have known the test was
22 incorrect and ignored the correct result because of a reckless
23 disregard for the truth. In addition, the bill also provides
24 that an employer is not liable for an action based on libel,
25 slander, or defamation unless certain additional requirements
26 are met, generally requiring a finding that an incorrect
27 positive test result was disclosed negligently. The bill
28 establishes that a drug or alcohol test conducted in
29 accordance with the bill is presumed valid and that an
30 employer is not liable for monetary damages if the employer's
31 reliance on a false positive test was reasonable and in good
32 faith. The bill provides, however, that if a person violates
33 a provision of this new Code section, that person is liable to
34 an aggrieved employee or prospective employee through a civil
35 action for damages or injunctive relief, as applicable.

1 The bill also provides for the confidentiality of test
2 results. However, the bill allows a tested employee to get
3 copies of any records of the employee's drug or alcohol test
4 if the test result was positive.

5 The bill takes effect 30 days after enactment.

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HOUSE FILE 299

H-1074

1 Amend House File 299 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 1997, is amended to read as follows:

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

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

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

15 Sec. 2. Section 730.5, subsection 2, Code 1997, is
16 amended to read as follows:

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

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

43 Sec. 3. Section 730.5, subsection 3, paragraph a,
44 Code 1997, is amended to read as follows:

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

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1 conditions are met:

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

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

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

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

20 Sec. 4. Section 730.5, subsection 3, paragraph c,
21 Code 1997, is amended to read as follows:

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

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

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

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

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

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

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

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

12 Sec. 5. Section 730.5, subsection 7, Code 1997, is
13 amended to read as follows:

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

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

29 If the test sample withdrawn from the applicant is
30 analyzed by the state hygienic laboratory or a
31 laboratory certified by, and at the request of, the
32 state hygienic laboratory, the cost of the initial
33 test of the sample shall not be paid for by the
34 employer but shall be paid for by the state.

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

39 c. For a preemployment drug test not conducted as
40 part of a preemployment physical, the employer shall
41 provide that any sample taken for analysis be taken
42 under the direct supervision of a person licensed
43 under chapter 148, 148C, 150A, or 152, and that the
44 sample shall be analyzed by the state hygienic
45 laboratory or a laboratory certified by, and at the
46 request of, the state hygienic laboratory.

47 d. An employer may require an employee, as a
48 condition of employment, to undergo testing for
49 illegal use of drugs if that employee has been
50 referred by the employer for substance abuse

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1 evaluation pursuant to subsection 3, paragraph "f",
2 and treatment, if recommended by the evaluation. The
3 employee may be required to undergo testing for
4 illegal use of drugs without prior notice, but in no
5 case shall more than three tests be conducted in the
6 eighteen-month period following the employee's
7 completion of substance abuse treatment if the
8 treatment was recommended by the evaluation. A drug
9 test shall not be required of an employee by an
10 employer during drug treatment of the employee, if
11 such testing would duplicate testing of the employee
12 conducted in the course of treatment and the employee
13 has waived confidentiality as to the employer of the
14 results of such testing. An employer shall not
15 require an employee to submit to testing for illegal
16 use of drugs under this paragraph if more than
17 eighteen months have elapsed since the employee
18 successfully completed drug treatment and the employee
19 has not had a drug test conducted indicating the
20 presence of alcohol or an illegal controlled substance
21 during that eighteen-month period.

22 e. If a preemployment drug test is conducted on an
23 applicant who does not reside in this state, the
24 sample taken for analysis shall be maintained under
25 the supervision of a comparable licensed person in the
26 state in which the test is conducted and the drug test
27 shall be performed by a laboratory certified by United
28 States department of health and human services.

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

34 Sec. 6. Section 730.5, subsection 9, paragraph a,
35 Code 1997, is amended to read as follows:

36 a. A person who violates this section or who aids
37 in the violation of this section is liable to an
38 aggrieved employee or applicant for employment for
39 affirmative relief including reinstatement or hiring,
40 with or without back pay, liquidated damages in the
41 amount of one hundred dollars for each violation, or
42 any other equitable relief as the court deems
43 appropriate including attorney fees and court costs.

44 Sec. 7. Section 730.5, subsection 11, Code 1997,
45 is amended by striking the subsection.

46 Sec. 8. Section 730.5, Code 1997, is amended by
47 adding the following new subsections:

48 NEW SUBSECTION. 12. An employer who conducts a
49 drug test pursuant to this section shall, for each
50 fiscal year beginning on or after July 1, 1997, file

H-1074

-4-

H-1074

Page 5

1 an annual report with the division of labor services
2 of the department of employment services, on forms
3 provided by the division, documenting separately the
4 following information for all preemployment drug
5 tests, regularly scheduled drug tests, and drug tests
6 conducted pursuant to a finding of probable cause:
7 a. The number of drug tests conducted in each
8 category.
9 b. The results of drug tests conducted in each
10 category.
11 c. The number of personal injuries, and the dollar
12 loss for property damage, arising out of the use of
13 alcohol and illegal controlled substances by
14 employees.
15 d. The cumulative direct costs of drug tests in
16 each category.
17 e. The cost of substance abuse evaluation and
18 treatment for employees in each category.
19 NEW SUBSECTION. 13. Any court ordered drug test
20 shall not in any manner affect the rights of an
21 employer to conduct a drug test under this section."
22 2. Title page, line 1, by striking the words
23 "private sector" and inserting the following:
24 "certain".
25 3. Title page, by striking lines 2 through 3 and
26 inserting the following: "employees and applicants
27 for employment, providing for employer reporting of
28 testing, and making remedies applicable."
By MURPHY of Dubuque O'BRIEN of Boone
BELL of Jasper RICHARDSON of Warren
CONNORS of Polk SCHERRMAN of Dubuque
DOTZLER of Black Hawk SHOULTZ of Black Hawk
FALCK of Fayette TAYLOR of Linn
KINZER of Scott WHITEAD of Woodbury
LARKIN of Lee WITT of Black Hawk

H-1074 FILED FEBRUARY 20, 1997

lost 2/27/97 (p. 436)

HOUSE FILE 299

H-1083

- 1 Amend House File 299 as follows:
- 2 1. By striking page 8, line 7, through page 9,
- 3 line 22.
- 4 2. Page 9, line 32, by striking the words
- 5 "subsection 11" and inserting the following: "this
- 6 section".
- 7 3. By renumbering as necessary.

By CONNORS of Polk

H-1083 FILED FEBRUARY 24, 1997

Lost 2/27/97 (p.450)

HOUSE FILE 299

H-1084

- 1 Amend House File 299 as follows:
- 2 1. Page 5, by inserting after line 5 the
- 3 following:
- 4 "g. In conducting drug or alcohol testing pursuant
- 5 to this section, the employer shall ensure to the
- 6 extent feasible that the testing only measure, and the
- 7 records concerning the testing only show or make use
- 8 of information regarding, alcohol or drugs in the
- 9 body."
- 10 2. By renumbering and relettering as necessary.

By TAYLOR of Linn

H-1084 FILED FEBRUARY 24, 1997

Adopted 2/27/97 (p.446)

HOUSE FILE 299

H-1085

- 1 Amend House File 299 as follows:
- 2 1. Page 2, line 26, by striking the word "each"
- 3 and inserting the following: "every".
- 4 2. Page 2, lines 27 and 28, by striking the words
- 5 "has an equal chance of selection for initial testing"
- 6 and inserting the following: "shall be tested at the
- 7 same time".
- 8 3. Page 5, line 9, by inserting after the word
- 9 "large." the following: "For purposes of this
- 10 paragraph, the population at large means employees in
- 11 a building or group of buildings located at the same
- 12 site or at a nearby site."

By WARNSTADT of Woodbury

H-1085 FILED FEBRUARY 24, 1997

Lost 2/27/97 (p.443)

HOUSE FILE 299

H-1086

- 1 Amend House File 299 as follows:
- 2 1. Page 7, by striking line 16 and inserting the
- 3 following: "policy."
- 4 2. Page 7, line 17, by striking the word "the"
- 5 and inserting the following: "The".

By MORELAND of Wapello

H-1086 FILED FEBRUARY 24, 1997

Adopted 2/27/97 (p.447)

HOUSE FILE 299

H-1096

- 1 Amend House File 299 as follows:
- 2 1. Page 1, by inserting before line 1 the
- 3 following:
- 4 "Section 1. NEW SECTION. 2.40A GENERAL ASSEMBLY
- 5 -- DRUG TESTING.
- 6 On the first session day during every week the
- 7 general assembly is in session, the chief clerk of the
- 8 house and the secretary of the senate shall each
- 9 select, by random drawing, the names of ten members of
- 10 their respective chambers for purposes of submission
- 11 to a drug or alcohol test. The members selected shall
- 12 submit to a drug or alcohol test conducted pursuant to
- 13 the requirements of section 730.5, subsections 4 and
- 14 6. The results of the drug or alcohol test shall be a
- 15 public record."
- 16 2. Title page, line 2, by striking the words
- 17 "employees and prospective" and inserting the
- 18 following: "employees, public officials, and
- 19 prospective".
- 20 3. By renumbering as necessary.

By FALLON of Polk

H-1096 FILED FEBRUARY 24, 1997

(P.437) Pat Simone (P.437)

HOUSE FILE 299

H-1099

- 1 Amend House File 299 as follows:
- 2 1. Page 2, by striking lines 12 through 17.
- 3 2. Page 2, by striking lines 21 through 28.
- 4 3. Page 5, by striking lines 8 through 11.
- 5 4. Page 5, line 14, by inserting after the word
- 6 "rehabilitation." the following: "However, in no case
- 7 shall more than three drug or alcohol tests be
- 8 conducted in the eighteen-month period following the
- 9 employee's completion of drug or alcohol
- 10 rehabilitation."
- 11 5. Page 7, by striking line 16 and inserting the
- 12 following: "policy."
- 13 6. Page 7, line 17, by striking the words "the
- 14 standard" and inserting the following: "The
- 15 standard".
- 16 7. By renumbering and relettering as necessary.

By FALLON of Polk

H-1099 FILED FEBRUARY 24, 1997

Doct 2/24/97 (P.442)

HOUSE FILE 299

H-1090

- 1 Amend House File 299 as follows:
- 2 1. Page 2, line 15, by striking the word
- 3 "immediate".

By O'BRIEN of Boone

H-1090 FILED FEBRUARY 24, 1997

Lost 2/27/97 (p.441)

HOUSE FILE 299

H-1094

- 1 Amend House File 299 as follows:
- 2 1. Page 6, line 30, by striking the word
- 3 "possible".
- 4 2. Page 6, line 34, by striking the word
- 5 "possible".
- 6 3. Page 7, line 1, by striking the word
- 7 "possible".

By O'BRIEN of Boone

H-1094 FILED FEBRUARY 24, 1997

adopted 2/27/97 (p.447)

HOUSE FILE 299

H-1095

- 1 Amend House File 299 as follows:
- 2 1. Page 1, by inserting before line 1 the
- 3 following:
- 4 "Section 1. Section 2.43, Code 1997, is amended by
- 5 adding the following new unnumbered paragraph:
- 6 NEW UNNUMBERED PARAGRAPH. The pastor of the day
- 7 for the general assembly shall submit to a drug or
- 8 alcohol test conducted pursuant to the requirements of
- 9 section 730.5, subsections 4 and 6, on the date the
- 10 pastor is the pastor of the day. Failure to submit to
- 11 a drug or alcohol test as required by this section or
- 12 a test indicating the presence of drugs or alcohol
- 13 shall result in the pastor of the day being denied
- 14 compensation for being pastor of the day. The results
- 15 of the drug or alcohol test shall be a public record."
- 16 2. Title page, line 2, by striking the words
- 17 "employees and prospective" and inserting the
- 18 following: "employees, pastors, and prospective".
- 19 3. By renumbering as necessary.

By FALLON of Polk

H-1095 FILED FEBRUARY 24, 1997

Lost 2/27/97 (p.436)

HOUSE FILE 299

H-1102

1 Amend House File 299 as follows:

2 1. Page 5, line 9, by inserting after the word
3 "large" the following: "or of employees in the
4 population at large who are in a safety-sensitive
5 position".

6 2. Page 5, by striking lines 10 through 11.

7 3. By renumbering and relettering as necessary.

By MORELAND of Wapello

H-1102 FILED FEBRUARY 24, 1997

adopted 2/27/97 (p. 446)

HOUSE FILE 299

H-1103

1 Amend House File 299 as follows:

2 1. Page 2, line 6, by striking the words
3 "Reasonable suspicion" and inserting the following:
4 "Probable cause".

5 2. Page 2, by striking lines 8 through 11 and
6 inserting the following: "is conducted when the
7 employer has probable cause to believe that an
8 employee's faculties are impaired on the job. For
9 purposes of this paragraph, an employer has probable
10 cause to believe that an employee's faculties are
11 impaired on the job if the employer is investigating
12 an accident in the workplace and all of the following
13 conditions are met:

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

18 (2) The employer has reasonable grounds to believe
19 that the employee's faculties were impaired and that
20 the impairment was likely a substantial factor in
21 causing the accident.

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

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

32 3. Page 5, by striking lines 15 through 23 and
33 inserting the following:

34 "d. Employers may conduct probable cause drug or
35 alcohol testing."

36 4. Page 6, line 26, by inserting after the word
37 "policy" the following: "and subject to the
38 requirements of subsection 7".

By DOTZLER of Black Hawk

H-1103 FILED FEBRUARY 24, 1997

lost 2/27/97 (p. 446)

HOUSE FILE 299

H-1100

- 1 Amend House File 299 as follows:
2 1. Page 10, by inserting after line 23 the
3 following:
4 "14. REPORTS. An employer who conducts a drug
5 test pursuant to this section shall, for each fiscal
6 year beginning on or after July 1, 1997, file an
7 annual report with the division of labor services of
8 the department of workforce development, on forms
9 provided by the division, documenting separately for
10 each category of test the following information for
11 all drug or alcohol tests conducted pursuant to
12 subsection 7, paragraphs "a" through "g":
13 a. The number of drug or alcohol tests conducted
14 in each category.
15 b. The results of drug or alcohol tests conducted
16 in each category.
17 c. The number of personal injuries, and the dollar
18 loss for property damage, arising out of the use of
19 drugs or alcohol by employees.
20 d. The cumulative direct costs of drug or alcohol
21 tests in each category.
22 e. The cost of substance abuse evaluation and
23 treatment for employees in each category."
24 2. By renumbering as necessary.

By HUSER of Polk

H-1100 FILED FEBRUARY 24, 1997

Lost 2/27/97 (P.452)

HOUSE FILE 299

H-1101

- 1 Amend House File 299 as follows:
2 1. Page 3, by inserting after line 34 the
3 following:
4 "____. Sample collections shall be obtained so that
5 a portion of the sample shall be retained and stored
6 by the employer, sufficient in quantity to conduct
7 drug or alcohol testing as well as confirmatory
8 testing, and made available to an employee or
9 prospective employee if a confirmed positive drug or
10 alcohol test is reported to the employer. The sample
11 retained and stored by the employer pursuant to this
12 paragraph shall be destroyed upon receipt of a
13 confirmed negative drug or alcohol test result or if
14 the employee or prospective employee so requests in
15 writing."
16 2. By renumbering as necessary.

By KREIMAN of Davis

H-1101 FILED FEBRUARY 24, 1997

*a depted
2-27-97
(P.445)*

HOUSE FILE 299

H-1108

- 1 Amend House File 299 as follows:
 - 2 1. Page 2, line 25, by striking the words
 - 3 "process, operated" and inserting the following:
 - 4 "process operated".
 - 5 2. Page 9, line 32, by striking the word and
 - 6 figure "subsection 11" and inserting the following:
 - 7 "this section".
 - 8 3. Page 10, line 6, by striking the word
 - 9 "PENALTY" and inserting the following: "REMEDIES".
- By SUKUP of Franklin

H-1108 FILED FEBRUARY 24, 1997

2/27/97 adopted (P. 442)

HOUSE FILE 299

H-1109

- 1 Amend House File 299 as follows:
 - 2 1. Page 6, line 1, by inserting after the word
 - 3 "shall" the following: "establish an awareness
 - 4 program to inform employees of the dangers of drug and
 - 5 alcohol use in the workplace and".
 - 6 2. Page 9, line 11, by inserting after the word
 - 7 "employment," the following: "a substance abuse
 - 8 treatment program or employee assistance program,".
- By NELSON of Marshall

H-1109 FILED FEBRUARY 24, 1997

adopted 2-27-97 (P. 447)

HOUSE FILE 299

H-1082

- 1 Amend House File 299 as follows:
 - 2 1. Page 7, by inserting after line 19 the
 - 3 following:
 - 4 "f. The written policy shall provide that no
 - 5 disciplinary or rehabilitative actions may occur until
 - 6 the employee has been afforded a reasonable
 - 7 opportunity to rebut or explain the results of the
 - 8 drug or alcohol test, and been given an opportunity to
 - 9 appeal an adverse determination of the employer to a
 - 10 review board consisting of employees and members of
 - 11 management of the employer."
 - 12 2. By renumbering and relettering as necessary.
- By CONNORS of Polk

H-1082 FILED FEBRUARY 24, 1997

Withdrawn 2-27-97 (P. 449)

HOUSE FILE 299

H-1118

- 1 Amend the amendment, H-1082, to House File 299 as
 - 2 follows:
 - 3 1. Page 1, by striking lines 4 through 11 and
 - 4 inserting the following:
 - 5 ""f. The written policy shall provide that an
 - 6 employee shall have five days after receipt of a
 - 7 positive test result to rebut or explain the result.""
- By SUKUP of Franklin

H-1118 FILED FEBRUARY 25, 1997

adopted 2/27/97 (P. 449)

HOUSE FILE 299

H-1104

- 1 Amend House File 299 as follows:
- 2 1. Page 4, line 18, by striking the word
- 3 "Confirmatory" and inserting the following: "All".

By TAYLOR of Linn

H-1104 FILED FEBRUARY 24, 1997

*adopted 2-27-97
(p.445)*

HOUSE FILE 299

H-1105

- 1 Amend House File 299 as follows:
- 2 1. Page 3, line 2, by inserting after the word
- 3 "hiring" the following: ", consistent with the
- 4 requirements of this section".
- 5 2. By striking page 7, line 20, through page 8,
- 6 line 6, and inserting the following:
- 7 "9. REHABILITATION AND DISCIPLINE. The employer
- 8 shall provide substance abuse evaluation, and
- 9 treatment if recommended by the evaluation, with costs
- 10 apportioned as provided under the employee benefit
- 11 plan or at employer expense, if there is no employee
- 12 benefit plan, the first time an employee's drug or
- 13 alcohol test indicates the presence of drugs or
- 14 alcohol in violation of the employer's written policy.
- 15 An employer shall not take disciplinary action against
- 16 an employee due to the employee's drug or alcohol
- 17 involvement the first time the employee's drug or
- 18 alcohol test indicates the presence of drugs or
- 19 alcohol if the employee undergoes a substance abuse
- 20 evaluation, and if the employee successfully completes
- 21 substance abuse treatment if treatment is recommended
- 22 by the evaluation. However, if an employee fails to
- 23 undergo a substance abuse evaluation when the
- 24 employee's drug or alcohol test indicates the presence
- 25 of drugs or alcohol, or if an employee fails to
- 26 successfully complete substance abuse treatment when
- 27 recommended by an evaluation, the employee may be
- 28 disciplined up to and including discharge. The
- 29 substance abuse evaluation and treatment provided by
- 30 the employer shall take place under a program approved
- 31 by the Iowa department of public health or accredited
- 32 by the joint commission on the accreditation of health
- 33 care organizations. This subsection shall not apply
- 34 to a drug or alcohol test of a prospective employee."

By DOTZLER of Black Hawk

H-1105 FILED FEBRUARY 24, 1997

*Lost
2/27/97
(p.444)*

H-1119

- 1 Amend the amendment, H-1103, to House File 299 as
 2 follows:
 3 1. Page 1, by inserting after line 31 the
 4 following:
 5 "____. Page 5, by striking lines 8 through 11."
 6 2. Page 1, by inserting after line 38 the
 7 following:
 8 "____. By renumbering and relettering as
 9 necessary."

By DOTZLER of Black Hawk

H-1119 FILED FEBRUARY 25, 1997

Adopted 2/27/97 (P.439)

HOUSE FILE 299

H-1120

- 1 Amend the amendment, H-1102, to House File 299 as
 2 follows:
 3 1. Page 1, by striking lines 2 through 6 and
 4 inserting the following:
 5 "____. Page 5, line 10, by inserting after the
 6 word "conduct" the following: "unannounced"."

By SUKUP of Franklin

H-1120 FILED FEBRUARY 25, 1997

Adopted 2-27-97 (P.446)

HOUSE FILE 299

H-1121

- 1 Amend the amendment, H-1101, to House File 299 as
 2 follows:
 3 1. Page 1, line 6, by striking the word
 4 "employer" and inserting the following: "laboratory
 5 conducting the confirmatory test".
 6 2. Page 1, by striking line 7 and inserting the
 7 following: "a second confirmatory drug or alcohol".
 8 3. Page 1, line 8, by striking the word "testing"
 9 and inserting the following: "test".
 10 4. Page 1, line 10, by inserting after the word
 11 "employer." the following: "If the employee or
 12 prospective employee requests a second confirmatory
 13 test within five days after receipt of a positive test
 14 result, the employee or prospective employee shall, at
 15 the employee's expense, make arrangements for a second
 16 confirmatory test consistent with the requirements of
 17 subsection 6, paragraphs "b" through "f"."
 18 5. Page 1, line 11, by striking the word
 19 "employer" and inserting the following: "laboratory
 20 conducting the confirmatory test".

By SUKUP of Franklin

H-1121 FILED FEBRUARY 25, 1997

Adopted 2/27/97 (P.445)

HOUSE FILE 299

H-1122

- 1 Amend the amendment, H-1082, to House File 299 as
 2 follows:
 3 1. Page 1, line 10, by inserting after the word
 4 "employees" and inserting the following: "equal
 5 numbers of employees appointed or elected by an
 6 employee organization, if one exists,".

By CONNORS of Polk

H-1122 FILED FEBRUARY 25, 1997

Adopted 2/27/97 (P.448) - Now Ruled out of Order (P.449)

HOUSE FILE 299

H-1126

- 1 Amend House File 299 as follows:
 - 2 1. Page 1, by striking lines 15 through 17 and
 - 3 inserting the following: "labor organization, or
 - 4 employment agency, which has one or more full-time".
- By SIEGRIST of Pottawattamie
SCHRADER of Marion

H-1126 FILED FEBRUARY 26, 1997

Adopted 2-27-97 (P.437)

HOUSE FILE 299

H-1127

- 1 Amend House File 299 as follows:
 - 2 1. Page 1, lines 15 and 16, by striking the words
 - 3 "employment agency, or joint labor-management
 - 4 committee,".
 - 5 2. Page 2, line 5, by inserting after the word
 - 6 "employee" the following: "and who has received a
 - 7 bona fide offer of employment from the employer".
- By SCHRADER of Marion

H-1127 FILED FEBRUARY 27, 1997

DIV. A - WITHDRAWN DIV. B - LOST

(P.437)
(P.438)

HOUSE FILE 299

H-1129

- 1 Amend the amendment, H-1109, to House File 299 as
 - 2 follows:
 - 3 1. Page 1, line 7, by striking the word "a" and
 - 4 inserting the following: "an authorized".
- By SIEGRIST of Pottawattamie
SCHRADER of Marion

H-1129 FILED FEBRUARY 27, 1997

ADOPTED

(P.447)

S-3/5/97 Judson
S-4/2/97 amf/d.o. Pass w/S. 3349
S-4/10/97 Unfinished Business Calendar

HOUSE FILE **299**
BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS

2/18/98 Motion to R/C by Johnson
2/25/98 Motion to R/C With draw
(SUCCESSOR TO HSB 105)

(As Amended and Passed by the House, February 27, 1997)

(P. 344)
Passed House, Date 2/18/98
Vote: Ayes 54 Nays 44

(P. 452)
Passed Senate, Date 2/27/97
Vote: Ayes 26 Nays 22

(P. 524)
Passed 3/4/98
Vote 53-46
Approved March 17, 1998

A BILL FOR

1 An Act concerning drug and alcohol testing of private sector
2 employees and prospective employees and providing remedies and
3 an effective date.

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

Deleted Language *

House Amendments _____

- 5
- 6
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1 Section 1. Section 730.5, Code 1997, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

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

7 a. "Alcohol" means ethanol, isopropanol, or methanol.

8 b. "Drug" means a substance considered unlawful under the
9 federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

10 c. "Employee" means a person in the service of an employer
11 and includes the employer, and any chief executive officer,
12 president, vice president, supervisor, manager, and officer of
13 the employer.

14 d. "Employer" means a person, firm, company, corporation,
15 labor organization, or employment agency, which has one or
16 more full-time employees employed in the same business, or in
17 or about the same establishment, under any contract of hire,
18 express or implied, oral or written, in this state.

19 "Employer" does not include the state, a political subdivision
20 of the state, including a city, county, or school district,
21 the United States, the United States postal service, or a
22 Native-American tribe.

23 e. "Good faith" means reasonable reliance on facts, or
24 that which is held out to be factual, without the intent to be
25 deceived, and without reckless, malicious, or negligent
26 disregard for the truth.

27 f. "Medical review officer" means a physician licensed to
28 practice medicine and surgery or osteopathic medicine and
29 surgery in any state of the United States, responsible for
30 receiving laboratory results generated by an employer's drug
31 testing program, who has knowledge of substance abuse
32 disorders and has appropriate medical training to interpret
33 and evaluate an individual's confirmed positive test result
34 together with the individual's medical history and any other
35 relevant biomedical information.

1 g. "Prospective employee" means a person who has made
2 application, whether written or oral, to an employer to become
3 an employee.

4 h. "Reasonable suspicion drug or alcohol testing" means
5 testing for the purposes of detecting drugs or alcohol which
6 is conducted on an individual based on a criterion or criteria
7 that would suggest to a reasonable person that the individual
8 may have engaged in illicit drug use or alcohol abuse, or has
9 a substance abuse problem.

10 i. "Safety-sensitive position" means a job wherein an
11 accident could cause loss of human life, serious bodily
12 injury, or significant property or environmental damage,
13 including a job with duties that include immediate supervision
14 of a person in a job that meets the requirement of this
15 paragraph.

16 j. "Sample" means such sample from the human body capable
17 of revealing the presence of alcohol or other drugs, or their
18 metabolites.

19 k. "Unannounced drug or alcohol testing" means testing for
20 the purposes of detecting drugs or alcohol which is conducted
21 on a periodic basis, without advance notice of the test, and
22 without individualized suspicion, and with a neutral and
23 objective selection process operated by an entity independent
24 from the employer, in which each member of the employee
25 population subject to testing has an equal chance of selection
26 for initial testing.

27 2. TESTING OPTIONAL. This section does not require an
28 employer to conduct drug or alcohol testing and the
29 requirements of this section shall not be construed to
30 encourage, discourage, restrict, limit, prohibit, or require
31 such testing.

32 3. TESTING AS CONDITION OF EMPLOYMENT -- REQUIREMENTS. To
33 the extent provided in subsection 7, an employer may test
34 employees and prospective employees for the presence of drugs
35 or alcohol as a condition of continued employment or hiring.

1 An employer shall adhere to the requirements of this section
2 concerning the conduct of such testing and the use and
3 disposition of the results of such testing.

4 4. COLLECTION OF SAMPLES. In conducting drug or alcohol
5 testing, an employer may require the collection of samples
6 from its employees and prospective employees, and may require
7 presentation of reliable individual identification from the
8 person being tested to the person collecting the samples.
9 Collection of a sample shall be in conformance with the
10 requirements of this section. The employer may designate the
11 type of sample to be used for this testing.

12 5. SCHEDULING OF TESTS.

13 a. Drug or alcohol testing of employees conducted by an
14 employer shall normally occur during, or immediately before or
15 after, a regular work period. The time required for such
16 testing by an employer shall be deemed work time for the
17 purposes of compensation and benefits for employees.

18 b. An employer shall pay all actual costs for drug or
19 alcohol testing of employees and prospective employees
20 required by the employer.

21 c. An employer shall provide transportation or pay
22 reasonable transportation costs to employees if drug or
23 alcohol sample collection is conducted at a location other
24 than the employee's normal work site.

25 6. TESTING PROCEDURES. All sample collection and testing
26 for drugs or alcohol under this section shall be performed in
27 accordance with the following conditions:

28 a. The collection of samples shall be performed under
29 sanitary conditions and with regard for the privacy of the
30 individual from whom the specimen is being obtained and in a
31 manner reasonably calculated to preclude contamination or
32 substitution of the specimen.

33 b. Sample collections shall be obtained so that a portion
34 of the sample shall be retained and stored by the laboratory
35 conducting the confirmatory test, sufficient in quantity to

1 conduct a second confirmatory drug or alcohol test, and made
2 available to an employee or prospective employee if a
3 confirmed positive drug or alcohol test is reported to the
4 employer. If the employee or prospective employee requests a
5 second confirmatory test within five days after receipt of a
6 positive test result, the employee or prospective employee
7 shall, at the employee's expense, make arrangements for a
8 second confirmatory test consistent with the requirements of
9 subsection 6, paragraphs "c" through "g". The sample retained
10 and stored by the laboratory conducting the confirmatory test
11 pursuant to this paragraph shall be destroyed upon receipt of
12 a confirmed negative drug or alcohol test result or if the
13 employee or prospective employee so requests in writing.

14 c. Sample collections shall be documented, and the
15 procedure for documentation shall include the following:

16 (1) Samples shall be labeled so as to reasonably preclude
17 the possibility of misidentification of the person tested in
18 relation to the test result provided, and samples shall be
19 handled and tracked in a manner such that control and
20 accountability are maintained from initial collection to each
21 stage in handling, testing, and storage, through final
22 disposition.

23 (2) An employee or prospective employee shall be provided
24 an opportunity to provide any information which may be
25 considered relevant to the test, including identification of
26 prescription or nonprescription drugs currently or recently
27 used, or other relevant medical information.

28 d. Sample collection, storage, and transportation to the
29 place of testing shall be performed so as to reasonably
30 preclude the possibility of sample contamination,
31 adulteration, or misidentification.

32 e. All drug testing shall be conducted at a laboratory
33 certified by the United States department of health and human
34 services' substance abuse and mental health services
35 administration, approved by the United States department of

1 health and human services under the federal Clinical
2 Laboratory Improvement Act, or approved under rules adopted by
3 the Iowa department of public health.

4 f. Drug or alcohol testing shall include confirmation of
5 any initial positive test results. For drug testing,
6 confirmation shall be by use of a different chemical process
7 than was used in the initial drug screen. The confirmatory
8 drug test shall be a chromatographic technique such as gas
9 chromatography or mass spectrometry, or another comparably
10 reliable analytical method. An employer may take adverse
11 employment action, including refusal to hire a prospective
12 employee, based on a confirmed positive drug or alcohol test.

13 g. A medical review officer shall, prior to the results
14 being reported to an employer, review and interpret any
15 confirmed positive test results, including both quantitative
16 and qualitative test results, to ensure that the chain of
17 custody is complete and sufficient on its face and that any
18 information provided by the individual pursuant to paragraph
19 "c", subparagraph (2), is considered.

20 h. In conducting drug or alcohol testing pursuant to this
21 section, the employer shall ensure to the extent feasible that
22 the testing only measure, and the records concerning the
23 testing only show or make use of information regarding,
24 alcohol or drugs in the body.

25 7. DRUG OR ALCOHOL TESTING. Employers may conduct drug or
26 alcohol testing as provided in this subsection:

27 a. Employers may conduct unannounced drug or alcohol
28 testing of the employee population at large.

29 b. Employers may conduct unannounced drug or alcohol
30 testing of employees in a safety-sensitive position.

31 c. Employers may conduct drug or alcohol testing of
32 employees during, and after completion of, drug or alcohol
33 rehabilitation.

34 d. Employers may conduct reasonable suspicion drug or
35 alcohol testing if there is reasonable suspicion to believe,

1 based on the employee's performance, behavior, attendance, or
2 other observable criterion or criteria, that the employee has
3 engaged in illicit drug use, or may be under the influence of
4 alcohol, or may be otherwise impaired by drugs or alcohol, or
5 if an employer believes, in good faith, that the employee may
6 have violated the employer's written substance abuse
7 prevention policy.

8 e. Employers may conduct drug or alcohol testing of
9 prospective employees.

10 f. Employers may conduct drug or alcohol testing as
11 required by federal law or regulation.

12 g. Employers may conduct drug or alcohol testing in
13 investigating accidents in the workplace.

14 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

15 a. Drug or alcohol testing or retesting by an employer
16 shall be carried out within the terms of a written policy
17 which has been provided to every employee subject to testing,
18 and is available for review by employees and prospective
19 employees.

20 b. Employers shall establish an awareness program to
21 inform employees of the dangers of drug and alcohol use in the
22 workplace and comply with the following requirements in order
23 to conduct drug or alcohol testing under this section:

24 (1) If an employer has an employee assistance program, the
25 employer must inform the employee of the benefits and services
26 of the employee assistance program. An employer shall post
27 notice of the employee assistance program in conspicuous
28 places and explore alternative routine and reinforcing means
29 of publicizing such services. In addition, the employer must
30 provide the employee with notice of the policies and
31 procedures regarding access to and utilization of the program.

32 (2) If an employer does not have an employee assistance
33 program, the employer must maintain a resource file of
34 employee assistance services providers, alcohol and other drug
35 abuse programs certified by the Iowa department of public

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

11 c. Within the terms of the written policy, an employer may
12 require the collection and testing of samples for, among other
13 legitimate drug or alcohol abuse prevention and treatment
14 purposes, any of the following:

- * 15 (1) Deterrence and detection of illicit drug use,
16 possession, sale, conveyance, distribution, or manufacture of
17 drugs, intoxicants, or controlled substances in any amount or
18 in any manner, whether or not the employee is at work, or
- * 19 deterrence and detection of abuse of alcohol or prescription
20 drugs.
- * 21 (2) Investigation of individual employee impairment.
- 22 (3) Investigation of accidents in the workplace.
- 23 (4) Maintenance of safety for employees, customers,
24 clients, or the general public.
- 25 (5) Maintenance of productivity, quality of products or
26 services, or security of property or information.

27 d. An employee or prospective employee whose drug or
28 alcohol test results are confirmed as positive in accordance
29 with this section shall not, by virtue of those results alone,
30 be considered as a person with a disability for purposes of
31 any state or local law or regulation.

32 e. If the written policy provides for alcohol testing, the
33 employer shall establish in the written policy a standard for
34 alcohol concentration which shall be deemed to violate the
35 policy. The standard for alcohol concentration shall not be

1 less than .02, expressed in terms of grams of alcohol per two
2 hundred ten liters of breath, or its equivalent.

3 9. DISCIPLINARY PROCEDURES. Upon receipt of a confirmed
4 positive drug or alcohol test result which indicates a
5 violation of the employer's written policy, or upon the
6 refusal of an employee or prospective employee to provide a
7 testing sample, an employer may use that test result or test
8 refusal as a valid basis for disciplinary or rehabilitative
9 actions consistent with the employer's written policy, which
10 may include, among other actions, the following:

11 a. A requirement that the employee enroll in an employer-
12 provided or approved rehabilitation, treatment, or counseling
13 program, which may include additional drug or alcohol testing,
14 participation in and successful completion of which may be a
15 condition of continued employment, and the costs of which may
16 or may not be covered by the employer's health plan or
17 policies.

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

20 c. Termination of employment.

21 d. Refusal to hire a prospective employee.

22 e. Other adverse employment action in conformance with the
23 employer's written policy and procedures, including any
24 relevant collective bargaining agreement provisions.

25 10. EMPLOYER IMMUNITY. A cause of action shall not arise
26 against an employer who has established a policy and initiated
27 a testing program in accordance with the testing and policy
28 safeguards provided for under this section, for any of the
29 following:

30 a. Testing or taking action based on the results of a
31 positive drug or alcohol test result, indicating the presence
32 of drugs or alcohol, in good faith, or the refusal of an
33 employee or prospective employee to submit to a drug or
34 alcohol test.

35 b. Failure to test for drugs or alcohol, or failure to

1 test for a specific drug or controlled substance.

2 c. Failure to test for, or if tested for, failure to
3 detect, any specific drug or other controlled substance.

4 d. Termination or suspension of any substance abuse
5 prevention or testing program or policy.

6 e. Any action taken related to a false negative drug or
7 alcohol test result.

8 11. EMPLOYER LIABILITY -- FALSE POSITIVE TEST RESULTS.

9 a. Except as otherwise provided in paragraph "b", a cause
10 of action shall not arise against an employer who has
11 established a program of drug or alcohol testing in accordance
12 with this section, unless all of the following conditions
13 exist:

14 (1) The employer's action was based on a false positive
15 test result.

16 (2) The employer knew or clearly should have known that
17 the test result was in error and ignored the correct test
18 result because of reckless, malicious, or negligent disregard
19 for the truth, or the willful intent to deceive or to be
20 deceived.

21 b. A cause of action for defamation, libel, slander, or
22 damage to reputation shall not arise against an employer
23 establishing a program of drug or alcohol testing in
24 accordance with this section unless all of the following
25 apply:

26 (1) The employer discloses the test results to a person
27 other than the employer, an authorized employee, agent, or
28 representative of the employer, the tested employee or the
29 tested applicant for employment, an authorized substance abuse
30 treatment program or employee assistance program, or an
31 authorized agent or representative of the tested employee or
32 applicant.

33 (2) The test results disclosed incorrectly indicate the
34 presence of alcohol or drugs.

35 (3) The employer negligently discloses the results.

1 c. In any cause of action based upon a false positive test
2 result, all of the following conditions apply:

3 (1) The results of a drug or alcohol test conducted in
4 compliance with this section are presumed to be valid.

5 (2) An employer shall not be liable for monetary damages
6 if the employer's reliance on the false positive test result
7 was reasonable and in good faith.

8 12. CONFIDENTIALITY OF RESULTS - EXCEPTION.

9 a. Except as provided in paragraph "b", all communications
10 received by an employer relevant to employee or prospective
11 employee drug or alcohol test results, or otherwise received
12 through the employer's drug or alcohol testing program, are
13 confidential communications and shall not be used or received
14 in evidence, obtained in discovery, or disclosed in any public
15 or private proceeding, except in a proceeding related to an
16 action taken by an employer under this section or by an
17 employee under this section.

18 b. An employee who is the subject of a drug or alcohol
19 test conducted under this section pursuant to an employer's
20 written policy and for whom a confirmed positive test result
21 is reported shall, upon written request, have access to any
22 records relating to the employee's drug or alcohol test,
23 including records of the laboratory where the testing was
24 conducted and any records relating to the results of any
25 relevant certification or review by a medical review officer.

26 13. CIVIL REMEDIES. This section may be enforced through
27 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 prospective employee 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.

34 b. When a person commits, is committing, or proposes to
35 commit, an act in violation of this section, an injunction may

1 be granted through an action in district court to prohibit the
2 person from continuing such acts. The action for injunctive
3 relief may be brought by an aggrieved employee or prospective
4 employee, the county attorney, or the attorney general.

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

9 Sec. 2. EFFECTIVE DATE. This Act takes effect on the
10 thirtieth day following enactment.

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HOUSE FILE 299

S-3349

1 Amend House File 299, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 2, by striking lines 5 through 9 and
4 inserting the following: "drug or alcohol testing
5 based upon evidence that an employee is using or has
6 used alcohol or other drugs in violation of the
7 employer's written policy drawn from specific
8 objective and articulable facts and reasonable
9 inferences drawn from those facts in light of
10 experience. For purposes of this paragraph, facts and
11 inferences may be based upon, but not limited to, any
12 of the following:

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

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

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

22 (4) Evidence that an individual has tampered with
23 any drug or alcohol test during the individual's
24 employment with the current employer.

25 (5) Evidence that an employee has caused an
26 accident while at work.

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

32 2. Page 2, by striking lines 22 through 24 and
33 inserting the following: "without individualized
34 suspicion. The selection of employees to be tested
35 shall be done by an entity independent from the
36 employer and shall be made by a scientifically valid
37 method, such as a random number table or a computer-
38 based random number generator that is matched with
39 employees' social security numbers, payroll
40 identification numbers, or other comparable
41 identifying numbers in which each member of the
42 employee".

43 3. By striking page 3, line 33, through page 4,
44 line 13, and inserting the following:

45 "b. Sample collection for testing of current
46 employees shall be performed so that the specimen is
47 split into two components at the time of collection in
48 the presence of the individual from whom the sample or
49 specimen is collected. The second portion of the
50 specimen or sample shall be of sufficient quantity to

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1 permit a second, independent confirmatory test as
2 provided in paragraph "i". If the specimen is urine,
3 the sample shall be split such that the primary sample
4 contains at least thirty milliliters and the secondary
5 sample contains at least fifteen milliliters. Both
6 portions of the sample shall be forwarded to the
7 laboratory conducting the initial confirmatory
8 testing. In addition to any requirements for storage
9 of the initial sample that may be imposed upon the
10 laboratory as a condition for certification of
11 approval, the laboratory shall store the second
12 portion of any sample until receipt of a confirmed
13 negative test result or for a period of at least
14 forty-five calendar days following the completion of
15 the initial confirmatory testing, if the first portion
16 yielded a confirmed positive test result."

17 4. By striking page 4, line 35, through page 5,
18 line 2, and inserting the following: "administration
19 or approved under rules adopted by".

20 5. Page 5, by inserting after line 24 the
21 following:

22 "i. (1) If a confirmed positive drug or alcohol
23 test for a current employee is reported to the
24 employer by the medical review officer, the employer
25 shall notify the employee in writing of the results of
26 the test, the employee's right to request and obtain a
27 confirmatory test of the second sample collected
28 pursuant to paragraph "b" at an approved laboratory of
29 the employee's choice, and the fee payable by the
30 employee to the employer for reimbursement of expenses
31 concerning the test. The fee charged an employee
32 shall be an amount that represents the costs
33 associated with conducting the second confirmatory
34 test, which shall be consistent with the employer's
35 cost for conducting the initial confirmatory test on
36 an employee's sample. If the employee requests a
37 second confirmatory test, identifies an approved
38 laboratory to conduct the test, and pays the employer
39 the fee for the test within five days from the date
40 the employee receives written notice of the right to
41 request a test, a second confirmatory test shall be
42 conducted at the laboratory chosen by the employee.
43 The results of the second confirmatory test shall be
44 reported to the medical review officer who reviewed
45 the initial confirmatory test results and the medical
46 review officer shall review the results and issue a
47 report to the employer on whether the results of the
48 second confirmatory test confirmed the initial
49 confirmatory test as to the presence of a specific
50 drug or alcohol. If the results of the second test do

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1 not confirm the results of the initial confirmatory
2 test, the initial confirmatory test shall not be
3 considered a confirmed positive drug or alcohol test
4 for purposes of taking disciplinary action pursuant to
5 subsection 9.

6 (2) If a confirmed positive drug or alcohol test
7 for a prospective employee is reported to the employer
8 by the medical review officer, the employer shall
9 notify the prospective employee in writing of the
10 results of the test, of the name and address of the
11 medical review officer who made the report, and of the
12 prospective employee's right to request records under
13 subsection 12."

14 6. By striking page 5, line 35, through page 6,
15 line 7, and inserting the following: "alcohol
16 testing."

17 7. Page 8, by inserting after line 2 the
18 following:

19 "f. In order to conduct drug or alcohol testing
20 under this section, an employer shall require
21 supervisory personnel of the employer involved with
22 drug or alcohol testing under this section to attend a
23 minimum of two hours of initial training and to
24 attend, on an annual basis thereafter, a minimum of
25 one hour of subsequent training. The training shall
26 include, but is not limited to, information concerning
27 the recognition of evidence of employee alcohol and
28 other drug abuse, the documentation and corroboration
29 of employee alcohol and other drug abuse, and the
30 referral of employees who abuse alcohol or other drugs
31 to the employee assistance program or to the resource
32 file of employee assistance services providers."

33 8. Page 8, line 3, by inserting after the word
34 "PROCEDURES." the following:

35 "a."

36 9. Page 8, line 11, by striking the word "a." and
37 inserting the following: "(1)".

38 10. Page 8, line 18, by striking the word "b."
39 and inserting the following: "(2)".

40 11. Page 8, line 20, by striking the word "c."
41 and inserting the following: "(3)".

42 12. Page 8, line 21, by striking the word "d."
43 and inserting the following: "(4)".

44 13. Page 8, line 22, by striking the word "e."
45 and inserting the following: "(5)".

46 14. Page 8, by inserting after line 24 the
47 following:

48 "b. Following a drug or alcohol test, but prior to
49 receipt of the final results of the drug or alcohol
50 test, an employer may suspend a current employee, with

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1 or without pay, pending the outcome of the test. An
2 employee who has been suspended shall be reinstated by
3 the employer, with back pay if applicable, if the
4 result of the test is not a confirmed positive drug or
5 alcohol test which indicates a violation of the
6 employer's written policy."

7 15. Page 10, line 15, by inserting after the word
8 "except" the following: "as provided by this section
9 or".

10 16. Page 10, line 18, by inserting after the word
11 "employee" the following: ", or a prospective
12 employee,".

13 17. Page 10, line 25, by inserting after the word
14 "officer." the following: "However, a prospective
15 employee shall be entitled to records under this
16 paragraph only if the prospective employee requests
17 the records within fifteen calendar days from the date
18 the employer provided the prospective employee written
19 notice of the results of a drug or alcohol test as
20 provided in subsection 6, paragraph "i", subparagraph
21 (2)."

22 18. By renumbering, relettering, or redesignating
23 and correcting internal references as necessary.

By COMMITTEE ON JUDICIARY
ANDY McKEAN, Chairperson

S-3349 FILED APRIL 2, 1997

0/0
(p. 345)

HOUSE FILE 299

S-3771

1 Amend House File 299, 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, Code 1997, is amended
6 by striking the section and inserting in lieu thereof
7 the following:
8 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
9 1. DEFINITIONS. As used in this section, unless
10 the context otherwise requires:
11 a. "Alcohol" means ethanol, isopropanol, or
12 methanol.
13 b. "Drug" means a substance considered unlawful
14 under the federal Controlled Substances Act, 21 U.S.C.
15 § 801 et seq.
16 c. "Employee" means a person in the service of an
17 employer and includes the employer, and any chief
18 executive officer, president, vice president,
19 supervisor, manager, and officer of the employer.
20 d. "Employer" means a person, firm, company,
21 corporation, labor organization, or employment agency,
22 which has one or more full-time employees employed in
23 the same business, or in or about the same
24 establishment, under any contract of hire, express or
25 implied, oral or written, in this state. "Employer"
26 does not include the state, a political subdivision of
27 the state, including a city, county, or school
28 district, the United States, the United States postal
29 service, or a Native-American tribe.
30 e. "Good faith" means reasonable reliance on
31 facts, or that which is held out to be factual,
32 without the intent to be deceived, and without
33 reckless, malicious, or negligent disregard for the
34 truth.
35 f. "Medical review officer" means a licensed
36 physician, osteopathic physician, chiropractor, nurse
37 practitioner, or physician's assistant authorized to
38 practice in any state of the United States, who is
39 responsible for receiving laboratory results generated
40 by an employer's drug testing program, and who has
41 knowledge of substance abuse disorders and has
42 appropriate medical training to interpret and evaluate
43 an individual's confirmed positive test result
44 together with the individual's medical history and any
45 other relevant biomedical information.
46 g. "Prospective employee" means a person who has
47 made application, whether written or oral, to an
48 employer to become an employee.
49 h. "Reasonable suspicion drug or alcohol testing"
50 means drug or alcohol testing based upon evidence that

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1 an employee is using or has used alcohol or other
2 drugs in violation of the employer's written policy
3 drawn from specific objective and articulable facts
4 and reasonable inferences drawn from those facts in
5 light of experience. For purposes of this paragraph,
6 facts and inferences may be based upon, but not
7 limited to, any of the following:

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

12 (2) Abnormal conduct or erratic behavior while at
13 work or a significant deterioration in work
14 performance.

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

17 (4) Evidence that an individual has tampered with
18 any drug or alcohol test during the individual's
19 employment with the current employer.

20 (5) Evidence that an employee has caused an
21 accident while at work.

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

27 i. "Safety-sensitive position" means a job wherein
28 an accident could cause loss of human life, serious
29 bodily injury, or significant property or
30 environmental damage, including a job with duties that
31 include immediate supervision of a person in a job
32 that meets the requirement of this paragraph.

33 j. "Sample" means such sample from the human body
34 capable of revealing the presence of alcohol or other
35 drugs, or their metabolites.

36 k. "Unannounced drug or alcohol testing" means
37 testing for the purposes of detecting drugs or alcohol
38 which is conducted on a periodic basis, without
39 advance notice of the test, and without individualized
40 suspicion. The selection of employees to be tested
41 shall be done by an entity independent from the
42 employer and shall be made by a computer-based random
43 number generator that is matched with employees'
44 social security numbers, payroll identification
45 numbers, or other comparable identifying numbers in
46 which each member of the employee population subject
47 to testing has an equal chance of selection for
48 initial testing. The random selection process shall
49 be conducted through a computer program that records
50 each selection attempt by date, time, and employee

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1 number.

2 2. TESTING OPTIONAL. This section does not
3 require an employer to conduct drug or alcohol testing
4 and the requirements of this section shall not be
5 construed to encourage, discourage, restrict, limit,
6 prohibit, or require such testing.

7 3. TESTING AS CONDITION OF EMPLOYMENT --
8 REQUIREMENTS. To the extent provided in subsection 7,
9 an employer may test employees and prospective
10 employees for the presence of drugs or alcohol as a
11 condition of continued employment or hiring. An
12 employer shall adhere to the requirements of this
13 section concerning the conduct of such testing and the
14 use and disposition of the results of such testing.

15 4. COLLECTION OF SAMPLES. In conducting drug or
16 alcohol testing, an employer may require the
17 collection of samples from its employees and
18 prospective employees, and may require presentation of
19 reliable individual identification from the person
20 being tested to the person collecting the samples.
21 Collection of a sample shall be in conformance with
22 the requirements of this section. The employer may
23 designate the type of sample to be used for this
24 testing.

25 5. SCHEDULING OF TESTS.

26 a. Drug or alcohol testing of employees conducted
27 by an employer shall normally occur during, or
28 immediately before or after, a regular work period.
29 The time required for such testing by an employer
30 shall be deemed work time for the purposes of
31 compensation and benefits for employees.

32 b. An employer shall pay all actual costs for drug
33 or alcohol testing of employees and prospective
34 employees required by the employer.

35 c. An employer shall provide transportation or pay
36 reasonable transportation costs to employees if drug
37 or alcohol sample collection is conducted at a
38 location other than the employee's normal work site.

39 6. TESTING PROCEDURES. All sample collection and
40 testing for drugs or alcohol under this section shall
41 be performed in accordance with the following
42 conditions:

43 a. The collection of samples shall be performed
44 under sanitary conditions and with regard for the
45 privacy of the individual from whom the specimen is
46 being obtained and in a manner reasonably calculated
47 to preclude contamination or substitution of the
48 specimen.

49 b. Sample collection for testing of current
50 employees shall be performed so that the specimen is

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1 split into two components at the time of collection in
2 the presence of the individual from whom the sample or
3 specimen is collected. The second portion of the
4 specimen or sample shall be of sufficient quantity to
5 permit a second, independent confirmatory test as
6 provided in paragraph "i". If the specimen is urine,
7 the sample shall be split such that the primary sample
8 contains at least thirty milliliters and the secondary
9 sample contains at least fifteen milliliters. Both
10 portions of the sample shall be forwarded to the
11 laboratory conducting the initial confirmatory
12 testing. In addition to any requirements for storage
13 of the initial sample that may be imposed upon the
14 laboratory as a condition for certification of
15 approval, the laboratory shall store the second
16 portion of any sample until receipt of a confirmed
17 negative test result or for a period of at least
18 forty-five calendar days following the completion of
19 the initial confirmatory testing, if the first portion
20 yielded a confirmed positive test result.

21 c. Sample collections shall be documented, and the
22 procedure for documentation shall include the
23 following:

24 (1) Samples shall be labeled so as to reasonably
25 preclude the possibility of misidentification of the
26 person tested in relation to the test result provided,
27 and samples shall be handled and tracked in a manner
28 such that control and accountability are maintained
29 from initial collection to each stage in handling,
30 testing, and storage, through final disposition.

31 (2) An employee or prospective employee shall be
32 provided an opportunity to provide any information
33 which may be considered relevant to the test,
34 including identification of prescription or
35 nonprescription drugs currently or recently used, or
36 other relevant medical information. To assist an
37 employee or prospective employee in providing the
38 information described in this subparagraph, the
39 employer shall provide an employee or prospective
40 employee with a list of the drugs to be tested.

41 d. Sample collection, storage, and transportation
42 to the place of testing shall be performed so as to
43 reasonably preclude the possibility of sample
44 contamination, adulteration, or misidentification.

45 e. All drug testing shall be conducted at a
46 laboratory certified by the United States department
47 of health and human services' substance abuse and
48 mental health services administration or approved
49 under rules adopted by the Iowa department of public
50 health.

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1 f. Drug or alcohol testing shall include
2 confirmation of any initial positive test results.
3 For drug or alcohol testing, confirmation shall be by
4 use of a different chemical process than was used in
5 the initial screen for drugs or alcohol. The
6 confirmatory drug or alcohol test shall be a
7 chromatographic technique such as gas chromatography
8 or mass spectrometry, or another comparably reliable
9 analytical method. An employer may take adverse
10 employment action, including refusal to hire a
11 prospective employee, based on a confirmed positive
12 drug or alcohol test.

13 g. A medical review officer shall, prior to the
14 results being reported to an employer, review and
15 interpret any confirmed positive test results,
16 including both quantitative and qualitative test
17 results, to ensure that the chain of custody is
18 complete and sufficient on its face and that any
19 information provided by the individual pursuant to
20 paragraph "c", subparagraph (2), is considered.

21 h. In conducting drug or alcohol testing pursuant
22 to this section, the employer shall ensure to the
23 extent feasible that the testing only measure, and the
24 records concerning the testing only show or make use
25 of information regarding, alcohol or drugs in the
26 body.

27 i. (1) If a confirmed positive drug or alcohol
28 test for a current employee is reported to the
29 employer by the medical review officer, the employer
30 shall notify the employee in writing of the results of
31 the test, the employee's right to request and obtain a
32 confirmatory test of the second sample collected
33 pursuant to paragraph "b" at an approved laboratory of
34 the employee's choice, and the fee payable by the
35 employee to the employer for reimbursement of expenses
36 concerning the test. The fee charged an employee
37 shall be an amount that represents the costs
38 associated with conducting the second confirmatory
39 test, which shall be consistent with the employer's
40 cost for conducting the initial confirmatory test on
41 an employee's sample. If the employee requests a
42 second confirmatory test, identifies an approved
43 laboratory to conduct the test, and pays the employer
44 the fee for the test within five days from the date
45 the employee receives written notice of the right to
46 request a test, a second confirmatory test shall be
47 conducted at the laboratory chosen by the employee.
48 The results of the second confirmatory test shall be
49 reported to the medical review officer who reviewed
50 the initial confirmatory test results and the medical

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1 review officer shall review the results and issue a
2 report to the employer on whether the results of the
3 second confirmatory test confirmed the initial
4 confirmatory test as to the presence of a specific
5 drug or alcohol. If the results of the second test do
6 not confirm the results of the initial confirmatory
7 test, the employer shall reimburse the employee for
8 the fee paid by the employee for the second test and
9 the initial confirmatory test shall not be considered
10 a confirmed positive drug or alcohol test for purposes
11 of taking disciplinary action pursuant to subsection
12 9.

13 (2) If a confirmed positive drug or alcohol test
14 for a prospective employee is reported to the employer
15 by the medical review officer, the employer shall
16 notify the prospective employee in writing of the
17 results of the test, of the name and address of the
18 medical review officer who made the report, and of the
19 prospective employee's right to request records under
20 subsection 12.

21 j. A laboratory conducting testing under this
22 section shall dispose of all samples for which a
23 negative test result was reported to an employer
24 within five working days after issuance of the
25 negative test result report.

26 7. DRUG OR ALCOHOL TESTING. Employers may conduct
27 drug or alcohol testing as provided in this
28 subsection:

29 a. Employers may conduct unannounced drug or
30 alcohol testing of the employee population not subject
31 to testing pursuant to paragraph "b".

32 b. Employers may conduct unannounced drug or
33 alcohol testing of employees in a pool of employees
34 who are in a safety-sensitive position.

35 c. Employers may conduct drug or alcohol testing
36 of employees during, and after completion of, drug or
37 alcohol rehabilitation.

38 d. Employers may conduct reasonable suspicion drug
39 or alcohol testing.

40 e. Employers may conduct drug or alcohol testing
41 of prospective employees.

42 f. Employers may conduct drug or alcohol testing
43 as required by federal law or regulation.

44 g. Employers may conduct drug or alcohol testing
45 in investigating accidents in the workplace.

46 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

47 a. Drug or alcohol testing or retesting by an
48 employer shall be carried out within the terms of a
49 written policy which has been provided to every
50 employee subject to testing, and is available for

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1 review by employees and prospective employees.

2 b. Employers shall establish an awareness program
3 to inform employees of the dangers of drug and alcohol
4 use in the workplace and comply with the following
5 requirements in order to conduct drug or alcohol
6 testing under this section:

7 (1) If an employer has an employee assistance
8 program, the employer must inform the employee of the
9 benefits and services of the employee assistance
10 program. An employer shall post notice of the
11 employee assistance program in conspicuous places and
12 explore alternative routine and reinforcing means of
13 publicizing such services. In addition, the employer
14 must provide the employee with notice of the policies
15 and procedures regarding access to and utilization of
16 the program.

17 (2) If an employer does not have an employee
18 assistance program, the employer must maintain a
19 resource file of employee assistance services
20 providers, alcohol and other drug abuse programs
21 certified by the Iowa department of public health,
22 mental health providers, and other persons, entities,
23 or organizations available to assist employees with
24 personal or behavioral problems. The employer shall
25 provide all employees information about the existence
26 of the resource file and a summary of the information
27 contained within the resource file. The summary
28 should contain, but need not be limited to, all
29 information necessary to access the services listed in
30 the resource file. In addition, the employer shall
31 post in conspicuous places a listing of multiple
32 employee assistance providers in the area.

33 c. An employee or prospective employee whose drug
34 or alcohol test results are confirmed as positive in
35 accordance with this section shall not, by virtue of
36 those results alone, be considered as a person with a
37 disability for purposes of any state or local law or
38 regulation.

39 d. If the written policy provides for alcohol
40 testing, the employer shall establish in the written
41 policy a standard for alcohol concentration which
42 shall be deemed to violate the policy. The standard
43 for alcohol concentration shall not be less than .02,
44 expressed in terms of grams of alcohol per two hundred
45 ten liters of breath, or its equivalent.

46 e. All employees of an employer who are designated
47 by the employer as being in a safety-sensitive
48 position shall be placed in a pool of safety-sensitive
49 employees subject to drug or alcohol testing pursuant
50 to subsection 7, paragraph "b". An employer shall

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1 have no more than one pool of safety-sensitive
2 employees subject to drug or alcohol testing pursuant
3 to subsection 7, paragraph "b".

4 f. Upon receipt of a confirmed positive alcohol
5 test or a confirmed positive drug test relating to the
6 abuse of lawfully prescribed drugs currently or
7 recently used by an employee, and if the employer has
8 at least fifty employees, and if the employee has been
9 employed by the employer on a full-time basis for
10 twelve consecutive months and rehabilitation is agreed
11 upon by both the employer and the employee, and if the
12 employee has not previously undergone rehabilitation
13 with the same employer pursuant to this section, the
14 written policy shall provide for the apportionment of
15 the costs of rehabilitation as provided by this
16 paragraph.

17 (1) If the employer has an employee benefit plan,
18 the costs of rehabilitation shall be apportioned as
19 provided under the employee benefit plan.

20 (2) If no employee benefit plan exists and the
21 employee has coverage for any portion of the costs of
22 rehabilitation under any health care plan of the
23 employee, the costs of rehabilitation shall be
24 apportioned as provided by the health care plan.

25 (3) If no employee benefit plan exists and the
26 employee does not have coverage for any portion of the
27 costs of rehabilitation under any health care plan of
28 the employee, the costs of rehabilitation shall be
29 apportioned equally between the employee and the
30 employer. However, the employer shall not be required
31 to pay more than two thousand dollars towards the cost
32 of rehabilitation under this subparagraph.

33 g. In order to conduct drug or alcohol testing
34 under this section, an employer shall require
35 supervisory personnel of the employer involved with
36 drug or alcohol testing under this section to attend a
37 minimum of two hours of initial training and to
38 attend, on an annual basis thereafter, a minimum of
39 one hour of subsequent training. The training shall
40 include, but is not limited to, information concerning
41 the recognition of evidence of employee alcohol and
42 other drug abuse, the documentation and corroboration
43 of employee alcohol and other drug abuse, and the
44 referral of employees who abuse alcohol or other drugs
45 to the employee assistance program or to the resource
46 file of employee assistance services providers.

47 9. DISCIPLINARY PROCEDURES.

48 a. Upon receipt of a confirmed positive drug or
49 alcohol test result which indicates a violation of the
50 employer's written policy, or upon the refusal of an

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1 employee or prospective employee to provide a testing
2 sample, an employer may use that test result or test
3 refusal as a valid basis for disciplinary or
4 rehabilitative actions consistent with the employer's
5 written policy, which may include, among other
6 actions, the following:

7 (1) A requirement that the employee enroll in an
8 employer-provided or approved rehabilitation,
9 treatment, or counseling program, which may include
10 additional drug or alcohol testing, participation in
11 and successful completion of which may be a condition
12 of continued employment, and the costs of which may or
13 may not be covered by the employer's health plan or
14 policies.

15 (2) Suspension of the employee, with or without
16 pay, for a designated period of time.

17 (3) Termination of employment.

18 (4) Refusal to hire a prospective employee.

19 (5) Other adverse employment action in conformance
20 with the employer's written policy and procedures,
21 including any relevant collective bargaining agreement
22 provisions.

23 b. Following a drug or alcohol test, but prior to
24 receipt of the final results of the drug or alcohol
25 test, an employer may suspend a current employee, with
26 or without pay, pending the outcome of the test. An
27 employee who has been suspended shall be reinstated by
28 the employer, with back pay, and interest on such
29 amount at eighteen percent per annum compounded
30 annually, if applicable, if the result of the test is
31 not a confirmed positive drug or alcohol test which
32 indicates a violation of the employer's written
33 policy.

34 10. EMPLOYER IMMUNITY. A cause of action shall
35 not arise against an employer who has established a
36 policy and initiated a testing program in accordance
37 with the testing and policy safeguards provided for
38 under this section, for any of the following:

39 a. Testing or taking action based on the results
40 of a positive drug or alcohol test result, indicating
41 the presence of drugs or alcohol, in good faith, or
42 the refusal of an employee or prospective employee to
43 submit to a drug or alcohol test.

44 b. Failure to test for drugs or alcohol, or
45 failure to test for a specific drug or controlled
46 substance.

47 c. Failure to test for, or if tested for, failure
48 to detect, any specific drug or other controlled
49 substance.

50 d. Termination or suspension of any substance

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1 abuse prevention or testing program or policy.
 2 e. Any action taken related to a false negative
 3 drug or alcohol test result.
 4 11. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
 5 RESULTS.
 6 a. Except as otherwise provided in paragraph "b",
 7 a cause of action shall not arise against an employer
 8 who has established a program of drug or alcohol
 9 testing in accordance with this section, unless all of
 10 the following conditions exist:

11 (1) The employer's action was based on a false
 12 positive test result.
 13 (2) The employer knew or clearly should have known
 14 that the test result was in error and ignored the
 15 correct test result because of reckless, malicious, or
 16 negligent disregard for the truth, or the willful
 17 intent to deceive or to be deceived.

18 b. A cause of action for defamation, libel,
 19 slander, or damage to reputation shall not arise
 20 against an employer establishing a program of drug or
 21 alcohol testing in accordance with this section unless
 22 all of the following apply:

23 (1) The employer discloses the test results to a
 24 person other than the employer, an authorized
 25 employee, agent, or representative of the employer,
 26 the tested employee or the tested applicant for
 27 employment, an authorized substance abuse treatment
 28 program or employee assistance program, or an
 29 authorized agent or representative of the tested
 30 employee or applicant.

31 (2) The test results disclosed incorrectly
 32 indicate the presence of alcohol or drugs.

33 (3) The employer negligently discloses the
 34 results.

35 c. In any cause of action based upon a false
 36 positive test result, all of the following conditions
 37 apply:

38 (1) The results of a drug or alcohol test
 39 conducted in compliance with this section are presumed
 40 to be valid.

41 (2) An employer shall not be liable for monetary
 42 damages if the employer's reliance on the false
 43 positive test result was reasonable and in good faith.

44 12. CONFIDENTIALITY OF RESULTS - EXCEPTION.

45 a. Except as provided in paragraph "b", all
 46 communications received by an employer relevant to
 47 employee or prospective employee drug or alcohol test
 48 results, or otherwise received through the employer's
 49 drug or alcohol testing program, are confidential
 50 communications and shall not be used or received in

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1 evidence, obtained in discovery, or disclosed in any
2 public or private proceeding, except as provided by
3 this section or in a proceeding related to an action
4 taken by an employer under this section or by an
5 employee under this section.

6 b. An employee, or a prospective employee, who is
7 the subject of a drug or alcohol test conducted under
8 this section pursuant to an employer's written policy
9 and for whom a confirmed positive test result is
10 reported shall, upon written request, have access to
11 any records relating to the employee's drug or alcohol
12 test, including records of the laboratory where the
13 testing was conducted and any records relating to the
14 results of any relevant certification or review by a
15 medical review officer. However, a prospective
16 employee shall be entitled to records under this
17 paragraph only if the prospective employee requests
18 the records within fifteen calendar days from the date
19 the employer provided the prospective employee written
20 notice of the results of a drug or alcohol test as
21 provided in subsection 6, paragraph "i", subparagraph
22 (2).

23 c. Except as provided by this subsection and as
24 necessary to conduct drug or alcohol testing under
25 this section, a laboratory and a medical review
26 officer conducting drug or alcohol testing under this
27 section shall not use or disclose to any person any
28 personally identifiable information regarding such
29 testing, including the names of individuals tested,
30 even if unaccompanied by the results of the test.

31 13. CIVIL REMEDIES. This section may be enforced
32 through a civil action.

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

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

48 In an action brought under this subsection alleging
49 that an employer has required or requested a drug or
50 alcohol test in violation of this section, the

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1 employer has the burden of proving that the
2 requirements of this section were met.

3 Sec. 2. EFFECTIVE DATE. This Act takes effect on
4 the thirtieth day following enactment."

By STEVE KING

Out of Order

S-3771 FILED APRIL 24, 1997

HOUSE FILE 299

S-3773

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking everything after the amending
5 clause and inserting the following:

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

8 "Section 1. Section 730.5, Code 1997, is amended
9 by striking the section and inserting in lieu thereof
10 the following:

11 730.5 DRUG-FREE WORKPLACES.

12 1. DEFINITIONS. As used in this section, unless
13 the context otherwise requires:

14 a. "Alcohol" means ethanol, isopropanol, or
15 methanol.

16 b. "Drug" means a substance considered unlawful
17 under the federal Controlled Substances Act, 21 U.S.C.
18 § 801 et seq.

19 c. "Employee" means a person in the service of an
20 employer.

21 d. "Employer" means a person which has one or more
22 employees employed in the same business, or in or
23 about the same establishment, in this state.

24 e. "Good faith" means reasonable reliance on
25 facts.

26 f. "Medical review officer" means a physician
27 licensed to practice medicine and surgery or
28 osteopathic medicine and surgery in any state of the
29 United States, responsible for receiving laboratory
30 results generated by an employer's drug testing
31 program, who is independent from the employer and is
32 agreed upon by representatives of the employer and the
33 employees, and who has knowledge of substance abuse
34 disorders and has appropriate medical training to
35 interpret and evaluate an individual's confirmed
36 positive test result together with the individual's
37 medical history and any other relevant biomedical
38 information.

39 g. "Prospective employee" means a person who has
40 made application, whether written or oral, to an
41 employer to become an employee and who has received a
42 bona fide offer of employment from the employer.

43 h. "Reasonable suspicion drug or alcohol testing"
44 means drug or alcohol testing based upon evidence
45 which would cause a reasonable person to conclude that
46 an employee is using or has used alcohol or other
47 drugs and which use impairs the employee's performance
48 while on the job in violation of the employer's
49 written policy. For purposes of this paragraph,
50 evidence may include, but is not limited to, any of

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1 the following:

2 (1) Observable phenomena while at work such as
3 direct observation of alcohol or other drug use or
4 abuse or of the physical symptoms or manifestations of
5 being impaired due to alcohol or other drug use.

6 (2) Abnormal conduct or erratic behavior while at
7 work or a significant deterioration in work
8 performance.

9 (3) A report of alcohol or other drug use while at
10 work provided by a reliable and credible source.

11 (4) Evidence that an individual has tampered with
12 their own drug or alcohol test during the individual's
13 employment with the current employer.

14 (5) Evidence that an employee has caused an
15 accident while at work which resulted in a personal
16 injury which required medical treatment away from the
17 workplace or damage to property, including equipment,
18 in an amount reasonably estimated to exceed one
19 thousand dollars at the time of the accident.

20 (6) Evidence that an employee has possessed or
21 used drugs while working or while on the employer's
22 premises or while operating the employer's vehicle,
23 machinery, or equipment.

24 i. "Sample" means such sample of blood or urine
25 from the human body capable of revealing the presence
26 of alcohol or other drugs, or their metabolites.

27 2. TESTING AS CONDITION OF EMPLOYMENT --

28 REQUIREMENTS. To the extent provided in subsection 6,
29 an employer may test employees and prospective
30 employees for the presence of drugs or alcohol as a
31 condition of continued employment or hiring. An
32 employer shall adhere to the requirements of this
33 section concerning the conduct of such testing and the
34 use and disposition of the results of such testing.

35 3. COLLECTION OF SAMPLES. In conducting drug or
36 alcohol testing, an employer may require the
37 collection of samples from its employees and
38 prospective employees, and may require presentation of
39 reliable individual identification from the person
40 being tested to the person collecting the samples.
41 Collection of a sample shall be in conformance with
42 the requirements of this section. If the employer
43 requests that a urine sample be provided in conducting
44 drug or alcohol testing under this section, the
45 employer shall provide the employee or prospective
46 employee with an opportunity to have a blood sample
47 drawn instead of providing a urine sample.

48 4. SCHEDULING OF TESTS.

49 a. Drug or alcohol testing of employees conducted
50 by an employer shall normally occur during, or

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1 immediately before or after, a regular work period.

2 The time required for such testing by an employer
3 shall be deemed work time for the purposes of
4 compensation and benefits for employees.

5 b. An employer shall pay all actual costs for drug
6 or alcohol testing of employees and prospective
7 employees required by the employer.

8 c. An employer shall provide transportation or pay
9 reasonable transportation costs to employees for all
10 drug or alcohol testing under this section.

11 5. TESTING PROCEDURES. All sample collection and
12 testing for drugs or alcohol under this section shall
13 be performed in accordance with the following
14 conditions:

15 a. The collection of samples shall be performed
16 under sanitary conditions and with regard for the
17 privacy of the individual from whom the specimen is
18 being obtained and in a manner reasonably calculated
19 to preclude contamination or substitution of the
20 specimen.

21 b. Sample collection for testing of current
22 employees shall be performed so that the specimen is
23 split into two components at the time of collection in
24 the presence of the individual from whom the sample or
25 specimen is collected. The second portion of the
26 specimen or sample shall be of sufficient quantity to
27 permit a second, independent confirmatory test as
28 provided in paragraph "i". If the specimen is urine,
29 the sample shall be split such that the primary sample
30 contains at least thirty milliliters and the secondary
31 sample contains at least fifteen milliliters. Both
32 portions of the sample shall be forwarded to the
33 laboratory conducting the initial confirmatory
34 testing. In addition to any requirements for storage
35 of the initial sample that may be imposed upon the
36 laboratory as a condition for certification of
37 approval, the laboratory shall store the second
38 portion of any sample until receipt of a confirmed
39 negative test result or for a period of at least
40 forty-five calendar days following the completion of
41 the initial confirmatory testing, if the first portion
42 yielded a confirmed positive test result.

43 c. Sample collections shall be documented, and the
44 procedure for documentation shall include the
45 following:

46 (1) Samples shall be labeled so as to reasonably
47 preclude the possibility of misidentification of the
48 person tested in relation to the test result provided,
49 and samples shall be handled and tracked in a manner
50 such that control and accountability are maintained

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1 from initial collection to each stage in handling,
2 testing, and storage, through final disposition.

3 (2) An employee or prospective employee shall be
4 provided an opportunity to provide any information
5 which may be considered relevant to the test,
6 including identification of prescription or
7 nonprescription drugs currently or recently used, or
8 other relevant medical information. Information
9 provided by the employee or prospective employee shall
10 not be disclosed to the employer but shall be
11 delivered to the facility conducting confirmatory
12 testing. To assist an employee or prospective
13 employee in providing the information described in
14 this subparagraph, the employer shall provide an
15 employee or prospective employee with a list of the
16 drugs to be tested.

17 d. Sample collection, storage, and transportation
18 to the place of testing shall be performed so as to
19 reasonably preclude the possibility of sample
20 contamination, adulteration, or misidentification.

21 e. All drug testing, including both initial and
22 confirmatory testing, shall be conducted at a
23 laboratory certified by the United States department
24 of health and human services' substance abuse and
25 mental health services administration or approved
26 under rules adopted by the Iowa department of public
27 health.

28 f. Drug or alcohol testing shall include
29 confirmation of any initial positive test results.
30 For drug testing, confirmation shall be by use of a
31 different chemical process than was used in the
32 initial drug screen. The confirmatory drug test shall
33 be a chromatographic technique such as gas
34 chromatography or mass spectrometry, or another
35 comparably reliable analytical method.

36 g. A medical review officer shall, prior to the
37 results being reported to an employer and the employee
38 or prospective employee tested, review and interpret
39 any confirmed positive test results, including both
40 quantitative and qualitative test results, to ensure
41 that the chain of custody is complete and sufficient
42 on its face and that any information provided by the
43 individual pursuant to paragraph "c", subparagraph
44 (2), is considered.

45 h. In conducting drug or alcohol testing pursuant
46 to this section, the employer shall ensure that the
47 testing only measure, and the records concerning the
48 testing only show or make use of information
49 regarding, alcohol or drugs in the body.

50 i. If a positive drug or alcohol test for an

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1 employee or prospective employee is confirmed by the
2 medical review officer, the medical review officer
3 shall notify the employee or prospective employee in
4 writing of the results of the test, the employee's or
5 prospective employee's right to request and obtain a
6 confirmatory test of the second sample collected
7 pursuant to paragraph "b" at an approved laboratory of
8 the employee's or prospective employee's choice, and
9 the fee established by the employer's written policy
10 to be payable by the employee or prospective employee
11 to the medical review officer for reimbursement of
12 expenses concerning the test. The fee charged an
13 employee or prospective employee shall be an amount,
14 not in excess of one hundred dollars, that represents
15 the costs associated with conducting the second
16 confirmatory test, which shall be consistent with the
17 employer's cost for conducting the initial
18 confirmatory test on an employee's or prospective
19 employee's sample. If the employee or prospective
20 employee requests a second confirmatory test,
21 identifies an approved laboratory to conduct the test,
22 and pays the medical review officer the fee for the
23 test within fifteen days from the date the employee or
24 prospective employee receives written notice of the
25 right to request a test, a second confirmatory test
26 shall be conducted at the laboratory chosen by the
27 employee or prospective employee. The results of the
28 second confirmatory test shall be reported to the
29 medical review officer who reviewed the initial
30 confirmatory test results and the medical review
31 officer shall review the results and issue a report to
32 the employer and the employee or prospective employee
33 tested that the results of the drug or alcohol test
34 were confirmed as positive if the results of the
35 second confirmatory test confirmed the initial
36 confirmatory test as to the presence of a specific
37 drug or alcohol. If the results of the second test do
38 not confirm the results of the initial confirmatory
39 test, the medical review officer shall report to the
40 employer that the result of the drug or alcohol test
41 is negative and not a confirmed positive test result
42 for purposes of this section.

43 j. A report of the results of a drug or alcohol
44 test issued to an employer and the individual tested
45 shall only indicate, as to an employee or prospective
46 employee, whether the test results were positive or
47 negative, pursuant to the review and interpretation of
48 a medical review officer as provided in this
49 subsection. An inconclusive test result shall be
50 reported as a negative test result. If the test

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1 results are positive, the report shall only indicate
2 whether drugs or alcohol were present, which drugs
3 were present if applicable, information concerning the
4 amount of alcohol present, and a statement from the
5 medical review officer that any information provided
6 by the employee or prospective employee fails to
7 explain the results.

8 6. DRUG OR ALCOHOL TESTING. Employers may conduct
9 drug or alcohol testing as provided in this
10 subsection:

11 a. Employers may conduct drug or alcohol testing
12 of employees for up to two years after completion of
13 drug or alcohol rehabilitation.

14 b. Employers may conduct reasonable suspicion drug
15 or alcohol testing.

16 c. Employers may conduct drug or alcohol testing
17 of prospective employees.

18 d. Employers may conduct drug or alcohol testing
19 as required by federal law or regulation.

20 e. Employers may conduct drug or alcohol testing
21 in investigating accidents in the workplace which
22 result in a personal injury which requires medical
23 treatment away from the workplace or damage to
24 property, including equipment, in an amount reasonably
25 estimated to exceed one thousand dollars at the time
26 of the accident.

27 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

28 a. Prior to conducting drug or alcohol testing
29 under this section, an employer shall establish,
30 following consultation with representatives of
31 employees, a written policy consistent with the
32 requirements of this section governing such testing.
33 The employer shall comply with this section and the
34 requirements of the written policy to conduct drug or
35 alcohol testing of employees and prospective employees
36 and shall provide the written policy to every employee
37 subject to testing and shall make the policy available
38 for review by employees and prospective employees.

39 b. Employers shall establish an awareness program
40 to inform employees of the dangers of drug and alcohol
41 use in the workplace and comply with the following
42 requirements in order to conduct drug or alcohol
43 testing under this section:

44 (1) If an employer has an employee assistance
45 program, the employer must inform the employee of the
46 benefits and services of the employee assistance
47 program. An employer shall post notice of the
48 employee assistance program in conspicuous places and
49 explore alternative routine and reinforcing means of
50 publicizing such services. In addition, the employer

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1 must provide the employee with notice of the policies
2 and procedures regarding access to and utilization of
3 the program.

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

20 c. An employee or prospective employee whose drug
21 or alcohol test results are confirmed as positive in
22 accordance with this section shall not, by virtue of
23 those results alone, be considered as a person with a
24 disability for purposes of any state or local law or
25 regulation.

26 d. If the written policy provides for alcohol
27 testing, the employer shall establish in the written
28 policy a standard for alcohol concentration which
29 shall be deemed to violate the policy. The standard
30 for alcohol concentration shall not be less than .04,
31 expressed in terms of grams of alcohol per two hundred
32 ten liters of breath, or its equivalent.

33 e. In order to conduct drug or alcohol testing
34 under this section, an employer shall require all
35 supervisory personnel of the employer to attend a
36 minimum of two hours of initial training and to
37 attend, on an annual basis thereafter, a minimum of
38 one hour of subsequent training. The training shall
39 be based upon standards adopted by the Iowa department
40 of public health and shall include, but is not limited
41 to, information concerning the recognition of evidence
42 of employee alcohol and other drug abuse, the
43 documentation and corroboration of employee alcohol
44 and other drug abuse, and the referral of employees
45 who abuse alcohol or other drugs to the employee
46 assistance program or to the resource file of employee
47 assistance services providers. For purposes of this
48 paragraph, "supervisory personnel" means persons
49 having authority, in the interest of the employer, to
50 hire, transfer, suspend, lay off, recall, promote,

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1 discharge, assign, reward, or discipline other
 2 employees, or responsibly to direct them, or to adjust
 3 their grievances, or effectively to recommend such
 4 action, if in connection with the foregoing the
 5 exercise of such authority is not of a merely routine
 6 or clerical nature, but requires the use of
 7 independent judgment.

8 f. If an employee is under eighteen years of age,
 9 in order to conduct drug or alcohol testing under this
 10 section, the employer shall, prior to conducting a
 11 test, notify the employee's parent or grandparent that
 12 a test shall be conducted and the basis for the test.
 13 For purposes of this paragraph, "parent" means one
 14 parent or a legal guardian or custodian of the
 15 employee.

16 8. DISCIPLINARY PROCEDURES.

17 a. Upon receipt for an employee of the first
 18 confirmed positive drug or alcohol test result, the
 19 employer shall provide the employee with a substance
 20 abuse evaluation, and treatment if recommended by the
 21 evaluation, with costs apportioned as provided under
 22 the employee benefit plan or at employer expense, if
 23 an employee benefit plan is not in effect which
 24 apportions costs. The employer shall take no
 25 disciplinary action against the employee upon receipt
 26 of the first confirmed positive drug or alcohol test
 27 result if the employee undergoes a substance abuse
 28 evaluation, and if the employee successfully completes
 29 substance abuse treatment if treatment is recommended
 30 by the evaluation. However, if an employee fails to
 31 undergo substance abuse evaluation when required as a
 32 result of a drug or alcohol test, or fails to
 33 successfully complete substance abuse treatment when
 34 recommended by an evaluation, the employee may be
 35 disciplined as provided in paragraph "b". The
 36 substance abuse evaluation and treatment provided by
 37 the employer shall take place under a program approved
 38 by the department of public health or accredited by
 39 the joint commission on the accreditation of health
 40 care organizations.

41 b. Upon receipt for an employee of a second
 42 confirmed positive drug or alcohol test result or upon
 43 receipt for a prospective employee of a confirmed
 44 positive drug or alcohol test result, upon the failure
 45 of an employee to comply with the requirements of
 46 paragraph "a", or upon the refusal of an employee or
 47 prospective employee to provide a testing sample, an
 48 employer may use that test result or test refusal as a
 49 valid basis for disciplinary or rehabilitative actions
 50 consistent with the employer's written policy, which

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1 may include, among other actions, the following:

2 (1) A requirement that the employee enroll in an
3 employer-provided or approved rehabilitation,
4 treatment, or counseling program, which may include
5 additional drug or alcohol testing, participation in
6 and successful completion of which may be a condition
7 of continued employment, and the costs of which may or
8 may not be covered by the employer's health plan or
9 policies.

10 (2) Suspension of the employee, with or without
11 pay, for a designated period of time.

12 (3) Termination of employment.

13 (4) Refusal to hire a prospective employee.

14 (5) Other adverse employment action in conformance
15 with the employer's written policy and procedures,
16 including any relevant collective bargaining agreement
17 provisions.

18 9. EMPLOYER IMMUNITY. A cause of action shall not
19 arise against an employer who has established a
20 written policy in accordance with this section and has
21 complied with the requirements of the written policy
22 and this section for testing or taking action based on
23 the results of a confirmed positive drug or alcohol
24 test result, indicating the presence of drugs or
25 alcohol, in good faith, or the refusal of an employee
26 or prospective employee to submit to a drug or alcohol
27 test.

28 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --
29 EXCEPTIONS.

30 a. Except as provided in paragraph "b", all
31 communications received by an employer relevant to
32 employee or prospective employee drug or alcohol test
33 results, or otherwise received through the employer's
34 drug or alcohol testing program, are confidential
35 communications and shall not be used or received in
36 evidence, obtained in discovery, or disclosed in any
37 public or private proceeding, except as provided by
38 this section or in a proceeding related to an action
39 taken by an employer under this section or by an
40 employee under this section.

41 b. An employee, or a prospective employee, who is
42 the subject of a drug or alcohol test conducted under
43 this section pursuant to an employer's written policy
44 and for whom a confirmed positive test result is
45 reported shall receive, at the same time the report is
46 issued to the employer, a copy of the report issued to
47 the employer and shall receive any records relating to
48 the employee's drug or alcohol test, including records
49 of the laboratory where the testing was conducted and
50 any records relating to the results of any relevant

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1 certification or review by a medical review officer.

2 11. CIVIL REMEDIES. This section may be enforced
3 through a civil action.

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

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

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

24 12. OFFENSES. Samples collected, information
25 provided by an employee or prospective employee
26 pursuant to subsection 5, paragraph "c", subparagraph
27 (2), and the results of drug or alcohol testing shall
28 be used solely for the purpose of conducting drug or
29 alcohol testing pursuant to this section and shall not
30 be sold, transferred, or disseminated, to any person
31 for any purpose not expressly authorized by this
32 section. A person who violates this subsection
33 commits a simple misdemeanor and, notwithstanding
34 section 903.1, if a monetary fine is imposed, the fine
35 shall be one hundred dollars. Each violation of this
36 subsection constitutes a separate offense.

37 13. REPORTS.

38 a. An employer who conducts a drug test pursuant
39 to this section shall, for each fiscal year beginning
40 on or after July 1, 1998, file an annual report with
41 the division of labor services of the department of
42 workforce development, on forms provided by the
43 division, documenting the number of accidents,
44 including the number of personal injuries and the
45 dollar loss for property damage arising out of the
46 accidents, caused by the use of drugs or alcohol by
47 employees and documenting separately for each category
48 of test described in subsection 6 the following
49 information:

50 (1) The number of drug or alcohol tests conducted

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1 in each category.
2 (2) The results of drug or alcohol tests conducted
3 in each category.
4 b. The division of labor services of the
5 department of workforce development shall compile the
6 information submitted by employers pursuant to this
7 subsection and shall submit an annual report to the
8 general assembly on this information.
9 Sec. 2. EFFECTIVE DATE. This Act takes effect on
10 January 1, 1998."

By TOM VILSACK

S-3773 FILED APRIL 25, 1997
LOST (p.1455)

HOUSE FILE 299

S-3772

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. By striking page 1, line 1, through page 12,
5 line 4 and inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered unlawful
19 under the federal Controlled Substances Act, 21 U.S.C.
20 § 801 et seq.
21 c. "Employee" means a person in the service of an
22 employer and includes the employer, and any chief
23 executive officer, president, vice president,
24 supervisor, manager, and officer of the employer.
25 d. "Employer" means a person, firm, company,
26 corporation, labor organization, or employment agency,
27 which has one or more full-time employees employed in
28 the same business, or in or about the same
29 establishment, under any contract of hire, express or
30 implied, oral or written, in this state. "Employer"
31 does not include the state, a political subdivision of
32 the state, including a city, county, or school
33 district, the United States, the United States postal
34 service, or a Native-American tribe.
35 e. "Good faith" means reasonable reliance on
36 facts, or that which is held out to be factual,
37 without the intent to be deceived, and without
38 reckless, malicious, or negligent disregard for the
39 truth.
40 f. "Medical review officer" means a licensed
41 physician, osteopathic physician, chiropractor, nurse
42 practitioner, or physician's assistant authorized to
43 practice in any state of the United States, who is
44 responsible for receiving laboratory results generated
45 by an employer's drug testing program, and who has
46 knowledge of substance abuse disorders and has
47 appropriate medical training to interpret and evaluate
48 an individual's confirmed positive test result
49 together with the individual's medical history and any
50 other relevant biomedical information.

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1 g. "Prospective employee" means a person who has
2 made application, whether written or oral, to an
3 employer to become an employee.

4 h. "Reasonable suspicion drug or alcohol testing"
5 means drug or alcohol testing based upon evidence that
6 an employee is using or has used alcohol or other
7 drugs in violation of the employer's written policy
8 drawn from specific objective and articulable facts
9 and reasonable inferences drawn from those facts in
10 light of experience. For purposes of this paragraph,
11 facts and inferences may be based upon, but not
12 limited to, any of the following:

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

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

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

22 (4) Evidence that an individual has tampered with
23 any drug or alcohol test during the individual's
24 employment with the current employer.

25 (5) Evidence that an employee has caused an
26 accident while at work.

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

32 i. "Safety-sensitive position" means a job wherein
33 an accident could cause loss of human life, serious
34 bodily injury, or significant property or
35 environmental damage, including a job with duties that
36 include immediate supervision of a person in a job
37 that meets the requirement of this paragraph.

38 j. "Sample" means such sample from the human body
39 capable of revealing the presence of alcohol or other
40 drugs, or their metabolites.

41 k. "Unannounced drug or alcohol testing" means
42 testing for the purposes of detecting drugs or alcohol
43 which is conducted on a periodic basis, without
44 advance notice of the test, and without individualized
45 suspicion. The selection of employees to be tested
46 shall be done by an entity independent from the
47 employer and shall be made by a computer-based random
48 number generator that is matched with employees'
49 social security numbers, payroll identification
50 numbers, or other comparable identifying numbers in

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1 which each member of the employee population subject
2 to testing has an equal chance of selection for
3 initial testing. The random selection process shall
4 be conducted through a computer program that records
5 each selection attempt by date, time, and employee
6 number.

7 2. TESTING OPTIONAL. This section does not
8 require an employer to conduct drug or alcohol testing
9 and the requirements of this section shall not be
10 construed to encourage, discourage, restrict, limit,
11 prohibit, or require such testing.

12 3. TESTING AS CONDITION OF EMPLOYMENT --
13 REQUIREMENTS. To the extent provided in subsection 7,
14 an employer may test employees and prospective
15 employees for the presence of drugs or alcohol as a
16 condition of continued employment or hiring. An
17 employer shall adhere to the requirements of this
18 section concerning the conduct of such testing and the
19 use and disposition of the results of such testing.

20 4. COLLECTION OF SAMPLES. In conducting drug or
21 alcohol testing, an employer may require the
22 collection of samples from its employees and
23 prospective employees, and may require presentation of
24 reliable individual identification from the person
25 being tested to the person collecting the samples.
26 Collection of a sample shall be in conformance with
27 the requirements of this section. The employer may
28 designate the type of sample to be used for this
29 testing.

30 5. SCHEDULING OF TESTS.

31 a. Drug or alcohol testing of employees conducted
32 by an employer shall normally occur during, or
33 immediately before or after, a regular work period.
34 The time required for such testing by an employer
35 shall be deemed work time for the purposes of
36 compensation and benefits for employees.

37 b. An employer shall pay all actual costs for drug
38 or alcohol testing of employees and prospective
39 employees required by the employer.

40 c. An employer shall provide transportation or pay
41 reasonable transportation costs to employees if drug
42 or alcohol sample collection is conducted at a
43 location other than the employee's normal work site.

44 6. TESTING PROCEDURES. All sample collection and
45 testing for drugs or alcohol under this section shall
46 be performed in accordance with the following
47 conditions:

48 a. The collection of samples shall be performed
49 under sanitary conditions and with regard for the
50 privacy of the individual from whom the specimen is

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1 being obtained and in a manner reasonably calculated
2 to preclude contamination or substitution of the
3 specimen.

4 b. Sample collection for testing of current
5 employees shall be performed so that the specimen is
6 split into two components at the time of collection in
7 the presence of the individual from whom the sample or
8 specimen is collected. The second portion of the
9 specimen or sample shall be of sufficient quantity to
10 permit a second, independent confirmatory test as
11 provided in paragraph "i". If the specimen is urine,
12 the sample shall be split such that the primary sample
13 contains at least thirty milliliters and the secondary
14 sample contains at least fifteen milliliters. Both
15 portions of the sample shall be forwarded to the
16 laboratory conducting the initial confirmatory
17 testing. In addition to any requirements for storage
18 of the initial sample that may be imposed upon the
19 laboratory as a condition for certification of
20 approval, the laboratory shall store the second
21 portion of any sample until receipt of a confirmed
22 negative test result or for a period of at least
23 forty-five calendar days following the completion of
24 the initial confirmatory testing, if the first portion
25 yielded a confirmed positive test result.

26 c. Sample collections shall be documented, and the
27 procedure for documentation shall include the
28 following:

29 (1) Samples shall be labeled so as to reasonably
30 preclude the possibility of misidentification of the
31 person tested in relation to the test result provided,
32 and samples shall be handled and tracked in a manner
33 such that control and accountability are maintained
34 from initial collection to each stage in handling,
35 testing, and storage, through final disposition.

36 (2) An employee or prospective employee shall be
37 provided an opportunity to provide any information
38 which may be considered relevant to the test,
39 including identification of prescription or
40 nonprescription drugs currently or recently used, or
41 other relevant medical information. To assist an
42 employee or prospective employee in providing the
43 information described in this subparagraph, the
44 employer shall provide an employee or prospective
45 employee with a list of the drugs to be tested.

46 d. Sample collection, storage, and transportation
47 to the place of testing shall be performed so as to
48 reasonably preclude the possibility of sample
49 contamination, adulteration, or misidentification.

50 e. All drug testing shall be conducted at a

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1 laboratory certified by the United States department
2 of health and human services' substance abuse and
3 mental health services administration or approved
4 under rules adopted by the Iowa department of public
5 health.

6 f. Drug or alcohol testing shall include
7 confirmation of any initial positive test results.
8 For drug or alcohol testing, confirmation shall be by
9 use of a different chemical process than was used in
10 the initial screen for drugs or alcohol. The
11 confirmatory drug or alcohol test shall be a
12 chromatographic technique such as gas chromatography
13 or mass spectrometry, or another comparably reliable
14 analytical method. An employer may take adverse
15 employment action, including refusal to hire a
16 prospective employee, based on a confirmed positive
17 drug or alcohol test.

18 g. A medical review officer shall, prior to the
19 results being reported to an employer, review and
20 interpret any confirmed positive test results,
21 including both quantitative and qualitative test
22 results, to ensure that the chain of custody is
23 complete and sufficient on its face and that any
24 information provided by the individual pursuant to
25 paragraph "c", subparagraph (2), is considered.

26 h. In conducting drug or alcohol testing pursuant
27 to this section, the employer shall ensure to the
28 extent feasible that the testing only measure, and the
29 records concerning the testing only show or make use
30 of information regarding, alcohol or drugs in the
31 body.

32 i. (1) If a confirmed positive drug or alcohol
33 test for a current employee is reported to the
34 employer by the medical review officer, the employer
35 shall notify the employee in writing of the results of
36 the test, the employee's right to request and obtain a
37 confirmatory test of the second sample collected
38 pursuant to paragraph "b" at an approved laboratory of
39 the employee's choice, and the fee payable by the
40 employee to the employer for reimbursement of expenses
41 concerning the test. The fee charged an employee
42 shall be an amount that represents the costs
43 associated with conducting the second confirmatory
44 test, which shall be consistent with the employer's
45 cost for conducting the initial confirmatory test on
46 an employee's sample. If the employee requests a
47 second confirmatory test, identifies an approved
48 laboratory to conduct the test, and pays the employer
49 the fee for the test within five days from the date
50 the employee receives written notice of the right to

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1 request a test, a second confirmatory test shall be
2 conducted at the laboratory chosen by the employee.
3 The results of the second confirmatory test shall be
4 reported to the medical review officer who reviewed
5 the initial confirmatory test results and the medical
6 review officer shall review the results and issue a
7 report to the employer on whether the results of the
8 second confirmatory test confirmed the initial
9 confirmatory test as to the presence of a specific
10 drug or alcohol. If the results of the second test do
11 not confirm the results of the initial confirmatory
12 test, the employer shall reimburse the employee for
13 the fee paid by the employee for the second test and
14 the initial confirmatory test shall not be considered
15 a confirmed positive drug or alcohol test for purposes
16 of taking disciplinary action pursuant to subsection
17 9.

18 (2) If a confirmed positive drug or alcohol test
19 for a prospective employee is reported to the employer
20 by the medical review officer, the employer shall
21 notify the prospective employee in writing of the
22 results of the test, of the name and address of the
23 medical review officer who made the report, and of the
24 prospective employee's right to request records under
25 subsection 12.

26 j. A laboratory conducting testing under this
27 section shall dispose of all samples for which a
28 negative test result was reported to an employer
29 within five working days after issuance of the
30 negative test result report.

31 7. DRUG OR ALCOHOL TESTING. Employers may conduct
32 drug or alcohol testing as provided in this
33 subsection:

34 a. Employers may conduct unannounced drug or
35 alcohol testing of the employee population not subject
36 to testing pursuant to paragraph "b".

37 b. Employers may conduct unannounced drug or
38 alcohol testing of employees in a pool of employees
39 who are in a safety-sensitive position.

40 c. Employers may conduct drug or alcohol testing
41 of employees during, and after completion of, drug or
42 alcohol rehabilitation.

43 d. Employers may conduct reasonable suspicion drug
44 or alcohol testing.

45 e. Employers may conduct drug or alcohol testing
46 of prospective employees.

47 f. Employers may conduct drug or alcohol testing
48 as required by federal law or regulation.

49 g. Employers may conduct drug or alcohol testing
50 in investigating accidents in the workplace.

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1 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

2 a. Drug or alcohol testing or retesting by an
3 employer shall be carried out within the terms of a
4 written policy which has been provided to every
5 employee subject to testing, and is available for
6 review by employees and prospective employees.

7 b. Employers shall establish an awareness program
8 to inform employees of the dangers of drug and alcohol
9 use in the workplace and comply with the following
10 requirements in order to conduct drug or alcohol
11 testing under this section:

12 (1) If an employer has an employee assistance
13 program, the employer must inform the employee of the
14 benefits and services of the employee assistance
15 program. An employer shall post notice of the
16 employee assistance program in conspicuous places and
17 explore alternative routine and reinforcing means of
18 publicizing such services. In addition, the employer
19 must provide the employee with notice of the policies
20 and procedures regarding access to and utilization of
21 the program.

22 (2) If an employer does not have an employee
23 assistance program, the employer must maintain a
24 resource file of employee assistance services
25 providers, alcohol and other drug abuse programs
26 certified by the Iowa department of public health,
27 mental health providers, and other persons, entities,
28 or organizations available to assist employees with
29 personal or behavioral problems. The employer shall
30 provide all employees information about the existence
31 of the resource file and a summary of the information
32 contained within the resource file. The summary
33 should contain, but need not be limited to, all
34 information necessary to access the services listed in
35 the resource file. In addition, the employer shall
36 post in conspicuous places a listing of multiple
37 employee assistance providers in the area.

38 c. An employee or prospective employee whose drug
39 or alcohol test results are confirmed as positive in
40 accordance with this section shall not, by virtue of
41 those results alone, be considered as a person with a
42 disability for purposes of any state or local law or
43 regulation.

44 d. If the written policy provides for alcohol
45 testing, the employer shall establish in the written
46 policy a standard for alcohol concentration which
47 shall be deemed to violate the policy. The standard
48 for alcohol concentration shall not be less than .02,
49 expressed in terms of grams of alcohol per two hundred
50 ten liters of breath, or its equivalent.

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1 e. All employees of an employer who are designated
2 by the employer as being in a safety-sensitive
3 position shall be placed in a pool of safety-sensitive
4 employees subject to drug or alcohol testing pursuant
5 to subsection 7, paragraph "b". An employer shall
6 have no more than one pool of safety-sensitive
7 employees subject to drug or alcohol testing pursuant
8 to subsection 7, paragraph "b".

9 f. Upon receipt of a confirmed positive alcohol
10 test or a confirmed positive drug test relating to the
11 abuse of lawfully prescribed drugs currently or
12 recently used by an employee, and if the employer has
13 at least fifty employees, and if the employee has been
14 employed by the employer on a full-time basis for
15 twelve consecutive months and rehabilitation is agreed
16 upon by both the employer and the employee, and if the
17 employee has not previously undergone rehabilitation
18 with the same employer pursuant to this section, the
19 written policy shall provide for the apportionment of
20 the costs of rehabilitation as provided by this
21 paragraph.

22 (1) If the employer has an employee benefit plan,
23 the costs of rehabilitation shall be apportioned as
24 provided under the employee benefit plan.

25 (2) If no employee benefit plan exists and the
26 employee has coverage for any portion of the costs of
27 rehabilitation under any health care plan of the
28 employee, the costs of rehabilitation shall be
29 apportioned as provided by the health care plan with
30 any costs not covered by the plan apportioned equally
31 between the employee and the employer. However, the
32 employer shall not be required to pay more than two
33 thousand dollars toward the costs not covered by the
34 employee's health care plan.

35 (3) If no employee benefit plan exists and the
36 employee does not have coverage for any portion of the
37 costs of rehabilitation under any health care plan of
38 the employee, the costs of rehabilitation shall be
39 apportioned equally between the employee and the
40 employer. However, the employer shall not be required
41 to pay more than two thousand dollars towards the cost
42 of rehabilitation under this subparagraph.

43 g. In order to conduct drug or alcohol testing
44 under this section, an employer shall require
45 supervisory personnel of the employer involved with
46 drug or alcohol testing under this section to attend a
47 minimum of two hours of initial training and to
48 attend, on an annual basis thereafter, a minimum of
49 one hour of subsequent training. The training shall
50 include, but is not limited to, information concerning

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1 the recognition of evidence of employee alcohol and
2 other drug abuse, the documentation and corroboration
3 of employee alcohol and other drug abuse, and the
4 referral of employees who abuse alcohol or other drugs
5 to the employee assistance program or to the resource
6 file of employee assistance services providers.

7 9. DISCIPLINARY PROCEDURES.

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

17 (1) A requirement that the employee enroll in an
18 employer-provided or approved rehabilitation,
19 treatment, or counseling program, which may include
20 additional drug or alcohol testing, participation in
21 and successful completion of which may be a condition
22 of continued employment, and the costs of which may or
23 may not be covered by the employer's health plan or
24 policies.

25 (2) Suspension of the employee, with or without
26 pay, for a designated period of time.

27 (3) Termination of employment.

28 (4) Refusal to hire a prospective employee.

29 (5) Other adverse employment action in conformance
30 with the employer's written policy and procedures,
31 including any relevant collective bargaining agreement
32 provisions.

33 b. Following a drug or alcohol test, but prior to
34 receipt of the final results of the drug or alcohol
35 test, an employer may suspend a current employee, with
36 or without pay, pending the outcome of the test. An
37 employee who has been suspended shall be reinstated by
38 the employer, with back pay, and interest on such
39 amount at eighteen percent per annum compounded
40 annually, if applicable, if the result of the test is
41 not a confirmed positive drug or alcohol test which
42 indicates a violation of the employer's written
43 policy.

44 10. EMPLOYER IMMUNITY. A cause of action shall
45 not arise against an employer who has established a
46 policy and initiated a testing program in accordance
47 with the testing and policy safeguards provided for
48 under this section, for any of the following:

49 a. Testing or taking action based on the results
50 of a positive drug or alcohol test result, indicating

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1 the presence of drugs or alcohol, in good faith, or
2 the refusal of an employee or prospective employee to
3 submit to a drug or alcohol test.

4 b. Failure to test for drugs or alcohol, or
5 failure to test for a specific drug or controlled
6 substance.

7 c. Failure to test for, or if tested for, failure
8 to detect, any specific drug or other controlled
9 substance.

10 d. Termination or suspension of any substance
11 abuse prevention or testing program or policy.

12 e. Any action taken related to a false negative
13 drug or alcohol test result.

14 11. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
15 RESULTS.

16 a. Except as otherwise provided in paragraph "b",
17 a cause of action shall not arise against an employer
18 who has established a program of drug or alcohol
19 testing in accordance with this section, unless all of
20 the following conditions exist:

21 (1) The employer's action was based on a false
22 positive test result.

23 (2) The employer knew or clearly should have known
24 that the test result was in error and ignored the
25 correct test result because of reckless, malicious, or
26 negligent disregard for the truth, or the willful
27 intent to deceive or to be deceived.

28 b. A cause of action for defamation, libel,
29 slander, or damage to reputation shall not arise
30 against an employer establishing a program of drug or
31 alcohol testing in accordance with this section unless
32 all of the following apply:

33 (1) The employer discloses the test results to a
34 person other than the employer, an authorized
35 employee, agent, or representative of the employer,
36 the tested employee or the tested applicant for
37 employment, an authorized substance abuse treatment
38 program or employee assistance program, or an
39 authorized agent or representative of the tested
40 employee or applicant.

41 (2) The test results disclosed incorrectly
42 indicate the presence of alcohol or drugs.

43 (3) The employer negligently discloses the
44 results.

45 c. In any cause of action based upon a false
46 positive test result, all of the following conditions
47 apply:

48 (1) The results of a drug or alcohol test
49 conducted in compliance with this section are presumed
50 to be valid.

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1 (2) An employer shall not be liable for monetary
2 damages if the employer's reliance on the false
3 positive test result was reasonable and in good faith.

4 12. CONFIDENTIALITY OF RESULTS - EXCEPTION.

5 a. Except as provided in paragraph "b", all
6 communications received by an employer relevant to
7 employee or prospective employee drug or alcohol test
8 results, or otherwise received through the employer's
9 drug or alcohol testing program, are confidential
10 communications and shall not be used or received in
11 evidence, obtained in discovery, or disclosed in any
12 public or private proceeding, except as provided by
13 this section or in a proceeding related to an action
14 taken by an employer under this section or by an
15 employee under this section.

16 b. An employee, or a prospective employee, who is
17 the subject of a drug or alcohol test conducted under
18 this section pursuant to an employer's written policy
19 and for whom a confirmed positive test result is
20 reported shall, upon written request, have access to
21 any records relating to the employee's drug or alcohol
22 test, including records of the laboratory where the
23 testing was conducted and any records relating to the
24 results of any relevant certification or review by a
25 medical review officer. However, a prospective
26 employee shall be entitled to records under this
27 paragraph only if the prospective employee requests
28 the records within fifteen calendar days from the date
29 the employer provided the prospective employee written
30 notice of the results of a drug or alcohol test as
31 provided in subsection 6, paragraph "i", subparagraph
32 (2).

33 c. Except as provided by this subsection and as
34 necessary to conduct drug or alcohol testing under
35 this section, a laboratory and a medical review
36 officer conducting drug or alcohol testing under this
37 section shall not use or disclose to any person any
38 personally identifiable information regarding such
39 testing, including the names of individuals tested,
40 even if unaccompanied by the results of the test.

41 13. CIVIL REMEDIES. This section may be enforced
42 through a civil action.

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

50 b. When a person commits, is committing, or

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

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

13 Sec. 2. EFFECTIVE DATE. This Act takes effect on
 14 the thirtieth day following enactment."

By STEVE KING

S-3772 FILED APRIL 25, 1997

LOST, MOTION TO RECONSIDER FILED

(p.1456)

(p.1473)

*return to
 R/c no order
 2/18/98*

HOUSE FILE 299

S-3789

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. By striking page 1, line 1, through page 12,
5 line 4 and inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered unlawful
19 under the federal Controlled Substances Act, 21 U.S.C.
20 § 801 et seq.
21 c. "Employee" means a person in the service of an
22 employer and includes the employer, and any chief
23 executive officer, president, vice president,
24 supervisor, manager, and officer of the employer.
25 d. "Employer" means a person, firm, company,
26 corporation, labor organization, or employment agency,
27 which has one or more full-time employees employed in
28 the same business, or in or about the same
29 establishment, under any contract of hire, express or
30 implied, oral or written, in this state. "Employer"
31 does not include the state, a political subdivision of
32 the state, including a city, county, or school
33 district, the United States, the United States postal
34 service, or a Native-American tribe.
35 e. "Good faith" means reasonable reliance on
36 facts, or that which is held out to be factual,
37 without the intent to be deceived, and without
38 reckless, malicious, or negligent disregard for the
39 truth.
40 f. "Medical review officer" means a licensed
41 physician, osteopathic physician, chiropractor, nurse
42 practitioner, or physician's assistant authorized to
43 practice in any state of the United States, who is
44 responsible for receiving laboratory results generated
45 by an employer's drug testing program, and who has
46 knowledge of substance abuse disorders and has
47 appropriate medical training to interpret and evaluate
48 an individual's confirmed positive test result
49 together with the individual's medical history and any
50 other relevant biomedical information.

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1 g. "Prospective employee" means a person who has
2 made application, whether written or oral, to an
3 employer to become an employee.

4 h. "Reasonable suspicion drug or alcohol testing"
5 means drug or alcohol testing based upon evidence that
6 an employee is using or has used alcohol or other
7 drugs in violation of the employer's written policy
8 drawn from specific objective and articulable facts
9 and reasonable inferences drawn from those facts in
10 light of experience. For purposes of this paragraph,
11 facts and inferences may be based upon, but not
12 limited to, any of the following:

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

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

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

22 (4) Evidence that an individual has tampered with
23 any drug or alcohol test during the individual's
24 employment with the current employer.

25 (5) Evidence that an employee has caused an
26 accident while at work.

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

32 i. "Safety-sensitive position" means a job wherein
33 an accident could cause loss of human life, serious
34 bodily injury, or significant property or
35 environmental damage, including a job with duties that
36 include immediate supervision of a person in a job
37 that meets the requirement of this paragraph.

38 j. "Sample" means such sample from the human body
39 capable of revealing the presence of alcohol or other
40 drugs, or their metabolites.

41 k. "Unannounced drug or alcohol testing" means
42 testing for the purposes of detecting drugs or alcohol
43 which is conducted on a periodic basis, without
44 advance notice of the test, and without individualized
45 suspicion. The selection of employees to be tested
46 shall be done by an entity independent from the
47 employer and shall be made by a computer-based random
48 number generator that is matched with employees'
49 social security numbers, payroll identification
50 numbers, or other comparable identifying numbers in

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1 which each member of the employee population subject
2 to testing has an equal chance of selection for
3 initial testing. The random selection process shall
4 be conducted through a computer program that records
5 each selection attempt by date, time, and employee
6 number.

7 2. TESTING OPTIONAL. This section does not
8 require an employer to conduct drug or alcohol testing
9 and the requirements of this section shall not be
10 construed to encourage, discourage, restrict, limit,
11 prohibit, or require such testing.

12 3. TESTING AS CONDITION OF EMPLOYMENT --
13 REQUIREMENTS. To the extent provided in subsection 7,
14 an employer may test employees and prospective
15 employees for the presence of drugs or alcohol as a
16 condition of continued employment or hiring. An
17 employer shall adhere to the requirements of this
18 section concerning the conduct of such testing and the
19 use and disposition of the results of such testing.

20 4. COLLECTION OF SAMPLES. In conducting drug or
21 alcohol testing, an employer may require the
22 collection of samples from its employees and
23 prospective employees, and may require presentation of
24 reliable individual identification from the person
25 being tested to the person collecting the samples.
26 Collection of a sample shall be in conformance with
27 the requirements of this section. The employer may
28 designate the type of sample to be used for this
29 testing.

30 5. SCHEDULING OF TESTS.

31 a. Drug or alcohol testing of employees conducted
32 by an employer shall normally occur during, or
33 immediately before or after, a regular work period.
34 The time required for such testing by an employer
35 shall be deemed work time for the purposes of
36 compensation and benefits for employees.

37 b. An employer shall pay all actual costs for drug
38 or alcohol testing of employees and prospective
39 employees required by the employer.

40 c. An employer shall provide transportation or pay
41 reasonable transportation costs to employees if drug
42 or alcohol sample collection is conducted at a
43 location other than the employee's normal work site.

44 6. TESTING PROCEDURES. All sample collection and
45 testing for drugs or alcohol under this section shall
46 be performed in accordance with the following
47 conditions:

48 a. The collection of samples shall be performed
49 under sanitary conditions and with regard for the
50 privacy of the individual from whom the specimen is

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1 being obtained and in a manner reasonably calculated
2 to preclude contamination or substitution of the
3 specimen.

4 b. Sample collection for testing of current
5 employees shall be performed so that the specimen is
6 split into two components at the time of collection in
7 the presence of the individual from whom the sample or
8 specimen is collected. The second portion of the
9 specimen or sample shall be of sufficient quantity to
10 permit a second, independent confirmatory test as
11 provided in paragraph "i". If the specimen is urine,
12 the sample shall be split such that the primary sample
13 contains at least thirty milliliters and the secondary
14 sample contains at least fifteen milliliters. Both
15 portions of the sample shall be forwarded to the
16 laboratory conducting the initial confirmatory
17 testing. In addition to any requirements for storage
18 of the initial sample that may be imposed upon the
19 laboratory as a condition for certification of
20 approval, the laboratory shall store the second
21 portion of any sample until receipt of a confirmed
22 negative test result or for a period of at least
23 forty-five calendar days following the completion of
24 the initial confirmatory testing, if the first portion
25 yielded a confirmed positive test result.

26 c. Sample collections shall be documented, and the
27 procedure for documentation shall include the
28 following:

29 (1) Samples shall be labeled so as to reasonably
30 preclude the possibility of misidentification of the
31 person tested in relation to the test result provided,
32 and samples shall be handled and tracked in a manner
33 such that control and accountability are maintained
34 from initial collection to each stage in handling,
35 testing, and storage, through final disposition.

36 (2) An employee or prospective employee shall be
37 provided an opportunity to provide any information
38 which may be considered relevant to the test,
39 including identification of prescription or
40 nonprescription drugs currently or recently used, or
41 other relevant medical information. To assist an
42 employee or prospective employee in providing the
43 information described in this subparagraph, the
44 employer shall provide an employee or prospective
45 employee with a list of the drugs to be tested.

46 d. Sample collection, storage, and transportation
47 to the place of testing shall be performed so as to
48 reasonably preclude the possibility of sample
49 contamination, adulteration, or misidentification.

50 e. All drug testing shall be conducted at a

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1 laboratory certified by the United States department
2 of health and human services' substance abuse and
3 mental health services administration or approved
4 under rules adopted by the Iowa department of public
5 health.

6 f. Drug or alcohol testing shall include
7 confirmation of any initial positive test results.
8 For drug or alcohol testing, confirmation shall be by
9 use of a different chemical process than was used in
10 the initial screen for drugs or alcohol. The
11 confirmatory drug or alcohol test shall be a
12 chromatographic technique such as gas chromatography
13 or mass spectrometry, or another comparably reliable
14 analytical method. An employer may take adverse
15 employment action, including refusal to hire a
16 prospective employee, based on a confirmed positive
17 drug or alcohol test.

18 g. A medical review officer shall, prior to the
19 results being reported to an employer, review and
20 interpret any confirmed positive test results,
21 including both quantitative and qualitative test
22 results, to ensure that the chain of custody is
23 complete and sufficient on its face and that any
24 information provided by the individual pursuant to
25 paragraph "c", subparagraph (2), is considered.

26 h. In conducting drug or alcohol testing pursuant
27 to this section, the employer shall ensure to the
28 extent feasible that the testing only measure, and the
29 records concerning the testing only show or make use
30 of information regarding, alcohol or drugs in the
31 body.

32 i. (1) If a confirmed positive drug or alcohol
33 test for a current employee is reported to the
34 employer by the medical review officer, the employer
35 shall notify the employee in writing of the results of
36 the test, the employee's right to request and obtain a
37 confirmatory test of the second sample collected
38 pursuant to paragraph "b" at an approved laboratory of
39 the employee's choice, and the fee payable by the
40 employee to the employer for reimbursement of expenses
41 concerning the test. The fee charged an employee
42 shall be an amount that represents the costs
43 associated with conducting the second confirmatory
44 test, which shall be consistent with the employer's
45 cost for conducting the initial confirmatory test on
46 an employee's sample. If the employee requests a
47 second confirmatory test, identifies an approved
48 laboratory to conduct the test, and pays the employer
49 the fee for the test within five days from the date
50 the employee receives written notice of the right to

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1 request a test, a second confirmatory test shall be
2 conducted at the laboratory chosen by the employee.
3 The results of the second confirmatory test shall be
4 reported to the medical review officer who reviewed
5 the initial confirmatory test results and the medical
6 review officer shall review the results and issue a
7 report to the employer on whether the results of the
8 second confirmatory test confirmed the initial
9 confirmatory test as to the presence of a specific
10 drug or alcohol. If the results of the second test do
11 not confirm the results of the initial confirmatory
12 test, the employer shall reimburse the employee for
13 the fee paid by the employee for the second test and
14 the initial confirmatory test shall not be considered
15 a confirmed positive drug or alcohol test for purposes
16 of taking disciplinary action pursuant to subsection
17 9.

18 (2) If a confirmed positive drug or alcohol test
19 for a prospective employee is reported to the employer
20 by the medical review officer, the employer shall
21 notify the prospective employee in writing of the
22 results of the test, of the name and address of the
23 medical review officer who made the report, and of the
24 prospective employee's right to request records under
25 subsection 12.

26 j. A laboratory conducting testing under this
27 section shall dispose of all samples for which a
28 negative test result was reported to an employer
29 within five working days after issuance of the
30 negative test result report.

31 7. DRUG OR ALCOHOL TESTING. Employers may conduct
32 drug or alcohol testing as provided in this
33 subsection:

34 a. Employers may conduct unannounced drug or
35 alcohol testing of the employee population not subject
36 to testing pursuant to paragraph "b".

37 b. Employers may conduct unannounced drug or
38 alcohol testing of employees in a pool of employees
39 who are in a safety-sensitive position.

40 c. Employers may conduct drug or alcohol testing
41 of employees during, and after completion of, drug or
42 alcohol rehabilitation.

43 d. Employers may conduct reasonable suspicion drug
44 or alcohol testing.

45 e. Employers may conduct drug or alcohol testing
46 of prospective employees.

47 f. Employers may conduct drug or alcohol testing
48 as required by federal law or regulation.

49 g. Employers may conduct drug or alcohol testing
50 in investigating accidents in the workplace.

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1 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.
2 a. Drug or alcohol testing or retesting by an
3 employer shall be carried out within the terms of a
4 written policy which has been provided to every
5 employee subject to testing, and is available for
6 review by employees and prospective employees.
7 b. Employers shall establish an awareness program
8 to inform employees of the dangers of drug and alcohol
9 use in the workplace and comply with the following
10 requirements in order to conduct drug or alcohol
11 testing under this section:
12 (1) If an employer has an employee assistance
13 program, the employer must inform the employee of the
14 benefits and services of the employee assistance
15 program. An employer shall post notice of the
16 employee assistance program in conspicuous places and
17 explore alternative routine and reinforcing means of
18 publicizing such services. In addition, the employer
19 must provide the employee with notice of the policies
20 and procedures regarding access to and utilization of
21 the program.
22 (2) If an employer does not have an employee
23 assistance program, the employer must maintain a
24 resource file of employee assistance services
25 providers, alcohol and other drug abuse programs
26 certified by the Iowa department of public health,
27 mental health providers, and other persons, entities,
28 or organizations available to assist employees with
29 personal or behavioral problems. The employer shall
30 provide all employees information about the existence
31 of the resource file and a summary of the information
32 contained within the resource file. The summary
33 should contain, but need not be limited to, all
34 information necessary to access the services listed in
35 the resource file. In addition, the employer shall
36 post in conspicuous places a listing of multiple
37 employee assistance providers in the area.
38 c. An employee or prospective employee whose drug
39 or alcohol test results are confirmed as positive in
40 accordance with this section shall not, by virtue of
41 those results alone, be considered as a person with a
42 disability for purposes of any state or local law or
43 regulation.
44 d. If the written policy provides for alcohol
45 testing, the employer shall establish in the written
46 policy a standard for alcohol concentration which
47 shall be deemed to violate the policy. The standard
48 for alcohol concentration shall not be less than .02,
49 expressed in terms of grams of alcohol per two hundred
50 ten liters of breath, or its equivalent.

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1 e. All employees of an employer who are designated
2 by the employer as being in a safety-sensitive
3 position shall be placed in a pool of safety-sensitive
4 employees subject to drug or alcohol testing pursuant
5 to subsection 7, paragraph "b". An employer shall
6 have no more than one pool of safety-sensitive
7 employees subject to drug or alcohol testing pursuant
8 to subsection 7, paragraph "b".

9 f. Upon receipt of a confirmed positive alcohol
10 test or a confirmed positive drug test relating to the
11 abuse of lawfully prescribed drugs currently or
12 recently used by an employee, and if the employer has
13 at least fifty employees, and if the employee has been
14 employed by the employer on a full-time basis for
15 twelve consecutive months and rehabilitation is agreed
16 upon by both the employer and the employee, and if the
17 employee has not previously undergone rehabilitation
18 with the same employer pursuant to this section, the
19 written policy shall provide for the apportionment of
20 the costs of rehabilitation as provided by this
21 paragraph.

22 (1) If the employer has an employee benefit plan,
23 the costs of rehabilitation shall be apportioned as
24 provided under the employee benefit plan.

25 (2) If no employee benefit plan exists and the
26 employee has coverage for any portion of the costs of
27 rehabilitation under any health care plan of the
28 employee, the costs of rehabilitation shall be
29 apportioned as provided by the health care plan with
30 any costs not covered by the plan apportioned equally
31 between the employee and the employer. However, the
32 employer shall not be required to pay more than two
33 thousand dollars toward the costs not covered by the
34 employee's health care plan.

35 (3) If no employee benefit plan exists and the
36 employee does not have coverage for any portion of the
37 costs of rehabilitation under any health care plan of
38 the employee, the costs of rehabilitation shall be
39 apportioned equally between the employee and the
40 employer. However, the employer shall not be required
41 to pay more than two thousand dollars towards the cost
42 of rehabilitation under this subparagraph.

43 g. In order to conduct drug or alcohol testing
44 under this section, an employer shall require
45 supervisory personnel of the employer involved with
46 drug or alcohol testing under this section to attend a
47 minimum of two hours of initial training and to
48 attend, on an annual basis thereafter, a minimum of
49 one hour of subsequent training. The training shall
50 include, but is not limited to, information concerning

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1 the recognition of evidence of employee alcohol and
2 other drug abuse, the documentation and corroboration
3 of employee alcohol and other drug abuse, and the
4 referral of employees who abuse alcohol or other drugs
5 to the employee assistance program or to the resource
6 file of employee assistance services providers.

7 9. DISCIPLINARY PROCEDURES.

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

17 (1) A requirement that the employee enroll in an
18 employer-provided or approved rehabilitation,
19 treatment, or counseling program, which may include
20 additional drug or alcohol testing, participation in
21 and successful completion of which may be a condition
22 of continued employment, and the costs of which may or
23 may not be covered by the employer's health plan or
24 policies.

25 (2) Suspension of the employee, with or without
26 pay, for a designated period of time.

27 (3) Termination of employment.

28 (4) Refusal to hire a prospective employee.

29 (5) Other adverse employment action in conformance
30 with the employer's written policy and procedures,
31 including any relevant collective bargaining agreement
32 provisions.

33 b. Following a drug or alcohol test, but prior to
34 receipt of the final results of the drug or alcohol
35 test, an employer may suspend a current employee, with
36 or without pay, pending the outcome of the test. An
37 employee who has been suspended shall be reinstated by
38 the employer, with back pay, and interest on such
39 amount at eighteen percent per annum compounded
40 annually, if applicable, if the result of the test is
41 not a confirmed positive drug or alcohol test which
42 indicates a violation of the employer's written
43 policy.

44 10. EMPLOYER IMMUNITY. A cause of action shall
45 not arise against an employer who has established a
46 policy and initiated a testing program in accordance
47 with the testing and policy safeguards provided for
48 under this section, for any of the following:

49 a. Testing or taking action based on the results
50 of a positive drug or alcohol test result, indicating

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1 the presence of drugs or alcohol, in good faith, or
2 the refusal of an employee or prospective employee to
3 submit to a drug or alcohol test.

4 b. Failure to test for drugs or alcohol, or
5 failure to test for a specific drug or controlled
6 substance.

7 c. Failure to test for, or if tested for, failure
8 to detect, any specific drug or other controlled
9 substance.

10 d. Termination or suspension of any substance
11 abuse prevention or testing program or policy.

12 e. Any action taken related to a false negative
13 drug or alcohol test result.

14 11. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
15 RESULTS.

16 a. Except as otherwise provided in paragraph "b",
17 a cause of action shall not arise against an employer
18 who has established a program of drug or alcohol
19 testing in accordance with this section, unless all of
20 the following conditions exist:

21 (1) The employer's action was based on a false
22 positive test result.

23 (2) The employer knew or clearly should have known
24 that the test result was in error and ignored the
25 correct test result because of reckless, malicious, or
26 negligent disregard for the truth, or the willful
27 intent to deceive or to be deceived.

28 b. A cause of action for defamation, libel,
29 slander, or damage to reputation shall not arise
30 against an employer establishing a program of drug or
31 alcohol testing in accordance with this section unless
32 all of the following apply:

33 (1) The employer discloses the test results to a
34 person other than the employer, an authorized
35 employee, agent, or representative of the employer,
36 the tested employee or the tested applicant for
37 employment, an authorized substance abuse treatment
38 program or employee assistance program, or an
39 authorized agent or representative of the tested
40 employee or applicant.

41 (2) The test results disclosed incorrectly
42 indicate the presence of alcohol or drugs.

43 (3) The employer negligently discloses the
44 results.

45 c. In any cause of action based upon a false
46 positive test result, all of the following conditions
47 apply:

48 (1) The results of a drug or alcohol test
49 conducted in compliance with this section are presumed
50 to be valid.

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1 (2) An employer shall not be liable for monetary
2 damages if the employer's reliance on the false
3 positive test result was reasonable and in good faith.

4 12. CONFIDENTIALITY OF RESULTS - EXCEPTION.

5 a. Except as provided in paragraph "b", all
6 communications received by an employer relevant to
7 employee or prospective employee drug or alcohol test
8 results, or otherwise received through the employer's
9 drug or alcohol testing program, are confidential
10 communications and shall not be used or received in
11 evidence, obtained in discovery, or disclosed in any
12 public or private proceeding, except as provided by
13 this section or in a proceeding related to an action
14 taken by an employer under this section or by an
15 employee under this section.

16 b. An employee, or a prospective employee, who is
17 the subject of a drug or alcohol test conducted under
18 this section pursuant to an employer's written policy
19 and for whom a confirmed positive test result is
20 reported shall, upon written request, have access to
21 any records relating to the employee's drug or alcohol
22 test, including records of the laboratory where the
23 testing was conducted and any records relating to the
24 results of any relevant certification or review by a
25 medical review officer. However, a prospective
26 employee shall be entitled to records under this
27 paragraph only if the prospective employee requests
28 the records within fifteen calendar days from the date
29 the employer provided the prospective employee written
30 notice of the results of a drug or alcohol test as
31 provided in subsection 6, paragraph "i", subparagraph
32 (2).

33 c. Except as provided by this subsection and as
34 necessary to conduct drug or alcohol testing under
35 this section, a laboratory and a medical review
36 officer conducting drug or alcohol testing under this
37 section shall not use or disclose to any person any
38 personally identifiable information regarding such
39 testing, including the names of individuals tested,
40 even if unaccompanied by the results of the test.

41 13. CIVIL REMEDIES. This section may be enforced
42 through a civil action.

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

50 b. When a person commits, is committing, or

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Page 12

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

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

13 Sec. 2. EFFECTIVE DATE. This Act, being deemed of
14 immediate importance, takes effect upon enactment."

By STEVE KING

S-3789 FILED APRIL 25, 1997

O/O
2/8/98

HOUSE FILE 299

S-3855

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. By striking page 1, line 1, through page 12,
5 line 4 and inserting the following:
6 "Amend House File 299, as amended, passed, and
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8 "____. By striking everything after the enacting
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10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered unlawful
19 under the federal Controlled Substances Act, 21 U.S.C.
20 § 801 et seq.
21 c. "Employee" means a person in the service of an
22 employer.
23 d. "Employer" means a person which has one or more
24 employees employed in the same business, or in or
25 about the same establishment, in this state.
26 e. "Good faith" means reasonable reliance on
27 facts.
28 f. "Medical review officer" means a physician
29 licensed to practice medicine and surgery or
30 osteopathic medicine and surgery in any state of the
31 United States, responsible for receiving laboratory
32 results generated by an employer's drug testing
33 program, who is independent from the employer and is
34 agreed upon by representatives of the employer and the
35 employees, and who has knowledge of substance abuse
36 disorders and has appropriate medical training to
37 interpret and evaluate an individual's confirmed
38 positive test result together with the individual's
39 medical history and any other relevant biomedical
40 information.
41 g. "Prospective employee" means a person who has
42 made application, whether written or oral, to an
43 employer to become an employee and who has received a
44 bona fide offer of employment from the employer.
45 h. "Reasonable suspicion drug or alcohol testing"
46 means drug or alcohol testing based upon evidence
47 which would cause a reasonable person to conclude that
48 an employee is using or has used alcohol or other
49 drugs and which use impairs the employee's performance
50 while on the job in violation of the employer's

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1 written policy. For purposes of this paragraph,
 2 evidence may include, but is not limited to, any of
 3 the following:

4 (1) Observable phenomena while at work such as
 5 direct observation of alcohol or other drug use or
 6 abuse or of the physical symptoms or manifestations of
 7 being impaired due to alcohol or other drug use.

8 (2) Abnormal conduct or erratic behavior while at
 9 work or a significant deterioration in work
 10 performance.

11 (3) A report of alcohol or other drug use while at
 12 work provided by a reliable and credible source.

13 (4) Evidence that an individual has tampered with
 14 their own drug or alcohol test during the individual's
 15 employment with the current employer.

16 (5) Evidence that an employee has caused an
 17 accident while at work which resulted in a personal
 18 injury which required medical treatment away from the
 19 workplace or damage to property, including equipment,
 20 in an amount reasonably estimated to exceed one
 21 thousand dollars at the time of the accident.

22 (6) Evidence that an employee has possessed or
 23 used drugs while working or while on the employer's
 24 premises or while operating the employer's vehicle,
 25 machinery, or equipment.

26 i. "Sample" means such sample of blood or urine
 27 from the human body capable of revealing the presence
 28 of alcohol or other drugs, or their metabolites.

29 2. TESTING AS CONDITION OF EMPLOYMENT --
 30 REQUIREMENTS. To the extent provided in subsection 6,
 31 an employer may test employees and prospective
 32 employees for the presence of drugs or alcohol as a
 33 condition of continued employment or hiring. An
 34 employer shall adhere to the requirements of this
 35 section concerning the conduct of such testing and the
 36 use and disposition of the results of such testing.

37 3. COLLECTION OF SAMPLES. In conducting drug or
 38 alcohol testing, an employer may require the
 39 collection of samples from its employees and
 40 prospective employees, and may require presentation of
 41 reliable individual identification from the person
 42 being tested to the person collecting the samples.
 43 Collection of a sample shall be in conformance with
 44 the requirements of this section. If the employer
 45 requests that a urine sample be provided in conducting
 46 drug or alcohol testing under this section, the
 47 employer shall provide the employee or prospective
 48 employee with an opportunity to have a blood sample
 49 drawn instead of providing a urine sample.

50 4. SCHEDULING OF TESTS.

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1 a. Drug or alcohol testing of employees conducted
2 by an employer shall normally occur during, or
3 immediately before or after, a regular work period.
4 The time required for such testing by an employer
5 shall be deemed work time for the purposes of
6 compensation and benefits for employees.

7 b. An employer shall pay all actual costs for drug
8 or alcohol testing of employees and prospective
9 employees required by the employer.

10 c. An employer shall provide transportation or pay
11 reasonable transportation costs to employees for all
12 drug or alcohol testing under this section.

13 5. TESTING PROCEDURES. All sample collection and
14 testing for drugs or alcohol under this section shall
15 be performed in accordance with the following
16 conditions:

17 a. The collection of samples shall be performed
18 under sanitary conditions and with regard for the
19 privacy of the individual from whom the specimen is
20 being obtained and in a manner reasonably calculated
21 to preclude contamination or substitution of the
22 specimen.

23 b. Sample collection for testing of current
24 employees shall be performed so that the specimen is
25 split into two components at the time of collection in
26 the presence of the individual from whom the sample or
27 specimen is collected. The second portion of the
28 specimen or sample shall be of sufficient quantity to
29 permit a second, independent confirmatory test as
30 provided in paragraph "i". If the specimen is urine,
31 the sample shall be split such that the primary sample
32 contains at least thirty milliliters and the secondary
33 sample contains at least fifteen milliliters. Both
34 portions of the sample shall be forwarded to the
35 laboratory conducting the initial confirmatory
36 testing. In addition to any requirements for storage
37 of the initial sample that may be imposed upon the
38 laboratory as a condition for certification of
39 approval, the laboratory shall store the second
40 portion of any sample until receipt of a confirmed
41 negative test result or for a period of at least
42 forty-five calendar days following the completion of
43 the initial confirmatory testing, if the first portion
44 yielded a confirmed positive test result.

45 c. Sample collections shall be documented, and the
46 procedure for documentation shall include the
47 following:

48 (1) Samples shall be labeled so as to reasonably
49 preclude the possibility of misidentification of the
50 person tested in relation to the test result provided,

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1 and samples shall be handled and tracked in a manner
2 such that control and accountability are maintained
3 from initial collection to each stage in handling,
4 testing, and storage, through final disposition.

5 (2) An employee or prospective employee shall be
6 provided an opportunity to provide any information
7 which may be considered relevant to the test,
8 including identification of prescription or
9 nonprescription drugs currently or recently used, or
10 other relevant medical information. Information
11 provided by the employee or prospective employee shall
12 not be disclosed to the employer but shall be
13 delivered to the facility conducting confirmatory
14 testing. To assist an employee or prospective
15 employee in providing the information described in
16 this subparagraph, the employer shall provide an
17 employee or prospective employee with a list of the
18 drugs to be tested.

19 d. Sample collection, storage, and transportation
20 to the place of testing shall be performed so as to
21 reasonably preclude the possibility of sample
22 contamination, adulteration, or misidentification.

23 e. All drug testing, including both initial and
24 confirmatory testing, shall be conducted at a
25 laboratory certified by the United States department
26 of health and human services' substance abuse and
27 mental health services administration or approved
28 under rules adopted by the Iowa department of public
29 health.

30 f. Drug or alcohol testing shall include
31 confirmation of any initial positive test results.
32 For drug testing, confirmation shall be by use of a
33 different chemical process than was used in the
34 initial drug screen. The confirmatory drug test shall
35 be a chromatographic technique such as gas
36 chromatography or mass spectrometry, or another
37 comparably reliable analytical method.

38 g. A medical review officer shall, prior to the
39 results being reported to an employer and the employee
40 or prospective employee tested, review and interpret
41 any confirmed positive test results, including both
42 quantitative and qualitative test results, to ensure
43 that the chain of custody is complete and sufficient
44 on its face and that any information provided by the
45 individual pursuant to paragraph "c", subparagraph
46 (2), is considered.

47 h. In conducting drug or alcohol testing pursuant
48 to this section, the employer shall ensure that the
49 testing only measure, and the records concerning the
50 testing only show or make use of information

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1 regarding, alcohol or drugs in the body.
2 i. If a positive drug or alcohol test for an
3 employee or prospective employee is confirmed by the
4 medical review officer, the medical review officer
5 shall notify the employee or prospective employee in
6 writing of the results of the test, the employee's or
7 prospective employee's right to request and obtain a
8 confirmatory test of the second sample collected
9 pursuant to paragraph "b" at an approved laboratory of
10 the employee's or prospective employee's choice, and
11 the fee established by the employer's written policy
12 to be payable by the employee or prospective employee
13 to the medical review officer for reimbursement of
14 expenses concerning the test. The fee charged an
15 employee or prospective employee shall be an amount,
16 not in excess of one hundred dollars, that represents
17 the costs associated with conducting the second
18 confirmatory test, which shall be consistent with the
19 employer's cost for conducting the initial
20 confirmatory test on an employee's or prospective
21 employee's sample. If the employee or prospective
22 employee requests a second confirmatory test,
23 identifies an approved laboratory to conduct the test,
24 and pays the medical review officer the fee for the
25 test within fifteen days from the date the employee or
26 prospective employee receives written notice of the
27 right to request a test, a second confirmatory test
28 shall be conducted at the laboratory chosen by the
29 employee or prospective employee. The results of the
30 second confirmatory test shall be reported to the
31 medical review officer who reviewed the initial
32 confirmatory test results and the medical review
33 officer shall review the results and issue a report to
34 the employer and the employee or prospective employee
35 tested that the results of the drug or alcohol test
36 were confirmed as positive if the results of the
37 second confirmatory test confirmed the initial
38 confirmatory test as to the presence of a specific
39 drug or alcohol. If the results of the second test do
40 not confirm the results of the initial confirmatory
41 test, the medical review officer shall report to the
42 employer that the result of the drug or alcohol test
43 is negative and not a confirmed positive test result
44 for purposes of this section.
45 j. A report of the results of a drug or alcohol
46 test issued to an employer and the individual tested
47 shall only indicate, as to an employee or prospective
48 employee, whether the test results were positive or
49 negative, pursuant to the review and interpretation of
50 a medical review officer as provided in this

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1 subsection. An inconclusive test result shall be
2 reported as a negative test result. If the test
3 results are positive, the report shall only indicate
4 whether drugs or alcohol were present, which drugs
5 were present if applicable, information concerning the
6 amount of alcohol present, and a statement from the
7 medical review officer that any information provided
8 by the employee or prospective employee fails to
9 explain the results.

10 6. DRUG OR ALCOHOL TESTING. Employers may conduct
11 drug or alcohol testing as provided in this
12 subsection:

13 a. Employers may conduct drug or alcohol testing
14 of employees for up to two years after completion of
15 drug or alcohol rehabilitation.

16 b. Employers may conduct reasonable suspicion drug
17 or alcohol testing.

18 c. Employers may conduct drug or alcohol testing
19 of prospective employees.

20 d. Employers may conduct drug or alcohol testing
21 as required by federal law or regulation.

22 e. Employers may conduct drug or alcohol testing
23 in investigating accidents in the workplace which
24 result in a personal injury which requires medical
25 treatment away from the workplace or damage to
26 property, including equipment, in an amount reasonably
27 estimated to exceed one thousand dollars at the time
28 of the accident.

29 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

30 a. Prior to conducting drug or alcohol testing
31 under this section, an employer shall establish,
32 following consultation with representatives of
33 employees, a written policy consistent with the
34 requirements of this section governing such testing.
35 The employer shall comply with this section and the
36 requirements of the written policy to conduct drug or
37 alcohol testing of employees and prospective employees
38 and shall provide the written policy to every employee
39 subject to testing and shall make the policy available
40 for review by employees and prospective employees.

41 b. Employers shall establish an awareness program
42 to inform employees of the dangers of drug and alcohol
43 use in the workplace and comply with the following
44 requirements in order to conduct drug or alcohol
45 testing under this section:

46 (1) If an employer has an employee assistance
47 program, the employer must inform the employee of the
48 benefits and services of the employee assistance
49 program. An employer shall post notice of the
50 employee assistance program in conspicuous places and

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

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

22 c. An employee or prospective employee whose drug
23 or alcohol test results are confirmed as positive in
24 accordance with this section shall not, by virtue of
25 those results alone, be considered as a person with a
26 disability for purposes of any state or local law or
27 regulation.

28 d. If the written policy provides for alcohol
29 testing, the employer shall establish in the written
30 policy a standard for alcohol concentration which
31 shall be deemed to violate the policy. The standard
32 for alcohol concentration shall not be less than .04,
33 expressed in terms of grams of alcohol per two hundred
34 ten liters of breath, or its equivalent.

35 e. In order to conduct drug or alcohol testing
36 under this section, an employer shall require all
37 supervisory personnel of the employer to attend a
38 minimum of two hours of initial training and to
39 attend, on an annual basis thereafter, a minimum of
40 one hour of subsequent training. The training shall
41 be based upon standards adopted by the Iowa department
42 of public health and shall include, but is not limited
43 to, information concerning the recognition of evidence
44 of employee alcohol and other drug abuse, the
45 documentation and corroboration of employee alcohol
46 and other drug abuse, and the referral of employees
47 who abuse alcohol or other drugs to the employee
48 assistance program or to the resource file of employee
49 assistance services providers. For purposes of this
50 paragraph, "supervisory personnel" means persons

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1 having authority, in the interest of the employer, to
2 hire, transfer, suspend, lay off, recall, promote,
3 discharge, assign, reward, or discipline other
4 employees, or responsibly to direct them, or to adjust
5 their grievances, or effectively to recommend such
6 action, if in connection with the foregoing the
7 exercise of such authority is not of a merely routine
8 or clerical nature, but requires the use of
9 independent judgment.

10 f. If an employee is under eighteen years of age,
11 in order to conduct drug or alcohol testing under this
12 section, the employer shall, prior to conducting a
13 test, notify the employee's parent or grandparent that
14 a test shall be conducted and the basis for the test.
15 For purposes of this paragraph, "parent" means one
16 parent or a legal guardian or custodian of the
17 employee.

18 g. In order to conduct drug or alcohol testing
19 under this section, an employer shall provide all
20 employees, on an annual basis, an opportunity to
21 participate in an educational program of a minimum of
22 one hour on alcohol and other drug abuse and the
23 effects of such abuse on the workplace. The program
24 shall include, but is not limited to, information on
25 all of the following topics:

26 (1) The explanation of the diseases of addiction
27 to alcohol and other drugs.

28 (2) The effects and dangers of the commonly abused
29 substances in the workplace.

30 (3) The employer's policies and procedures
31 regarding alcohol and other drug use or abuse in the
32 workplace and how employees who wish to obtain
33 substance abuse treatment can obtain such treatment.

34 (4) An explanation of the penalties that may be
35 imposed upon employees for alcohol and other drug
36 violations.

37 8. DISCIPLINARY PROCEDURES.

38 a. Upon receipt for an employee of the first
39 confirmed positive drug or alcohol test result, the
40 employer shall provide the employee with a substance
41 abuse evaluation, and treatment if recommended by the
42 evaluation, with costs apportioned as provided under
43 the employee benefit plan or at employer expense, if
44 an employee benefit plan is not in effect which
45 apportions costs. The employer shall take no
46 disciplinary action against the employee upon receipt
47 of the first confirmed positive drug or alcohol test
48 result if the employee undergoes a substance abuse
49 evaluation, and if the employee successfully completes
50 substance abuse treatment if treatment is recommended

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1 by the evaluation. However, if an employee fails to
2 undergo substance abuse evaluation when required as a
3 result of a drug or alcohol test, or fails to
4 successfully complete substance abuse treatment when
5 recommended by an evaluation, the employee may be
6 disciplined as provided in paragraph "b". The
7 substance abuse evaluation and treatment provided by
8 the employer shall take place under a program approved
9 by the department of public health or accredited by
10 the joint commission on the accreditation of health
11 care organizations.

12 b. Upon receipt for an employee of a second
13 confirmed positive drug or alcohol test result or upon
14 receipt for a prospective employee of a confirmed
15 positive drug or alcohol test result, upon the failure
16 of an employee to comply with the requirements of
17 paragraph "a", or upon the refusal of an employee or
18 prospective employee to provide a testing sample, an
19 employer may use that test result or test refusal as a
20 valid basis for disciplinary or rehabilitative actions
21 consistent with the employer's written policy, which
22 may include, among other actions, the following:

23 (1) A requirement that the employee enroll in an
24 employer-provided or approved rehabilitation,
25 treatment, or counseling program, which may include
26 additional drug or alcohol testing, participation in
27 and successful completion of which may be a condition
28 of continued employment, and the costs of which may or
29 may not be covered by the employer's health plan or
30 policies.

31 (2) Suspension of the employee, with or without
32 pay, for a designated period of time.

33 (3) Termination of employment.

34 (4) Refusal to hire a prospective employee.

35 (5) Other adverse employment action in conformance
36 with the employer's written policy and procedures,
37 including any relevant collective bargaining agreement
38 provisions.

39 9. EMPLOYER IMMUNITY. A cause of action shall not
40 arise against an employer who has established a
41 written policy in accordance with this section and has
42 complied with the requirements of the written policy
43 and this section for testing or taking action based on
44 the results of a confirmed positive drug or alcohol
45 test result, indicating the presence of drugs or
46 alcohol, in good faith, or the refusal of an employee
47 or prospective employee to submit to a drug or alcohol
48 test.

49 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --
50 EXCEPTIONS.

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1 a. Except as provided in paragraph "b", all
2 communications received by an employer relevant to
3 employee or prospective employee drug or alcohol test
4 results, or otherwise received through the employer's
5 drug or alcohol testing program, are confidential
6 communications and shall not be used or received in
7 evidence, obtained in discovery, or disclosed in any
8 public or private proceeding, except as provided by
9 this section or in a proceeding related to an action
10 taken by an employer under this section or by an
11 employee under this section.

12 b. An employee, or a prospective employee, who is
13 the subject of a drug or alcohol test conducted under
14 this section pursuant to an employer's written policy
15 and for whom a confirmed positive test result is
16 reported shall receive, at the same time the report is
17 issued to the employer, a copy of the report issued to
18 the employer and shall receive any records relating to
19 the employee's drug or alcohol test, including records
20 of the laboratory where the testing was conducted and
21 any records relating to the results of any relevant
22 certification or review by a medical review officer.

23 11. CIVIL REMEDIES. This section may be enforced
24 through a civil action.

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

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

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

45 12. OFFENSES. Samples collected, information
46 provided by an employee or prospective employee
47 pursuant to subsection 5, paragraph "c", subparagraph
48 (2), and the results of drug or alcohol testing shall
49 be used solely for the purpose of conducting drug or
50 alcohol testing pursuant to this section and shall not

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1 be sold, transferred, or disseminated, to any person
 2 for any purpose not expressly authorized by this
 3 section. A person who violates this subsection
 4 commits a simple misdemeanor and, notwithstanding
 5 section 903.1, if a monetary fine is imposed, the fine
 6 shall be one hundred dollars. Each violation of this
 7 subsection constitutes a separate offense.

8 13. REPORTS.

9 a. An employer who conducts a drug test pursuant
 10 to this section shall, for each fiscal year beginning
 11 on or after July 1, 1998, file an annual report with
 12 the division of labor services of the department of
 13 workforce development, on forms provided by the
 14 division, documenting the number of accidents,
 15 including the number of personal injuries and the
 16 dollar loss for property damage arising out of the
 17 accidents, caused by the use of drugs or alcohol by
 18 employees and documenting separately for each category
 19 of test described in subsection 6 the following
 20 information:

21 (1) The number of drug or alcohol tests conducted
 22 in each category.

23 (2) The results of drug or alcohol tests conducted
 24 in each category.

25 b. The division of labor services of the
 26 department of workforce development shall compile the
 27 information submitted by employers pursuant to this
 28 subsection and shall submit an annual report to the
 29 general assembly on this information.

30 Sec. 2. EFFECTIVE DATE. This Act takes effect on
 31 January 1, 1998."

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2/18/98

By TOM VILSACK

S-3855 FILED APRIL 29, 1997

HOUSE FILE 299

S-3851

1 Amend House File 299, 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 99F.4, subsection 21, Code
 6 1997, is amended to read as follows:

7 21. Drug testing, as permitted by ~~section-730-5~~
 8 law, shall be required periodically, not less than
 9 every sixty days, of persons employed as captains,
 10 pilots, or physical operators of excursion gambling
 11 boats under the provisions of this chapter.

12 Sec. 2. Section 730.5, Code 1997, is repealed."

13 2. Title page, by striking lines 1 through 3 and
 14 inserting the following: "An Act repealing statutory
 15 provisions governing the conduct of drug or alcohol
 16 testing of employees and applicants for employment."

By STEVE KING

S-3851 FILED APRIL 29, 1997

adopted 2/18/98 (p. 343)

HOUSE FILE 299

S-3857

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 12,
5 line 4 and inserting the following:

6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:

8 _____. By striking everything after the enacting
9 clause and inserting the following:

10 "Section 1. Section 15A.1, subsection 3, Code
11 1997, is amended by adding the following new
12 paragraph:

13 NEW PARAGRAPH. c. The business has established a
14 written policy to conduct drug or alcohol testing
15 pursuant to section 730.5.

16 Sec. 2. Section 730.5, Code 1997, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 730.5 DRUG-FREE WORKPLACES.

20 1. DEFINITIONS. As used in this section, unless
21 the context otherwise requires:

22 a. "Alcohol" means ethanol, isopropanol, or
23 methanol.

24 b. "Drug" means a substance considered unlawful
25 under the federal Controlled Substances Act, 21 U.S.C.
26 § 801 et seq.

27 c. "Employee" means a person in the service of an
28 employer.

29 d. "Employer" means a person which has one or more
30 employees employed in the same business, or in or
31 about the same establishment, in this state.

32 e. "Good faith" means reasonable reliance on
33 facts.

34 f. "Medical review officer" means a physician
35 licensed to practice medicine and surgery or
36 osteopathic medicine and surgery in any state of the
37 United States, responsible for receiving laboratory
38 results generated by an employer's drug testing
39 program, who is independent from the employer and is
40 agreed upon by representatives of the employer and the
41 employees, and who has knowledge of substance abuse
42 disorders and has appropriate medical training to
43 interpret and evaluate an individual's confirmed
44 positive test result together with the individual's
45 medical history and any other relevant biomedical
46 information.

47 g. "Prospective employee" means a person who has
48 made application, whether written or oral, to an
49 employer to become an employee and who has received a
50 bona fide offer of employment from the employer.

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1 h. "Reasonable suspicion drug or alcohol testing"
2 means drug or alcohol testing based upon evidence
3 which would cause a reasonable person to conclude that
4 an employee is using or has used alcohol or other
5 drugs and which use impairs the employee's performance
6 while on the job in violation of the employer's
7 written policy. For purposes of this paragraph,
8 evidence may include, but is not limited to, any of
9 the following:

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

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

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

19 (4) Evidence that an individual has tampered with
20 their own drug or alcohol test during the individual's
21 employment with the current employer.

22 (5) Evidence that an employee has caused an
23 accident while at work which resulted in a personal
24 injury which required medical treatment away from the
25 workplace or damage to property, including equipment,
26 in an amount reasonably estimated to exceed one
27 thousand dollars at the time of the accident.

28 (6) Evidence that an employee has possessed or
29 used drugs while working or while on the employer's
30 premises or while operating the employer's vehicle,
31 machinery, or equipment.

32 i. "Sample" means such sample of blood or urine
33 from the human body capable of revealing the presence
34 of alcohol or other drugs, or their metabolites.

35 2. TESTING AS CONDITION OF EMPLOYMENT --
36 REQUIREMENTS. To the extent provided in subsection 6,
37 an employer may test employees and prospective
38 employees for the presence of drugs or alcohol as a
39 condition of continued employment or hiring. An
40 employer shall adhere to the requirements of this
41 section concerning the conduct of such testing and the
42 use and disposition of the results of such testing.

43 3. COLLECTION OF SAMPLES. In conducting drug or
44 alcohol testing, an employer may require the
45 collection of samples from its employees and
46 prospective employees, and may require presentation of
47 reliable individual identification from the person
48 being tested to the person collecting the samples.
49 Collection of a sample shall be in conformance with
50 the requirements of this section. If the employer

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1 requests that a urine sample be provided in conducting
2 drug or alcohol testing under this section, the
3 employer shall provide the employee or prospective
4 employee with an opportunity to have a blood sample
5 drawn instead of providing a urine sample.

6 4. SCHEDULING OF TESTS.

7 a. Drug or alcohol testing of employees conducted
8 by an employer shall normally occur during, or
9 immediately before or after, a regular work period.
10 The time required for such testing by an employer
11 shall be deemed work time for the purposes of
12 compensation and benefits for employees.

13 b. An employer shall pay all actual costs for drug
14 or alcohol testing of employees and prospective
15 employees required by the employer.

16 c. An employer shall provide transportation or pay
17 reasonable transportation costs to employees for all
18 drug or alcohol testing under this section.

19 5. TESTING PROCEDURES. All sample collection and
20 testing for drugs or alcohol under this section shall
21 be performed in accordance with the following
22 conditions:

23 a. The collection of samples shall be performed
24 under sanitary conditions and with regard for the
25 privacy of the individual from whom the specimen is
26 being obtained and in a manner reasonably calculated
27 to preclude contamination or substitution of the
28 specimen.

29 b. Sample collection for testing of current
30 employees shall be performed so that the specimen is
31 split into two components at the time of collection in
32 the presence of the individual from whom the sample or
33 specimen is collected. The second portion of the
34 specimen or sample shall be of sufficient quantity to
35 permit a second, independent confirmatory test as
36 provided in paragraph "i". If the specimen is urine,
37 the sample shall be split such that the primary sample
38 contains at least thirty milliliters and the secondary
39 sample contains at least fifteen milliliters. Both
40 portions of the sample shall be forwarded to the
41 laboratory conducting the initial confirmatory
42 testing. In addition to any requirements for storage
43 of the initial sample that may be imposed upon the
44 laboratory as a condition for certification of
45 approval, the laboratory shall store the second
46 portion of any sample until receipt of a confirmed
47 negative test result or for a period of at least
48 forty-five calendar days following the completion of
49 the initial confirmatory testing, if the first portion
50 yielded a confirmed positive test result.

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1 c. Sample collections shall be documented, and the
2 procedure for documentation shall include the
3 following:

4 (1) Samples shall be labeled so as to reasonably
5 preclude the possibility of misidentification of the
6 person tested in relation to the test result provided,
7 and samples shall be handled and tracked in a manner
8 such that control and accountability are maintained
9 from initial collection to each stage in handling,
10 testing, and storage, through final disposition.

11 (2) An employee or prospective employee shall be
12 provided an opportunity to provide any information
13 which may be considered relevant to the test,
14 including identification of prescription or
15 nonprescription drugs currently or recently used, or
16 other relevant medical information. Information
17 provided by the employee or prospective employee shall
18 not be disclosed to the employer but shall be
19 delivered to the facility conducting confirmatory
20 testing. To assist an employee or prospective
21 employee in providing the information described in
22 this subparagraph, the employer shall provide an
23 employee or prospective employee with a list of the
24 drugs to be tested.

25 d. Sample collection, storage, and transportation
26 to the place of testing shall be performed so as to
27 reasonably preclude the possibility of sample
28 contamination, adulteration, or misidentification.

29 e. All drug testing, including both initial and
30 confirmatory testing, shall be conducted at a
31 laboratory certified by the United States department
32 of health and human services' substance abuse and
33 mental health services administration or approved
34 under rules adopted by the Iowa department of public
35 health.

36 f. Drug or alcohol testing shall include
37 confirmation of any initial positive test results.
38 For drug testing, confirmation shall be by use of a
39 different chemical process than was used in the
40 initial drug screen. The confirmatory drug test shall
41 be a chromatographic technique such as gas
42 chromatography or mass spectrometry, or another
43 comparably reliable analytical method.

44 g. A medical review officer shall, prior to the
45 results being reported to an employer and the employee
46 or prospective employee tested, review and interpret
47 any confirmed positive test results, including both
48 quantitative and qualitative test results, to ensure
49 that the chain of custody is complete and sufficient
50 on its face and that any information provided by the

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1 individual pursuant to paragraph "c", subparagraph
2 (2), is considered.

3 h. In conducting drug or alcohol testing pursuant
4 to this section, the employer shall ensure that the
5 testing only measure, and the records concerning the
6 testing only show or make use of information
7 regarding, alcohol or drugs in the body.

8 i. If a positive drug or alcohol test for an
9 employee or prospective employee is confirmed by the
10 medical review officer, the medical review officer
11 shall notify the employee or prospective employee in
12 writing of the results of the test, the employee's or
13 prospective employee's right to request and obtain a
14 confirmatory test of the second sample collected
15 pursuant to paragraph "b" at an approved laboratory of
16 the employee's or prospective employee's choice, and
17 the fee established by the employer's written policy
18 to be payable by the employee or prospective employee
19 to the medical review officer for reimbursement of
20 expenses concerning the test. The fee charged an
21 employee or prospective employee shall be an amount,
22 not in excess of one hundred dollars, that represents
23 the costs associated with conducting the second
24 confirmatory test, which shall be consistent with the
25 employer's cost for conducting the initial
26 confirmatory test on an employee's or prospective
27 employee's sample. If the employee or prospective
28 employee requests a second confirmatory test,
29 identifies an approved laboratory to conduct the test,
30 and pays the medical review officer the fee for the
31 test within fifteen days from the date the employee or
32 prospective employee receives written notice of the
33 right to request a test, a second confirmatory test
34 shall be conducted at the laboratory chosen by the
35 employee or prospective employee. The results of the
36 second confirmatory test shall be reported to the
37 medical review officer who reviewed the initial
38 confirmatory test results and the medical review
39 officer shall review the results and issue a report to
40 the employer and the employee or prospective employee
41 tested that the results of the drug or alcohol test
42 were confirmed as positive if the results of the
43 second confirmatory test confirmed the initial
44 confirmatory test as to the presence of a specific
45 drug or alcohol. If the results of the second test do
46 not confirm the results of the initial confirmatory
47 test, the medical review officer shall report to the
48 employer that the result of the drug or alcohol test
49 is negative and not a confirmed positive test result
50 for purposes of this section.

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1 j. A report of the results of a drug or alcohol
2 test issued to an employer and the individual tested
3 shall only indicate, as to an employee or prospective
4 employee, whether the test results were positive or
5 negative, pursuant to the review and interpretation of
6 a medical review officer as provided in this
7 subsection. An inconclusive test result shall be
8 reported as a negative test result. If the test
9 results are positive, the report shall only indicate
10 whether drugs or alcohol were present, which drugs
11 were present if applicable, information concerning the
12 amount of alcohol present, and a statement from the
13 medical review officer that any information provided
14 by the employee or prospective employee fails to
15 explain the results.

16 6. DRUG OR ALCOHOL TESTING. Employers may conduct
17 drug or alcohol testing as provided in this
18 subsection:

19 a. Employers may conduct drug or alcohol testing
20 of employees for up to two years after completion of
21 drug or alcohol rehabilitation.

22 b. Employers may conduct reasonable suspicion drug
23 or alcohol testing.

24 c. Employers may conduct drug or alcohol testing
25 of prospective employees.

26 d. Employers may conduct drug or alcohol testing
27 as required by federal law or regulation.

28 e. Employers may conduct drug or alcohol testing
29 in investigating accidents in the workplace which
30 result in a personal injury which requires medical
31 treatment away from the workplace or damage to
32 property, including equipment, in an amount reasonably
33 estimated to exceed one thousand dollars at the time
34 of the accident.

35 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

36 a. Prior to conducting drug or alcohol testing
37 under this section, an employer shall establish,
38 following consultation with representatives of
39 employees, a written policy consistent with the
40 requirements of this section governing such testing.
41 The employer shall comply with this section and the
42 requirements of the written policy to conduct drug or
43 alcohol testing of employees and prospective employees
44 and shall provide the written policy to every employee
45 subject to testing and shall make the policy available
46 for review by employees and prospective employees.

47 b. Employers shall establish an awareness program
48 to inform employees of the dangers of drug and alcohol
49 use in the workplace and comply with the following
50 requirements in order to conduct drug or alcohol

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1 testing under this section:

2 (1) If an employer has an employee assistance
3 program, the employer must inform the employee of the
4 benefits and services of the employee assistance
5 program. An employer shall post notice of the
6 employee assistance program in conspicuous places and
7 explore alternative routine and reinforcing means of
8 publicizing such services. In addition, the employer
9 must provide the employee with notice of the policies
10 and procedures regarding access to and utilization of
11 the program.

12 (2) If an employer does not have an employee
13 assistance program, the employer must maintain a
14 resource file of employee assistance services
15 providers, alcohol and other drug abuse programs
16 certified by the Iowa department of public health,
17 mental health providers, and other persons, entities,
18 or organizations available to assist employees with
19 personal or behavioral problems. The employer shall
20 provide all employees information about the existence
21 of the resource file and a summary of the information
22 contained within the resource file. The summary
23 should contain, but need not be limited to, all
24 information necessary to access the services listed in
25 the resource file. In addition, the employer shall
26 post in conspicuous places a listing of multiple
27 employee assistance providers in the area.

28 c. An employee or prospective employee whose drug
29 or alcohol test results are confirmed as positive in
30 accordance with this section shall not, by virtue of
31 those results alone, be considered as a person with a
32 disability for purposes of any state or local law or
33 regulation.

34 d. If the written policy provides for alcohol
35 testing, the employer shall establish in the written
36 policy a standard for alcohol concentration which
37 shall be deemed to violate the policy. The standard
38 for alcohol concentration shall not be less than .04,
39 expressed in terms of grams of alcohol per two hundred
40 ten liters of breath, or its equivalent.

41 e. In order to conduct drug or alcohol testing
42 under this section, an employer shall require all
43 supervisory personnel of the employer to attend a
44 minimum of two hours of initial training and to
45 attend, on an annual basis thereafter, a minimum of
46 one hour of subsequent training. The training shall
47 be based upon standards adopted by the Iowa department
48 of public health and shall include, but is not limited
49 to, information concerning the recognition of evidence
50 of employee alcohol and other drug abuse, the

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1 documentation and corroboration of employee alcohol
2 and other drug abuse, and the referral of employees
3 who abuse alcohol or other drugs to the employee
4 assistance program or to the resource file of employee
5 assistance services providers. For purposes of this
6 paragraph, "supervisory personnel" means persons
7 having authority, in the interest of the employer, to
8 hire, transfer, suspend, lay off, recall, promote,
9 discharge, assign, reward, or discipline other
10 employees, or responsibly to direct them, or to adjust
11 their grievances, or effectively to recommend such
12 action, if in connection with the foregoing the
13 exercise of such authority is not of a merely routine
14 or clerical nature, but requires the use of
15 independent judgment.

16 f. If an employee is under eighteen years of age,
17 in order to conduct drug or alcohol testing under this
18 section, the employer shall, prior to conducting a
19 test, notify the employee's parent or grandparent that
20 a test shall be conducted and the basis for the test.
21 For purposes of this paragraph, "parent" means one
22 parent or a legal guardian or custodian of the
23 employee.

24 8. DISCIPLINARY PROCEDURES.

25 a. Upon receipt for an employee of the first
26 confirmed positive drug or alcohol test result, the
27 employer shall provide the employee with a substance
28 abuse evaluation, and treatment if recommended by the
29 evaluation, with costs apportioned as provided under
30 the employee benefit plan or at employer expense, if
31 an employee benefit plan is not in effect which
32 apportions costs. The employer shall take no
33 disciplinary action against the employee upon receipt
34 of the first confirmed positive drug or alcohol test
35 result if the employee undergoes a substance abuse
36 evaluation, and if the employee successfully completes
37 substance abuse treatment if treatment is recommended
38 by the evaluation. However, if an employee fails to
39 undergo substance abuse evaluation when required as a
40 result of a drug or alcohol test, or fails to
41 successfully complete substance abuse treatment when
42 recommended by an evaluation, the employee may be
43 disciplined as provided in paragraph "b". The
44 substance abuse evaluation and treatment provided by
45 the employer shall take place under a program approved
46 by the department of public health or accredited by
47 the joint commission on the accreditation of health
48 care organizations.

49 b. Upon receipt for an employee of a second
50 confirmed positive drug or alcohol test result or upon

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1 receipt for a prospective employee of a confirmed
2 positive drug or alcohol test result, upon the failure
3 of an employee to comply with the requirements of
4 paragraph "a", or upon the refusal of an employee or
5 prospective employee to provide a testing sample, an
6 employer may use that test result or test refusal as a
7 valid basis for disciplinary or rehabilitative actions
8 consistent with the employer's written policy, which
9 may include, among other actions, the following:

10 (1) A requirement that the employee enroll in an
11 employer-provided or approved rehabilitation,
12 treatment, or counseling program, which may include
13 additional drug or alcohol testing, participation in
14 and successful completion of which may be a condition
15 of continued employment, and the costs of which may or
16 may not be covered by the employer's health plan or
17 policies.

18 (2) Suspension of the employee, with or without
19 pay, for a designated period of time.

20 (3) Termination of employment.

21 (4) Refusal to hire a prospective employee.

22 (5) Other adverse employment action in conformance
23 with the employer's written policy and procedures,
24 including any relevant collective bargaining agreement
25 provisions.

26 9. EMPLOYER IMMUNITY. A cause of action shall not
27 arise against an employer who has established a
28 written policy in accordance with this section and has
29 complied with the requirements of the written policy
30 and this section for testing or taking action based on
31 the results of a confirmed positive drug or alcohol
32 test result, indicating the presence of drugs or
33 alcohol, in good faith, or the refusal of an employee
34 or prospective employee to submit to a drug or alcohol
35 test.

36 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --
37 EXCEPTIONS.

38 a. Except as provided in paragraph "b", all
39 communications received by an employer relevant to
40 employee or prospective employee drug or alcohol test
41 results, or otherwise received through the employer's
42 drug or alcohol testing program, are confidential
43 communications and shall not be used or received in
44 evidence, obtained in discovery, or disclosed in any
45 public or private proceeding, except as provided by
46 this section or in a proceeding related to an action
47 taken by an employer under this section or by an
48 employee under this section.

49 b. An employee, or a prospective employee, who is
50 the subject of a drug or alcohol test conducted under

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1 this section pursuant to an employer's written policy
2 and for whom a confirmed positive test result is
3 reported shall receive, at the same time the report is
4 issued to the employer, a copy of the report issued to
5 the employer and shall receive any records relating to
6 the employee's drug or alcohol test, including records
7 of the laboratory where the testing was conducted and
8 any records relating to the results of any relevant
9 certification or review by a medical review officer.

10 11. CIVIL REMEDIES. This section may be enforced
11 through a civil action.

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

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

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

32 12. OFFENSES. Samples collected, information
33 provided by an employee or prospective employee
34 pursuant to subsection 5, paragraph "c", subparagraph
35 (2), and the results of drug or alcohol testing shall
36 be used solely for the purpose of conducting drug or
37 alcohol testing pursuant to this section and shall not
38 be sold, transferred, or disseminated, to any person
39 for any purpose not expressly authorized by this
40 section. A person who violates this subsection
41 commits a simple misdemeanor and, notwithstanding
42 section 903.1, if a monetary fine is imposed, the fine
43 shall be one hundred dollars. Each violation of this
44 subsection constitutes a separate offense.

45 13. REPORTS.

46 a. An employer who conducts a drug test pursuant
47 to this section shall, for each fiscal year beginning
48 on or after July 1, 1998, file an annual report with
49 the division of labor services of the department of
50 workforce development, on forms provided by the

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1 division, documenting the number of accidents,
2 including the number of personal injuries and the
3 dollar loss for property damage arising out of the
4 accidents, caused by the use of drugs or alcohol by
5 employees and documenting separately for each category
6 of test described in subsection 6 the following
7 information:
8 (1) The number of drug or alcohol tests conducted
9 in each category.
10 (2) The results of drug or alcohol tests conducted
11 in each category.
12 b. The division of labor services of the
13 department of workforce development shall compile the
14 information submitted by employers pursuant to this
15 subsection and shall submit an annual report to the
16 general assembly on this information.
17 Sec. 3. EFFECTIVE DATE. This Act takes effect on
18 January 1, 1998."

By TOM VILSACK

S-3857 FILED APRIL 29, 1997

o/o
2/18/98

HOUSE FILE 299

S-3856

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 12,
5 line 4 and inserting the following:

6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:

8 _____. By striking everything after the enacting
9 clause and inserting the following:

10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:

13 730.5 DRUG-FREE WORKPLACES.

14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:

16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.

18 b. "Drug" means a substance considered unlawful
19 under the federal Controlled Substances Act, 21 U.S.C.
20 § 801 et seq.

21 c. "Employee" means a person in the service of an
22 employer.

23 d. "Employer" means a person which has one or more
24 employees employed in the same business, or in or
25 about the same establishment, in this state.

26 e. "Good faith" means reasonable reliance on
27 facts.

28 f. "Medical review officer" means a physician
29 licensed to practice medicine and surgery or
30 osteopathic medicine and surgery in any state of the
31 United States, responsible for receiving laboratory
32 results generated by an employer's drug testing
33 program, who is independent from the employer and is
34 agreed upon by representatives of the employer and the
35 employees, and who has knowledge of substance abuse
36 disorders and has appropriate medical training to
37 interpret and evaluate an individual's confirmed
38 positive test result together with the individual's
39 medical history and any other relevant biomedical
40 information.

41 g. "Prospective employee" means a person who has
42 made application, whether written or oral, to an
43 employer to become an employee and who has received a
44 bona fide offer of employment from the employer.

45 h. "Reasonable suspicion drug or alcohol testing"
46 means drug or alcohol testing based upon evidence
47 which would cause a reasonable person to conclude that
48 an employee is using or has used alcohol or other
49 drugs and which use impairs the employee's performance
50 while on the job in violation of the employer's

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1 written policy. For purposes of this paragraph,
2 evidence may include, but is not limited to, any of
3 the following:

4 (1) Observable phenomena while at work such as
5 direct observation of alcohol or other drug use or
6 abuse or of the physical symptoms or manifestations of
7 being impaired due to alcohol or other drug use.

8 (2) Abnormal conduct or erratic behavior while at
9 work or a significant deterioration in work
10 performance.

11 (3) A report of alcohol or other drug use while at
12 work provided by a reliable and credible source.

13 (4) Evidence that an individual has tampered with
14 their own drug or alcohol test during the individual's
15 employment with the current employer.

16 (5) Evidence that an employee has caused an
17 accident while at work which resulted in a personal
18 injury which required medical treatment away from the
19 workplace or damage to property, including equipment,
20 in an amount reasonably estimated to exceed one
21 thousand dollars at the time of the accident.

22 (6) Evidence that an employee has possessed or
23 used drugs while working or while on the employer's
24 premises or while operating the employer's vehicle,
25 machinery, or equipment.

26 i. "Sample" means such sample of blood or urine
27 from the human body capable of revealing the presence
28 of alcohol or other drugs, or their metabolites.

29 2. TESTING AS CONDITION OF EMPLOYMENT --
30 REQUIREMENTS. To the extent provided in subsection 6,
31 an employer may test employees and prospective
32 employees for the presence of drugs or alcohol as a
33 condition of continued employment or hiring. An
34 employer shall adhere to the requirements of this
35 section concerning the conduct of such testing and the
36 use and disposition of the results of such testing.

37 3. COLLECTION OF SAMPLES. In conducting drug or
38 alcohol testing, an employer may require the
39 collection of samples from its employees and
40 prospective employees, and may require presentation of
41 reliable individual identification from the person
42 being tested to the person collecting the samples.
43 Collection of a sample shall be in conformance with
44 the requirements of this section. If the employer
45 requests that a urine sample be provided in conducting
46 drug or alcohol testing under this section, the
47 employer shall provide the employee or prospective
48 employee with an opportunity to have a blood sample
49 drawn instead of providing a urine sample.

50 4. SCHEDULING OF TESTS.

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1 a. Drug or alcohol testing of employees conducted
2 by an employer shall normally occur during, or
3 immediately before or after, a regular work period.
4 The time required for such testing by an employer
5 shall be deemed work time for the purposes of
6 compensation and benefits for employees.

7 b. An employer shall pay all actual costs for drug
8 or alcohol testing of employees and prospective
9 employees required by the employer.

10 c. An employer shall provide transportation or pay
11 reasonable transportation costs to employees for all
12 drug or alcohol testing under this section.

13 5. TESTING PROCEDURES. All sample collection and
14 testing for drugs or alcohol under this section shall
15 be performed in accordance with the following
16 conditions:

17 a. The collection of samples shall be performed
18 under sanitary conditions and with regard for the
19 privacy of the individual from whom the specimen is
20 being obtained and in a manner reasonably calculated
21 to preclude contamination or substitution of the
22 specimen.

23 b. Sample collection for testing of current
24 employees shall be performed so that the specimen is
25 split into two components at the time of collection in
26 the presence of the individual from whom the sample or
27 specimen is collected. The second portion of the
28 specimen or sample shall be of sufficient quantity to
29 permit a second, independent confirmatory test as
30 provided in paragraph "i". If the specimen is urine,
31 the sample shall be split such that the primary sample
32 contains at least thirty milliliters and the secondary
33 sample contains at least fifteen milliliters. Both
34 portions of the sample shall be forwarded to the
35 laboratory conducting the initial confirmatory
36 testing. In addition to any requirements for storage
37 of the initial sample that may be imposed upon the
38 laboratory as a condition for certification of
39 approval, the laboratory shall store the second
40 portion of any sample until receipt of a confirmed
41 negative test result or for a period of at least
42 forty-five calendar days following the completion of
43 the initial confirmatory testing, if the first portion
44 yielded a confirmed positive test result.

45 c. Sample collections shall be documented, and the
46 procedure for documentation shall include the
47 following:

48 (1) Samples shall be labeled so as to reasonably
49 preclude the possibility of misidentification of the
50 person tested in relation to the test result provided,

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1 and samples shall be handled and tracked in a manner
2 such that control and accountability are maintained
3 from initial collection to each stage in handling,
4 testing, and storage, through final disposition.

5 (2) An employee or prospective employee shall be
6 provided an opportunity to provide any information
7 which may be considered relevant to the test,
8 including identification of prescription or
9 nonprescription drugs currently or recently used, or
10 other relevant medical information. Information
11 provided by the employee or prospective employee shall
12 not be disclosed to the employer but shall be
13 delivered to the facility conducting confirmatory
14 testing. To assist an employee or prospective
15 employee in providing the information described in
16 this subparagraph, the employer shall provide an
17 employee or prospective employee with a list of the
18 drugs to be tested.

19 d. Sample collection, storage, and transportation
20 to the place of testing shall be performed so as to
21 reasonably preclude the possibility of sample
22 contamination, adulteration, or misidentification.

23 e. All drug testing, including both initial and
24 confirmatory testing, shall be conducted at a
25 laboratory certified by the United States department
26 of health and human services' substance abuse and
27 mental health services administration or approved
28 under rules adopted by the Iowa department of public
29 health.

30 f. Drug or alcohol testing shall include
31 confirmation of any initial positive test results.
32 For drug testing, confirmation shall be by use of a
33 different chemical process than was used in the
34 initial drug screen. The confirmatory drug test shall
35 be a chromatographic technique such as gas
36 chromatography or mass spectrometry, or another
37 comparably reliable analytical method.

38 g. A medical review officer shall, prior to the
39 results being reported to an employer and the employee
40 or prospective employee tested, review and interpret
41 any confirmed positive test results, including both
42 quantitative and qualitative test results, to ensure
43 that the chain of custody is complete and sufficient
44 on its face and that any information provided by the
45 individual pursuant to paragraph "c", subparagraph
46 (2), is considered.

47 h. In conducting drug or alcohol testing pursuant
48 to this section, the employer shall ensure that the
49 testing only measure, and the records concerning the
50 testing only show or make use of information

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1 regarding, alcohol or drugs in the body.
2 i. If a positive drug or alcohol test for an
3 employee or prospective employee is confirmed by the
4 medical review officer, the medical review officer
5 shall notify the employee or prospective employee in
6 writing of the results of the test, the employee's or
7 prospective employee's right to request and obtain a
8 confirmatory test of the second sample collected
9 pursuant to paragraph "b" at an approved laboratory of
10 the employee's or prospective employee's choice, and
11 the fee established by the employer's written policy
12 to be payable by the employee or prospective employee
13 to the medical review officer for reimbursement of
14 expenses concerning the test. The fee charged an
15 employee or prospective employee shall be an amount,
16 not in excess of one hundred dollars, that represents
17 the costs associated with conducting the second
18 confirmatory test, which shall be consistent with the
19 employer's cost for conducting the initial
20 confirmatory test on an employee's or prospective
21 employee's sample. If the employee or prospective
22 employee requests a second confirmatory test,
23 identifies an approved laboratory to conduct the test,
24 and pays the medical review officer the fee for the
25 test within fifteen days from the date the employee or
26 prospective employee receives written notice of the
27 right to request a test, a second confirmatory test
28 shall be conducted at the laboratory chosen by the
29 employee or prospective employee. The results of the
30 second confirmatory test shall be reported to the
31 medical review officer who reviewed the initial
32 confirmatory test results and the medical review
33 officer shall review the results and issue a report to
34 the employer and the employee or prospective employee
35 tested that the results of the drug or alcohol test
36 were confirmed as positive if the results of the
37 second confirmatory test confirmed the initial
38 confirmatory test as to the presence of a specific
39 drug or alcohol. If the results of the second test do
40 not confirm the results of the initial confirmatory
41 test, the medical review officer shall report to the
42 employer that the result of the drug or alcohol test
43 is negative and not a confirmed positive test result
44 for purposes of this section.
45 j. A report of the results of a drug or alcohol
46 test issued to an employer and the individual tested
47 shall only indicate, as to an employee or prospective
48 employee, whether the test results were positive or
49 negative, pursuant to the review and interpretation of
50 a medical review officer as provided in this

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1 subsection. An inconclusive test result shall be
2 reported as a negative test result. If the test
3 results are positive, the report shall only indicate
4 whether drugs or alcohol were present, which drugs
5 were present if applicable, information concerning the
6 amount of alcohol present, and a statement from the
7 medical review officer that any information provided
8 by the employee or prospective employee fails to
9 explain the results.

10 6. DRUG OR ALCOHOL TESTING. Employers may conduct
11 drug or alcohol testing as provided in this
12 subsection:

13 a. Employers may conduct drug or alcohol testing
14 of employees for up to two years after completion of
15 drug or alcohol rehabilitation.

16 b. Employers may conduct reasonable suspicion drug
17 or alcohol testing.

18 c. Employers may conduct drug or alcohol testing
19 of prospective employees.

20 d. Employers may conduct drug or alcohol testing
21 as required by federal law or regulation.

22 e. Employers may conduct drug or alcohol testing
23 in investigating accidents in the workplace which
24 result in a personal injury which requires medical
25 treatment away from the workplace or damage to
26 property, including equipment, in an amount reasonably
27 estimated to exceed one thousand dollars at the time
28 of the accident.

29 f. Employers shall conduct a drug or alcohol test
30 on an employee if the employee requests, in writing,
31 that a drug or alcohol test be conducted pursuant to
32 this paragraph on the employee and the employee
33 provides the employer with evidence concerning the
34 employee which would be sufficient for an employer to
35 conduct reasonable suspicion drug or alcohol testing.

36 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

37 a. Prior to conducting drug or alcohol testing
38 under this section, an employer shall establish,
39 following consultation with representatives of
40 employees, a written policy consistent with the
41 requirements of this section governing such testing.
42 The employer shall comply with this section and the
43 requirements of the written policy to conduct drug or
44 alcohol testing of employees and prospective employees
45 and shall provide the written policy to every employee
46 subject to testing and shall make the policy available
47 for review by employees and prospective employees.

48 b. Employers shall establish an awareness program
49 to inform employees of the dangers of drug and alcohol
50 use in the workplace and comply with the following

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1 requirements in order to conduct drug or alcohol
2 testing under this section:

3 (1) If an employer has an employee assistance
4 program, the employer must inform the employee of the
5 benefits and services of the employee assistance
6 program. An employer shall post notice of the
7 employee assistance program in conspicuous places and
8 explore alternative routine and reinforcing means of
9 publicizing such services. In addition, the employer
10 must provide the employee with notice of the policies
11 and procedures regarding access to and utilization of
12 the program.

13 (2) If an employer does not have an employee
14 assistance program, the employer must maintain a
15 resource file of employee assistance services
16 providers, alcohol and other drug abuse programs
17 certified by the Iowa department of public health,
18 mental health providers, and other persons, entities,
19 or organizations available to assist employees with
20 personal or behavioral problems. The employer shall
21 provide all employees information about the existence
22 of the resource file and a summary of the information
23 contained within the resource file. The summary
24 should contain, but need not be limited to, all
25 information necessary to access the services listed in
26 the resource file. In addition, the employer shall
27 post in conspicuous places a listing of multiple
28 employee assistance providers in the area.

29 c. An employee or prospective employee whose drug
30 or alcohol test results are confirmed as positive in
31 accordance with this section shall not, by virtue of
32 those results alone, be considered as a person with a
33 disability for purposes of any state or local law or
34 regulation.

35 d. If the written policy provides for alcohol
36 testing, the employer shall establish in the written
37 policy a standard for alcohol concentration which
38 shall be deemed to violate the policy. The standard
39 for alcohol concentration shall not be less than .04,
40 expressed in terms of grams of alcohol per two hundred
41 ten liters of breath, or its equivalent.

42 e. In order to conduct drug or alcohol testing
43 under this section, an employer shall require all
44 supervisory personnel of the employer to attend a
45 minimum of two hours of initial training and to
46 attend, on an annual basis thereafter, a minimum of
47 one hour of subsequent training. The training shall
48 be based upon standards adopted by the Iowa department
49 of public health and shall include, but is not limited
50 to, information concerning the recognition of evidence

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1 of employee alcohol and other drug abuse, the
2 documentation and corroboration of employee alcohol
3 and other drug abuse, and the referral of employees
4 who abuse alcohol or other drugs to the employee
5 assistance program or to the resource file of employee
6 assistance services providers. For purposes of this
7 paragraph, "supervisory personnel" means persons
8 having authority, in the interest of the employer, to
9 hire, transfer, suspend, lay off, recall, promote,
10 discharge, assign, reward, or discipline other
11 employees, or responsibly to direct them, or to adjust
12 their grievances, or effectively to recommend such
13 action, if in connection with the foregoing the
14 exercise of such authority is not of a merely routine
15 or clerical nature, but requires the use of
16 independent judgment.

17 f. If an employee is under eighteen years of age,
18 in order to conduct drug or alcohol testing under this
19 section, the employer shall, prior to conducting a
20 test, notify the employee's parent or grandparent that
21 a test shall be conducted and the basis for the test.
22 For purposes of this paragraph, "parent" means one
23 parent or a legal guardian or custodian of the
24 employee.

25 8. DISCIPLINARY PROCEDURES.

26 a. Upon receipt for an employee of the first
27 confirmed positive drug or alcohol test result, the
28 employer shall provide the employee with a substance
29 abuse evaluation, and treatment if recommended by the
30 evaluation, with costs apportioned as provided under
31 the employee benefit plan or at employer expense, if
32 an employee benefit plan is not in effect which
33 apportions costs. The employer shall take no
34 disciplinary action against the employee upon receipt
35 of the first confirmed positive drug or alcohol test
36 result if the employee undergoes a substance abuse
37 evaluation, and if the employee successfully completes
38 substance abuse treatment if treatment is recommended
39 by the evaluation. However, if an employee fails to
40 undergo substance abuse evaluation when required as a
41 result of a drug or alcohol test, or fails to
42 successfully complete substance abuse treatment when
43 recommended by an evaluation, the employee may be
44 disciplined as provided in paragraph "b". The
45 substance abuse evaluation and treatment provided by
46 the employer shall take place under a program approved
47 by the department of public health or accredited by
48 the joint commission on the accreditation of health
49 care organizations.

50 b. Upon receipt for an employee of a second

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1 confirmed positive drug or alcohol test result or upon
2 receipt for a prospective employee of a confirmed
3 positive drug or alcohol test result, upon the failure
4 of an employee to comply with the requirements of
5 paragraph "a", or upon the refusal of an employee or
6 prospective employee to provide a testing sample, an
7 employer may use that test result or test refusal as a
8 valid basis for disciplinary or rehabilitative actions
9 consistent with the employer's written policy, which
10 may include, among other actions, the following:

11 (1) A requirement that the employee enroll in an
12 employer-provided or approved rehabilitation,
13 treatment, or counseling program, which may include
14 additional drug or alcohol testing, participation in
15 and successful completion of which may be a condition
16 of continued employment, and the costs of which may or
17 may not be covered by the employer's health plan or
18 policies.

19 (2) Suspension of the employee, with or without
20 pay, for a designated period of time.

21 (3) Termination of employment.

22 (4) Refusal to hire a prospective employee.

23 (5) Other adverse employment action in conformance
24 with the employer's written policy and procedures,
25 including any relevant collective bargaining agreement
26 provisions.

27 9. EMPLOYER IMMUNITY. A cause of action shall not
28 arise against an employer who has established a
29 written policy in accordance with this section and has
30 complied with the requirements of the written policy
31 and this section for testing or taking action based on
32 the results of a confirmed positive drug or alcohol
33 test result, indicating the presence of drugs or
34 alcohol, in good faith, or the refusal of an employee
35 or prospective employee to submit to a drug or alcohol
36 test.

37 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --
38 EXCEPTIONS.

39 a. Except as provided in paragraph "b", all
40 communications received by an employer relevant to
41 employee or prospective employee drug or alcohol test
42 results, or otherwise received through the employer's
43 drug or alcohol testing program, are confidential
44 communications and shall not be used or received in
45 evidence, obtained in discovery, or disclosed in any
46 public or private proceeding, except as provided by
47 this section or in a proceeding related to an action
48 taken by an employer under this section or by an
49 employee under this section.

50 b. An employee, or a prospective employee, who is

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1 the subject of a drug or alcohol test conducted under
2 this section pursuant to an employer's written policy
3 and for whom a confirmed positive test result is
4 reported shall receive, at the same time the report is
5 issued to the employer, a copy of the report issued to
6 the employer and shall receive any records relating to
7 the employee's drug or alcohol test, including records
8 of the laboratory where the testing was conducted and
9 any records relating to the results of any relevant
10 certification or review by a medical review officer.

11 11. CIVIL REMEDIES. This section may be enforced
12 through a civil action.

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

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

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

33 12. OFFENSES. Samples collected, information
34 provided by an employee or prospective employee
35 pursuant to subsection 5, paragraph "c", subparagraph
36 (2), and the results of drug or alcohol testing shall
37 be used solely for the purpose of conducting drug or
38 alcohol testing pursuant to this section and shall not
39 be sold, transferred, or disseminated, to any person
40 for any purpose not expressly authorized by this
41 section. A person who violates this subsection
42 commits a simple misdemeanor and, notwithstanding
43 section 903.1, if a monetary fine is imposed, the fine
44 shall be one hundred dollars. Each violation of this
45 subsection constitutes a separate offense.

46 13. REPORTS.

47 a. An employer who conducts a drug test pursuant
48 to this section shall, for each fiscal year beginning
49 on or after July 1, 1998, file an annual report with
50 the division of labor services of the department of

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1 workforce development, on forms provided by the
2 division, documenting the number of accidents,
3 including the number of personal injuries and the
4 dollar loss for property damage arising out of the
5 accidents, caused by the use of drugs or alcohol by
6 employees and documenting separately for each category
7 of test described in subsection 6 the following
8 information:

9 (1) The number of drug or alcohol tests conducted
10 in each category.

11 (2) The results of drug or alcohol tests conducted
12 in each category.

13 b. The division of labor services of the
14 department of workforce development shall compile the
15 information submitted by employers pursuant to this
16 subsection and shall submit an annual report to the
17 general assembly on this information.

18 Sec. 2. EFFECTIVE DATE. This Act takes effect on
19 January 1, 1998."

By TOM VILSACK

S-3856 FILED APRIL 29, 1997

0/0
2/18/98

HOUSE FILE 299

S-5003

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 12,
5 line 4, and inserting the following:

6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:

8 _____. By striking everything after the enacting
9 clause and inserting the following:

10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:

13 730.5 DRUG-FREE WORKPLACES.

14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:

16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.

18 b. "Drug" means a substance considered unlawful
19 under the federal Controlled Substances Act, 21 U.S.C.
20 § 801 et seq.

21 c. "Employee" means a person in the service of an
22 employer.

23 d. "Employer" means a person which has one or more
24 employees employed in the same business, or in or
25 about the same establishment, in this state.

26 e. "Good faith" means reasonable reliance on
27 facts.

28 f. "Medical review officer" means a physician
29 licensed to practice medicine and surgery or
30 osteopathic medicine and surgery in any state of the
31 United States, responsible for receiving laboratory
32 results generated by an employer's drug testing
33 program, who is independent from the employer and is
34 agreed upon by representatives of the employer and the
35 employees, and who has knowledge of substance abuse
36 disorders and has appropriate medical training to
37 interpret and evaluate an individual's confirmed
38 positive test result together with the individual's
39 medical history and any other relevant biomedical
40 information.

41 g. "Prospective employee" means an individual who
42 has made application, whether written or oral, to an
43 employer to become an employee and who has received a
44 bona fide offer of employment from the employer.

45 h. "Reasonable suspicion drug or alcohol testing"
46 means drug or alcohol testing based upon evidence
47 which would cause a reasonable person to conclude that
48 an employee is using or has used alcohol or other
49 drugs and which use impairs the employee's performance
50 while on the job in violation of the employer's

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1 written policy. For purposes of this paragraph,
2 evidence may include, but is not limited to, any of
3 the following:

4 (1) Observable phenomena while at work such as
5 direct observation of alcohol or other drug use or
6 abuse or of the physical symptoms or manifestations of
7 being impaired due to alcohol or other drug use.

8 (2) Abnormal conduct or erratic behavior while at
9 work or a significant deterioration in work
10 performance.

11 (3) A report of alcohol or other drug use while at
12 work provided by a reliable and credible source.

13 (4) Evidence that an individual has tampered with
14 the individual's own drug or alcohol test during the
15 individual's employment with the current employer.

16 (5) Evidence that an employee has caused an
17 accident while at work which resulted in a personal
18 injury which required medical treatment away from the
19 workplace or damage to property, including equipment,
20 in an amount reasonably estimated to exceed one
21 thousand dollars at the time of the accident.

22 (6) Evidence that an employee has possessed or
23 used drugs while working or while on the employer's
24 premises or while operating the employer's vehicle,
25 machinery, or equipment.

26 i. "Sample" means such sample of blood or urine
27 from the human body capable of revealing the presence
28 of alcohol or other drugs, or their metabolites.

29 2. TESTING AS CONDITION OF EMPLOYMENT --
30 REQUIREMENTS. To the extent provided in subsection 6,
31 an employer may test employees and prospective
32 employees for the presence of drugs or alcohol as a
33 condition of continued employment or hiring. An
34 employer shall adhere to the requirements of this
35 section concerning the conduct of such testing and the
36 use and disposition of the results of such testing.

37 3. COLLECTION OF SAMPLES. In conducting drug or
38 alcohol testing, an employer may require the
39 collection of samples from its employees and
40 prospective employees, and may require presentation of
41 reliable individual identification from the person
42 being tested to the person collecting the samples.
43 Collection of a sample shall be in conformance with
44 the requirements of this section. If the employer
45 requests that a urine sample be provided in conducting
46 drug or alcohol testing under this section, the
47 employer shall provide the employee or prospective
48 employee with an opportunity to have a blood sample
49 drawn instead of providing a urine sample.

50 4. SCHEDULING OF TESTS.

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1 a. Drug or alcohol testing of employees conducted
2 by an employer shall normally occur during, or
3 immediately before or after, a regular work period.
4 The time required for such testing by an employer
5 shall be deemed work time for the purposes of
6 compensation and benefits for employees.

7 b. An employer shall pay all actual costs for drug
8 or alcohol testing of employees and prospective
9 employees required by the employer.

10 c. An employer shall provide transportation or pay
11 reasonable transportation costs to employees for all
12 drug or alcohol testing under this section.

13 5. TESTING PROCEDURES. All sample collection and
14 testing for drugs or alcohol under this section shall
15 be performed in accordance with the following
16 conditions:

17 a. The collection of samples shall be performed
18 under sanitary conditions and with regard for the
19 privacy of the individual from whom the specimen is
20 being obtained and in a manner reasonably calculated
21 to preclude contamination or substitution of the
22 specimen.

23 b. Sample collection for testing of current
24 employees shall be performed so that the specimen is
25 split into two components at the time of collection in
26 the presence of the individual from whom the sample or
27 specimen is collected. The second portion of the
28 specimen or sample shall be of sufficient quantity to
29 permit a second, independent confirmatory test as
30 provided in paragraph "i". If the specimen is urine,
31 the sample shall be split such that the primary sample
32 contains at least thirty milliliters and the secondary
33 sample contains at least fifteen milliliters. Both
34 portions of the sample shall be forwarded to the
35 laboratory conducting the initial confirmatory
36 testing. In addition to any requirements for storage
37 of the initial sample that may be imposed upon the
38 laboratory as a condition for certification or
39 approval, the laboratory shall store the second
40 portion of any sample until receipt of a confirmed
41 negative test result or for a period of at least
42 forty-five calendar days following the completion of
43 the initial confirmatory testing, if the first portion
44 yielded a confirmed positive test result.

45 c. Sample collections shall be documented, and the
46 procedure for documentation shall include the
47 following:

48 (1) Samples shall be labeled so as to reasonably
49 preclude the possibility of misidentification of the
50 individual tested in relation to the test result

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1 provided, and samples shall be handled and tracked in
2 a manner such that control and accountability are
3 maintained from initial collection to each stage in
4 handling, testing, and storage, through final
5 disposition.

6 (2) An employee or prospective employee shall be
7 provided an opportunity to provide any information
8 which may be considered relevant to the test,
9 including identification of prescription or
10 nonprescription drugs currently or recently used, or
11 other relevant medical information. Information
12 provided by the employee or prospective employee shall
13 not be disclosed to the employer but shall be
14 delivered to the facility conducting confirmatory
15 testing. To assist an employee or prospective
16 employee in providing the information described in
17 this subparagraph, the employer shall provide an
18 employee or prospective employee with a list of the
19 drugs to be tested.

20 d. Sample collection, storage, and transportation
21 to the place of testing shall be performed so as to
22 reasonably preclude the possibility of sample
23 contamination, adulteration, or misidentification.

24 e. All drug testing, including both initial and
25 confirmatory testing, shall be conducted at a
26 laboratory certified by the United States department
27 of health and human services' substance abuse and
28 mental health services administration or approved
29 under rules adopted by the Iowa department of public
30 health.

31 f. Drug or alcohol testing shall include
32 confirmation of any initial positive test results.
33 For drug testing, confirmation shall be by use of a
34 different chemical process than was used in the
35 initial drug screen. The confirmatory drug test shall
36 be a chromatographic technique such as gas
37 chromatography or mass spectrometry, or another
38 comparably reliable analytical method.

39 g. A medical review officer shall, prior to the
40 results being reported to an employer and the employee
41 or prospective employee tested, review and interpret
42 any confirmed positive test results, including both
43 quantitative and qualitative test results, to ensure
44 that the chain of custody is complete and sufficient
45 on its face and that any information provided by the
46 individual pursuant to paragraph "c", subparagraph
47 (2), is considered.

48 h. In conducting drug or alcohol testing pursuant
49 to this section, the employer shall ensure that the
50 testing only measure, and the records concerning the

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1 testing only show or make use of information
2 regarding, alcohol or drugs in the body.
3 i. If a positive drug or alcohol test for an
4 employee or prospective employee is confirmed by the
5 medical review officer, the medical review officer
6 shall notify the employee or prospective employee in
7 writing of the results of the test, the employee's or
8 prospective employee's right to request and obtain a
9 confirmatory test of the second sample collected
10 pursuant to paragraph "b" at a certified or approved
11 laboratory of the employee's or prospective employee's
12 choice, and the fee established by the employer's
13 written policy to be payable by the employee or
14 prospective employee to the medical review officer for
15 reimbursement of expenses concerning the test. The
16 fee charged an employee or prospective employee shall
17 be an amount, not in excess of one hundred dollars,
18 that represents the costs associated with conducting
19 the second confirmatory test, which shall be
20 consistent with the employer's cost for conducting the
21 initial confirmatory test on an employee's or
22 prospective employee's sample. If the employee or
23 prospective employee requests a second confirmatory
24 test, identifies a certified or approved laboratory to
25 conduct the test, and pays the medical review officer
26 the fee for the test within fifteen days from the date
27 the employee or prospective employee receives written
28 notice of the right to request a test, a second
29 confirmatory test shall be conducted at the laboratory
30 chosen by the employee or prospective employee. The
31 results of the second confirmatory test shall be
32 reported to the medical review officer who reviewed
33 the initial confirmatory test results and the medical
34 review officer shall review the results and issue a
35 report to the employer and the employee or prospective
36 employee tested that the results of the drug or
37 alcohol test were confirmed as positive if the results
38 of the second confirmatory test confirmed the initial
39 confirmatory test as to the presence of a specific
40 drug or alcohol. If the results of the second test do
41 not confirm the results of the initial confirmatory
42 test, the medical review officer shall report to the
43 employer that the result of the drug or alcohol test
44 is negative and not a confirmed positive test result
45 for purposes of this section.
46 j. A report of the results of a drug or alcohol
47 test issued to an employer and the individual tested
48 shall only indicate, as to an employee or prospective
49 employee, whether the test results were positive or
50 negative, pursuant to the review and interpretation of

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1 a medical review officer as provided in this
2 subsection. An inconclusive test result shall be
3 reported as a negative test result. If the test
4 results are positive, the report shall only indicate
5 whether drugs or alcohol were present, which drugs
6 were present if applicable, information concerning the
7 amount of alcohol present, and a statement from the
8 medical review officer that any information provided
9 by the employee or prospective employee fails to
10 explain the results.

11 6. DRUG OR ALCOHOL TESTING. Employers may conduct
12 drug or alcohol testing as provided in this
13 subsection:

14 a. Employers may conduct drug or alcohol testing
15 of employees for up to two years after completion of
16 drug or alcohol rehabilitation.

17 b. Employers may conduct reasonable suspicion drug
18 or alcohol testing.

19 c. Employers may conduct drug or alcohol testing
20 of prospective employees.

21 d. Employers may conduct drug or alcohol testing
22 as required by federal law or regulation.

23 e. Employers may conduct drug or alcohol testing
24 in investigating accidents in the workplace which
25 result in a personal injury which requires medical
26 treatment away from the workplace or damage to
27 property, including equipment, in an amount reasonably
28 estimated to exceed one thousand dollars at the time
29 of the accident.

30 f. Employers shall conduct a drug or alcohol test
31 on an employee if the employee requests, in writing,
32 that a drug or alcohol test be conducted pursuant to
33 this paragraph on the employee and the employee
34 provides the employer with evidence concerning the
35 employee which would be sufficient for an employer to
36 conduct reasonable suspicion drug or alcohol testing.

37 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

38 a. Prior to conducting drug or alcohol testing
39 under this section, an employer shall establish,
40 following consultation with representatives of
41 employees, a written policy consistent with the
42 requirements of this section governing such testing.
43 The employer shall comply with this section and the
44 requirements of the written policy to conduct drug or
45 alcohol testing of employees and prospective employees
46 and shall provide the written policy to every employee
47 subject to testing and shall make the policy available
48 for review by employees and prospective employees.

49 b. Employers shall establish an awareness program
50 to inform employees of the dangers of drug and alcohol

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1 use in the workplace and shall comply with the
2 following requirements in order to conduct drug or
3 alcohol testing under this section:

4 (1) If an employer has an employee assistance
5 program, the employer must inform the employee of the
6 benefits and services of the employee assistance
7 program. An employer shall post notice of the
8 employee assistance program in conspicuous places and
9 explore alternative routine and reinforcing means of
10 publicizing such services. In addition, the employer
11 must provide the employee with notice of the policies
12 and procedures regarding access to and utilization of
13 the program.

14 (2) If an employer does not have an employee
15 assistance program, the employer must maintain a
16 resource file of employee assistance services
17 providers, alcohol and other drug abuse programs
18 certified by the Iowa department of public health,
19 mental health providers, and other persons, entities,
20 or organizations available to assist employees with
21 personal or behavioral problems. The employer shall
22 provide all employees information about the existence
23 of the resource file and a summary of the information
24 contained within the resource file. The summary
25 should contain, but need not be limited to, all
26 information necessary to access the services listed in
27 the resource file. In addition, the employer shall
28 post in conspicuous places a listing of multiple
29 employee assistance providers in the area.

30 c. An employee or prospective employee whose drug
31 or alcohol test results are confirmed as positive in
32 accordance with this section shall not, by virtue of
33 those results alone, be considered as a person with a
34 disability for purposes of any state or local law or
35 regulation.

36 d. If the written policy provides for alcohol
37 testing, the employer shall establish in the written
38 policy a standard for alcohol concentration which
39 shall be deemed to violate the policy. The standard
40 for alcohol concentration shall not be less than .04,
41 expressed in terms of grams of alcohol per two hundred
42 ten liters of breath, or its equivalent.

43 e. In order to conduct drug or alcohol testing
44 under this section, an employer shall require all
45 supervisory personnel of the employer to attend a
46 minimum of two hours of initial training and to
47 attend, on an annual basis thereafter, a minimum of
48 one hour of subsequent training. The training shall
49 be based upon standards adopted by the Iowa department
50 of public health and shall include, but is not limited

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1 to, information concerning the recognition of evidence
2 of employee alcohol and other drug abuse, the
3 documentation and corroboration of employee alcohol
4 and other drug abuse, and the referral of employees
5 who abuse alcohol or other drugs to the employee
6 assistance program or to the resource file of employee
7 assistance services providers. For purposes of this
8 paragraph, "supervisory personnel" means persons
9 having authority, in the interest of the employer, to
10 hire, transfer, suspend, lay off, recall, promote,
11 discharge, assign, reward, or discipline other
12 employees, or responsibly to direct them, or to adjust
13 their grievances, or effectively to recommend such
14 action, if in connection with the foregoing the
15 exercise of such authority is not of a merely routine
16 or clerical nature, but requires the use of
17 independent judgment.

18 f. If an employee is under eighteen years of age,
19 in order to conduct drug or alcohol testing under this
20 section, the employer shall, prior to conducting a
21 test, notify the employee's parent or grandparent that
22 a test shall be conducted and the basis for the test.
23 For purposes of this paragraph, "parent" means one
24 parent or a legal guardian or custodian of the
25 employee.

26 8. DISCIPLINARY PROCEDURES.

27 a. Upon receipt for an employee of the first
28 confirmed positive drug or alcohol test result, the
29 employer shall provide the employee with a substance
30 abuse evaluation, and treatment if recommended by the
31 evaluation, with costs apportioned as provided under
32 the employee benefit plan or at employer expense, if
33 an employee benefit plan is not in effect which
34 apportions costs. The employer shall take no
35 disciplinary action against the employee upon receipt
36 of the first confirmed positive drug or alcohol test
37 result if the employee undergoes a substance abuse
38 evaluation, and if the employee successfully completes
39 substance abuse treatment if treatment is recommended
40 by the evaluation. However, if an employee fails to
41 undergo substance abuse evaluation when required as a
42 result of a drug or alcohol test, or fails to
43 successfully complete substance abuse treatment when
44 recommended by an evaluation, the employee may be
45 disciplined as provided in paragraph "b". The
46 substance abuse evaluation and treatment provided by
47 the employer shall take place under a program approved
48 by the Iowa department of public health or accredited
49 by the joint commission on the accreditation of health
50 care organizations.

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1 b. Upon receipt for an employee of a second
2 confirmed positive drug or alcohol test result or upon
3 receipt for a prospective employee of a confirmed
4 positive drug or alcohol test result, upon the failure
5 of an employee to comply with the requirements of
6 paragraph "a", or upon the refusal of an employee or
7 prospective employee to provide a testing sample, an
8 employer may use that test result or test refusal as a
9 valid basis for disciplinary or rehabilitative actions
10 consistent with the employer's written policy, which
11 may include, among other actions, the following:

12 (1) A requirement that the employee enroll in an
13 employer-provided or approved rehabilitation,
14 treatment, or counseling program, which may include
15 additional drug or alcohol testing, participation in
16 and successful completion of which may be a condition
17 of continued employment, and the costs of which may or
18 may not be covered by the employer's health plan or
19 policies.

20 (2) Suspension of the employee, with or without
21 pay, for a designated period of time.

22 (3) Termination of employment.

23 (4) Refusal to hire a prospective employee.

24 (5) Other adverse employment action in conformance
25 with the employer's written policy and procedures,
26 including any relevant collective bargaining agreement
27 provisions.

28 9. EMPLOYER IMMUNITY. A cause of action shall not
29 arise against an employer who, in good faith, has
30 established a written policy in accordance with this
31 section and has complied with the requirements of the
32 written policy and this section for testing or taking
33 action based on the results of a confirmed positive
34 drug or alcohol test result, indicating the presence
35 of drugs or alcohol, or the refusal of an employee or
36 prospective employee to submit to a drug or alcohol
37 test.

38 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --
39 EXCEPTIONS.

40 a. Except as provided in paragraph "b", all
41 communications received by an employer relevant to
42 employee or prospective employee drug or alcohol test
43 results, or otherwise received through the employer's
44 drug or alcohol testing program, are confidential
45 communications and shall not be used or received in
46 evidence, obtained in discovery, or disclosed in any
47 public or private proceeding, except as provided by
48 this section or in a proceeding related to an action
49 taken by an employer under this section or by an
50 employee under this section.

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1 b. An employee, or a prospective employee, who is
2 the subject of a drug or alcohol test conducted under
3 this section pursuant to an employer's written policy
4 and for whom a confirmed positive test result is
5 reported shall receive, at the same time the report is
6 issued to the employer, a copy of the report issued to
7 the employer and shall receive any records relating to
8 the employee's drug or alcohol test, including records
9 of the laboratory where the testing was conducted and
10 any records relating to the results of any relevant
11 review by a medical review officer.

12 11. CIVIL REMEDIES. This section may be enforced
13 through a civil action.

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

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

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

34 12. OFFENSES. Samples collected, information
35 provided by an employee or prospective employee
36 pursuant to subsection 5, paragraph "c", subparagraph
37 (2), and the results of drug or alcohol testing shall
38 be used solely for the purpose of conducting drug or
39 alcohol testing pursuant to this section and shall not
40 be sold, transferred, or disseminated, to any person
41 for any purpose not expressly authorized by this
42 section. A person who violates this subsection
43 commits a simple misdemeanor and, notwithstanding
44 section 903.1, if a monetary fine is imposed, the fine
45 shall be one hundred dollars. Each violation of this
46 subsection constitutes a separate offense.

47 13. REPORTS.

48 a. An employer who conducts a drug test pursuant
49 to this section shall, for each fiscal year beginning
50 on or after July 1, 1999, file an annual report with

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1 the division of labor services of the department of
2 workforce development, on forms provided by the
3 division, documenting the number of accidents,
4 including the number of personal injuries and the
5 dollar loss for property damage arising out of the
6 accidents, caused by the use of drugs or alcohol by
7 employees and documenting separately for each category
8 of testing described in subsection 6 the following
9 information:

10 (1) The number of drug or alcohol tests conducted
11 in each category.

12 (2) The results of drug or alcohol tests conducted
13 in each category.

14 b. The division of labor services of the
15 department of workforce development shall compile the
16 information submitted by employers pursuant to this
17 subsection and shall submit an annual report to the
18 general assembly on this information.

19 Sec. 2. EFFECTIVE DATE. This Act takes effect on
20 January 1, 1999."

By TOM VILSACK
MICHAEL E. GRONSTAL

S-5003 FILED JANUARY 12, 1998

O/O
2/18/98

HOUSE FILE 299

S-5004

1 Amend the amendment, S-3851, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, by striking lines 1 through 16 and
5 inserting the following:

6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:

8 _____. By striking everything after the enacting
9 clause and inserting the following:

10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:

13 730.5 DRUG-FREE WORKPLACES.

14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:

16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.

18 b. "Drug" means a substance considered unlawful
19 under the federal Controlled Substances Act, 21 U.S.C.
20 § 801 et seq.

21 c. "Employee" means a person in the service of an
22 employer.

23 d. "Employer" means a person which has one or more
24 employees employed in the same business, or in or
25 about the same establishment, in this state.

26 e. "Good faith" means reasonable reliance on
27 facts.

28 f. "Medical review officer" means a physician
29 licensed to practice medicine and surgery or
30 osteopathic medicine and surgery in any state of the
31 United States, responsible for receiving laboratory
32 results generated by an employer's drug testing
33 program, who is independent from the employer and is
34 agreed upon by representatives of the employer and the
35 employees, and who has knowledge of substance abuse
36 disorders and has appropriate medical training to
37 interpret and evaluate an individual's confirmed
38 positive test result together with the individual's
39 medical history and any other relevant biomedical
40 information.

41 g. "Prospective employee" means a person who has
42 made application, whether written or oral, to an
43 employer to become an employee and who has received a
44 bona fide offer of employment from the employer.

45 h. "Reasonable suspicion drug or alcohol testing"
46 means drug or alcohol testing based upon evidence
47 which would cause a reasonable person to conclude that
48 an employee is using or has used alcohol or other
49 drugs and which use impairs the employee's performance
50 while on the job in violation of the employer's

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1 written policy. For purposes of this paragraph,
2 evidence may include, but is not limited to, any of
3 the following:

4 (1) Observable phenomena while at work such as
5 direct observation of alcohol or other drug use or
6 abuse or of the physical symptoms or manifestations of
7 being impaired due to alcohol or other drug use.

8 (2) Abnormal conduct or erratic behavior while at
9 work or a significant deterioration in work
10 performance.

11 (3) A report of alcohol or other drug use while at
12 work provided by a reliable and credible source.

13 (4) Evidence that an individual has tampered with
14 the individual's own drug or alcohol test during the
15 individual's employment with the current employer.

16 (5) Evidence that an employee has caused an
17 accident while at work which resulted in a personal
18 injury which required medical treatment away from the
19 workplace or damage to property, including equipment,
20 in an amount reasonably estimated to exceed one
21 thousand dollars at the time of the accident.

22 (6) Evidence that an employee has possessed or
23 used drugs while working or while on the employer's
24 premises or while operating the employer's vehicle,
25 machinery, or equipment.

26 i. "Sample" means such sample of blood or urine
27 from the human body capable of revealing the presence
28 of alcohol or other drugs, or their metabolites.

29 2. TESTING AS CONDITION OF EMPLOYMENT --
30 REQUIREMENTS. To the extent provided in subsection 6,
31 an employer may test employees and prospective
32 employees for the presence of drugs or alcohol as a
33 condition of continued employment or hiring. An
34 employer shall adhere to the requirements of this
35 section concerning the conduct of such testing and the
36 use and disposition of the results of such testing.

37 3. COLLECTION OF SAMPLES. In conducting drug or
38 alcohol testing, an employer may require the
39 collection of samples from its employees and
40 prospective employees, and may require presentation of
41 reliable individual identification from the person
42 being tested to the person collecting the samples.
43 Collection of a sample shall be in conformance with
44 the requirements of this section. If the employer
45 requests that a urine sample be provided in conducting
46 drug or alcohol testing under this section, the
47 employer shall provide the employee or prospective
48 employee with an opportunity to have a blood sample
49 drawn instead of providing a urine sample.

50 4. SCHEDULING OF TESTS.

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1 a. Drug or alcohol testing of employees conducted
2 by an employer shall normally occur during, or
3 immediately before or after, a regular work period.
4 The time required for such testing by an employer
5 shall be deemed work time for the purposes of
6 compensation and benefits for employees.

7 b. An employer shall pay all actual costs for drug
8 or alcohol testing of employees and prospective
9 employees required by the employer.

10 c. An employer shall provide transportation or pay
11 reasonable transportation costs to employees for all
12 drug or alcohol testing under this section.

13 5. TESTING PROCEDURES. All sample collection and
14 testing for drugs or alcohol under this section shall
15 be performed in accordance with the following
16 conditions:

17 a. The collection of samples shall be performed
18 under sanitary conditions and with regard for the
19 privacy of the individual from whom the specimen is
20 being obtained and in a manner reasonably calculated
21 to preclude contamination or substitution of the
22 specimen.

23 b. Sample collection for testing of current
24 employees shall be performed so that the specimen is
25 split into two components at the time of collection in
26 the presence of the individual from whom the sample or
27 specimen is collected. The second portion of the
28 specimen or sample shall be of sufficient quantity to
29 permit a second, independent confirmatory test as
30 provided in paragraph "i". If the specimen is urine,
31 the sample shall be split such that the primary sample
32 contains at least thirty milliliters and the secondary
33 sample contains at least fifteen milliliters. Both
34 portions of the sample shall be forwarded to the
35 laboratory conducting the initial confirmatory
36 testing. In addition to any requirements for storage
37 of the initial sample that may be imposed upon the
38 laboratory as a condition for certification or
39 approval, the laboratory shall store the second
40 portion of any sample until receipt of a confirmed
41 negative test result or for a period of at least
42 forty-five calendar days following the completion of
43 the initial confirmatory testing, if the first portion
44 yielded a confirmed positive test result.

45 c. Sample collections shall be documented, and the
46 procedure for documentation shall include the
47 following:

48 (1) Samples shall be labeled so as to reasonably
49 preclude the possibility of misidentification of the
50 individual tested in relation to the test result

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1 provided, and samples shall be handled and tracked in
2 a manner such that control and accountability are
3 maintained from initial collection to each stage in
4 handling, testing, and storage, through final
5 disposition.

6 (2) An employee or prospective employee shall be
7 provided an opportunity to provide any information
8 which may be considered relevant to the test,
9 including identification of prescription or
10 nonprescription drugs currently or recently used, or
11 other relevant medical information. Information
12 provided by the employee or prospective employee shall
13 not be disclosed to the employer but shall be
14 delivered to the facility conducting confirmatory
15 testing. To assist an employee or prospective
16 employee in providing the information described in
17 this subparagraph, the employer shall provide an
18 employee or prospective employee with a list of the
19 drugs to be tested.

20 d. Sample collection, storage, and transportation
21 to the place of testing shall be performed so as to
22 reasonably preclude the possibility of sample
23 contamination, adulteration, or misidentification.

24 e. All drug testing, including both initial and
25 confirmatory testing, shall be conducted at a
26 laboratory certified by the United States department
27 of health and human services' substance abuse and
28 mental health services administration or approved
29 under rules adopted by the Iowa department of public
30 health.

31 f. Drug or alcohol testing shall include
32 confirmation of any initial positive test results.
33 For drug testing, confirmation shall be by use of a
34 different chemical process than was used in the
35 initial drug screen. The confirmatory drug test shall
36 be a chromatographic technique such as gas
37 chromatography or mass spectrometry, or another
38 comparably reliable analytical method.

39 g. A medical review officer shall, prior to the
40 results being reported to an employer and the employee
41 or prospective employee tested, review and interpret
42 any confirmed positive test results, including both
43 quantitative and qualitative test results, to ensure
44 that the chain of custody is complete and sufficient
45 on its face and that any information provided by the
46 individual pursuant to paragraph "c", subparagraph
47 (2), is considered.

48 h. In conducting drug or alcohol testing pursuant
49 to this section, the employer shall ensure that the
50 testing only measure, and the records concerning the

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1 testing only show or make use of information
2 regarding, alcohol or drugs in the body.
3 i. If a positive drug or alcohol test for an
4 employee or prospective employee is confirmed by the
5 medical review officer, the medical review officer
6 shall notify the employee or prospective employee in
7 writing of the results of the test, the employee's or
8 prospective employee's right to request and obtain a
9 confirmatory test of the second sample collected
10 pursuant to paragraph "b" at a certified or approved
11 laboratory of the employee's or prospective employee's
12 choice, and the fee established by the employer's
13 written policy to be payable by the employee or
14 prospective employee to the medical review officer for
15 reimbursement of expenses concerning the test. The
16 fee charged an employee or prospective employee shall
17 be an amount, not in excess of one hundred dollars,
18 that represents the costs associated with conducting
19 the second confirmatory test, which shall be
20 consistent with the employer's cost for conducting the
21 initial confirmatory test on an employee's or
22 prospective employee's sample. If the employee or
23 prospective employee requests a second confirmatory
24 test, identifies a certified or approved laboratory to
25 conduct the test, and pays the medical review officer
26 the fee for the test within fifteen days from the date
27 the employee or prospective employee receives written
28 notice of the right to request a test, a second
29 confirmatory test shall be conducted at the laboratory
30 chosen by the employee or prospective employee. The
31 results of the second confirmatory test shall be
32 reported to the medical review officer who reviewed
33 the initial confirmatory test results and the medical
34 review officer shall review the results and issue a
35 report to the employer and the employee or prospective
36 employee tested that the results of the drug or
37 alcohol test were confirmed as positive if the results
38 of the second confirmatory test confirmed the initial
39 confirmatory test as to the presence of a specific
40 drug or alcohol. If the results of the second test do
41 not confirm the results of the initial confirmatory
42 test, the medical review officer shall report to the
43 employer that the result of the drug or alcohol test
44 is negative and not a confirmed positive test result
45 for purposes of this section.
46 j. A report of the results of a drug or alcohol
47 test issued to an employer and the individual tested
48 shall only indicate, as to an employee or prospective
49 employee, whether the test results were positive or
50 negative, pursuant to the review and interpretation of

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1 a medical review officer as provided in this
2 subsection. An inconclusive test result shall be
3 reported as a negative test result. If the test
4 results are positive, the report shall only indicate
5 whether drugs or alcohol were present, which drugs
6 were present if applicable, information concerning the
7 amount of alcohol present, and a statement from the
8 medical review officer that any information provided
9 by the employee or prospective employee fails to
10 explain the results.

11 6. DRUG OR ALCOHOL TESTING. Employers may conduct
12 drug or alcohol testing as provided in this
13 subsection:

14 a. Employers may conduct drug or alcohol testing
15 of employees for up to two years after completion of
16 drug or alcohol rehabilitation.

17 b. Employers may conduct reasonable suspicion drug
18 or alcohol testing.

19 c. Employers may conduct drug or alcohol testing
20 of prospective employees.

21 d. Employers may conduct drug or alcohol testing
22 as required by federal law or regulation.

23 e. Employers may conduct drug or alcohol testing
24 in investigating accidents in the workplace which
25 result in a personal injury which requires medical
26 treatment away from the workplace or damage to
27 property, including equipment, in an amount reasonably
28 estimated to exceed one thousand dollars at the time
29 of the accident.

30 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

31 a. Prior to conducting drug or alcohol testing
32 under this section, an employer shall establish,
33 following consultation with representatives of
34 employees, a written policy consistent with the
35 requirements of this section governing such testing.
36 The employer shall comply with this section and the
37 requirements of the written policy to conduct drug or
38 alcohol testing of employees and prospective employees
39 and shall provide the written policy to every employee
40 subject to testing and shall make the policy available
41 for review by employees and prospective employees.

42 b. Employers shall establish an awareness program
43 to inform employees of the dangers of drug and alcohol
44 use in the workplace and shall comply with the
45 following requirements in order to conduct drug or
46 alcohol testing under this section:

47 (1) If an employer has an employee assistance
48 program, the employer must inform the employee of the
49 benefits and services of the employee assistance
50 program. An employer shall post notice of the

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

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

23 c. An employee or prospective employee whose drug
24 or alcohol test results are confirmed as positive in
25 accordance with this section shall not, by virtue of
26 those results alone, be considered as a person with a
27 disability for purposes of any state or local law or
28 regulation.

29 d. If the written policy provides for alcohol
30 testing, the employer shall establish in the written
31 policy a standard for alcohol concentration which
32 shall be deemed to violate the policy. The standard
33 for alcohol concentration shall not be less than .04,
34 expressed in terms of grams of alcohol per two hundred
35 ten liters of breath, or its equivalent.

36 e. In order to conduct drug or alcohol testing
37 under this section, an employer shall require all
38 supervisory personnel of the employer to attend a
39 minimum of two hours of initial training and to
40 attend, on an annual basis thereafter, a minimum of
41 one hour of subsequent training. The training shall
42 be based upon standards adopted by the Iowa department
43 of public health and shall include, but is not limited
44 to, information concerning the recognition of evidence
45 of employee alcohol and other drug abuse, the
46 documentation and corroboration of employee alcohol
47 and other drug abuse, and the referral of employees
48 who abuse alcohol or other drugs to the employee
49 assistance program or to the resource file of employee
50 assistance services providers. For purposes of this

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1 paragraph, "supervisory personnel" means persons
2 having authority, in the interest of the employer, to
3 hire, transfer, suspend, lay off, recall, promote,
4 discharge, assign, reward, or discipline other
5 employees, or responsibly to direct them, or to adjust
6 their grievances, or effectively to recommend such
7 action, if in connection with the foregoing the
8 exercise of such authority is not of a merely routine
9 or clerical nature, but requires the use of
10 independent judgment.

11 f. If an employee is under eighteen years of age,
12 in order to conduct drug or alcohol testing under this
13 section, the employer shall, prior to conducting a
14 test, notify the employee's parent or grandparent that
15 a test shall be conducted and the basis for the test.
16 For purposes of this paragraph, "parent" means one
17 parent or a legal guardian or custodian of the
18 employee.

19 8. DISCIPLINARY PROCEDURES.

20 a. Upon receipt for an employee of the first
21 confirmed positive drug or alcohol test result, the
22 employer shall provide the employee with a substance
23 abuse evaluation, and treatment if recommended by the
24 evaluation, with costs apportioned as provided under
25 the employee benefit plan or at employer expense, if
26 an employee benefit plan is not in effect which
27 apportions costs. The employer shall take no
28 disciplinary action against the employee upon receipt
29 of the first confirmed positive drug or alcohol test
30 result if the employee undergoes a substance abuse
31 evaluation, and if the employee successfully completes
32 substance abuse treatment if treatment is recommended
33 by the evaluation. However, if an employee fails to
34 undergo substance abuse evaluation when required as a
35 result of a drug or alcohol test, or fails to
36 successfully complete substance abuse treatment when
37 recommended by an evaluation, the employee may be
38 disciplined as provided in paragraph "b". The
39 substance abuse evaluation and treatment provided by
40 the employer shall take place under a program approved
41 by the Iowa department of public health or accredited
42 by the joint commission on the accreditation of health
43 care organizations.

44 b. Upon receipt for an employee of a second
45 confirmed positive drug or alcohol test result or upon
46 receipt for a prospective employee of a confirmed
47 positive drug or alcohol test result, upon the failure
48 of an employee to comply with the requirements of
49 paragraph "a", or upon the refusal of an employee or
50 prospective employee to provide a testing sample, an

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1 employer may use that test result or test refusal as a
2 valid basis for disciplinary or rehabilitative actions
3 consistent with the employer's written policy, which
4 may include, among other actions, the following:

5 (1) A requirement that the employee enroll in an
6 employer-provided or approved rehabilitation,
7 treatment, or counseling program, which may include
8 additional drug or alcohol testing, participation in
9 and successful completion of which may be a condition
10 of continued employment, and the costs of which may or
11 may not be covered by the employer's health plan or
12 policies.

13 (2) Suspension of the employee, with or without
14 pay, for a designated period of time.

15 (3) Termination of employment.

16 (4) Refusal to hire a prospective employee.

17 (5) Other adverse employment action in conformance
18 with the employer's written policy and procedures,
19 including any relevant collective bargaining agreement
20 provisions.

21 9. EMPLOYER IMMUNITY. A cause of action shall not
22 arise against an employer who, in good faith, has
23 established a written policy in accordance with this
24 section and has complied with the requirements of the
25 written policy and this section for testing or taking
26 action based on the results of a confirmed positive
27 drug or alcohol test result, indicating the presence
28 of drugs or alcohol, or the refusal of an employee or
29 prospective employee to submit to a drug or alcohol
30 test.

31 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --
32 EXCEPTIONS.

33 a. Except as provided in paragraph "b", all
34 communications received by an employer relevant to
35 employee or prospective employee drug or alcohol test
36 results, or otherwise received through the employer's
37 drug or alcohol testing program, are confidential
38 communications and shall not be used or received in
39 evidence, obtained in discovery, or disclosed in any
40 public or private proceeding, except as provided by
41 this section or in a proceeding related to an action
42 taken by an employer under this section or by an
43 employee under this section.

44 b. An employee, or a prospective employee, who is
45 the subject of a drug or alcohol test conducted under
46 this section pursuant to an employer's written policy
47 and for whom a confirmed positive test result is
48 reported shall receive, at the same time the report is
49 issued to the employer, a copy of the report issued to
50 the employer and shall receive any records relating to

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1 the employee's drug or alcohol test, including records
2 of the laboratory where the testing was conducted and
3 any records relating to the results of any relevant
4 review by a medical review officer.

5 11. CIVIL REMEDIES. This section may be enforced
6 through a civil action.

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

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

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

27 12. OFFENSES. Samples collected, information
28 provided by an employee or prospective employee
29 pursuant to subsection 5, paragraph "c", subparagraph
30 (2), and the results of drug or alcohol testing shall
31 be used solely for the purpose of conducting drug or
32 alcohol testing pursuant to this section and shall not
33 be sold, transferred, or disseminated, to any person
34 for any purpose not expressly authorized by this
35 section. A person who violates this subsection
36 commits a simple misdemeanor and, notwithstanding
37 section 903.1, if a monetary fine is imposed, the fine
38 shall be one hundred dollars. Each violation of this
39 subsection constitutes a separate offense.

40 13. REPORTS.

41 a. An employer who conducts a drug test pursuant
42 to this section shall, for each fiscal year beginning
43 on or after July 1, 1999, file an annual report with
44 the division of labor services of the department of
45 workforce development, on forms provided by the
46 division, documenting the number of accidents,
47 including the number of personal injuries and the
48 dollar loss for property damage arising out of the
49 accidents, caused by the use of drugs or alcohol by
50 employees and documenting separately for each category

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1 of testing described in subsection 6 the following
2 information:

3 (1) The number of drug or alcohol tests conducted
4 in each category.

5 (2) The results of drug or alcohol tests conducted
6 in each category.

7 (3) The cumulative direct costs of drug or alcohol
8 tests in each category.

9 (4) The cost of substance abuse evaluation and
10 treatment for employees in each category.

11 b. The division of labor services of the
12 department of workforce development shall compile the
13 information submitted by employers pursuant to this
14 subsection and shall submit an annual report to the
15 general assembly on this information.

16 Sec. 2. EFFECTIVE DATE. This Act takes effect on
17 January 1, 1999.""

By TOM VILSACK
MICHAEL E. GRONSTAL

S-5004 FILED JANUARY 12, 1998

Lost 2/18/98

(p. 341)

HOUSE FILE 299

S-5001

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 12,
5 line 4, and inserting the following:

6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:

8 _____. By striking everything after the enacting
9 clause and inserting the following:

10 "Section 1. Section 15A.1, subsection 3, Code
11 1997, is amended by adding the following new
12 paragraph:

13 NEW PARAGRAPH. c. The business has established a
14 written policy to conduct drug or alcohol testing
15 pursuant to section 730.5.

16 Sec. 2. Section 730.5, Code 1997, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 730.5 DRUG-FREE WORKPLACES.

20 1. DEFINITIONS. As used in this section, unless
21 the context otherwise requires:

22 a. "Alcohol" means ethanol, isopropanol, or
23 methanol.

24 b. "Drug" means a substance considered unlawful
25 under the federal Controlled Substances Act, 21 U.S.C.
26 § 801 et seq.

27 c. "Employee" means a person in the service of an
28 employer.

29 d. "Employer" means a person which has one or more
30 employees employed in the same business, or in or
31 about the same establishment, in this state.

32 e. "Good faith" means reasonable reliance on
33 facts.

34 f. "Medical review officer" means a physician
35 licensed to practice medicine and surgery or
36 osteopathic medicine and surgery in any state of the
37 United States, responsible for receiving laboratory
38 results generated by an employer's drug testing
39 program, who is independent from the employer and is
40 agreed upon by representatives of the employer and the
41 employees, and who has knowledge of substance abuse
42 disorders and has appropriate medical training to
43 interpret and evaluate an individual's confirmed
44 positive test result together with the individual's
45 medical history and any other relevant biomedical
46 information.

47 g. "Prospective employee" means an individual who
48 has made application, whether written or oral, to an
49 employer to become an employee and who has received a
50 bona fide offer of employment from the employer.

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1 h. "Reasonable suspicion drug or alcohol testing"
2 means drug or alcohol testing based upon evidence
3 which would cause a reasonable person to conclude that
4 an employee is using or has used alcohol or other
5 drugs and which use impairs the employee's performance
6 while on the job in violation of the employer's
7 written policy. For purposes of this paragraph,
8 evidence may include, but is not limited to, any of
9 the following:

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

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

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

19 (4) Evidence that an individual has tampered with
20 the individual's own drug or alcohol test during the
21 individual's employment with the current employer.

22 (5) Evidence that an employee has caused an
23 accident while at work which resulted in a personal
24 injury which required medical treatment away from the
25 workplace or damage to property, including equipment,
26 in an amount reasonably estimated to exceed one
27 thousand dollars at the time of the accident.

28 (6) Evidence that an employee has possessed or
29 used drugs while working or while on the employer's
30 premises or while operating the employer's vehicle,
31 machinery, or equipment.

32 i. "Sample" means such sample of blood or urine
33 from the human body capable of revealing the presence
34 of alcohol or other drugs, or their metabolites.

35 2. TESTING AS CONDITION OF EMPLOYMENT --
36 REQUIREMENTS. To the extent provided in subsection 6,
37 an employer may test employees and prospective
38 employees for the presence of drugs or alcohol as a
39 condition of continued employment or hiring. An
40 employer shall adhere to the requirements of this
41 section concerning the conduct of such testing and the
42 use and disposition of the results of such testing.

43 3. COLLECTION OF SAMPLES. In conducting drug or
44 alcohol testing, an employer may require the
45 collection of samples from its employees and
46 prospective employees, and may require presentation of
47 reliable individual identification from the person
48 being tested to the person collecting the samples.
49 Collection of a sample shall be in conformance with
50 the requirements of this section. If the employer

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1 requests that a urine sample be provided in conducting
2 drug or alcohol testing under this section, the
3 employer shall provide the employee or prospective
4 employee with an opportunity to have a blood sample
5 drawn instead of providing a urine sample.

6 4. SCHEDULING OF TESTS.

7 a. Drug or alcohol testing of employees conducted
8 by an employer shall normally occur during, or
9 immediately before or after, a regular work period.
10 The time required for such testing by an employer
11 shall be deemed work time for the purposes of
12 compensation and benefits for employees.

13 b. An employer shall pay all actual costs for drug
14 or alcohol testing of employees and prospective
15 employees required by the employer.

16 c. An employer shall provide transportation or pay
17 reasonable transportation costs to employees for all
18 drug or alcohol testing under this section.

19 5. TESTING PROCEDURES. All sample collection and
20 testing for drugs or alcohol under this section shall
21 be performed in accordance with the following
22 conditions:

23 a. The collection of samples shall be performed
24 under sanitary conditions and with regard for the
25 privacy of the individual from whom the specimen is
26 being obtained and in a manner reasonably calculated
27 to preclude contamination or substitution of the
28 specimen.

29 b. Sample collection for testing of current
30 employees shall be performed so that the specimen is
31 split into two components at the time of collection in
32 the presence of the individual from whom the sample or
33 specimen is collected. The second portion of the
34 specimen or sample shall be of sufficient quantity to
35 permit a second, independent confirmatory test as
36 provided in paragraph "i". If the specimen is urine,
37 the sample shall be split such that the primary sample
38 contains at least thirty milliliters and the secondary
39 sample contains at least fifteen milliliters. Both
40 portions of the sample shall be forwarded to the
41 laboratory conducting the initial confirmatory
42 testing. In addition to any requirements for storage
43 of the initial sample that may be imposed upon the
44 laboratory as a condition for certification or
45 approval, the laboratory shall store the second
46 portion of any sample until receipt of a confirmed
47 negative test result or for a period of at least
48 forty-five calendar days following the completion of
49 the initial confirmatory testing, if the first portion
50 yielded a confirmed positive test result.

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1 c. Sample collections shall be documented, and the
2 procedure for documentation shall include the
3 following:

4 (1) Samples shall be labeled so as to reasonably
5 preclude the possibility of misidentification of the
6 individual tested in relation to the test result
7 provided, and samples shall be handled and tracked in
8 a manner such that control and accountability are
9 maintained from initial collection to each stage in
10 handling, testing, and storage, through final
11 disposition.

12 (2) An employee or prospective employee shall be
13 provided an opportunity to provide any information
14 which may be considered relevant to the test,
15 including identification of prescription or
16 nonprescription drugs currently or recently used, or
17 other relevant medical information. Information
18 provided by the employee or prospective employee shall
19 not be disclosed to the employer but shall be
20 delivered to the facility conducting confirmatory
21 testing. To assist an employee or prospective
22 employee in providing the information described in
23 this subparagraph, the employer shall provide an
24 employee or prospective employee with a list of the
25 drugs to be tested.

26 d. Sample collection, storage, and transportation
27 to the place of testing shall be performed so as to
28 reasonably preclude the possibility of sample
29 contamination, adulteration, or misidentification.

30 e. All drug testing, including both initial and
31 confirmatory testing, shall be conducted at a
32 laboratory certified by the United States department
33 of health and human services' substance abuse and
34 mental health services administration or approved
35 under rules adopted by the Iowa department of public
36 health.

37 f. Drug or alcohol testing shall include
38 confirmation of any initial positive test results.
39 For drug testing, confirmation shall be by use of a
40 different chemical process than was used in the
41 initial drug screen. The confirmatory drug test shall
42 be a chromatographic technique such as gas
43 chromatography or mass spectrometry, or another
44 comparably reliable analytical method.

45 g. A medical review officer shall, prior to the
46 results being reported to an employer and the employee
47 or prospective employee tested, review and interpret
48 any confirmed positive test results, including both
49 quantitative and qualitative test results, to ensure
50 that the chain of custody is complete and sufficient

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1 on its face and that any information provided by the
2 individual pursuant to paragraph "c", subparagraph
3 (2), is considered.

4 h. In conducting drug or alcohol testing pursuant
5 to this section, the employer shall ensure that the
6 testing only measure, and the records concerning the
7 testing only show or make use of information
8 regarding, alcohol or drugs in the body.

9 i. If a positive drug or alcohol test for an
10 employee or prospective employee is confirmed by the
11 medical review officer, the medical review officer
12 shall notify the employee or prospective employee in
13 writing of the results of the test, the employee's or
14 prospective employee's right to request and obtain a
15 confirmatory test of the second sample collected
16 pursuant to paragraph "b" at a certified or approved
17 laboratory of the employee's or prospective employee's
18 choice, and the fee established by the employer's
19 written policy to be payable by the employee or
20 prospective employee to the medical review officer for
21 reimbursement of expenses concerning the test. The
22 fee charged an employee or prospective employee shall
23 be an amount, not in excess of one hundred dollars,
24 that represents the costs associated with conducting
25 the second confirmatory test, which shall be
26 consistent with the employer's cost for conducting the
27 initial confirmatory test on an employee's or
28 prospective employee's sample. If the employee or
29 prospective employee requests a second confirmatory
30 test, identifies a certified or approved laboratory to
31 conduct the test, and pays the medical review officer
32 the fee for the test within fifteen days from the date
33 the employee or prospective employee receives written
34 notice of the right to request a test, a second
35 confirmatory test shall be conducted at the laboratory
36 chosen by the employee or prospective employee. The
37 results of the second confirmatory test shall be
38 reported to the medical review officer who reviewed
39 the initial confirmatory test results and the medical
40 review officer shall review the results and issue a
41 report to the employer and the employee or prospective
42 employee tested that the results of the drug or
43 alcohol test were confirmed as positive if the results
44 of the second confirmatory test confirmed the initial
45 confirmatory test as to the presence of a specific
46 drug or alcohol. If the results of the second test do
47 not confirm the results of the initial confirmatory
48 test, the medical review officer shall report to the
49 employer that the result of the drug or alcohol test
50 is negative and not a confirmed positive test result

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1 for purposes of this section.

2 j. A report of the results of a drug or alcohol
3 test issued to an employer and the individual tested
4 shall only indicate, as to an employee or prospective
5 employee, whether the test results were positive or
6 negative, pursuant to the review and interpretation of
7 a medical review officer as provided in this
8 subsection. An inconclusive test result shall be
9 reported as a negative test result. If the test
10 results are positive, the report shall only indicate
11 whether drugs or alcohol were present, which drugs
12 were present if applicable, information concerning the
13 amount of alcohol present, and a statement from the
14 medical review officer that any information provided
15 by the employee or prospective employee fails to
16 explain the results.

17 6. DRUG OR ALCOHOL TESTING. Employers may conduct
18 drug or alcohol testing as provided in this
19 subsection:

20 a. Employers may conduct drug or alcohol testing
21 of employees for up to two years after completion of
22 drug or alcohol rehabilitation.

23 b. Employers may conduct reasonable suspicion drug
24 or alcohol testing.

25 c. Employers may conduct drug or alcohol testing
26 of prospective employees.

27 d. Employers may conduct drug or alcohol testing
28 as required by federal law or regulation.

29 e. Employers may conduct drug or alcohol testing
30 in investigating accidents in the workplace which
31 result in a personal injury which requires medical
32 treatment away from the workplace or damage to
33 property, including equipment, in an amount reasonably
34 estimated to exceed one thousand dollars at the time
35 of the accident.

36 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

37 a. Prior to conducting drug or alcohol testing
38 under this section, an employer shall establish,
39 following consultation with representatives of
40 employees, a written policy consistent with the
41 requirements of this section governing such testing.
42 The employer shall comply with this section and the
43 requirements of the written policy to conduct drug or
44 alcohol testing of employees and prospective employees
45 and shall provide the written policy to every employee
46 subject to testing and shall make the policy available
47 for review by employees and prospective employees.

48 b. Employers shall establish an awareness program
49 to inform employees of the dangers of drug and alcohol
50 use in the workplace and shall comply with the

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1 following requirements in order to conduct drug or
2 alcohol testing under this section:

3 (1) If an employer has an employee assistance
4 program, the employer must inform the employee of the
5 benefits and services of the employee assistance
6 program. An employer shall post notice of the
7 employee assistance program in conspicuous places and
8 explore alternative routine and reinforcing means of
9 publicizing such services. In addition, the employer
10 must provide the employee with notice of the policies
11 and procedures regarding access to and utilization of
12 the program.

13 (2) If an employer does not have an employee
14 assistance program, the employer must maintain a
15 resource file of employee assistance services
16 providers, alcohol and other drug abuse programs
17 certified by the Iowa department of public health,
18 mental health providers, and other persons, entities,
19 or organizations available to assist employees with
20 personal or behavioral problems. The employer shall
21 provide all employees information about the existence
22 of the resource file and a summary of the information
23 contained within the resource file. The summary
24 should contain, but need not be limited to, all
25 information necessary to access the services listed in
26 the resource file. In addition, the employer shall
27 post in conspicuous places a listing of multiple
28 employee assistance providers in the area.

29 c. An employee or prospective employee whose drug
30 or alcohol test results are confirmed as positive in
31 accordance with this section shall not, by virtue of
32 those results alone, be considered as a person with a
33 disability for purposes of any state or local law or
34 regulation.

35 d. If the written policy provides for alcohol
36 testing, the employer shall establish in the written
37 policy a standard for alcohol concentration which
38 shall be deemed to violate the policy. The standard
39 for alcohol concentration shall not be less than .04,
40 expressed in terms of grams of alcohol per two hundred
41 ten liters of breath, or its equivalent.

42 e. In order to conduct drug or alcohol testing
43 under this section, an employer shall require all
44 supervisory personnel of the employer to attend a
45 minimum of two hours of initial training and to
46 attend, on an annual basis thereafter, a minimum of
47 one hour of subsequent training. The training shall
48 be based upon standards adopted by the Iowa department
49 of public health and shall include, but is not limited
50 to, information concerning the recognition of evidence

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1 of employee alcohol and other drug abuse, the
2 documentation and corroboration of employee alcohol
3 and other drug abuse, and the referral of employees
4 who abuse alcohol or other drugs to the employee
5 assistance program or to the resource file of employee
6 assistance services providers. For purposes of this
7 paragraph, "supervisory personnel" means persons
8 having authority, in the interest of the employer, to
9 hire, transfer, suspend, lay off, recall, promote,
10 discharge, assign, reward, or discipline other
11 employees, or responsibly to direct them, or to adjust
12 their grievances, or effectively to recommend such
13 action, if in connection with the foregoing the
14 exercise of such authority is not of a merely routine
15 or clerical nature, but requires the use of
16 independent judgment.

17 f. If an employee is under eighteen years of age,
18 in order to conduct drug or alcohol testing under this
19 section, the employer shall, prior to conducting a
20 test, notify the employee's parent or grandparent that
21 a test shall be conducted and the basis for the test.
22 For purposes of this paragraph, "parent" means one
23 parent or a legal guardian or custodian of the
24 employee.

25 8. DISCIPLINARY PROCEDURES.

26 a. Upon receipt for an employee of the first
27 confirmed positive drug or alcohol test result, the
28 employer shall provide the employee with a substance
29 abuse evaluation, and treatment if recommended by the
30 evaluation, with costs apportioned as provided under
31 the employee benefit plan or at employer expense, if
32 an employee benefit plan is not in effect which
33 apportions costs. The employer shall take no
34 disciplinary action against the employee upon receipt
35 of the first confirmed positive drug or alcohol test
36 result if the employee undergoes a substance abuse
37 evaluation, and if the employee successfully completes
38 substance abuse treatment if treatment is recommended
39 by the evaluation. However, if an employee fails to
40 undergo substance abuse evaluation when required as a
41 result of a drug or alcohol test, or fails to
42 successfully complete substance abuse treatment when
43 recommended by an evaluation, the employee may be
44 disciplined as provided in paragraph "b". The
45 substance abuse evaluation and treatment provided by
46 the employer shall take place under a program approved
47 by the Iowa department of public health or accredited
48 by the joint commission on the accreditation of health
49 care organizations.

50 b. Upon receipt for an employee of a second

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1 confirmed positive drug or alcohol test result or upon
2 receipt for a prospective employee of a confirmed
3 positive drug or alcohol test result, upon the failure
4 of an employee to comply with the requirements of
5 paragraph "a", or upon the refusal of an employee or
6 prospective employee to provide a testing sample, an
7 employer may use that test result or test refusal as a
8 valid basis for disciplinary or rehabilitative actions
9 consistent with the employer's written policy, which
10 may include, among other actions, the following:

11 (1) A requirement that the employee enroll in an
12 employer-provided or approved rehabilitation,
13 treatment, or counseling program, which may include
14 additional drug or alcohol testing, participation in
15 and successful completion of which may be a condition
16 of continued employment, and the costs of which may or
17 may not be covered by the employer's health plan or
18 policies.

19 (2) Suspension of the employee, with or without
20 pay, for a designated period of time.

21 (3) Termination of employment.

22 (4) Refusal to hire a prospective employee.

23 (5) Other adverse employment action in conformance
24 with the employer's written policy and procedures,
25 including any relevant collective bargaining agreement
26 provisions.

27 9. EMPLOYER IMMUNITY. A cause of action shall not
28 arise against an employer who, in good faith, has
29 established a written policy in accordance with this
30 section and has complied with the requirements of the
31 written policy and this section for testing or taking
32 action based on the results of a confirmed positive
33 drug or alcohol test result, indicating the presence
34 of drugs or alcohol, or the refusal of an employee or
35 prospective employee to submit to a drug or alcohol
36 test.

37 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --
38 EXCEPTIONS.

39 a. Except as provided in paragraph "b", all
40 communications received by an employer relevant to
41 employee or prospective employee drug or alcohol test
42 results, or otherwise received through the employer's
43 drug or alcohol testing program, are confidential
44 communications and shall not be used or received in
45 evidence, obtained in discovery, or disclosed in any
46 public or private proceeding, except as provided by
47 this section or in a proceeding related to an action
48 taken by an employer under this section or by an
49 employee under this section.

50 b. An employee, or a prospective employee, who is

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1 the subject of a drug or alcohol test conducted under
2 this section pursuant to an employer's written policy
3 and for whom a confirmed positive test result is
4 reported shall receive, at the same time the report is
5 issued to the employer, a copy of the report issued to
6 the employer and shall receive any records relating to
7 the employee's drug or alcohol test, including records
8 of the laboratory where the testing was conducted and
9 any records relating to the results of any relevant
10 review by a medical review officer.

11 11. CIVIL REMEDIES. This section may be enforced
12 through a civil action.

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

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

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

33 12. OFFENSES. Samples collected, information
34 provided by an employee or prospective employee
35 pursuant to subsection 5, paragraph "c", subparagraph
36 (2), and the results of drug or alcohol testing shall
37 be used solely for the purpose of conducting drug or
38 alcohol testing pursuant to this section and shall not
39 be sold, transferred, or disseminated, to any person
40 for any purpose not expressly authorized by this
41 section. A person who violates this subsection
42 commits a simple misdemeanor and, notwithstanding
43 section 903.1, if a monetary fine is imposed, the fine
44 shall be one hundred dollars. Each violation of this
45 subsection constitutes a separate offense.

46 13. REPORTS.

47 a. An employer who conducts a drug test pursuant
48 to this section shall, for each fiscal year beginning
49 on or after July 1, 1999, file an annual report with
50 the division of labor services of the department of

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1 workforce development, on forms provided by the
 2 division, documenting the number of accidents,
 3 including the number of personal injuries and the
 4 dollar loss for property damage arising out of the
 5 accidents, caused by the use of drugs or alcohol by
 6 employees and documenting separately for each category
 7 of testing described in subsection 6 the following
 8 information:
 9 (1) The number of drug or alcohol tests conducted
 10 in each category.
 11 (2) The results of drug or alcohol tests conducted
 12 in each category.
 13 b. The division of labor services of the
 14 department of workforce development shall compile the
 15 information submitted by employers pursuant to this
 16 subsection and shall submit an annual report to the
 17 general assembly on this information.
 18 Sec. 3. EFFECTIVE DATE. This Act takes effect on
 19 January 1, 1999."

By TOM VILSACK
 MICHAEL E. GRONSTAL

S-5001 FILED JANUARY 12, 1998

o/o
2/18/98

HOUSE FILE 299

S-5002

1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 12,
5 line 4, and inserting the following:

6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:

8 "____. By striking everything after the enacting
9 clause and inserting the following:

10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:

13 730.5 DRUG-FREE WORKPLACES.

14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:

16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.

18 b. "Drug" means a substance considered unlawful
19 under the federal Controlled Substances Act, 21 U.S.C.
20 § 801 et seq.

21 c. "Employee" means a person in the service of an
22 employer.

23 d. "Employer" means a person which has one or more
24 employees employed in the same business, or in or
25 about the same establishment, in this state.

26 e. "Good faith" means reasonable reliance on
27 facts.

28 f. "Medical review officer" means a physician
29 licensed to practice medicine and surgery or
30 osteopathic medicine and surgery in any state of the
31 United States, responsible for receiving laboratory
32 results generated by an employer's drug testing
33 program, who is independent from the employer and is
34 agreed upon by representatives of the employer and the
35 employees, and who has knowledge of substance abuse
36 disorders and has appropriate medical training to
37 interpret and evaluate an individual's confirmed
38 positive test result together with the individual's
39 medical history and any other relevant biomedical
40 information.

41 g. "Prospective employee" means an individual who
42 has made application, whether written or oral, to an
43 employer to become an employee and who has received a
44 bona fide offer of employment from the employer.

45 h. "Reasonable suspicion drug or alcohol testing"
46 means drug or alcohol testing based upon evidence
47 which would cause a reasonable person to conclude that
48 an employee is using or has used alcohol or other
49 drugs and which use impairs the employee's performance
50 while on the job in violation of the employer's

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1 written policy. For purposes of this paragraph,
2 evidence may include, but is not limited to, any of
3 the following:

4 (1) Observable phenomena while at work such as
5 direct observation of alcohol or other drug use or
6 abuse or of the physical symptoms or manifestations of
7 being impaired due to alcohol or other drug use.

8 (2) Abnormal conduct or erratic behavior while at
9 work or a significant deterioration in work
10 performance.

11 (3) A report of alcohol or other drug use while at
12 work provided by a reliable and credible source.

13 (4) Evidence that an individual has tampered with
14 the individual's own drug or alcohol test during the
15 individual's employment with the current employer.

16 (5) Evidence that an employee has caused an
17 accident while at work which resulted in a personal
18 injury which required medical treatment away from the
19 workplace or damage to property, including equipment,
20 in an amount reasonably estimated to exceed one
21 thousand dollars at the time of the accident.

22 (6) Evidence that an employee has possessed or
23 used drugs while working or while on the employer's
24 premises or while operating the employer's vehicle,
25 machinery, or equipment.

26 i. "Sample" means such sample of blood or urine
27 from the human body capable of revealing the presence
28 of alcohol or other drugs, or their metabolites.

29 2. TESTING AS CONDITION OF EMPLOYMENT --
30 REQUIREMENTS. To the extent provided in subsection 6,
31 an employer may test employees and prospective
32 employees for the presence of drugs or alcohol as a
33 condition of continued employment or hiring. An
34 employer shall adhere to the requirements of this
35 section concerning the conduct of such testing and the
36 use and disposition of the results of such testing.

37 3. COLLECTION OF SAMPLES. In conducting drug or
38 alcohol testing, an employer may require the
39 collection of samples from its employees and
40 prospective employees, and may require presentation of
41 reliable individual identification from the person
42 being tested to the person collecting the samples.
43 Collection of a sample shall be in conformance with
44 the requirements of this section. If the employer
45 requests that a urine sample be provided in conducting
46 drug or alcohol testing under this section, the
47 employer shall provide the employee or prospective
48 employee with an opportunity to have a blood sample
49 drawn instead of providing a urine sample.

50 4. SCHEDULING OF TESTS.

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1 a. Drug or alcohol testing of employees conducted
2 by an employer shall normally occur during, or
3 immediately before or after, a regular work period.
4 The time required for such testing by an employer
5 shall be deemed work time for the purposes of
6 compensation and benefits for employees.

7 b. An employer shall pay all actual costs for drug
8 or alcohol testing of employees and prospective
9 employees required by the employer.

10 c. An employer shall provide transportation or pay
11 reasonable transportation costs to employees for all
12 drug or alcohol testing under this section.

13 5. TESTING PROCEDURES. All sample collection and
14 testing for drugs or alcohol under this section shall
15 be performed in accordance with the following
16 conditions:

17 a. The collection of samples shall be performed
18 under sanitary conditions and with regard for the
19 privacy of the individual from whom the specimen is
20 being obtained and in a manner reasonably calculated
21 to preclude contamination or substitution of the
22 specimen.

23 b. Sample collection for testing of current
24 employees shall be performed so that the specimen is
25 split into two components at the time of collection in
26 the presence of the individual from whom the sample or
27 specimen is collected. The second portion of the
28 specimen or sample shall be of sufficient quantity to
29 permit a second, independent confirmatory test as
30 provided in paragraph "i". If the specimen is urine,
31 the sample shall be split such that the primary sample
32 contains at least thirty milliliters and the secondary
33 sample contains at least fifteen milliliters. Both
34 portions of the sample shall be forwarded to the
35 laboratory conducting the initial confirmatory
36 testing. In addition to any requirements for storage
37 of the initial sample that may be imposed upon the
38 laboratory as a condition for certification of
39 approval, the laboratory shall store the second
40 portion of any sample until receipt of a confirmed
41 negative test result or for a period of at least
42 forty-five calendar days following the completion of
43 the initial confirmatory testing, if the first portion
44 yielded a confirmed positive test result.

45 c. Sample collections shall be documented, and the
46 procedure for documentation shall include the
47 following:

48 (1) Samples shall be labeled so as to reasonably
49 preclude the possibility of misidentification of the
50 individual tested in relation to the test result

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1 provided, and samples shall be handled and tracked in
2 a manner such that control and accountability are
3 maintained from initial collection to each stage in
4 handling, testing, and storage, through final
5 disposition.

6 (2) An employee or prospective employee shall be
7 provided an opportunity to provide any information
8 which may be considered relevant to the test,
9 including identification of prescription or
10 nonprescription drugs currently or recently used, or
11 other relevant medical information. Information
12 provided by the employee or prospective employee shall
13 not be disclosed to the employer but shall be
14 delivered to the facility conducting confirmatory
15 testing. To assist an employee or prospective
16 employee in providing the information described in
17 this subparagraph, the employer shall provide an
18 employee or prospective employee with a list of the
19 drugs to be tested.

20 d. Sample collection, storage, and transportation
21 to the place of testing shall be performed so as to
22 reasonably preclude the possibility of sample
23 contamination, adulteration, or misidentification.

24 e. All drug testing, including both initial and
25 confirmatory testing, shall be conducted at a
26 laboratory certified by the United States department
27 of health and human services' substance abuse and
28 mental health services administration or approved
29 under rules adopted by the Iowa department of public
30 health.

31 f. Drug or alcohol testing shall include
32 confirmation of any initial positive test results.
33 For drug testing, confirmation shall be by use of a
34 different chemical process than was used in the
35 initial drug screen. The confirmatory drug test shall
36 be a chromatographic technique such as gas
37 chromatography or mass spectrometry, or another
38 comparably reliable analytical method.

39 g. A medical review officer shall, prior to the
40 results being reported to an employer and the employee
41 or prospective employee tested, review and interpret
42 any confirmed positive test results, including both
43 quantitative and qualitative test results, to ensure
44 that the chain of custody is complete and sufficient
45 on its face and that any information provided by the
46 individual pursuant to paragraph "c", subparagraph
47 (2), is considered.

48 h. In conducting drug or alcohol testing pursuant
49 to this section, the employer shall ensure that the
50 testing only measure, and the records concerning the

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1 testing only show or make use of information
2 regarding, alcohol or drugs in the body.
3 i. If a positive drug or alcohol test for an
4 employee or prospective employee is confirmed by the
5 medical review officer, the medical review officer
6 shall notify the employee or prospective employee in
7 writing of the results of the test, the employee's or
8 prospective employee's right to request and obtain a
9 confirmatory test of the second sample collected
10 pursuant to paragraph "b" at a certified or approved
11 laboratory of the employee's or prospective employee's
12 choice, and the fee established by the employer's
13 written policy to be payable by the employee or
14 prospective employee to the medical review officer for
15 reimbursement of expenses concerning the test. The
16 fee charged an employee or prospective employee shall
17 be an amount, not in excess of one hundred dollars,
18 that represents the costs associated with conducting
19 the second confirmatory test, which shall be
20 consistent with the employer's cost for conducting the
21 initial confirmatory test on an employee's or
22 prospective employee's sample. If the employee or
23 prospective employee requests a second confirmatory
24 test, identifies a certified or approved laboratory to
25 conduct the test, and pays the medical review officer
26 the fee for the test within fifteen days from the date
27 the employee or prospective employee receives written
28 notice of the right to request a test, a second
29 confirmatory test shall be conducted at the laboratory
30 chosen by the employee or prospective employee. The
31 results of the second confirmatory test shall be
32 reported to the medical review officer who reviewed
33 the initial confirmatory test results and the medical
34 review officer shall review the results and issue a
35 report to the employer and the employee or prospective
36 employee tested that the results of the drug or
37 alcohol test were confirmed as positive if the results
38 of the second confirmatory test confirmed the initial
39 confirmatory test as to the presence of a specific
40 drug or alcohol. If the results of the second test do
41 not confirm the results of the initial confirmatory
42 test, the medical review officer shall report to the
43 employer that the result of the drug or alcohol test
44 is negative and not a confirmed positive test result
45 for purposes of this section.
46 j. A report of the results of a drug or alcohol
47 test issued to an employer and the individual tested
48 shall only indicate, as to an employee or prospective
49 employee, whether the test results were positive or
50 negative, pursuant to the review and interpretation of

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1 a medical review officer as provided in this
 2 subsection. An inconclusive test result shall be
 3 reported as a negative test result. If the test
 4 results are positive, the report shall only indicate
 5 whether drugs or alcohol were present, which drugs
 6 were present if applicable, information concerning the
 7 amount of alcohol present, and a statement from the
 8 medical review officer that any information provided
 9 by the employee or prospective employee fails to
 10 explain the results.

11 6. DRUG OR ALCOHOL TESTING. Employers may conduct
 12 drug or alcohol testing as provided in this
 13 subsection:

14 a. Employers may conduct drug or alcohol testing
 15 of employees for up to two years after completion of
 16 drug or alcohol rehabilitation.

17 b. Employers may conduct reasonable suspicion drug
 18 or alcohol testing.

19 c. Employers may conduct drug or alcohol testing
 20 of prospective employees.

21 d. Employers may conduct drug or alcohol testing
 22 as required by federal law or regulation.

23 e. Employers may conduct drug or alcohol testing
 24 in investigating accidents in the workplace which
 25 result in a personal injury which requires medical
 26 treatment away from the workplace or damage to
 27 property, including equipment, in an amount reasonably
 28 estimated to exceed one thousand dollars at the time
 29 of the accident.

30 7. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

31 a. Prior to conducting drug or alcohol testing
 32 under this section, an employer shall establish,
 33 following consultation with representatives of
 34 employees, a written policy consistent with the
 35 requirements of this section governing such testing.
 36 The employer shall comply with this section and the
 37 requirements of the written policy to conduct drug or
 38 alcohol testing of employees and prospective employees
 39 and shall provide the written policy to every employee
 40 subject to testing and shall make the policy available
 41 for review by employees and prospective employees.

42 b. Employers shall establish an awareness program
 43 to inform employees of the dangers of drug and alcohol
 44 use in the workplace and shall comply with the
 45 following requirements in order to conduct drug or
 46 alcohol testing under this section:

47 (1) If an employer has an employee assistance
 48 program, the employer must inform the employee of the
 49 benefits and services of the employee assistance
 50 program. An employer shall post notice of the

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

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

23 c. An employee or prospective employee whose drug
24 or alcohol test results are confirmed as positive in
25 accordance with this section shall not, by virtue of
26 those results alone, be considered as a person with a
27 disability for purposes of any state or local law or
28 regulation.

29 d. If the written policy provides for alcohol
30 testing, the employer shall establish in the written
31 policy a standard for alcohol concentration which
32 shall be deemed to violate the policy. The standard
33 for alcohol concentration shall not be less than .04,
34 expressed in terms of grams of alcohol per two hundred
35 ten liters of breath, or its equivalent.

36 e. In order to conduct drug or alcohol testing
37 under this section, an employer shall require all
38 supervisory personnel of the employer to attend a
39 minimum of two hours of initial training and to
40 attend, on an annual basis thereafter, a minimum of
41 one hour of subsequent training. The training shall
42 be based upon standards adopted by the Iowa department
43 of public health and shall include, but is not limited
44 to, information concerning the recognition of evidence
45 of employee alcohol and other drug abuse, the
46 documentation and corroboration of employee alcohol
47 and other drug abuse, and the referral of employees
48 who abuse alcohol or other drugs to the employee
49 assistance program or to the resource file of employee
50 assistance services providers. For purposes of this

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1 paragraph, "supervisory personnel" means persons
2 having authority, in the interest of the employer, to
3 hire, transfer, suspend, lay off, recall, promote,
4 discharge, assign, reward, or discipline other
5 employees, or responsibly to direct them, or to adjust
6 their grievances, or effectively to recommend such
7 action, if in connection with the foregoing the
8 exercise of such authority is not of a merely routine
9 or clerical nature, but requires the use of
10 independent judgment.

11 f. If an employee is under eighteen years of age,
12 in order to conduct drug or alcohol testing under this
13 section, the employer shall, prior to conducting a
14 test, notify the employee's parent or grandparent that
15 a test shall be conducted and the basis for the test.
16 For purposes of this paragraph, "parent" means one
17 parent or a legal guardian or custodian of the
18 employee.

19 g. In order to conduct drug or alcohol testing
20 under this section, an employer shall provide all
21 employees, on an annual basis, an opportunity to
22 participate in an educational program of a minimum of
23 one hour on alcohol and other drug abuse and the
24 effects of such abuse on the workplace. The program
25 shall include, but is not limited to, information on
26 all of the following topics:

27 (1) The explanation of the diseases of addiction
28 to alcohol and other drugs.

29 (2) The effects and dangers of the commonly abused
30 substances in the workplace.

31 (3) The employer's policies and procedures
32 regarding alcohol and other drug use or abuse in the
33 workplace and how employees who wish to obtain
34 substance abuse treatment can obtain such treatment.

35 (4) An explanation of the penalties that may be
36 imposed upon employees for alcohol and other drug
37 violations.

38 8. DISCIPLINARY PROCEDURES.

39 a. Upon receipt for an employee of the first
40 confirmed positive drug or alcohol test result, the
41 employer shall provide the employee with a substance
42 abuse evaluation, and treatment if recommended by the
43 evaluation, with costs apportioned as provided under
44 the employee benefit plan or at employer expense, if
45 an employee benefit plan is not in effect which
46 apportions costs. The employer shall take no
47 disciplinary action against the employee upon receipt
48 of the first confirmed positive drug or alcohol test
49 result if the employee undergoes a substance abuse
50 evaluation, and if the employee successfully completes

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1 substance abuse treatment if treatment is recommended
2 by the evaluation. However, if an employee fails to
3 undergo substance abuse evaluation when required as a
4 result of a drug or alcohol test, or fails to
5 successfully complete substance abuse treatment when
6 recommended by an evaluation, the employee may be
7 disciplined as provided in paragraph "b". The
8 substance abuse evaluation and treatment provided by
9 the employer shall take place under a program approved
10 by the Iowa department of public health or accredited
11 by the joint commission on the accreditation of health
12 care organizations.

13 b. Upon receipt for an employee of a second
14 confirmed positive drug or alcohol test result or upon
15 receipt for a prospective employee of a confirmed
16 positive drug or alcohol test result, upon the failure
17 of an employee to comply with the requirements of
18 paragraph "a", or upon the refusal of an employee or
19 prospective employee to provide a testing sample, an
20 employer may use that test result or test refusal as a
21 valid basis for disciplinary or rehabilitative actions
22 consistent with the employer's written policy, which
23 may include, among other actions, the following:

24 (1) A requirement that the employee enroll in an
25 employer-provided or approved rehabilitation,
26 treatment, or counseling program, which may include
27 additional drug or alcohol testing, participation in
28 and successful completion of which may be a condition
29 of continued employment, and the costs of which may or
30 may not be covered by the employer's health plan or
31 policies.

32 (2) Suspension of the employee, with or without
33 pay, for a designated period of time.

34 (3) Termination of employment.

35 (4) Refusal to hire a prospective employee.

36 (5) Other adverse employment action in conformance
37 with the employer's written policy and procedures,
38 including any relevant collective bargaining agreement
39 provisions.

40 9. EMPLOYER IMMUNITY. A cause of action shall not
41 arise against an employer who, in good faith, has
42 established a written policy in accordance with this
43 section and has complied with the requirements of the
44 written policy and this section for testing or taking
45 action based on the results of a confirmed positive
46 drug or alcohol test result, indicating the presence
47 of drugs or alcohol, or the refusal of an employee or
48 prospective employee to submit to a drug or alcohol
49 test.

50 10. RELEASE OF INFORMATION -- CONFIDENTIALITY --

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1 EXCEPTIONS.

2 a. Except as provided in paragraph "b", all
 3 communications received by an employer relevant to
 4 employee or prospective employee drug or alcohol test
 5 results, or otherwise received through the employer's
 6 drug or alcohol testing program, are confidential
 7 communications and shall not be used or received in
 8 evidence, obtained in discovery, or disclosed in any
 9 public or private proceeding, except as provided by
 10 this section or in a proceeding related to an action
 11 taken by an employer under this section or by an
 12 employee under this section.

13 b. An employee, or a prospective employee, who is
 14 the subject of a drug or alcohol test conducted under
 15 this section pursuant to an employer's written policy
 16 and for whom a confirmed positive test result is
 17 reported shall receive, at the same time the report is
 18 issued to the employer, a copy of the report issued to
 19 the employer and shall receive any records relating to
 20 the employee's drug or alcohol test, including records
 21 of the laboratory where the testing was conducted and
 22 any records relating to the results of any relevant
 23 review by a medical review officer.

24 11. CIVIL REMEDIES. This section may be enforced
25 through a civil action.

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

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

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

46 12. OFFENSES. Samples collected, information
 47 provided by an employee or prospective employee
 48 pursuant to subsection 5, paragraph "c", subparagraph
 49 (2), and the results of drug or alcohol testing shall
 50 be used solely for the purpose of conducting drug or

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1 alcohol testing pursuant to this section and shall not
 2 be sold, transferred, or disseminated, to any person
 3 for any purpose not expressly authorized by this
 4 section. A person who violates this subsection
 5 commits a simple misdemeanor and, notwithstanding
 6 section 903.1, if a monetary fine is imposed, the fine
 7 shall be one hundred dollars. Each violation of this
 8 subsection constitutes a separate offense.

9 13. REPORTS.

10 a. An employer who conducts a drug test pursuant
 11 to this section shall, for each fiscal year beginning
 12 on or after July 1, 1999, file an annual report with
 13 the division of labor services of the department of
 14 workforce development, on forms provided by the
 15 division, documenting the number of accidents,
 16 including the number of personal injuries and the
 17 dollar loss for property damage arising out of the
 18 accidents, caused by the use of drugs or alcohol by
 19 employees and documenting separately for each category
 20 of testing described in subsection 6 the following
 21 information:

22 (1) The number of drug or alcohol tests conducted
 23 in each category.

24 (2) The results of drug or alcohol tests conducted
 25 in each category.

26 b. The division of labor services of the
 27 department of workforce development shall compile the
 28 information submitted by employers pursuant to this
 29 subsection and shall submit an annual report to the
 30 general assembly on this information.

31 Sec. 2. EFFECTIVE DATE. This Act takes effect on
 32 January 1, 1999."

By TOM VILSACK
 MICHAEL E. GRONSTAL

S-5002 FILED JANUARY 12, 1998

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 2/18/98

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1 Amend House File 299, 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, Code 1997, is amended
6 by striking the section and inserting in lieu thereof
7 the following:

8 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

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

11 a. "Alcohol" means ethanol, isopropanol, or
12 methanol.

13 b. "Drug" means a substance considered a
14 controlled substance and included in schedule I, II,
15 III, IV, or V under the federal Controlled Substances
16 Act, 21 U.S.C. § 801 et seq.

17 c. "Employee" means a person in the service of an
18 employer in this state and includes the employer, and
19 any chief executive officer, president, vice
20 president, supervisor, manager, and officer of the
21 employer who is actively involved in the day-to-day
22 operations of the business.

23 d. "Employer" means a person, firm, company,
24 corporation, labor organization, or employment agency,
25 which has one or more full-time employees employed in
26 the same business, or in or about the same
27 establishment, under any contract of hire, express or
28 implied, oral or written, in this state. "Employer"
29 does not include the state, a political subdivision of
30 the state, including a city, county, or school
31 district, the United States, the United States postal
32 service, or a Native-American tribe.

33 e. "Good faith" means reasonable reliance on
34 facts, or that which is held out to be factual,
35 without the intent to be deceived, and without
36 reckless, malicious, or negligent disregard for the
37 truth.

38 f. "Medical review officer" means a licensed
39 physician, osteopathic physician, chiropractor, nurse
40 practitioner, or physician assistant authorized to
41 practice in any state of the United States, who is
42 responsible for receiving laboratory results generated
43 by an employer's drug or alcohol testing program, and
44 who has knowledge of substance abuse disorders and has
45 appropriate medical training to interpret and evaluate
46 an individual's confirmed positive test result
47 together with the individual's medical history and any
48 other relevant biomedical information.

49 g. "Prospective employee" means a person who has
50 made application, whether written or oral, to an

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1 employer to become an employee.
2 h. "Reasonable suspicion drug or alcohol testing"
3 means drug or alcohol testing based upon evidence that
4 an employee is using or has used alcohol or other
5 drugs in violation of the employer's written policy
6 drawn from specific objective and articulable facts
7 and reasonable inferences drawn from those facts in
8 light of experience. For purposes of this paragraph,
9 facts and inferences may be based upon, but not
10 limited to, any of the following:
11 (1) Observable phenomena while at work such as
12 direct observation of alcohol or drug use or abuse or
13 of the physical symptoms or manifestations of being
14 impaired due to alcohol or other drug use.
15 (2) Abnormal conduct or erratic behavior while at
16 work or a significant deterioration in work
17 performance.
18 (3) A report of alcohol or other drug use provided
19 by a reliable and credible source.
20 (4) Evidence that an individual has tampered with
21 any drug or alcohol test during the individual's
22 employment with the current employer.
23 (5) Evidence that an employee has caused an
24 accident while at work.
25 (6) Evidence that an employee has manufactured,
26 sold, distributed, solicited, possessed, used, or
27 transferred drugs while working or while on the
28 employer's premises or while operating the employer's
29 vehicle, machinery, or equipment.
30 i. "Safety-sensitive position" means a job wherein
31 an accident could cause loss of human life, serious
32 bodily injury, or significant property or
33 environmental damage, including a job with duties that
34 include immediate supervision of a person in a job
35 that meets the requirement of this paragraph.
36 j. "Sample" means such sample from the human body
37 capable of revealing the presence of alcohol or other
38 drugs, or their metabolites.
39 k. "Unannounced drug or alcohol testing" means
40 testing for the purposes of detecting drugs or alcohol
41 which is conducted on a periodic basis, without
42 advance notice of the test, and without individualized
43 suspicion. The selection of employees to be tested
44 shall be made by a computer-based random number
45 generator that is matched with employees' social
46 security numbers, payroll identification numbers, or
47 other comparable identifying numbers in which each
48 member of the employee population subject to testing
49 has an equal chance of selection for initial testing.
50 The random selection process shall be conducted

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1 through a computer program that records each selection
2 attempt by date, time, and employee number.

3 2. APPLICABILITY. This section does not apply to
4 drug or alcohol tests conducted on employees required
5 to be tested pursuant to federal statutes, federal
6 regulations, or orders issued pursuant to federal law.
7 In addition, an employer, through its written policy,
8 may exclude from the pools of employees subject to
9 unannounced drug or alcohol testing pursuant to
10 subsection 8, paragraph "a", employee populations
11 required to be tested as described in this subsection.

12 3. TESTING OPTIONAL. This section does not
13 require or create a legal duty on an employer to
14 conduct drug or alcohol testing and the requirements
15 of this section shall not be construed to encourage,
16 discourage, restrict, limit, prohibit, or require such
17 testing. A cause of action shall not arise in favor
18 of any person against an employer or agent of an
19 employer based on the failure of the employer to
20 establish a program or policy on substance abuse
21 prevention or to implement any component of testing as
22 permitted by this section.

23 4. TESTING AS CONDITION OF EMPLOYMENT --
24 REQUIREMENTS. To the extent provided in subsection 8,
25 an employer may test employees and prospective
26 employees for the presence of drugs or alcohol as a
27 condition of continued employment or hiring. An
28 employer shall adhere to the requirements of this
29 section concerning the conduct of such testing and the
30 use and disposition of the results of such testing.

31 5. COLLECTION OF SAMPLES. In conducting drug or
32 alcohol testing, an employer may require the
33 collection of samples from its employees and
34 prospective employees, and may require presentation of
35 reliable individual identification from the person
36 being tested to the person collecting the samples.
37 Collection of a sample shall be in conformance with
38 the requirements of this section. The employer may
39 designate the type of sample to be used for this
40 testing.

41 6. SCHEDULING OF TESTS.

42 a. Drug or alcohol testing of employees conducted
43 by an employer shall normally occur during, or
44 immediately before or after, a regular work period.
45 The time required for such testing by an employer
46 shall be deemed work time for the purposes of
47 compensation and benefits for employees.

48 b. An employer shall pay all actual costs for drug
49 or alcohol testing of employees and prospective
50 employees required by the employer.

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1 c. An employer shall provide transportation or pay
2 reasonable transportation costs to employees if drug
3 or alcohol sample collection is conducted at a
4 location other than the employee's normal work site.

5 7. TESTING PROCEDURES. All sample collection and
6 testing for drugs or alcohol under this section shall
7 be performed in accordance with the following
8 conditions:

9 a. The collection of samples shall be performed
10 under sanitary conditions and with regard for the
11 privacy of the individual from whom the specimen is
12 being obtained and in a manner reasonably calculated
13 to preclude contamination or substitution of the
14 specimen.

15 b. Sample collection for testing of current
16 employees shall be performed so that the specimen is
17 split into two components at the time of collection in
18 the presence of the individual from whom the sample or
19 specimen is collected. The second portion of the
20 specimen or sample shall be of sufficient quantity to
21 permit a second, independent confirmatory test as
22 provided in paragraph "i". If the specimen is urine,
23 the sample shall be split such that the primary sample
24 contains at least thirty milliliters and the secondary
25 sample contains at least fifteen milliliters. Both
26 portions of the sample shall be forwarded to the
27 laboratory conducting the initial confirmatory
28 testing. In addition to any requirements for storage
29 of the initial sample that may be imposed upon the
30 laboratory as a condition for certification or
31 approval, the laboratory shall store the second
32 portion of any sample until receipt of a confirmed
33 negative test result or for a period of at least
34 forty-five calendar days following the completion of
35 the initial confirmatory testing, if the first portion
36 yielded a confirmed positive test result.

37 c. Sample collections shall be documented, and the
38 procedure for documentation shall include the
39 following:

40 (1) Samples shall be labeled so as to reasonably
41 preclude the possibility of misidentification of the
42 person tested in relation to the test result provided,
43 and samples shall be handled and tracked in a manner
44 such that control and accountability are maintained
45 from initial collection to each stage in handling,
46 testing, and storage, through final disposition.

47 (2) An employee or prospective employee shall be
48 provided an opportunity to provide any information
49 which may be considered relevant to the test,
50 including identification of prescription or

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1 nonprescription drugs currently or recently used, or
2 other relevant medical information. To assist an
3 employee or prospective employee in providing the
4 information described in this subparagraph, the
5 employer shall provide an employee or prospective
6 employee with a list of the drugs to be tested.

7 d. Sample collection, storage, and transportation
8 to the place of testing shall be performed so as to
9 reasonably preclude the possibility of sample
10 contamination, adulteration, or misidentification.

11 e. All confirmatory drug testing shall be
12 conducted at a laboratory certified by the United
13 States department of health and human services'
14 substance abuse and mental health services
15 administration or approved under rules adopted by the
16 Iowa department of public health.

17 f. Drug or alcohol testing shall include
18 confirmation of any initial positive test results.
19 For drug or alcohol testing, confirmation shall be by
20 use of a different chemical process than was used in
21 the initial screen for drugs or alcohol. The
22 confirmatory drug or alcohol test shall be a
23 chromatographic technique such as gas chromatography
24 or mass spectrometry, or another comparably reliable
25 analytical method. An employer may take adverse
26 employment action, including refusal to hire a
27 prospective employee, based on a confirmed positive
28 drug or alcohol test.

29 g. A medical review officer shall, prior to the
30 results being reported to an employer, review and
31 interpret any confirmed positive test results,
32 including both quantitative and qualitative test
33 results, to ensure that the chain of custody is
34 complete and sufficient on its face and that any
35 information provided by the individual pursuant to
36 paragraph "c", subparagraph (2), is considered.

37 h. In conducting drug or alcohol testing pursuant
38 to this section, the employer shall ensure to the
39 extent feasible that the testing only measure, and the
40 records concerning the testing only show or make use
41 of information regarding, alcohol or drugs in the
42 body.

43 i. (1) If a confirmed positive drug or alcohol
44 test for a current employee is reported to the
45 employer by the medical review officer, the employer
46 shall notify the employee in writing by certified
47 mail, return receipt requested, of the results of the
48 test, the employee's right to request and obtain a
49 confirmatory test of the second sample collected
50 pursuant to paragraph "b" at an approved laboratory of

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1 the employee's choice, and the fee payable by the
2 employee to the employer for reimbursement of expenses
3 concerning the test. The fee charged an employee
4 shall be an amount that represents the costs
5 associated with conducting the second confirmatory
6 test, which shall be consistent with the employer's
7 cost for conducting the initial confirmatory test on
8 an employee's sample. If the employee, in person or
9 by certified mail, return receipt requested, requests
10 a second confirmatory test, identifies an approved
11 laboratory to conduct the test, and pays the employer
12 the fee for the test within seven days from the date
13 the employer mails by certified mail, return receipt
14 requested, the written notice to the employee of the
15 employee's right to request a test, a second
16 confirmatory test shall be conducted at the laboratory
17 chosen by the employee. The results of the second
18 confirmatory test shall be reported to the medical
19 review officer who reviewed the initial confirmatory
20 test results and the medical review officer shall
21 review the results and issue a report to the employer
22 on whether the results of the second confirmatory test
23 confirmed the initial confirmatory test as to the
24 presence of a specific drug or alcohol. If the
25 results of the second test do not confirm the results
26 of the initial confirmatory test, the employer shall
27 reimburse the employee for the fee paid by the
28 employee for the second test and the initial
29 confirmatory test shall not be considered a confirmed
30 positive drug or alcohol test for purposes of taking
31 disciplinary action pursuant to subsection 10.

32 (2) If a confirmed positive drug or alcohol test
33 for a prospective employee is reported to the employer
34 by the medical review officer, the employer shall
35 notify the prospective employee in writing of the
36 results of the test, of the name and address of the
37 medical review officer who made the report, and of the
38 prospective employee's right to request records under
39 subsection 13.

40 j. A laboratory conducting testing under this
41 section shall dispose of all samples for which a
42 negative test result was reported to an employer
43 within five working days after issuance of the
44 negative test result report.

45 k. Except as necessary to conduct drug or alcohol
46 testing pursuant to this section, a laboratory or
47 other medical facility shall only report to an
48 employer or outside entity information relating to the
49 results of a drug or alcohol test conducted pursuant
50 to this section concerning the determination of

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1 whether the tested individual has engaged in conduct
2 prohibited by the employer's written policy with
3 regard to alcohol or drug use.

4 1. Notwithstanding the provisions of this
5 subsection, an employer may rely and take action upon
6 the results of any blood test for drugs or alcohol
7 made on any employee involved in an accident at work
8 if the test is administered by or at the direction of
9 the person providing treatment or care to the employee
10 without request or suggestion by the employer that a
11 test be conducted, and the employer has lawfully
12 obtained the results of the test. For purposes of
13 this paragraph, an employer shall not be deemed to
14 have requested or required a test in conjunction with
15 the provision of medical treatment following a
16 workplace accident by providing information concerning
17 the circumstance of the accident.

18 8. DRUG OR ALCOHOL TESTING. Employers may conduct
19 drug or alcohol testing as provided in this
20 subsection:

21 a. Employers may conduct unannounced drug or
22 alcohol testing of employees who are selected from any
23 of the following pools of employees:

24 (1) The entire employee population at a particular
25 work site of the employer except for employees who are
26 not scheduled to be at work at the time the testing is
27 conducted because of the status of the employees or
28 who have been excused from work pursuant to the
29 employer's work policy prior to the time the testing
30 is announced to employees.

31 (2) The entire full-time active employee
32 population at a particular work site.

33 (3) All employees at a particular work site who
34 are in a pool of employees in a safety-sensitive
35 position and who are scheduled to be at work at the
36 time testing is conducted, other than employees who
37 are not scheduled to be at work at the time the
38 testing is to be conducted or who have been excused
39 from work pursuant to the employer's work policy prior
40 to the time the testing is announced to employees.

41 b. Employers may conduct drug or alcohol testing
42 of employees during, and after completion of, drug or
43 alcohol rehabilitation.

44 c. Employers may conduct reasonable suspicion drug
45 or alcohol testing.

46 d. Employers may conduct drug or alcohol testing
47 of prospective employees.

48 e. Employers may conduct drug or alcohol testing
49 as required by federal law or regulation.

50 f. Employers may conduct drug or alcohol testing

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1 in investigating accidents in the workplace.

2 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

3 a. Drug or alcohol testing or retesting by an
4 employer shall be carried out within the terms of a
5 written policy which has been provided to every
6 employee subject to testing, and is available for
7 review by employees and prospective employees.

8 b. Employers shall establish an awareness program
9 to inform employees of the dangers of drug and alcohol
10 use in the workplace and comply with the following
11 requirements in order to conduct drug or alcohol
12 testing under this section:

13 (1) If an employer has an employee assistance
14 program, the employer must inform the employee of the
15 benefits and services of the employee assistance
16 program. An employer shall post notice of the
17 employee assistance program in conspicuous places and
18 explore alternative routine and reinforcing means of
19 publicizing such services. In addition, the employer
20 must provide the employee with notice of the policies
21 and procedures regarding access to and utilization of
22 the program.

23 (2) If an employer does not have an employee
24 assistance program, the employer must maintain a
25 resource file of employee assistance services
26 providers, alcohol and other drug abuse programs
27 certified by the Iowa department of public health,
28 mental health providers, and other persons, entities,
29 or organizations available to assist employees with
30 personal or behavioral problems. The employer shall
31 provide all employees information about the existence
32 of the resource file and a summary of the information
33 contained within the resource file. The summary
34 should contain, but need not be limited to, all
35 information necessary to access the services listed in
36 the resource file. In addition, the employer shall
37 post in conspicuous places a listing of multiple
38 employee assistance providers in the area.

39 c. An employee or prospective employee whose drug
40 or alcohol test results are confirmed as positive in
41 accordance with this section shall not, by virtue of
42 those results alone, be considered as a person with a
43 disability for purposes of any state or local law or
44 regulation.

45 d. If the written policy provides for alcohol
46 testing, the employer shall establish in the written
47 policy a standard for alcohol concentration which
48 shall be deemed to violate the policy. The standard
49 for alcohol concentration shall not be less than .02,
50 expressed in terms of grams of alcohol per two hundred

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1 ten liters of breath, or its equivalent.

2 e. An employee of an employer who is designated by
3 the employer as being in a safety-sensitive position
4 shall be placed in only one pool of safety-sensitive
5 employees subject to drug or alcohol testing pursuant
6 to subsection 8, paragraph "a", subparagraph (3). An
7 employer may have more than one pool of safety-
8 sensitive employees subject to drug or alcohol testing
9 pursuant to subsection 8, paragraph "a", subparagraph
10 (3), but shall not include an employee in more than
11 one safety-sensitive pool.

12 f. Upon receipt of a confirmed positive alcohol
13 test or a confirmed positive drug test relating to the
14 abuse of lawfully prescribed drugs currently or
15 recently used by an employee, and if the employer has
16 at least fifty employees, and if the employee has been
17 employed by the employer on a full-time basis for
18 twelve consecutive months and rehabilitation is agreed
19 upon by both the employer and the employee, and if the
20 employee has not previously undergone rehabilitation
21 with the same employer pursuant to this section, the
22 written policy shall provide for the apportionment of
23 the costs of rehabilitation as provided by this
24 paragraph.

25 (1) If the employer has an employee benefit plan,
26 the costs of rehabilitation shall be apportioned as
27 provided under the employee benefit plan.

28 (2) If no employee benefit plan exists and the
29 employee has coverage for any portion of the costs of
30 rehabilitation under any health care plan of the
31 employee, the costs of rehabilitation shall be
32 apportioned as provided by the health care plan with
33 any costs not covered by the plan apportioned equally
34 between the employee and the employer. However, the
35 employer shall not be required to pay more than two
36 thousand dollars toward the costs not covered by the
37 employee's health care plan.

38 (3) If no employee benefit plan exists and the
39 employee does not have coverage for any portion of the
40 costs of rehabilitation under any health care plan of
41 the employee, the costs of rehabilitation shall be
42 apportioned equally between the employee and the
43 employer. However, the employer shall not be required
44 to pay more than two thousand dollars towards the cost
45 of rehabilitation under this subparagraph.

46 g. In order to conduct drug or alcohol testing
47 under this section, an employer shall require
48 supervisory personnel of the employer involved with
49 drug or alcohol testing under this section to attend a
50 minimum of two hours of initial training and to

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1 attend, on an annual basis thereafter, a minimum of
2 one hour of subsequent training. The training shall
3 include, but is not limited to, information concerning
4 the recognition of evidence of employee alcohol and
5 other drug abuse, the documentation and corroboration
6 of employee alcohol and other drug abuse, and the
7 referral of employees who abuse alcohol or other drugs
8 to the employee assistance program or to the resource
9 file of employee assistance services providers.

10 10. DISCIPLINARY PROCEDURES.

11 a. Upon receipt of a confirmed positive drug or
12 alcohol test result which indicates a violation of the
13 employer's written policy, or upon the refusal of an
14 employee or prospective employee to provide a testing
15 sample, an employer may use that test result or test
16 refusal as a valid basis for disciplinary or
17 rehabilitative actions consistent with the employer's
18 written policy, which may include, among other
19 actions, the following:

20 (1) A requirement that the employee enroll in an
21 employer-provided or approved rehabilitation,
22 treatment, or counseling program, which may include
23 additional drug or alcohol testing, participation in
24 and successful completion of which may be a condition
25 of continued employment, and the costs of which may or
26 may not be covered by the employer's health plan or
27 policies.

28 (2) Suspension of the employee, with or without
29 pay, for a designated period of time.

30 (3) Termination of employment.

31 (4) Refusal to hire a prospective employee.

32 (5) Other adverse employment action in conformance
33 with the employer's written policy and procedures,
34 including any relevant collective bargaining agreement
35 provisions.

36 b. Following a drug or alcohol test, but prior to
37 receipt of the final results of the drug or alcohol
38 test, an employer may suspend a current employee, with
39 or without pay, pending the outcome of the test. An
40 employee who has been suspended shall be reinstated by
41 the employer, with back pay, and interest on such
42 amount at eighteen percent per annum compounded
43 annually, if applicable, if the result of the test is
44 not a confirmed positive drug or alcohol test which
45 indicates a violation of the employer's written
46 policy.

47 11. EMPLOYER IMMUNITY. A cause of action shall
48 not arise against an employer who has established a
49 policy and initiated a testing program in accordance
50 with the testing and policy safeguards provided for

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1 under this section, for any of the following:

2 a. Testing or taking action based on the results
3 of a positive drug or alcohol test result, indicating
4 the presence of drugs or alcohol, in good faith, or on
5 the refusal of an employee or prospective employee to
6 submit to a drug or alcohol test.

7 b. Failure to test for drugs or alcohol, or
8 failure to test for a specific drug or controlled
9 substance.

10 c. Failure to test for, or if tested for, failure
11 to detect, any specific drug or other controlled
12 substance.

13 d. Termination or suspension of any substance
14 abuse prevention or testing program or policy.

15 e. Any action taken related to a false negative
16 drug or alcohol test result.

17 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
18 RESULTS.

19 a. Except as otherwise provided in paragraph "b",
20 a cause of action shall not arise against an employer
21 who has established a program of drug or alcohol
22 testing in accordance with this section, unless all of
23 the following conditions exist:

24 (1) The employer's action was based on a false
25 positive test result.

26 (2) The employer knew or clearly should have known
27 that the test result was in error and ignored the
28 correct test result because of reckless, malicious, or
29 negligent disregard for the truth, or the willful
30 intent to deceive or to be deceived.

31 b. A cause of action for defamation, libel,
32 slander, or damage to reputation shall not arise
33 against an employer establishing a program of drug or
34 alcohol testing in accordance with this section unless
35 all of the following apply:

36 (1) The employer discloses the test results to a
37 person other than the employer, an authorized
38 employee, agent, or representative of the employer,
39 the tested employee or the tested applicant for
40 employment, an authorized substance abuse treatment
41 program or employee assistance program, or an
42 authorized agent or representative of the tested
43 employee or applicant.

44 (2) The test results disclosed incorrectly
45 indicate the presence of alcohol or drugs.

46 (3) The employer negligently discloses the
47 results.

48 c. In any cause of action based upon a false
49 positive test result, all of the following conditions
50 apply:

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1 (1) The results of a drug or alcohol test
2 conducted in compliance with this section are presumed
3 to be valid.

4 (2) An employer shall not be liable for monetary
5 damages if the employer's reliance on the false
6 positive test result was reasonable and in good faith.

7 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

8 a. All communications received by an employer
9 relevant to employee or prospective employee drug or
10 alcohol test results, or otherwise received through
11 the employer's drug or alcohol testing program, are
12 confidential communications and shall not be used or
13 received in evidence, obtained in discovery, or
14 disclosed in any public or private proceeding, except
15 as otherwise provided or authorized by this section.

16 b. An employee, or a prospective employee, who is
17 the subject of a drug or alcohol test conducted under
18 this section pursuant to an employer's written policy
19 and for whom a confirmed positive test result is
20 reported shall, upon written request, have access to
21 any records relating to the employee's drug or alcohol
22 test, including records of the laboratory where the
23 testing was conducted and any records relating to the
24 results of any relevant certification or review by a
25 medical review officer. However, a prospective
26 employee shall be entitled to records under this
27 paragraph only if the prospective employee requests
28 the records within fifteen calendar days from the date
29 the employer provided the prospective employee written
30 notice of the results of a drug or alcohol test as
31 provided in subsection 7, paragraph "i", subparagraph
32 (2).

33 c. Except as provided by this section and as
34 necessary to conduct drug or alcohol testing under
35 this section and to file a report pursuant to
36 subsection 16, a laboratory and a medical review
37 officer conducting drug or alcohol testing under this
38 section shall not use or disclose to any person any
39 personally identifiable information regarding such
40 testing, including the names of individuals tested,
41 even if unaccompanied by the results of the test.

42 d. An employer may use and disclose information
43 concerning the results of a drug or alcohol test
44 conducted pursuant to this section under any of the
45 following circumstances:

46 (1) In an arbitration proceeding pursuant to a
47 collective bargaining agreement, or an administrative
48 agency proceeding or judicial proceeding under
49 workers' compensation laws or unemployment
50 compensation laws or under common or statutory laws

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1 where action taken by the employer based on the test
2 is relevant or is challenged.

3 (2) To any federal agency or other unit of the
4 federal government as required under federal law,
5 regulation or order, or in accordance with compliance
6 requirements of a federal government contract.

7 (3) To any agency of this state authorized to
8 license individuals if the employee tested is licensed
9 by that agency and the rules of that agency require
10 such disclosure.

11 (4) To a union representing the employee if such
12 disclosure would be required by federal labor laws.

13 (5) To a substance abuse evaluation or treatment
14 facility or professional for the purpose of evaluation
15 or treatment of the employee.

16 However, positive test results from an employer
17 drug or alcohol testing program shall not be used as
18 evidence in any criminal action against the employee
19 or prospective employee tested.

20 14. CIVIL PENALTIES. Any laboratory or other
21 medical facility which discloses information in
22 violation of the provisions of subsection 7, paragraph
23 "k", or any employer who, through the selection
24 process described in subsection 1, paragraph "k",
25 improperly targets or exempts employees subject to
26 unannounced drug or alcohol testing, shall be subject
27 to a civil penalty of one thousand dollars for each
28 violation. The attorney general or the attorney
29 general's designee may maintain a civil action to
30 enforce this subsection. Any civil penalty recovered
31 shall be deposited in the general fund of the state.

32 15. CIVIL REMEDIES. This section may be enforced
33 through a civil action.

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

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

49 In an action brought under this subsection alleging
50 that an employer has required or requested a drug or

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1 alcohol test in violation of this section, the
2 employer has the burden of proving that the
3 requirements of this section were met.
4 16. REPORTS. A laboratory doing business for an
5 employer who conducts drug or alcohol tests pursuant
6 to this section shall file an annual report with the
7 Iowa department of public health by March 1 of each
8 year concerning the number of drug tests conducted on
9 employees who work in this state pursuant to this
10 section, the number of positive and negative results
11 of the tests, during the previous calendar year. In
12 addition, the laboratory shall include in its annual
13 report the specific basis for each test as authorized
14 in subsection 8, the type of drug or drugs which were
15 found in the positive tests, and all significant
16 available demographic factors relating to the positive
17 test pool.
18 Sec. 2. EFFECTIVE DATE. This Act, being deemed of
19 immediate importance, takes effect upon enactment."

By STEVE KING

S-5035 FILED FEBRUARY 16, 1998

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2/18/98

HOUSE FILE 299

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1 Amend the amendment, S-3771, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 12,
5 line 4 and inserting the following:

6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:

8 _____. By striking everything after the enacting
9 clause and inserting the following:

10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:

13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:

16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.

18 b. "Drug" means a substance considered a
19 controlled substance and included in schedule I, II,
20 III, IV, or V under the federal Controlled Substances
21 Act, 21 U.S.C. § 801 et seq.

22 c. "Employee" means a person in the service of an
23 employer in this state and includes the employer, and
24 any chief executive officer, president, vice
25 president, supervisor, manager, and officer of the
26 employer who is actively involved in the day-to-day
27 operations of the business.

28 d. "Employer" means a person, firm, company,
29 corporation, labor organization, or employment agency,
30 which has one or more full-time employees employed in
31 the same business, or in or about the same
32 establishment, under any contract of hire, express or
33 implied, oral or written, in this state. "Employer"
34 does not include the state, a political subdivision of
35 the state, including a city, county, or school
36 district, the United States, the United States postal
37 service, or a Native-American tribe.

38 e. "Good faith" means reasonable reliance on
39 facts, or that which is held out to be factual,
40 without the intent to be deceived, and without
41 reckless, malicious, or negligent disregard for the
42 truth.

43 f. "Medical review officer" means a licensed
44 physician, osteopathic physician, chiropractor, nurse
45 practitioner, or physician assistant authorized to
46 practice in any state of the United States, who is
47 responsible for receiving laboratory results generated
48 by an employer's drug or alcohol testing program, and
49 who has knowledge of substance abuse disorders and has
50 appropriate medical training to interpret and evaluate

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1 an individual's confirmed positive test result
2 together with the individual's medical history and any
3 other relevant biomedical information.

4 g. "Prospective employee" means a person who has
5 made application, whether written or oral, to an
6 employer to become an employee.

7 h. "Reasonable suspicion drug or alcohol testing"
8 means drug or alcohol testing based upon evidence that
9 an employee is using or has used alcohol or other
10 drugs in violation of the employer's written policy
11 drawn from specific objective and articulable facts
12 and reasonable inferences drawn from those facts in
13 light of experience. For purposes of this paragraph,
14 facts and inferences may be based upon, but not
15 limited to, any of the following:

16 (1) Observable phenomena while at work such as
17 direct observation of alcohol or drug use or abuse or
18 of the physical symptoms or manifestations of being
19 impaired due to alcohol or other drug use.

20 (2) Abnormal conduct or erratic behavior while at
21 work or a significant deterioration in work
22 performance.

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

25 (4) Evidence that an individual has tampered with
26 any drug or alcohol test during the individual's
27 employment with the current employer.

28 (5) Evidence that an employee has caused an
29 accident while at work.

30 (6) Evidence that an employee has manufactured,
31 sold, distributed, solicited, possessed, used, or
32 transferred drugs while working or while on the
33 employer's premises or while operating the employer's
34 vehicle, machinery, or equipment.

35 i. "Safety-sensitive position" means a job wherein
36 an accident could cause loss of human life, serious
37 bodily injury, or significant property or
38 environmental damage, including a job with duties that
39 include immediate supervision of a person in a job
40 that meets the requirement of this paragraph.

41 j. "Sample" means such sample from the human body
42 capable of revealing the presence of alcohol or other
43 drugs, or their metabolites.

44 k. "Unannounced drug or alcohol testing" means
45 testing for the purposes of detecting drugs or alcohol
46 which is conducted on a periodic basis, without
47 advance notice of the test, and without individualized
48 suspicion. The selection of employees to be tested
49 shall be made by a computer-based random number
50 generator that is matched with employees' social

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1 security numbers, payroll identification numbers, or
2 other comparable identifying numbers in which each
3 member of the employee population subject to testing
4 has an equal chance of selection for initial testing.
5 The random selection process shall be conducted
6 through a computer program that records each selection
7 attempt by date, time, and employee number.

8 2. APPLICABILITY. This section does not apply to
9 drug or alcohol tests conducted on employees required
10 to be tested pursuant to federal statutes, federal
11 regulations, or orders issued pursuant to federal law.
12 In addition, an employer, through its written policy,
13 may exclude from the pools of employees subject to
14 unannounced drug or alcohol testing pursuant to
15 subsection 8, paragraph "a", employee populations
16 required to be tested as described in this subsection.

17 3. TESTING OPTIONAL. This section does not
18 require or create a legal duty on an employer to
19 conduct drug or alcohol testing and the requirements
20 of this section shall not be construed to encourage,
21 discourage, restrict, limit, prohibit, or require such
22 testing. A cause of action shall not arise in favor
23 of any person against an employer or agent of an
24 employer based on the failure of the employer to
25 establish a program or policy on substance abuse
26 prevention or to implement any component of testing as
27 permitted by this section.

28 4. TESTING AS CONDITION OF EMPLOYMENT --
29 REQUIREMENTS. To the extent provided in subsection 8,
30 an employer may test employees and prospective
31 employees for the presence of drugs or alcohol as a
32 condition of continued employment or hiring. An
33 employer shall adhere to the requirements of this
34 section concerning the conduct of such testing and the
35 use and disposition of the results of such testing.

36 5. COLLECTION OF SAMPLES. In conducting drug or
37 alcohol testing, an employer may require the
38 collection of samples from its employees and
39 prospective employees, and may require presentation of
40 reliable individual identification from the person
41 being tested to the person collecting the samples.
42 Collection of a sample shall be in conformance with
43 the requirements of this section. The employer may
44 designate the type of sample to be used for this
45 testing.

46 6. SCHEDULING OF TESTS.

47 a. Drug or alcohol testing of employees conducted
48 by an employer shall normally occur during, or
49 immediately before or after, a regular work period.
50 The time required for such testing by an employer

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1 shall be deemed work time for the purposes of
2 compensation and benefits for employees.

3 b. An employer shall pay all actual costs for drug
4 or alcohol testing of employees and prospective
5 employees required by the employer.

6 c. An employer shall provide transportation or pay
7 reasonable transportation costs to employees if drug
8 or alcohol sample collection is conducted at a
9 location other than the employee's normal work site.

10 7. TESTING PROCEDURES. All sample collection and
11 testing for drugs or alcohol under this section shall
12 be performed in accordance with the following
13 conditions:

14 a. The collection of samples shall be performed
15 under sanitary conditions and with regard for the
16 privacy of the individual from whom the specimen is
17 being obtained and in a manner reasonably calculated
18 to preclude contamination or substitution of the
19 specimen.

20 b. Sample collection for testing of current
21 employees shall be performed so that the specimen is
22 split into two components at the time of collection in
23 the presence of the individual from whom the sample or
24 specimen is collected. The second portion of the
25 specimen or sample shall be of sufficient quantity to
26 permit a second, independent confirmatory test as
27 provided in paragraph "i". If the specimen is urine,
28 the sample shall be split such that the primary sample
29 contains at least thirty milliliters and the secondary
30 sample contains at least fifteen milliliters. Both
31 portions of the sample shall be forwarded to the
32 laboratory conducting the initial confirmatory
33 testing. In addition to any requirements for storage
34 of the initial sample that may be imposed upon the
35 laboratory as a condition for certification or
36 approval, the laboratory shall store the second
37 portion of any sample until receipt of a confirmed
38 negative test result or for a period of at least
39 forty-five calendar days following the completion of
40 the initial confirmatory testing, if the first portion
41 yielded a confirmed positive test result.

42 c. Sample collections shall be documented, and the
43 procedure for documentation shall include the
44 following:

45 (1) Samples shall be labeled so as to reasonably
46 preclude the possibility of misidentification of the
47 person tested in relation to the test result provided,
48 and samples shall be handled and tracked in a manner
49 such that control and accountability are maintained
50 from initial collection to each stage in handling,

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1 testing, and storage, through final disposition.

2 (2) An employee or prospective employee shall be
3 provided an opportunity to provide any information
4 which may be considered relevant to the test,
5 including identification of prescription or
6 nonprescription drugs currently or recently used, or
7 other relevant medical information. To assist an
8 employee or prospective employee in providing the
9 information described in this subparagraph, the
10 employer shall provide an employee or prospective
11 employee with a list of the drugs to be tested.

12 d. Sample collection, storage, and transportation
13 to the place of testing shall be performed so as to
14 reasonably preclude the possibility of sample
15 contamination, adulteration, or misidentification.

16 e. All confirmatory drug testing shall be
17 conducted at a laboratory certified by the United
18 States department of health and human services'
19 substance abuse and mental health services
20 administration or approved under rules adopted by the
21 Iowa department of public health.

22 f. Drug or alcohol testing shall include
23 confirmation of any initial positive test results.
24 For drug or alcohol testing, confirmation shall be by
25 use of a different chemical process than was used in
26 the initial screen for drugs or alcohol. The
27 confirmatory drug or alcohol test shall be a
28 chromatographic technique such as gas chromatography
29 or mass spectrometry, or another comparably reliable
30 analytical method. An employer may take adverse
31 employment action, including refusal to hire a
32 prospective employee, based on a confirmed positive
33 drug or alcohol test.

34 g. A medical review officer shall, prior to the
35 results being reported to an employer, review and
36 interpret any confirmed positive test results,
37 including both quantitative and qualitative test
38 results, to ensure that the chain of custody is
39 complete and sufficient on its face and that any
40 information provided by the individual pursuant to
41 paragraph "c", subparagraph (2), is considered.

42 h. In conducting drug or alcohol testing pursuant
43 to this section, the employer shall ensure to the
44 extent feasible that the testing only measure, and the
45 records concerning the testing only show or make use
46 of information regarding, alcohol or drugs in the
47 body.

48 i. (1) If a confirmed positive drug or alcohol
49 test for a current employee is reported to the
50 employer by the medical review officer, the employer

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1 shall notify the employee in writing by certified
2 mail, return receipt requested, of the results of the
3 test, the employee's right to request and obtain a
4 confirmatory test of the second sample collected
5 pursuant to paragraph "b" at an approved laboratory of
6 the employee's choice, and the fee payable by the
7 employee to the employer for reimbursement of expenses
8 concerning the test. The fee charged an employee
9 shall be an amount that represents the costs
10 associated with conducting the second confirmatory
11 test, which shall be consistent with the employer's
12 cost for conducting the initial confirmatory test on
13 an employee's sample. If the employee, in person or
14 by certified mail, return receipt requested, requests
15 a second confirmatory test, identifies an approved
16 laboratory to conduct the test, and pays the employer
17 the fee for the test within seven days from the date
18 the employer mails by certified mail, return receipt
19 requested, the written notice to the employee of the
20 employee's right to request a test, a second
21 confirmatory test shall be conducted at the laboratory
22 chosen by the employee. The results of the second
23 confirmatory test shall be reported to the medical
24 review officer who reviewed the initial confirmatory
25 test results and the medical review officer shall
26 review the results and issue a report to the employer
27 on whether the results of the second confirmatory test
28 confirmed the initial confirmatory test as to the
29 presence of a specific drug or alcohol. If the
30 results of the second test do not confirm the results
31 of the initial confirmatory test, the employer shall
32 reimburse the employee for the fee paid by the
33 employee for the second test and the initial
34 confirmatory test shall not be considered a confirmed
35 positive drug or alcohol test for purposes of taking
36 disciplinary action pursuant to subsection 10.

37 (2) If a confirmed positive drug or alcohol test
38 for a prospective employee is reported to the employer
39 by the medical review officer, the employer shall
40 notify the prospective employee in writing of the
41 results of the test, of the name and address of the
42 medical review officer who made the report, and of the
43 prospective employee's right to request records under
44 subsection 13.

45 j. A laboratory conducting testing under this
46 section shall dispose of all samples for which a
47 negative test result was reported to an employer
48 within five working days after issuance of the
49 negative test result report.

50 k. Except as necessary to conduct drug or alcohol

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1 testing pursuant to this section, a laboratory or
2 other medical facility shall only report to an
3 employer or outside entity information relating to the
4 results of a drug or alcohol test conducted pursuant
5 to this section concerning the determination of
6 whether the tested individual has engaged in conduct
7 prohibited by the employer's written policy with
8 regard to alcohol or drug use.

9 1. Notwithstanding the provisions of this
10 subsection, an employer may rely and take action upon
11 the results of any blood test for drugs or alcohol
12 made on any employee involved in an accident at work
13 if the test is administered by or at the direction of
14 the person providing treatment or care to the employee
15 without request or suggestion by the employer that a
16 test be conducted, and the employer has lawfully
17 obtained the results of the test. For purposes of
18 this paragraph, an employer shall not be deemed to
19 have requested or required a test in conjunction with
20 the provision of medical treatment following a
21 workplace accident by providing information concerning
22 the circumstance of the accident.

23 8. DRUG OR ALCOHOL TESTING. Employers may conduct
24 drug or alcohol testing as provided in this
25 subsection:

26 a. Employers may conduct unannounced drug or
27 alcohol testing of employees who are selected from any
28 of the following pools of employees:

29 (1) The entire employee population at a particular
30 work site of the employer except for employees who are
31 not scheduled to be at work at the time the testing is
32 conducted because of the status of the employees or
33 who have been excused from work pursuant to the
34 employer's work policy prior to the time the testing
35 is announced to employees.

36 (2) The entire full-time active employee
37 population at a particular work site.

38 (3) All employees at a particular work site who
39 are in a pool of employees in a safety-sensitive
40 position and who are scheduled to be at work at the
41 time testing is conducted, other than employees who
42 are not scheduled to be at work at the time the
43 testing is to be conducted or who have been excused
44 from work pursuant to the employer's work policy prior
45 to the time the testing is announced to employees.

46 b. Employers may conduct drug or alcohol testing
47 of employees during, and after completion of, drug or
48 alcohol rehabilitation.

49 c. Employers may conduct reasonable suspicion drug
50 or alcohol testing.

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1 d. Employers may conduct drug or alcohol testing
2 of prospective employees.

3 e. Employers may conduct drug or alcohol testing
4 as required by federal law or regulation.

5 f. Employers may conduct drug or alcohol testing
6 in investigating accidents in the workplace.

7 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

8 a. Drug or alcohol testing or retesting by an
9 employer shall be carried out within the terms of a
10 written policy which has been provided to every
11 employee subject to testing, and is available for
12 review by employees and prospective employees.

13 b. Employers shall establish an awareness program
14 to inform employees of the dangers of drug and alcohol
15 use in the workplace and comply with the following
16 requirements in order to conduct drug or alcohol
17 testing under this section:

18 (1) If an employer has an employee assistance
19 program, the employer must inform the employee of the
20 benefits and services of the employee assistance
21 program. An employer shall post notice of the
22 employee assistance program in conspicuous places and
23 explore alternative routine and reinforcing means of
24 publicizing such services. In addition, the employer
25 must provide the employee with notice of the policies
26 and procedures regarding access to and utilization of
27 the program.

28 (2) If an employer does not have an employee
29 assistance program, the employer must maintain a
30 resource file of employee assistance services
31 providers, alcohol and other drug abuse programs
32 certified by the Iowa department of public health,
33 mental health providers, and other persons, entities,
34 or organizations available to assist employees with
35 personal or behavioral problems. The employer shall
36 provide all employees information about the existence
37 of the resource file and a summary of the information
38 contained within the resource file. The summary
39 should contain, but need not be limited to, all
40 information necessary to access the services listed in
41 the resource file. In addition, the employer shall
42 post in conspicuous places a listing of multiple
43 employee assistance providers in the area.

44 c. An employee or prospective employee whose drug
45 or alcohol test results are confirmed as positive in
46 accordance with this section shall not, by virtue of
47 those results alone, be considered as a person with a
48 disability for purposes of any state or local law or
49 regulation.

50 d. If the written policy provides for alcohol

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1 testing, the employer shall establish in the written
2 policy a standard for alcohol concentration which
3 shall be deemed to violate the policy. The standard
4 for alcohol concentration shall not be less than .02,
5 expressed in terms of grams of alcohol per two hundred
6 ten liters of breath, or its equivalent.

7 e. An employee of an employer who is designated by
8 the employer as being in a safety-sensitive position
9 shall be placed in only one pool of safety-sensitive
10 employees subject to drug or alcohol testing pursuant
11 to subsection 8, paragraph "a", subparagraph (3). An
12 employer may have more than one pool of safety-
13 sensitive employees subject to drug or alcohol testing
14 pursuant to subsection 8, paragraph "a", subparagraph
15 (3), but shall not include an employee in more than
16 one safety-sensitive pool.

17 f. Upon receipt of a confirmed positive alcohol
18 test or a confirmed positive drug test relating to the
19 abuse of lawfully prescribed drugs currently or
20 recently used by an employee, and if the employer has
21 at least fifty employees, and if the employee has been
22 employed by the employer on a full-time basis for
23 twelve consecutive months and rehabilitation is agreed
24 upon by both the employer and the employee, and if the
25 employee has not previously undergone rehabilitation
26 with the same employer pursuant to this section, the
27 written policy shall provide for the apportionment of
28 the costs of rehabilitation as provided by this
29 paragraph.

30 (1) If the employer has an employee benefit plan,
31 the costs of rehabilitation shall be apportioned as
32 provided under the employee benefit plan.

33 (2) If no employee benefit plan exists and the
34 employee has coverage for any portion of the costs of
35 rehabilitation under any health care plan of the
36 employee, the costs of rehabilitation shall be
37 apportioned as provided by the health care plan with
38 any costs not covered by the plan apportioned equally
39 between the employee and the employer. However, the
40 employer shall not be required to pay more than two
41 thousand dollars toward the costs not covered by the
42 employee's health care plan.

43 (3) If no employee benefit plan exists and the
44 employee does not have coverage for any portion of the
45 costs of rehabilitation under any health care plan of
46 the employee, the costs of rehabilitation shall be
47 apportioned equally between the employee and the
48 employer. However, the employer shall not be required
49 to pay more than two thousand dollars towards the cost
50 of rehabilitation under this subparagraph.

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1 g. In order to conduct drug or alcohol testing
2 under this section, an employer shall require
3 supervisory personnel of the employer involved with
4 drug or alcohol testing under this section to attend a
5 minimum of two hours of initial training and to
6 attend, on an annual basis thereafter, a minimum of
7 one hour of subsequent training. The training shall
8 include, but is not limited to, information concerning
9 the recognition of evidence of employee alcohol and
10 other drug abuse, the documentation and corroboration
11 of employee alcohol and other drug abuse, and the
12 referral of employees who abuse alcohol or other drugs
13 to the employee assistance program or to the resource
14 file of employee assistance services providers.

15 10. DISCIPLINARY PROCEDURES.

16 a. Upon receipt of a confirmed positive drug or
17 alcohol test result which indicates a violation of the
18 employer's written policy, or upon the refusal of an
19 employee or prospective employee to provide a testing
20 sample, an employer may use that test result or test
21 refusal as a valid basis for disciplinary or
22 rehabilitative actions consistent with the employer's
23 written policy, which may include, among other
24 actions, the following:

25 (1) A requirement that the employee enroll in an
26 employer-provided or approved rehabilitation,
27 treatment, or counseling program, which may include
28 additional drug or alcohol testing, participation in
29 and successful completion of which may be a condition
30 of continued employment, and the costs of which may or
31 may not be covered by the employer's health plan or
32 policies.

33 (2) Suspension of the employee, with or without
34 pay, for a designated period of time.

35 (3) Termination of employment.

36 (4) Refusal to hire a prospective employee.

37 (5) Other adverse employment action in conformance
38 with the employer's written policy and procedures,
39 including any relevant collective bargaining agreement
40 provisions.

41 b. Following a drug or alcohol test, but prior to
42 receipt of the final results of the drug or alcohol
43 test, an employer may suspend a current employee, with
44 or without pay, pending the outcome of the test. An
45 employee who has been suspended shall be reinstated by
46 the employer, with back pay, and interest on such
47 amount at eighteen percent per annum compounded
48 annually, if applicable, if the result of the test is
49 not a confirmed positive drug or alcohol test which
50 indicates a violation of the employer's written

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1 policy.

2 11. EMPLOYER IMMUNITY. A cause of action shall
3 not arise against an employer who has established a
4 policy and initiated a testing program in accordance
5 with the testing and policy safeguards provided for
6 under this section, for any of the following:

7 a. Testing or taking action based on the results
8 of a positive drug or alcohol test result, indicating
9 the presence of drugs or alcohol, in good faith, or on
10 the refusal of an employee or prospective employee to
11 submit to a drug or alcohol test.

12 b. Failure to test for drugs or alcohol, or
13 failure to test for a specific drug or controlled
14 substance.

15 c. Failure to test for, or if tested for, failure
16 to detect, any specific drug or other controlled
17 substance.

18 d. Termination or suspension of any substance
19 abuse prevention or testing program or policy.

20 e. Any action taken related to a false negative
21 drug or alcohol test result.

22 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
23 RESULTS.

24 a. Except as otherwise provided in paragraph "b",
25 a cause of action shall not arise against an employer
26 who has established a program of drug or alcohol
27 testing in accordance with this section, unless all of
28 the following conditions exist:

29 (1) The employer's action was based on a false
30 positive test result.

31 (2) The employer knew or clearly should have known
32 that the test result was in error and ignored the
33 correct test result because of reckless, malicious, or
34 negligent disregard for the truth, or the willful
35 intent to deceive or to be deceived.

36 b. A cause of action for defamation, libel,
37 slander, or damage to reputation shall not arise
38 against an employer establishing a program of drug or
39 alcohol testing in accordance with this section unless
40 all of the following apply:

41 (1) The employer discloses the test results to a
42 person other than the employer, an authorized
43 employee, agent, or representative of the employer,
44 the tested employee or the tested applicant for
45 employment, an authorized substance abuse treatment
46 program or employee assistance program, or an
47 authorized agent or representative of the tested
48 employee or applicant.

49 (2) The test results disclosed incorrectly
50 indicate the presence of alcohol or drugs.

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1 (3) The employer negligently discloses the
2 results.

3 c. In any cause of action based upon a false
4 positive test result, all of the following conditions
5 apply:

6 (1) The results of a drug or alcohol test
7 conducted in compliance with this section are presumed
8 to be valid.

9 (2) An employer shall not be liable for monetary
10 damages if the employer's reliance on the false
11 positive test result was reasonable and in good faith.

12 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

13 a. All communications received by an employer
14 relevant to employee or prospective employee drug or
15 alcohol test results, or otherwise received through
16 the employer's drug or alcohol testing program, are
17 confidential communications and shall not be used or
18 received in evidence, obtained in discovery, or
19 disclosed in any public or private proceeding, except
20 as otherwise provided or authorized by this section.

21 b. An employee, or a prospective employee, who is
22 the subject of a drug or alcohol test conducted under
23 this section pursuant to an employer's written policy
24 and for whom a confirmed positive test result is
25 reported shall, upon written request, have access to
26 any records relating to the employee's drug or alcohol
27 test, including records of the laboratory where the
28 testing was conducted and any records relating to the
29 results of any relevant certification or review by a
30 medical review officer. However, a prospective
31 employee shall be entitled to records under this
32 paragraph only if the prospective employee requests
33 the records within fifteen calendar days from the date
34 the employer provided the prospective employee written
35 notice of the results of a drug or alcohol test as
36 provided in subsection 7, paragraph "i", subparagraph
37 (2).

38 c. Except as provided by this section and as
39 necessary to conduct drug or alcohol testing under
40 this section and to file a report pursuant to
41 subsection 16, a laboratory and a medical review
42 officer conducting drug or alcohol testing under this
43 section shall not use or disclose to any person any
44 personally identifiable information regarding such
45 testing, including the names of individuals tested,
46 even if unaccompanied by the results of the test.

47 d. An employer may use and disclose information
48 concerning the results of a drug or alcohol test
49 conducted pursuant to this section under any of the
50 following circumstances:

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1 (1) In an arbitration proceeding pursuant to a
2 collective bargaining agreement, or an administrative
3 agency proceeding or judicial proceeding under
4 workers' compensation laws or unemployment
5 compensation laws or under common or statutory laws
6 where action taken by the employer based on the test
7 is relevant or is challenged.

8 (2) To any federal agency or other unit of the
9 federal government as required under federal law,
10 regulation or order, or in accordance with compliance
11 requirements of a federal government contract.

12 (3) To any agency of this state authorized to
13 license individuals if the employee tested is licensed
14 by that agency and the rules of that agency require
15 such disclosure.

16 (4) To a union representing the employee if such
17 disclosure would be required by federal labor laws.

18 (5) To a substance abuse evaluation or treatment
19 facility or professional for the purpose of evaluation
20 or treatment of the employee.

21 However, positive test results from an employer
22 drug or alcohol testing program shall not be used as
23 evidence in any criminal action against the employee
24 or prospective employee tested.

25 14. CIVIL PENALTIES. Any laboratory or other
26 medical facility which discloses information in
27 violation of the provisions of subsection 7, paragraph
28 "k", or any employer who, through the selection
29 process described in subsection 1, paragraph "k",
30 improperly targets or exempts employees subject to
31 unannounced drug or alcohol testing, shall be subject
32 to a civil penalty of one thousand dollars for each
33 violation. The attorney general or the attorney
34 general's designee may maintain a civil action to
35 enforce this subsection. Any civil penalty recovered
36 shall be deposited in the general fund of the state.

37 15. CIVIL REMEDIES. This section may be enforced
38 through a civil action.

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

46 b. When a person commits, is committing, or
47 proposes to commit, an act in violation of this
48 section, an injunction may be granted through an
49 action in district court to prohibit the person from
50 continuing such acts. The action for injunctive

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1 relief may be brought by an aggrieved employee or
2 prospective employee, the county attorney, or the
3 attorney general.

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

9 16. REPORTS. A laboratory doing business for an
10 employer who conducts drug or alcohol tests pursuant
11 to this section shall file an annual report with the
12 Iowa department of public health by March 1 of each
13 year concerning the number of drug tests conducted on
14 employees who work in this state pursuant to this
15 section, the number of positive and negative results
16 of the tests, during the previous calendar year. In
17 addition, the laboratory shall include in its annual
18 report the specific basis for each test as authorized
19 in subsection 8, the type of drug or drugs which were
20 found in the positive tests, and all significant
21 available demographic factors relating to the positive
22 test pool.

23 Sec. 2. EFFECTIVE DATE. This Act takes effect on
24 the thirtieth day following enactment."

By STEVE KING

S-5036 FILED FEBRUARY 16, 1998

o/o
2/18/98

HOUSE FILE 299

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1 Amend the amendment, S-5035, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. By striking page 1, line 1, through page 14,
5 line 19 and inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered a
19 controlled substance and included in schedule I, II,
20 III, IV, or V under the federal Controlled Substances
21 Act, 21 U.S.C. § 801 et seq.
22 c. "Employee" means a person in the service of an
23 employer in this state and includes the employer, and
24 any chief executive officer, president, vice
25 president, supervisor, manager, and officer of the
26 employer who is actively involved in the day-to-day
27 operations of the business.
28 d. "Employer" means a person, firm, company,
29 corporation, labor organization, or employment agency,
30 which has one or more full-time employees employed in
31 the same business, or in or about the same
32 establishment, under any contract of hire, express or
33 implied, oral or written, in this state. "Employer"
34 does not include the state, a political subdivision of
35 the state, including a city, county, or school
36 district, the United States, the United States postal
37 service, or a Native-American tribe.
38 e. "Good faith" means reasonable reliance on
39 facts, or that which is held out to be factual,
40 without the intent to be deceived, and without
41 reckless, malicious, or negligent disregard for the
42 truth.
43 f. "Medical review officer" means a licensed
44 physician, osteopathic physician, chiropractor, nurse
45 practitioner, or physician assistant authorized to
46 practice in any state of the United States, who is
47 responsible for receiving laboratory results generated
48 by an employer's drug or alcohol testing program, and
49 who has knowledge of substance abuse disorders and has
50 appropriate medical training to interpret and evaluate

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1 an individual's confirmed positive test result
2 together with the individual's medical history and any
3 other relevant biomedical information.

4 g. "Prospective employee" means a person who has
5 made application, whether written or oral, to an
6 employer to become an employee.

7 h. "Reasonable suspicion drug or alcohol testing"
8 means drug or alcohol testing based upon evidence that
9 an employee is using or has used alcohol or other
10 drugs in violation of the employer's written policy
11 drawn from specific objective and articulable facts
12 and reasonable inferences drawn from those facts in
13 light of experience. For purposes of this paragraph,
14 facts and inferences may be based upon, but not
15 limited to, any of the following:

16 (1) Observable phenomena while at work such as
17 direct observation of alcohol or drug use or abuse or
18 of the physical symptoms or manifestations of being
19 impaired due to alcohol or other drug use.

20 (2) Abnormal conduct or erratic behavior while at
21 work or a significant deterioration in work
22 performance.

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

25 (4) Evidence that an individual has tampered with
26 any drug or alcohol test during the individual's
27 employment with the current employer.

28 (5) Evidence that an employee has caused an
29 accident while at work.

30 (6) Evidence that an employee has manufactured,
31 sold, distributed, solicited, possessed, used, or
32 transferred drugs while working or while on the
33 employer's premises or while operating the employer's
34 vehicle, machinery, or equipment.

35 i. "Safety-sensitive position" means a job wherein
36 an accident could cause loss of human life, serious
37 bodily injury, or significant property or
38 environmental damage, including a job with duties that
39 include immediate supervision of a person in a job
40 that meets the requirement of this paragraph.

41 j. "Sample" means such sample from the human body
42 capable of revealing the presence of alcohol or other
43 drugs, or their metabolites.

44 k. "Unannounced drug or alcohol testing" means
45 testing for the purposes of detecting drugs or alcohol
46 which is conducted on a periodic basis, without
47 advance notice of the test, and without individualized
48 suspicion. The selection of employees to be tested
49 shall be made by a computer-based random number
50 generator that is matched with employees' social

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1 security numbers, payroll identification numbers, or
2 other comparable identifying numbers in which each
3 member of the employee population subject to testing
4 has an equal chance of selection for initial testing.
5 The random selection process shall be conducted
6 through a computer program that records each selection
7 attempt by date, time, and employee number.

8 2. APPLICABILITY. This section does not apply to
9 drug or alcohol tests conducted on employees required
10 to be tested pursuant to federal statutes, federal
11 regulations, or orders issued pursuant to federal law.
12 In addition, an employer, through its written policy,
13 may exclude from the pools of employees subject to
14 unannounced drug or alcohol testing pursuant to
15 subsection 8, paragraph "a", employee populations
16 required to be tested as described in this subsection.

17 3. TESTING OPTIONAL. This section does not
18 require or create a legal duty on an employer to
19 conduct drug or alcohol testing and the requirements
20 of this section shall not be construed to encourage,
21 discourage, restrict, limit, prohibit, or require such
22 testing. A cause of action shall not arise in favor
23 of any person against an employer or agent of an
24 employer based on the failure of the employer to
25 establish a program or policy on substance abuse
26 prevention or to implement any component of testing as
27 permitted by this section.

28 4. TESTING AS CONDITION OF EMPLOYMENT --
29 REQUIREMENTS. To the extent provided in subsection 8,
30 an employer may test employees and prospective
31 employees for the presence of drugs or alcohol as a
32 condition of continued employment or hiring. An
33 employer shall adhere to the requirements of this
34 section concerning the conduct of such testing and the
35 use and disposition of the results of such testing.

36 5. COLLECTION OF SAMPLES. In conducting drug or
37 alcohol testing, an employer may require the
38 collection of samples from its employees and
39 prospective employees, and may require presentation of
40 reliable individual identification from the person
41 being tested to the person collecting the samples.
42 Collection of a sample shall be in conformance with
43 the requirements of this section. The employer may
44 designate the type of sample to be used for this
45 testing.

46 6. SCHEDULING OF TESTS.

47 a. Drug or alcohol testing of employees conducted
48 by an employer shall normally occur during, or
49 immediately before or after, a regular work period.
50 The time required for such testing by an employer

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1 shall be deemed work time for the purposes of
2 compensation and benefits for employees.

3 b. An employer shall pay all actual costs for drug
4 or alcohol testing of employees and prospective
5 employees required by the employer.

6 c. An employer shall provide transportation or pay
7 reasonable transportation costs to employees if drug
8 or alcohol sample collection is conducted at a
9 location other than the employee's normal work site.

10 7. TESTING PROCEDURES. All sample collection and
11 testing for drugs or alcohol under this section shall
12 be performed in accordance with the following
13 conditions:

14 a. The collection of samples shall be performed
15 under sanitary conditions and with regard for the
16 privacy of the individual from whom the specimen is
17 being obtained and in a manner reasonably calculated
18 to preclude contamination or substitution of the
19 specimen.

20 b. Sample collection for testing of current
21 employees shall be performed so that the specimen is
22 split into two components at the time of collection in
23 the presence of the individual from whom the sample or
24 specimen is collected. The second portion of the
25 specimen or sample shall be of sufficient quantity to
26 permit a second, independent confirmatory test as
27 provided in paragraph "i". If the specimen is urine,
28 the sample shall be split such that the primary sample
29 contains at least thirty milliliters and the secondary
30 sample contains at least fifteen milliliters. Both
31 portions of the sample shall be forwarded to the
32 laboratory conducting the initial confirmatory
33 testing. In addition to any requirements for storage
34 of the initial sample that may be imposed upon the
35 laboratory as a condition for certification or
36 approval, the laboratory shall store the second
37 portion of any sample until receipt of a confirmed
38 negative test result or for a period of at least
39 forty-five calendar days following the completion of
40 the initial confirmatory testing, if the first portion
41 yielded a confirmed positive test result.

42 c. Sample collections shall be documented, and the
43 procedure for documentation shall include the
44 following:

45 (1) Samples shall be labeled so as to reasonably
46 preclude the possibility of misidentification of the
47 person tested in relation to the test result provided,
48 and samples shall be handled and tracked in a manner
49 such that control and accountability are maintained
50 from initial collection to each stage in handling,

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1 testing, and storage, through final disposition.

2 (2) An employee or prospective employee shall be
3 provided an opportunity to provide any information
4 which may be considered relevant to the test,
5 including identification of prescription or
6 nonprescription drugs currently or recently used, or
7 other relevant medical information. To assist an
8 employee or prospective employee in providing the
9 information described in this subparagraph, the
10 employer shall provide an employee or prospective
11 employee with a list of the drugs to be tested.

12 d. Sample collection, storage, and transportation
13 to the place of testing shall be performed so as to
14 reasonably preclude the possibility of sample
15 contamination, adulteration, or misidentification.

16 e. All confirmatory drug testing shall be
17 conducted at a laboratory certified by the United
18 States department of health and human services'
19 substance abuse and mental health services
20 administration or approved under rules adopted by the
21 Iowa department of public health.

22 f. Drug or alcohol testing shall include
23 confirmation of any initial positive test results.
24 For drug or alcohol testing, confirmation shall be by
25 use of a different chemical process than was used in
26 the initial screen for drugs or alcohol. The
27 confirmatory drug or alcohol test shall be a
28 chromatographic technique such as gas chromatography
29 or mass spectrometry, or another comparably reliable
30 analytical method. An employer may take adverse
31 employment action, including refusal to hire a
32 prospective employee, based on a confirmed positive
33 drug or alcohol test.

34 g. A medical review officer shall, prior to the
35 results being reported to an employer, review and
36 interpret any confirmed positive test results,
37 including both quantitative and qualitative test
38 results, to ensure that the chain of custody is
39 complete and sufficient on its face and that any
40 information provided by the individual pursuant to
41 paragraph "c", subparagraph (2), is considered.

42 h. In conducting drug or alcohol testing pursuant
43 to this section, the employer shall ensure to the
44 extent feasible that the testing only measure, and the
45 records concerning the testing only show or make use
46 of information regarding, alcohol or drugs in the
47 body.

48 i. (1) If a confirmed positive drug or alcohol
49 test for a current employee is reported to the
50 employer by the medical review officer, the employer

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1 shall notify the employee in writing by certified
2 mail, return receipt requested, of the results of the
3 test, the employee's right to request and obtain a
4 confirmatory test of the second sample collected
5 pursuant to paragraph "b" at an approved laboratory of
6 the employee's choice, and the fee payable by the
7 employee to the employer for reimbursement of expenses
8 concerning the test. The fee charged an employee
9 shall be an amount that represents the costs
10 associated with conducting the second confirmatory
11 test, which shall be consistent with the employer's
12 cost for conducting the initial confirmatory test on
13 an employee's sample. If the employee, in person or
14 by certified mail, return receipt requested, requests
15 a second confirmatory test, identifies an approved
16 laboratory to conduct the test, and pays the employer
17 the fee for the test within seven days from the date
18 the employer mails by certified mail, return receipt
19 requested, the written notice to the employee of the
20 employee's right to request a test, a second
21 confirmatory test shall be conducted at the laboratory
22 chosen by the employee. The results of the second
23 confirmatory test shall be reported to the medical
24 review officer who reviewed the initial confirmatory
25 test results and the medical review officer shall
26 review the results and issue a report to the employer
27 on whether the results of the second confirmatory test
28 confirmed the initial confirmatory test as to the
29 presence of a specific drug or alcohol. If the
30 results of the second test do not confirm the results
31 of the initial confirmatory test, the employer shall
32 reimburse the employee for the fee paid by the
33 employee for the second test and the initial
34 confirmatory test shall not be considered a confirmed
35 positive drug or alcohol test for purposes of taking
36 disciplinary action pursuant to subsection 10.

37 (2) If a confirmed positive drug or alcohol test
38 for a prospective employee is reported to the employer
39 by the medical review officer, the employer shall
40 notify the prospective employee in writing of the
41 results of the test, of the name and address of the
42 medical review officer who made the report, and of the
43 prospective employee's right to request records under
44 subsection 13.

45 j. A laboratory conducting testing under this
46 section shall dispose of all samples for which a
47 negative test result was reported to an employer
48 within five working days after issuance of the
49 negative test result report.

50 k. Except as necessary to conduct drug or alcohol

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1 testing pursuant to this section, a laboratory or
2 other medical facility shall only report to an
3 employer or outside entity information relating to the
4 results of a drug or alcohol test conducted pursuant
5 to this section concerning the determination of
6 whether the tested individual has engaged in conduct
7 prohibited by the employer's written policy with
8 regard to alcohol or drug use.

9 1. Notwithstanding the provisions of this
10 subsection, an employer may rely and take action upon
11 the results of any blood test for drugs or alcohol
12 made on any employee involved in an accident at work
13 if the test is administered by or at the direction of
14 the person providing treatment or care to the employee
15 without request or suggestion by the employer that a
16 test be conducted, and the employer has lawfully
17 obtained the results of the test. For purposes of
18 this paragraph, an employer shall not be deemed to
19 have requested or required a test in conjunction with
20 the provision of medical treatment following a
21 workplace accident by providing information concerning
22 the circumstance of the accident.

23 8. DRUG OR ALCOHOL TESTING. Employers may conduct
24 drug or alcohol testing as provided in this
25 subsection:

26 a. Employers may conduct unannounced drug or
27 alcohol testing of employees who are selected from any
28 of the following pools of employees:

29 (1) The entire employee population at a particular
30 work site of the employer except for employees who are
31 not scheduled to be at work at the time the testing is
32 conducted because of the status of the employees or
33 who have been excused from work pursuant to the
34 employer's work policy prior to the time the testing
35 is announced to employees.

36 (2) The entire full-time active employee
37 population at a particular work site.

38 (3) All employees at a particular work site who
39 are in a pool of employees in a safety-sensitive
40 position and who are scheduled to be at work at the
41 time testing is conducted, other than employees who
42 are not scheduled to be at work at the time the
43 testing is to be conducted or who have been excused
44 from work pursuant to the employer's work policy prior
45 to the time the testing is announced to employees.

46 b. Employers may conduct drug or alcohol testing
47 of employees during, and after completion of, drug or
48 alcohol rehabilitation.

49 c. Employers may conduct reasonable suspicion drug
50 or alcohol testing.

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1 d. Employers may conduct drug or alcohol testing
2 of prospective employees.

3 e. Employers may conduct drug or alcohol testing
4 as required by federal law or regulation.

5 f. Employers may conduct drug or alcohol testing
6 in investigating accidents in the workplace.

7 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

8 a. Drug or alcohol testing or retesting by an
9 employer shall be carried out within the terms of a
10 written policy which has been provided to every
11 employee subject to testing, and is available for
12 review by employees and prospective employees.

13 b. Employers shall establish an awareness program
14 to inform employees of the dangers of drug and alcohol
15 use in the workplace and comply with the following
16 requirements in order to conduct drug or alcohol
17 testing under this section:

18 (1) If an employer has an employee assistance
19 program, the employer must inform the employee of the
20 benefits and services of the employee assistance
21 program. An employer shall post notice of the
22 employee assistance program in conspicuous places and
23 explore alternative routine and reinforcing means of
24 publicizing such services. In addition, the employer
25 must provide the employee with notice of the policies
26 and procedures regarding access to and utilization of
27 the program.

28 (2) If an employer does not have an employee
29 assistance program, the employer must maintain a
30 resource file of employee assistance services
31 providers, alcohol and other drug abuse programs
32 certified by the Iowa department of public health,
33 mental health providers, and other persons, entities,
34 or organizations available to assist employees with
35 personal or behavioral problems. The employer shall
36 provide all employees information about the existence
37 of the resource file and a summary of the information
38 contained within the resource file. The summary
39 should contain, but need not be limited to, all
40 information necessary to access the services listed in
41 the resource file. In addition, the employer shall
42 post in conspicuous places a listing of multiple
43 employee assistance providers in the area.

44 c. An employee or prospective employee whose drug
45 or alcohol test results are confirmed as positive in
46 accordance with this section shall not, by virtue of
47 those results alone, be considered as a person with a
48 disability for purposes of any state or local law or
49 regulation.

50 d. If the written policy provides for alcohol

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1 testing, the employer shall establish in the written
2 policy a standard for alcohol concentration which
3 shall be deemed to violate the policy. The standard
4 for alcohol concentration shall not be less than .02,
5 expressed in terms of grams of alcohol per two hundred
6 ten liters of breath, or its equivalent.

7 e. An employee of an employer who is designated by
8 the employer as being in a safety-sensitive position
9 shall be placed in only one pool of safety-sensitive
10 employees subject to drug or alcohol testing pursuant
11 to subsection 8, paragraph "a", subparagraph (3). An
12 employer may have more than one pool of safety-
13 sensitive employees subject to drug or alcohol testing
14 pursuant to subsection 8, paragraph "a", subparagraph
15 (3), but shall not include an employee in more than
16 one safety-sensitive pool.

17 f. Upon receipt of a confirmed positive alcohol
18 test or a confirmed positive drug test relating to the
19 abuse of lawfully prescribed drugs currently or
20 recently used by an employee, and if the employer has
21 at least fifty employees, and if the employee has been
22 employed by the employer on a full-time basis for
23 twelve consecutive months and rehabilitation is agreed
24 upon by both the employer and the employee, and if the
25 employee has not previously undergone rehabilitation
26 with the same employer pursuant to this section, the
27 written policy shall provide for the apportionment of
28 the costs of rehabilitation as provided by this
29 paragraph.

30 (1) If the employer has an employee benefit plan,
31 the costs of rehabilitation shall be apportioned as
32 provided under the employee benefit plan.

33 (2) If no employee benefit plan exists and the
34 employee has coverage for any portion of the costs of
35 rehabilitation under any health care plan of the
36 employee, the costs of rehabilitation shall be
37 apportioned as provided by the health care plan with
38 any costs not covered by the plan apportioned equally
39 between the employee and the employer. However, the
40 employer shall not be required to pay more than two
41 thousand dollars toward the costs not covered by the
42 employee's health care plan.

43 (3) If no employee benefit plan exists and the
44 employee does not have coverage for any portion of the
45 costs of rehabilitation under any health care plan of
46 the employee, the costs of rehabilitation shall be
47 apportioned equally between the employee and the
48 employer. However, the employer shall not be required
49 to pay more than two thousand dollars towards the cost
50 of rehabilitation under this subparagraph.

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1 g. In order to conduct drug or alcohol testing
2 under this section, an employer shall require
3 supervisory personnel of the employer involved with
4 drug or alcohol testing under this section to attend a
5 minimum of two hours of initial training and to
6 attend, on an annual basis thereafter, a minimum of
7 one hour of subsequent training. The training shall
8 include, but is not limited to, information concerning
9 the recognition of evidence of employee alcohol and
10 other drug abuse, the documentation and corroboration
11 of employee alcohol and other drug abuse, and the
12 referral of employees who abuse alcohol or other drugs
13 to the employee assistance program or to the resource
14 file of employee assistance services providers.

15 10. DISCIPLINARY PROCEDURES.

16 a. Upon receipt of a confirmed positive drug or
17 alcohol test result which indicates a violation of the
18 employer's written policy, or upon the refusal of an
19 employee or prospective employee to provide a testing
20 sample, an employer may use that test result or test
21 refusal as a valid basis for disciplinary or
22 rehabilitative actions consistent with the employer's
23 written policy, which may include, among other
24 actions, the following:

25 (1) A requirement that the employee enroll in an
26 employer-provided or approved rehabilitation,
27 treatment, or counseling program, which may include
28 additional drug or alcohol testing, participation in
29 and successful completion of which may be a condition
30 of continued employment, and the costs of which may or
31 may not be covered by the employer's health plan or
32 policies.

33 (2) Suspension of the employee, with or without
34 pay, for a designated period of time.

35 (3) Termination of employment.

36 (4) Refusal to hire a prospective employee.

37 (5) Other adverse employment action in conformance
38 with the employer's written policy and procedures,
39 including any relevant collective bargaining agreement
40 provisions.

41 b. Following a drug or alcohol test, but prior to
42 receipt of the final results of the drug or alcohol
43 test, an employer may suspend a current employee, with
44 or without pay, pending the outcome of the test. An
45 employee who has been suspended shall be reinstated by
46 the employer, with back pay, and interest on such
47 amount at eighteen percent per annum compounded
48 annually, if applicable, if the result of the test is
49 not a confirmed positive drug or alcohol test which
50 indicates a violation of the employer's written

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1 policy.

2 11. EMPLOYER IMMUNITY. A cause of action shall
3 not arise against an employer who has established a
4 policy and initiated a testing program in accordance
5 with the testing and policy safeguards provided for
6 under this section, for any of the following:

7 a. Testing or taking action based on the results
8 of a positive drug or alcohol test result, indicating
9 the presence of drugs or alcohol, in good faith, or on
10 the refusal of an employee or prospective employee to
11 submit to a drug or alcohol test.

12 b. Failure to test for drugs or alcohol, or
13 failure to test for a specific drug or controlled
14 substance.

15 c. Failure to test for, or if tested for, failure
16 to detect, any specific drug or other controlled
17 substance.

18 d. Termination or suspension of any substance
19 abuse prevention or testing program or policy.

20 e. Any action taken related to a false negative
21 drug or alcohol test result.

22 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
23 RESULTS.

24 a. Except as otherwise provided in paragraph "b",
25 a cause of action shall not arise against an employer
26 who has established a program of drug or alcohol
27 testing in accordance with this section, unless all of
28 the following conditions exist:

29 (1) The employer's action was based on a false
30 positive test result.

31 (2) The employer knew or clearly should have known
32 that the test result was in error and ignored the
33 correct test result because of reckless, malicious, or
34 negligent disregard for the truth, or the willful
35 intent to deceive or to be deceived.

36 b. A cause of action for defamation, libel,
37 slander, or damage to reputation shall not arise
38 against an employer establishing a program of drug or
39 alcohol testing in accordance with this section unless
40 all of the following apply:

41 (1) The employer discloses the test results to a
42 person other than the employer, an authorized
43 employee, agent, or representative of the employer,
44 the tested employee or the tested applicant for
45 employment, an authorized substance abuse treatment
46 program or employee assistance program, or an
47 authorized agent or representative of the tested
48 employee or applicant.

49 (2) The test results disclosed incorrectly
50 indicate the presence of alcohol or drugs.

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1 (3) The employer negligently discloses the
2 results.

3 c. In any cause of action based upon a false
4 positive test result, all of the following conditions
5 apply:

6 (1) The results of a drug or alcohol test
7 conducted in compliance with this section are presumed
8 to be valid.

9 (2) An employer shall not be liable for monetary
10 damages if the employer's reliance on the false
11 positive test result was reasonable and in good faith.

12 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

13 a. All communications received by an employer
14 relevant to employee or prospective employee drug or
15 alcohol test results, or otherwise received through
16 the employer's drug or alcohol testing program, are
17 confidential communications and shall not be used or
18 received in evidence, obtained in discovery, or
19 disclosed in any public or private proceeding, except
20 as otherwise provided or authorized by this section.

21 b. An employee, or a prospective employee, who is
22 the subject of a drug or alcohol test conducted under
23 this section pursuant to an employer's written policy
24 and for whom a confirmed positive test result is
25 reported shall, upon written request, have access to
26 any records relating to the employee's drug or alcohol
27 test, including records of the laboratory where the
28 testing was conducted and any records relating to the
29 results of any relevant certification or review by a
30 medical review officer. However, a prospective
31 employee shall be entitled to records under this
32 paragraph only if the prospective employee requests
33 the records within fifteen calendar days from the date
34 the employer provided the prospective employee written
35 notice of the results of a drug or alcohol test as
36 provided in subsection 7, paragraph "i", subparagraph
37 (2).

38 c. Except as provided by this section and as
39 necessary to conduct drug or alcohol testing under
40 this section and to file a report pursuant to
41 subsection 16, a laboratory and a medical review
42 officer conducting drug or alcohol testing under this
43 section shall not use or disclose to any person any
44 personally identifiable information regarding such
45 testing, including the names of individuals tested,
46 even if unaccompanied by the results of the test.

47 d. An employer may use and disclose information
48 concerning the results of a drug or alcohol test
49 conducted pursuant to this section under any of the
50 following circumstances:

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1 (1) In an arbitration proceeding pursuant to a
2 collective bargaining agreement, or an administrative
3 agency proceeding or judicial proceeding under
4 workers' compensation laws or unemployment
5 compensation laws or under common or statutory laws
6 where action taken by the employer based on the test
7 is relevant or is challenged.

8 (2) To any federal agency or other unit of the
9 federal government as required under federal law,
10 regulation or order, or in accordance with compliance
11 requirements of a federal government contract.

12 (3) To any agency of this state authorized to
13 license individuals if the employee tested is licensed
14 by that agency and the rules of that agency require
15 such disclosure.

16 (4) To a union representing the employee if such
17 disclosure would be required by federal labor laws.

18 (5) To a substance abuse evaluation or treatment
19 facility or professional for the purpose of evaluation
20 or treatment of the employee.

21 However, positive test results from an employer
22 drug or alcohol testing program shall not be used as
23 evidence in any criminal action against the employee
24 or prospective employee tested.

25 14. CIVIL PENALTIES. Any laboratory or other
26 medical facility which discloses information in
27 violation of the provisions of subsection 7, paragraph
28 "k", or any employer who, through the selection
29 process described in subsection 1, paragraph "k",
30 improperly targets or exempts employees subject to
31 unannounced drug or alcohol testing, shall be subject
32 to a civil penalty of one thousand dollars for each
33 violation. The attorney general or the attorney
34 general's designee may maintain a civil action to
35 enforce this subsection. Any civil penalty recovered
36 shall be deposited in the general fund of the state.

37 15. CIVIL REMEDIES. This section may be enforced
38 through a civil action.

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

46 b. When a person commits, is committing, or
47 proposes to commit, an act in violation of this
48 section, an injunction may be granted through an
49 action in district court to prohibit the person from
50 continuing such acts. The action for injunctive

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1 relief may be brought by an aggrieved employee or
2 prospective employee, the county attorney, or the
3 attorney general.

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

9 16. REPORTS. A laboratory doing business for an
10 employer who conducts drug or alcohol tests pursuant
11 to this section shall file an annual report with the
12 Iowa department of public health by March 1 of each
13 year concerning the number of drug tests conducted on
14 employees who work in this state pursuant to this
15 section, the number of positive and negative results
16 of the tests, during the previous calendar year. In
17 addition, the laboratory shall include in its annual
18 report the specific basis for each test as authorized
19 in subsection 8, the type of drug or drugs which were
20 found in the positive tests, and all significant
21 available demographic factors relating to the positive
22 test pool.

23 Sec. 2. EFFECTIVE DATE. This Act takes effect on
24 the forty-fifth day following enactment.""

By STEVE KING

S-5037 FILED FEBRUARY 16, 1998

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2/18/98

HOUSE FILE 299

S-5038

1 Amend the amendment, S-5035, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 14,
5 line 19 and inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered a
19 controlled substance and included in schedule I, II,
20 III, IV, or V under the federal Controlled Substances
21 Act, 21 U.S.C. § 801 et seq.
22 c. "Employee" means a person in the service of an
23 employer in this state and includes the employer, and
24 any chief executive officer, president, vice
25 president, supervisor, manager, and officer of the
26 employer who is actively involved in the day-to-day
27 operations of the business.
28 d. "Employer" means a person, firm, company,
29 corporation, labor organization, or employment agency,
30 which has one or more full-time employees employed in
31 the same business, or in or about the same
32 establishment, under any contract of hire, express or
33 implied, oral or written, in this state. "Employer"
34 does not include the state, a political subdivision of
35 the state, including a city, county, or school
36 district, the United States, the United States postal
37 service, or a Native-American tribe.
38 e. "Good faith" means reasonable reliance on
39 facts, or that which is held out to be factual,
40 without the intent to be deceived, and without
41 reckless, malicious, or negligent disregard for the
42 truth.
43 f. "Medical review officer" means a licensed
44 physician, osteopathic physician, chiropractor, nurse
45 practitioner, or physician assistant authorized to
46 practice in any state of the United States, who is
47 responsible for receiving laboratory results generated
48 by an employer's drug or alcohol testing program, and
49 who has knowledge of substance abuse disorders and has
50 appropriate medical training to interpret and evaluate

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1 an individual's confirmed positive test result
2 together with the individual's medical history and any
3 other relevant biomedical information.

4 g. "Prospective employee" means a person who has
5 made application, whether written or oral, to an
6 employer to become an employee.

7 h. "Reasonable suspicion drug or alcohol testing"
8 means drug or alcohol testing based upon evidence that
9 an employee is using or has used alcohol or other
10 drugs in violation of the employer's written policy
11 drawn from specific objective and articulable facts
12 and reasonable inferences drawn from those facts in
13 light of experience. For purposes of this paragraph,
14 facts and inferences may be based upon, but not
15 limited to, any of the following:

16 (1) Observable phenomena while at work such as
17 direct observation of alcohol or drug use or abuse or
18 of the physical symptoms or manifestations of being
19 impaired due to alcohol or other drug use.

20 (2) Abnormal conduct or erratic behavior while at
21 work or a significant deterioration in work
22 performance.

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

25 (4) Evidence that an individual has tampered with
26 any drug or alcohol test during the individual's
27 employment with the current employer.

28 (5) Evidence that an employee has caused an
29 accident while at work.

30 (6) Evidence that an employee has manufactured,
31 sold, distributed, solicited, possessed, used, or
32 transferred drugs while working or while on the
33 employer's premises or while operating the employer's
34 vehicle, machinery, or equipment.

35 i. "Safety-sensitive position" means a job wherein
36 an accident could cause loss of human life, serious
37 bodily injury, or significant property or
38 environmental damage, including a job with duties that
39 include immediate supervision of a person in a job
40 that meets the requirement of this paragraph.

41 j. "Sample" means such sample from the human body
42 capable of revealing the presence of alcohol or other
43 drugs, or their metabolites.

44 k. "Unannounced drug or alcohol testing" means
45 testing for the purposes of detecting drugs or alcohol
46 which is conducted on a periodic basis, without
47 advance notice of the test, and without individualized
48 suspicion. The selection of employees to be tested
49 shall be made by a computer-based random number
50 generator that is matched with employees' social

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1 security numbers, payroll identification numbers, or
2 other comparable identifying numbers in which each
3 member of the employee population subject to testing
4 has an equal chance of selection for initial testing.
5 The random selection process shall be conducted
6 through a computer program that records each selection
7 attempt by date, time, and employee number.

8 2. APPLICABILITY. This section does not apply to
9 drug or alcohol tests conducted on employees required
10 to be tested pursuant to federal statutes, federal
11 regulations, or orders issued pursuant to federal law.
12 In addition, an employer, through its written policy,
13 may exclude from the pools of employees subject to
14 unannounced drug or alcohol testing pursuant to
15 subsection 8, paragraph "a", employee populations
16 required to be tested as described in this subsection.

17 3. TESTING OPTIONAL. This section does not
18 require or create a legal duty on an employer to
19 conduct drug or alcohol testing and the requirements
20 of this section shall not be construed to encourage,
21 discourage, restrict, limit, prohibit, or require such
22 testing. A cause of action shall not arise in favor
23 of any person against an employer or agent of an
24 employer based on the failure of the employer to
25 establish a program or policy on substance abuse
26 prevention or to implement any component of testing as
27 permitted by this section.

28 4. TESTING AS CONDITION OF EMPLOYMENT --
29 REQUIREMENTS. To the extent provided in subsection 8,
30 an employer may test employees and prospective
31 employees for the presence of drugs or alcohol as a
32 condition of continued employment or hiring. An
33 employer shall adhere to the requirements of this
34 section concerning the conduct of such testing and the
35 use and disposition of the results of such testing.

36 5. COLLECTION OF SAMPLES. In conducting drug or
37 alcohol testing, an employer may require the
38 collection of samples from its employees and
39 prospective employees, and may require presentation of
40 reliable individual identification from the person
41 being tested to the person collecting the samples.
42 Collection of a sample shall be in conformance with
43 the requirements of this section. The employer may
44 designate the type of sample to be used for this
45 testing.

46 6. SCHEDULING OF TESTS.

47 a. Drug or alcohol testing of employees conducted
48 by an employer shall normally occur during, or
49 immediately before or after, a regular work period.
50 The time required for such testing by an employer

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1 shall be deemed work time for the purposes of
2 compensation and benefits for employees.

3 b. An employer shall pay all actual costs for drug
4 or alcohol testing of employees and prospective
5 employees required by the employer.

6 c. An employer shall provide transportation or pay
7 reasonable transportation costs to employees if drug
8 or alcohol sample collection is conducted at a
9 location other than the employee's normal work site.

10 7. TESTING PROCEDURES. All sample collection and
11 testing for drugs or alcohol under this section shall
12 be performed in accordance with the following
13 conditions:

14 a. The collection of samples shall be performed
15 under sanitary conditions and with regard for the
16 privacy of the individual from whom the specimen is
17 being obtained and in a manner reasonably calculated
18 to preclude contamination or substitution of the
19 specimen.

20 b. Sample collection for testing of current
21 employees shall be performed so that the specimen is
22 split into two components at the time of collection in
23 the presence of the individual from whom the sample or
24 specimen is collected. The second portion of the
25 specimen or sample shall be of sufficient quantity to
26 permit a second, independent confirmatory test as
27 provided in paragraph "i". If the specimen is urine,
28 the sample shall be split such that the primary sample
29 contains at least thirty milliliters and the secondary
30 sample contains at least fifteen milliliters. Both
31 portions of the sample shall be forwarded to the
32 laboratory conducting the initial confirmatory
33 testing. In addition to any requirements for storage
34 of the initial sample that may be imposed upon the
35 laboratory as a condition for certification or
36 approval, the laboratory shall store the second
37 portion of any sample until receipt of a confirmed
38 negative test result or for a period of at least
39 forty-five calendar days following the completion of
40 the initial confirmatory testing, if the first portion
41 yielded a confirmed positive test result.

42 c. Sample collections shall be documented, and the
43 procedure for documentation shall include the
44 following:

45 (1) Samples shall be labeled so as to reasonably
46 preclude the possibility of misidentification of the
47 person tested in relation to the test result provided,
48 and samples shall be handled and tracked in a manner
49 such that control and accountability are maintained
50 from initial collection to each stage in handling,

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1 testing, and storage, through final disposition.

2 (2) An employee or prospective employee shall be
3 provided an opportunity to provide any information
4 which may be considered relevant to the test,
5 including identification of prescription or
6 nonprescription drugs currently or recently used, or
7 other relevant medical information. To assist an
8 employee or prospective employee in providing the
9 information described in this subparagraph, the
10 employer shall provide an employee or prospective
11 employee with a list of the drugs to be tested.

12 d. Sample collection, storage, and transportation
13 to the place of testing shall be performed so as to
14 reasonably preclude the possibility of sample
15 contamination, adulteration, or misidentification.

16 e. All confirmatory drug testing shall be
17 conducted at a laboratory certified by the United
18 States department of health and human services'
19 substance abuse and mental health services
20 administration or approved under rules adopted by the
21 Iowa department of public health.

22 f. Drug or alcohol testing shall include
23 confirmation of any initial positive test results.
24 For drug or alcohol testing, confirmation shall be by
25 use of a different chemical process than was used in
26 the initial screen for drugs or alcohol. The
27 confirmatory drug or alcohol test shall be a
28 chromatographic technique such as gas chromatography
29 or mass spectrometry, or another comparably reliable
30 analytical method. An employer may take adverse
31 employment action, including refusal to hire a
32 prospective employee, based on a confirmed positive
33 drug or alcohol test.

34 g. A medical review officer shall, prior to the
35 results being reported to an employer, review and
36 interpret any confirmed positive test results,
37 including both quantitative and qualitative test
38 results, to ensure that the chain of custody is
39 complete and sufficient on its face and that any
40 information provided by the individual pursuant to
41 paragraph "c", subparagraph (2), is considered.

42 h. In conducting drug or alcohol testing pursuant
43 to this section, the employer shall ensure to the
44 extent feasible that the testing only measure, and the
45 records concerning the testing only show or make use
46 of information regarding, alcohol or drugs in the
47 body.

48 i. (1) If a confirmed positive drug or alcohol
49 test for a current employee is reported to the
50 employer by the medical review officer, the employer

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1 shall notify the employee in writing by certified
2 mail, return receipt requested, of the results of the
3 test, the employee's right to request and obtain a
4 confirmatory test of the second sample collected
5 pursuant to paragraph "b" at an approved laboratory of
6 the employee's choice, and the fee payable by the
7 employee to the employer for reimbursement of expenses
8 concerning the test. The fee charged an employee
9 shall be an amount that represents the costs
10 associated with conducting the second confirmatory
11 test, which shall be consistent with the employer's
12 cost for conducting the initial confirmatory test on
13 an employee's sample. If the employee, in person or
14 by certified mail, return receipt requested, requests
15 a second confirmatory test, identifies an approved
16 laboratory to conduct the test, and pays the employer
17 the fee for the test within seven days from the date
18 the employer mails by certified mail, return receipt
19 requested, the written notice to the employee of the
20 employee's right to request a test, a second
21 confirmatory test shall be conducted at the laboratory
22 chosen by the employee. The results of the second
23 confirmatory test shall be reported to the medical
24 review officer who reviewed the initial confirmatory
25 test results and the medical review officer shall
26 review the results and issue a report to the employer
27 on whether the results of the second confirmatory test
28 confirmed the initial confirmatory test as to the
29 presence of a specific drug or alcohol. If the
30 results of the second test do not confirm the results
31 of the initial confirmatory test, the employer shall
32 reimburse the employee for the fee paid by the
33 employee for the second test and the initial
34 confirmatory test shall not be considered a confirmed
35 positive drug or alcohol test for purposes of taking
36 disciplinary action pursuant to subsection 10.

37 (2) If a confirmed positive drug or alcohol test
38 for a prospective employee is reported to the employer
39 by the medical review officer, the employer shall
40 notify the prospective employee in writing of the
41 results of the test, of the name and address of the
42 medical review officer who made the report, and of the
43 prospective employee's right to request records under
44 subsection 13.

45 j. A laboratory conducting testing under this
46 section shall dispose of all samples for which a
47 negative test result was reported to an employer
48 within five working days after issuance of the
49 negative test result report.

50 k. Except as necessary to conduct drug or alcohol

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1 testing pursuant to this section, a laboratory or
2 other medical facility shall only report to an
3 employer or outside entity information relating to the
4 results of a drug or alcohol test conducted pursuant
5 to this section concerning the determination of
6 whether the tested individual has engaged in conduct
7 prohibited by the employer's written policy with
8 regard to alcohol or drug use.

9 1. Notwithstanding the provisions of this
10 subsection, an employer may rely and take action upon
11 the results of any blood test for drugs or alcohol
12 made on any employee involved in an accident at work
13 if the test is administered by or at the direction of
14 the person providing treatment or care to the employee
15 without request or suggestion by the employer that a
16 test be conducted, and the employer has lawfully
17 obtained the results of the test. For purposes of
18 this paragraph, an employer shall not be deemed to
19 have requested or required a test in conjunction with
20 the provision of medical treatment following a
21 workplace accident by providing information concerning
22 the circumstance of the accident.

23 8. DRUG OR ALCOHOL TESTING. Employers may conduct
24 drug or alcohol testing as provided in this
25 subsection:

26 a. Employers may conduct unannounced drug or
27 alcohol testing of employees who are selected from any
28 of the following pools of employees:

29 (1) The entire employee population at a particular
30 work site of the employer except for employees who are
31 not scheduled to be at work at the time the testing is
32 conducted because of the status of the employees or
33 who have been excused from work pursuant to the
34 employer's work policy prior to the time the testing
35 is announced to employees.

36 (2) The entire full-time active employee
37 population at a particular work site.

38 (3) All employees at a particular work site who
39 are in a pool of employees in a safety-sensitive
40 position and who are scheduled to be at work at the
41 time testing is conducted, other than employees who
42 are not scheduled to be at work at the time the
43 testing is to be conducted or who have been excused
44 from work pursuant to the employer's work policy prior
45 to the time the testing is announced to employees.

46 b. Employers may conduct drug or alcohol testing
47 of employees during, and after completion of, drug or
48 alcohol rehabilitation.

49 c. Employers may conduct reasonable suspicion drug
50 or alcohol testing.

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1 d. Employers may conduct drug or alcohol testing
2 of prospective employees.

3 e. Employers may conduct drug or alcohol testing
4 as required by federal law or regulation.

5 f. Employers may conduct drug or alcohol testing
6 in investigating accidents in the workplace.

7 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

8 a. Drug or alcohol testing or retesting by an
9 employer shall be carried out within the terms of a
10 written policy which has been provided to every
11 employee subject to testing, and is available for
12 review by employees and prospective employees.

13 b. Employers shall establish an awareness program
14 to inform employees of the dangers of drug and alcohol
15 use in the workplace and comply with the following
16 requirements in order to conduct drug or alcohol
17 testing under this section:

18 (1) If an employer has an employee assistance
19 program, the employer must inform the employee of the
20 benefits and services of the employee assistance
21 program. An employer shall post notice of the
22 employee assistance program in conspicuous places and
23 explore alternative routine and reinforcing means of
24 publicizing such services. In addition, the employer
25 must provide the employee with notice of the policies
26 and procedures regarding access to and utilization of
27 the program.

28 (2) If an employer does not have an employee
29 assistance program, the employer must maintain a
30 resource file of employee assistance services
31 providers, alcohol and other drug abuse programs
32 certified by the Iowa department of public health,
33 mental health providers, and other persons, entities,
34 or organizations available to assist employees with
35 personal or behavioral problems. The employer shall
36 provide all employees information about the existence
37 of the resource file and a summary of the information
38 contained within the resource file. The summary
39 should contain, but need not be limited to, all
40 information necessary to access the services listed in
41 the resource file. In addition, the employer shall
42 post in conspicuous places a listing of multiple
43 employee assistance providers in the area.

44 c. An employee or prospective employee whose drug
45 or alcohol test results are confirmed as positive in
46 accordance with this section shall not, by virtue of
47 those results alone, be considered as a person with a
48 disability for purposes of any state or local law or
49 regulation.

50 d. If the written policy provides for alcohol

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1 testing, the employer shall establish in the written
2 policy a standard for alcohol concentration which
3 shall be deemed to violate the policy. The standard
4 for alcohol concentration shall not be less than .02,
5 expressed in terms of grams of alcohol per two hundred
6 ten liters of breath, or its equivalent.

7 e. An employee of an employer who is designated by
8 the employer as being in a safety-sensitive position
9 shall be placed in only one pool of safety-sensitive
10 employees subject to drug or alcohol testing pursuant
11 to subsection 8, paragraph "a", subparagraph (3). An
12 employer may have more than one pool of safety-
13 sensitive employees subject to drug or alcohol testing
14 pursuant to subsection 8, paragraph "a", subparagraph
15 (3), but shall not include an employee in more than
16 one safety-sensitive pool.

17 f. Upon receipt of a confirmed positive alcohol
18 test or a confirmed positive drug test relating to the
19 abuse of lawfully prescribed drugs currently or
20 recently used by an employee, and if the employer has
21 at least fifty employees, and if the employee has been
22 employed by the employer on a full-time basis for
23 twelve consecutive months and rehabilitation is agreed
24 upon by both the employer and the employee, and if the
25 employee has not previously undergone rehabilitation
26 with the same employer pursuant to this section, the
27 written policy shall provide for the apportionment of
28 the costs of rehabilitation as provided by this
29 paragraph.

30 (1) If the employer has an employee benefit plan,
31 the costs of rehabilitation shall be apportioned as
32 provided under the employee benefit plan.

33 (2) If no employee benefit plan exists and the
34 employee has coverage for any portion of the costs of
35 rehabilitation under any health care plan of the
36 employee, the costs of rehabilitation shall be
37 apportioned as provided by the health care plan with
38 any costs not covered by the plan apportioned equally
39 between the employee and the employer. However, the
40 employer shall not be required to pay more than two
41 thousand dollars toward the costs not covered by the
42 employee's health care plan.

43 (3) If no employee benefit plan exists and the
44 employee does not have coverage for any portion of the
45 costs of rehabilitation under any health care plan of
46 the employee, the costs of rehabilitation shall be
47 apportioned equally between the employee and the
48 employer. However, the employer shall not be required
49 to pay more than two thousand dollars towards the cost
50 of rehabilitation under this subparagraph.

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1 g. In order to conduct drug or alcohol testing
2 under this section, an employer shall require
3 supervisory personnel of the employer involved with
4 drug or alcohol testing under this section to attend a
5 minimum of two hours of initial training and to
6 attend, on an annual basis thereafter, a minimum of
7 one hour of subsequent training. The training shall
8 include, but is not limited to, information concerning
9 the recognition of evidence of employee alcohol and
10 other drug abuse, the documentation and corroboration
11 of employee alcohol and other drug abuse, and the
12 referral of employees who abuse alcohol or other drugs
13 to the employee assistance program or to the resource
14 file of employee assistance services providers.

15 10. DISCIPLINARY PROCEDURES.

16 a. Upon receipt of a confirmed positive drug or
17 alcohol test result which indicates a violation of the
18 employer's written policy, or upon the refusal of an
19 employee or prospective employee to provide a testing
20 sample, an employer may use that test result or test
21 refusal as a valid basis for disciplinary or
22 rehabilitative actions consistent with the employer's
23 written policy, which may include, among other
24 actions, the following:

25 (1) A requirement that the employee enroll in an
26 employer-provided or approved rehabilitation,
27 treatment, or counseling program, which may include
28 additional drug or alcohol testing, participation in
29 and successful completion of which may be a condition
30 of continued employment, and the costs of which may or
31 may not be covered by the employer's health plan or
32 policies.

33 (2) Suspension of the employee, with or without
34 pay, for a designated period of time.

35 (3) Termination of employment.

36 (4) Refusal to hire a prospective employee.

37 (5) Other adverse employment action in conformance
38 with the employer's written policy and procedures,
39 including any relevant collective bargaining agreement
40 provisions.

41 b. Following a drug or alcohol test, but prior to
42 receipt of the final results of the drug or alcohol
43 test, an employer may suspend a current employee, with
44 or without pay, pending the outcome of the test. An
45 employee who has been suspended shall be reinstated by
46 the employer, with back pay, and interest on such
47 amount at eighteen percent per annum compounded
48 annually, if applicable, if the result of the test is
49 not a confirmed positive drug or alcohol test which
50 indicates a violation of the employer's written

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1 policy.

2 11. EMPLOYER IMMUNITY. A cause of action shall
3 not arise against an employer who has established a
4 policy and initiated a testing program in accordance
5 with the testing and policy safeguards provided for
6 under this section, for any of the following:

7 a. Testing or taking action based on the results
8 of a positive drug or alcohol test result, indicating
9 the presence of drugs or alcohol, in good faith, or on
10 the refusal of an employee or prospective employee to
11 submit to a drug or alcohol test.

12 b. Failure to test for drugs or alcohol, or
13 failure to test for a specific drug or controlled
14 substance.

15 c. Failure to test for, or if tested for, failure
16 to detect, any specific drug or other controlled
17 substance.

18 d. Termination or suspension of any substance
19 abuse prevention or testing program or policy.

20 e. Any action taken related to a false negative
21 drug or alcohol test result.

22 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
23 RESULTS.

24 a. Except as otherwise provided in paragraph "b",
25 a cause of action shall not arise against an employer
26 who has established a program of drug or alcohol
27 testing in accordance with this section, unless all of
28 the following conditions exist:

29 (1) The employer's action was based on a false
30 positive test result.

31 (2) The employer knew or clearly should have known
32 that the test result was in error and ignored the
33 correct test result because of reckless, malicious, or
34 negligent disregard for the truth, or the willful
35 intent to deceive or to be deceived.

36 b. A cause of action for defamation, libel,
37 slander, or damage to reputation shall not arise
38 against an employer establishing a program of drug or
39 alcohol testing in accordance with this section unless
40 all of the following apply:

41 (1) The employer discloses the test results to a
42 person other than the employer, an authorized
43 employee, agent, or representative of the employer,
44 the tested employee or the tested applicant for
45 employment, an authorized substance abuse treatment
46 program or employee assistance program, or an
47 authorized agent or representative of the tested
48 employee or applicant.

49 (2) The test results disclosed incorrectly
50 indicate the presence of alcohol or drugs.

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1 (3) The employer negligently discloses the
2 results.

3 c. In any cause of action based upon a false
4 positive test result, all of the following conditions
5 apply:

6 (1) The results of a drug or alcohol test
7 conducted in compliance with this section are presumed
8 to be valid.

9 (2) An employer shall not be liable for monetary
10 damages if the employer's reliance on the false
11 positive test result was reasonable and in good faith.

12 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

13 a. All communications received by an employer
14 relevant to employee or prospective employee drug or
15 alcohol test results, or otherwise received through
16 the employer's drug or alcohol testing program, are
17 confidential communications and shall not be used or
18 received in evidence, obtained in discovery, or
19 disclosed in any public or private proceeding, except
20 as otherwise provided or authorized by this section.

21 b. An employee, or a prospective employee, who is
22 the subject of a drug or alcohol test conducted under
23 this section pursuant to an employer's written policy
24 and for whom a confirmed positive test result is
25 reported shall, upon written request, have access to
26 any records relating to the employee's drug or alcohol
27 test, including records of the laboratory where the
28 testing was conducted and any records relating to the
29 results of any relevant certification or review by a
30 medical review officer. However, a prospective
31 employee shall be entitled to records under this
32 paragraph only if the prospective employee requests
33 the records within fifteen calendar days from the date
34 the employer provided the prospective employee written
35 notice of the results of a drug or alcohol test as
36 provided in subsection 7, paragraph "i", subparagraph
37 (2).

38 c. Except as provided by this section and as
39 necessary to conduct drug or alcohol testing under
40 this section, a laboratory and a medical review
41 officer conducting drug or alcohol testing under this
42 section shall not use or disclose to any person any
43 personally identifiable information regarding such
44 testing, including the names of individuals tested,
45 even if unaccompanied by the results of the test.

46 d. An employer may use and disclose information
47 concerning the results of a drug or alcohol test
48 conducted pursuant to this section under any of the
49 following circumstances:

50 (1) In an arbitration proceeding pursuant to a

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1 collective bargaining agreement, or an administrative
2 agency proceeding or judicial proceeding under
3 workers' compensation laws or unemployment
4 compensation laws or under common or statutory laws
5 where action taken by the employer based on the test
6 is relevant or is challenged.

7 (2) To any federal agency or other unit of the
8 federal government as required under federal law,
9 regulation or order, or in accordance with compliance
10 requirements of a federal government contract.

11 (3) To any agency of this state authorized to
12 license individuals if the employee tested is licensed
13 by that agency and the rules of that agency require
14 such disclosure.

15 (4) To a union representing the employee if such
16 disclosure would be required by federal labor laws.

17 (5) To a substance abuse evaluation or treatment
18 facility or professional for the purpose of evaluation
19 or treatment of the employee.

20 However, positive test results from an employer
21 drug or alcohol testing program shall not be used as
22 evidence in any criminal action against the employee
23 or prospective employee tested.

24 14. CIVIL PENALTIES. Any laboratory or other
25 medical facility which discloses information in
26 violation of the provisions of subsection 7, paragraph
27 "k", or any employer who, through the selection
28 process described in subsection 1, paragraph "k",
29 improperly targets or exempts employees subject to
30 unannounced drug or alcohol testing, shall be subject
31 to a civil penalty of one thousand dollars for each
32 violation. The attorney general or the attorney
33 general's designee may maintain a civil action to
34 enforce this subsection. Any civil penalty recovered
35 shall be deposited in the general fund of the state.

36 15. CIVIL REMEDIES. This section may be enforced
37 through a civil action.

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

45 b. When a person commits, is committing, or
46 proposes to commit, an act in violation of this
47 section, an injunction may be granted through an
48 action in district court to prohibit the person from
49 continuing such acts. The action for injunctive
50 relief may be brought by an aggrieved employee or

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1 prospective employee, the county attorney, or the
2 attorney general.

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

8 Sec. 2. EFFECTIVE DATE. This Act takes effect on
9 the forty-fifth day following enactment."

By STEVE KING

S-5038 FILED FEBRUARY 16, 1998

O/O
2/18/98

HOUSE FILE 299

S-5042

1 Amend the amendment, S-5035, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. By striking page 1, line 1, through page 14,
5 line 19 and inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered a
19 controlled substance and included in schedule I, II,
20 III, IV, or V under the federal Controlled Substances
21 Act, 21 U.S.C. § 801 et seq.
22 c. "Employee" means a person in the service of an
23 employer in this state and includes the employer, and
24 any chief executive officer, president, vice
25 president, supervisor, manager, and officer of the
26 employer who is actively involved in the day-to-day
27 operations of the business.
28 d. "Employer" means a person, firm, company,
29 corporation, labor organization, or employment agency,
30 which has one or more full-time employees employed in
31 the same business, or in or about the same
32 establishment, under any contract of hire, express or
33 implied, oral or written, in this state. "Employer"
34 does not include the state, a political subdivision of
35 the state, including a city, county, or school
36 district, the United States, the United States postal
37 service, or a Native-American tribe.
38 e. "Good faith" means reasonable reliance on
39 facts, or that which is held out to be factual,
40 without the intent to be deceived, and without
41 reckless, malicious, or negligent disregard for the
42 truth.
43 f. "Medical review officer" means a licensed
44 physician, osteopathic physician, chiropractor, nurse
45 practitioner, or physician assistant authorized to
46 practice in any state of the United States, who is
47 responsible for receiving laboratory results generated
48 by an employer's drug or alcohol testing program, and
49 who has knowledge of substance abuse disorders and has
50 appropriate medical training to interpret and evaluate

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1 an individual's confirmed positive test result
2 together with the individual's medical history and any
3 other relevant biomedical information.

4 g. "Prospective employee" means a person who has
5 made application, whether written or oral, to an
6 employer to become an employee.

7 h. "Reasonable suspicion drug or alcohol testing"
8 means drug or alcohol testing based upon evidence that
9 an employee is using or has used alcohol or other
10 drugs in violation of the employer's written policy
11 drawn from specific objective and articulable facts
12 and reasonable inferences drawn from those facts in
13 light of experience. For purposes of this paragraph,
14 facts and inferences may be based upon, but not
15 limited to, any of the following:

16 (1) Observable phenomena while at work such as
17 direct observation of alcohol or drug use or abuse or
18 of the physical symptoms or manifestations of being
19 impaired due to alcohol or other drug use.

20 (2) Abnormal conduct or erratic behavior while at
21 work or a significant deterioration in work
22 performance.

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

25 (4) Evidence that an individual has tampered with
26 any drug or alcohol test during the individual's
27 employment with the current employer.

28 (5) Evidence that an employee has caused an
29 accident while at work which resulted in an injury to
30 an employee which is required to be reported pursuant
31 to chapter 88, or a comparable injury to a person who
32 is not an employee, or resulted in damage to property,
33 including to equipment, in an amount reasonably
34 estimated at the time of the accident to exceed one
35 thousand dollars.

36 (6) Evidence that an employee has manufactured,
37 sold, distributed, solicited, possessed, used, or
38 transferred drugs while working or while on the
39 employer's premises or while operating the employer's
40 vehicle, machinery, or equipment.

41 i. "Safety-sensitive position" means a job wherein
42 an accident could cause loss of human life, serious
43 bodily injury, or significant property or
44 environmental damage, including a job with duties that
45 include immediate supervision of a person in a job
46 that meets the requirement of this paragraph.

47 j. "Sample" means such sample from the human body
48 capable of revealing the presence of alcohol or other
49 drugs, or their metabolites. However, sample does not
50 mean blood except as authorized pursuant to subsection

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1 7, paragraph "1".

2 k. "Unannounced drug or alcohol testing" means
3 testing for the purposes of detecting drugs or alcohol
4 which is conducted on a periodic basis, without
5 advance notice of the test to employees subject to
6 testing prior to the day of testing, and without
7 individualized suspicion. The selection of employees
8 to be tested from the pool of employees subject to
9 testing shall be done based on a neutral and objective
10 selection process by an entity independent from the
11 employer and shall be made by a computer-based random
12 number generator that is matched with employees'
13 social security numbers, payroll identification
14 numbers, or other comparable identifying numbers in
15 which each member of the employee population subject
16 to testing has an equal chance of selection for
17 initial testing, regardless of whether the employee
18 has been selected or tested previously. The random
19 selection process shall be conducted through a
20 computer program that records each selection attempt
21 by date, time, and employee number.

22 2. APPLICABILITY. This section does not apply to
23 drug or alcohol tests conducted on employees required
24 to be tested pursuant to federal statutes, federal
25 regulations, or orders issued pursuant to federal law.
26 In addition, an employer, through its written policy,
27 may exclude from the pools of employees subject to
28 unannounced drug or alcohol testing pursuant to
29 subsection 8, paragraph "a", employee populations
30 required to be tested as described in this subsection.

31 3. TESTING OPTIONAL. This section does not
32 require an employer to conduct drug or alcohol testing
33 and the requirements of this section shall not be
34 construed to encourage, discourage, restrict, limit,
35 prohibit, or require such testing. In addition, an
36 employer may implement and require drug or alcohol
37 testing at some but not all of the work sites of the
38 employer and the requirements of this section shall
39 only apply to the employer and employees who are at
40 the work sites where drug or alcohol testing pursuant
41 to this section has been implemented.

42 4. TESTING AS CONDITION OF EMPLOYMENT --
43 REQUIREMENTS. To the extent provided in subsection 8,
44 an employer may test employees and prospective
45 employees for the presence of drugs or alcohol as a
46 condition of continued employment or hiring. An
47 employer shall adhere to the requirements of this
48 section concerning the conduct of such testing and the
49 use and disposition of the results of such testing.

50 5. COLLECTION OF SAMPLES. In conducting drug or

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1 alcohol testing, an employer may require the
2 collection of samples from its employees and
3 prospective employees, and may require presentation of
4 reliable individual identification from the person
5 being tested to the person collecting the samples.
6 Collection of a sample shall be in conformance with
7 the requirements of this section. The employer may
8 designate the type of sample to be used for this
9 testing.

10 6. SCHEDULING OF TESTS.

11 a. Drug or alcohol testing of employees conducted
12 by an employer shall normally occur during, or
13 immediately before or after, a regular work period.
14 The time required for such testing by an employer
15 shall be deemed work time for the purposes of
16 compensation and benefits for employees.

17 b. An employer shall pay all actual costs for drug
18 or alcohol testing of employees and prospective
19 employees required by the employer.

20 c. An employer shall provide transportation or pay
21 reasonable transportation costs to employees if drug
22 or alcohol sample collection is conducted at a
23 location other than the employee's normal work site.

24 7. TESTING PROCEDURES. All sample collection and
25 testing for drugs or alcohol under this section shall
26 be performed in accordance with the following
27 conditions:

28 a. The collection of samples shall be performed
29 under sanitary conditions and with regard for the
30 privacy of the individual from whom the specimen is
31 being obtained and in a manner reasonably calculated
32 to preclude contamination or substitution of the
33 specimen.

34 b. Sample collection for testing of current
35 employees shall be performed so that the specimen is
36 split into two components at the time of collection in
37 the presence of the individual from whom the sample or
38 specimen is collected. The second portion of the
39 specimen or sample shall be of sufficient quantity to
40 permit a second, independent confirmatory test as
41 provided in paragraph "i". If the specimen is urine,
42 the sample shall be split such that the primary sample
43 contains at least thirty milliliters and the secondary
44 sample contains at least fifteen milliliters. Both
45 portions of the sample shall be forwarded to the
46 laboratory conducting the initial confirmatory
47 testing. In addition to any requirements for storage
48 of the initial sample that may be imposed upon the
49 laboratory as a condition for certification or
50 approval, the laboratory shall store the second

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1 portion of any sample until receipt of a confirmed
2 negative test result or for a period of at least
3 forty-five calendar days following the completion of
4 the initial confirmatory testing, if the first portion
5 yielded a confirmed positive test result.

6 c. Sample collections shall be documented, and the
7 procedure for documentation shall include the
8 following:

9 (1) Samples shall be labeled so as to reasonably
10 preclude the possibility of misidentification of the
11 person tested in relation to the test result provided,
12 and samples shall be handled and tracked in a manner
13 such that control and accountability are maintained
14 from initial collection to each stage in handling,
15 testing, and storage, through final disposition.

16 (2) An employee or prospective employee shall be
17 provided an opportunity to provide any information
18 which may be considered relevant to the test,
19 including identification of prescription or
20 nonprescription drugs currently or recently used, or
21 other relevant medical information. To assist an
22 employee or prospective employee in providing the
23 information described in this subparagraph, the
24 employer shall provide an employee or prospective
25 employee with a list of the drugs to be tested.

26 d. Sample collection, storage, and transportation
27 to the place of testing shall be performed so as to
28 reasonably preclude the possibility of sample
29 contamination, adulteration, or misidentification.

30 e. All confirmatory drug testing shall be
31 conducted at a laboratory certified by the United
32 States department of health and human services'
33 substance abuse and mental health services
34 administration or approved under rules adopted by the
35 Iowa department of public health.

36 f. Drug or alcohol testing shall include
37 confirmation of any initial positive test results.
38 For drug or alcohol testing, confirmation shall be by
39 use of a different chemical process than was used in
40 the initial screen for drugs or alcohol. The
41 confirmatory drug or alcohol test shall be a
42 chromatographic technique such as gas chromatography
43 or mass spectrometry, or another comparably reliable
44 analytical method. An employer may take adverse
45 employment action, including refusal to hire a
46 prospective employee, based on a confirmed positive
47 drug or alcohol test.

48 g. A medical review officer shall, prior to the
49 results being reported to an employer, review and
50 interpret any confirmed positive test results,

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1 including both quantitative and qualitative test
2 results, to ensure that the chain of custody is
3 complete and sufficient on its face and that any
4 information provided by the individual pursuant to
5 paragraph "c", subparagraph (2), is considered.

6 h. In conducting drug or alcohol testing pursuant
7 to this section, the laboratory, the medical review
8 officer, and the employer shall ensure, to the extent
9 feasible, that the testing only measure, and the
10 records concerning the testing only show or make use
11 of information regarding, alcohol or drugs in the
12 body.

13 i. (1) If a confirmed positive drug or alcohol
14 test for a current employee is reported to the
15 employer by the medical review officer, the employer
16 shall notify the employee in writing by certified
17 mail, return receipt requested, of the results of the
18 test, the employee's right to request and obtain a
19 confirmatory test of the second sample collected
20 pursuant to paragraph "b" at an approved laboratory of
21 the employee's choice, and the fee payable by the
22 employee to the employer for reimbursement of expenses
23 concerning the test. The fee charged an employee
24 shall be an amount that represents the costs
25 associated with conducting the second confirmatory
26 test, which shall be consistent with the employer's
27 cost for conducting the initial confirmatory test on
28 an employee's sample. If the employee, in person or
29 by certified mail, return receipt requested, requests
30 a second confirmatory test, identifies an approved
31 laboratory to conduct the test, and pays the employer
32 the fee for the test within seven days from the date
33 the employer mails by certified mail, return receipt
34 requested, the written notice to the employee of the
35 employee's right to request a test, a second
36 confirmatory test shall be conducted at the laboratory
37 chosen by the employee. The results of the second
38 confirmatory test shall be reported to the medical
39 review officer who reviewed the initial confirmatory
40 test results and the medical review officer shall
41 review the results and issue a report to the employer
42 on whether the results of the second confirmatory test
43 confirmed the initial confirmatory test as to the
44 presence of a specific drug or alcohol. If the
45 results of the second test do not confirm the results
46 of the initial confirmatory test, the employer shall
47 reimburse the employee for the fee paid by the
48 employee for the second test and the initial
49 confirmatory test shall not be considered a confirmed
50 positive drug or alcohol test for purposes of taking

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1 disciplinary action pursuant to subsection 10.
2 (2) If a confirmed positive drug or alcohol test
3 for a prospective employee is reported to the employer
4 by the medical review officer, the employer shall
5 notify the prospective employee in writing of the
6 results of the test, of the name and address of the
7 medical review officer who made the report, and of the
8 prospective employee's right to request records under
9 subsection 13.

10 j. A laboratory conducting testing under this
11 section shall dispose of all samples for which a
12 negative test result was reported to an employer
13 within five working days after issuance of the
14 negative test result report.

15 k. Except as necessary to conduct drug or alcohol
16 testing pursuant to this section and to submit the
17 report required by subsection 16, a laboratory or
18 other medical facility shall only report to an
19 employer or outside entity information relating to the
20 results of a drug or alcohol test conducted pursuant
21 to this section concerning the determination of
22 whether the tested individual has engaged in conduct
23 prohibited by the employer's written policy with
24 regard to alcohol or drug use.

25 l. The requirements of this subsection concerning
26 sample collection and testing shall not apply if the
27 results of a blood test conducted on an employee
28 involved in an accident at work which indicates the
29 presence of drugs or alcohol were lawfully obtained by
30 an employer from the hospital or other medical
31 facility which had treated the employee following the
32 workplace accident.

33 8. DRUG OR ALCOHOL TESTING. Employers may conduct
34 drug or alcohol testing as provided in this
35 subsection:

36 a. Employers may conduct unannounced drug or
37 alcohol testing of employees who are selected from any
38 of the following pools of employees:

39 (1) The entire employee population at a particular
40 work site of the employer except for employees who are
41 not scheduled to be at work at the time the testing is
42 conducted because of the status of the employees or
43 who have been excused from work pursuant to the
44 employer's work policy prior to the time the testing
45 is announced to employees.

46 (2) The entire full-time active employee
47 population at a particular work site.

48 (3) All employees at a particular work site who
49 are in a pool of employees in a safety-sensitive
50 position and who are scheduled to be at work at the

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1 time testing is conducted, other than employees who
2 are not scheduled to be at work at the time the
3 testing is to be conducted or who have been excused
4 from work pursuant to the employer's work policy prior
5 to the time the testing is announced to employees.

6 b. Employers may conduct drug or alcohol testing
7 of employees during, and after completion of, drug or
8 alcohol rehabilitation.

9 c. Employers may conduct reasonable suspicion drug
10 or alcohol testing.

11 d. Employers may conduct drug or alcohol testing
12 of prospective employees.

13 e. Employers may conduct drug or alcohol testing
14 as required by federal law or regulation or by law
15 enforcement.

16 f. Employers may conduct drug or alcohol testing
17 in investigating accidents in the workplace in which
18 the accident resulted in an injury to an employee
19 which is required to be reported pursuant to chapter
20 88, or a comparable injury to a person who is not an
21 employee, or resulted in damage to property, including
22 to equipment, in an amount reasonably estimated at the
23 time of the accident to exceed one thousand dollars.

24 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

25 a. Drug or alcohol testing or retesting by an
26 employer shall be carried out within the terms of a
27 written policy which has been provided to every
28 employee subject to testing, and is available for
29 review by employees and prospective employees.

30 b. The employer's written policy shall provide
31 uniform requirements for what disciplinary or
32 rehabilitative actions an employer shall take against
33 an employee or prospective employee upon receipt of a
34 confirmed positive drug or alcohol test result or upon
35 the refusal of the employee or prospective employee to
36 provide a testing sample. The policy shall provide
37 that any action taken against an employee or
38 prospective employee shall be based only on the
39 results of the drug or alcohol test. The written
40 policy shall also provide that if rehabilitation is
41 required pursuant to paragraph "g", the employer shall
42 not take adverse employment action against the
43 employee so long as the employee complies with the
44 requirements of rehabilitation and successfully
45 completes rehabilitation.

46 c. Employers shall establish an awareness program
47 to inform employees of the dangers of drug and alcohol
48 use in the workplace and comply with the following
49 requirements in order to conduct drug or alcohol
50 testing under this section:

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1 (1) If an employer has an employee assistance
2 program, the employer must inform the employee of the
3 benefits and services of the employee assistance
4 program. An employer shall post notice of the
5 employee assistance program in conspicuous places and
6 explore alternative routine and reinforcing means of
7 publicizing such services. In addition, the employer
8 must provide the employee with notice of the policies
9 and procedures regarding access to and utilization of
10 the program.

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

27 d. An employee or prospective employee whose drug
28 or alcohol test results are confirmed as positive in
29 accordance with this section shall not, by virtue of
30 those results alone, be considered as a person with a
31 disability for purposes of any state or local law or
32 regulation.

33 e. If the written policy provides for alcohol
34 testing, the employer shall establish in the written
35 policy a standard for alcohol concentration which
36 shall be deemed to violate the policy. The standard
37 for alcohol concentration shall not be less than .04,
38 expressed in terms of grams of alcohol per two hundred
39 ten liters of breath, or its equivalent.

40 f. An employee of an employer who is designated by
41 the employer as being in a safety-sensitive position
42 shall be placed in only one pool of safety-sensitive
43 employees subject to drug or alcohol testing pursuant
44 to subsection 8, paragraph "a", subparagraph (3). An
45 employer may have more than one pool of safety-
46 sensitive employees subject to drug or alcohol testing
47 pursuant to subsection 8, paragraph "a", subparagraph
48 (3), but shall not include an employee in more than
49 one safety-sensitive pool.

50 g. Upon receipt of a confirmed positive drug test

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1 relating to the abuse of lawfully prescribed drugs
2 currently or recently used by an employee, or upon
3 receipt of a confirmed positive alcohol test which
4 indicates an alcohol concentration greater than the
5 concentration level established by the employer
6 pursuant to this section but less than the
7 concentration level in section 321J.2 for operating
8 while under the influence of alcohol, and if the
9 employer has at least fifty employees, and if the
10 employee has been employed by the employer for at
11 least twelve of the preceding eighteen months, and if
12 rehabilitation is agreed upon by the employee, and if
13 the employee has not previously violated the
14 employer's substance abuse prevention policy pursuant
15 to this section, the written policy shall provide for
16 the rehabilitation of the employee pursuant to
17 subsection 10, paragraph "a", subparagraph (1), and
18 the apportionment of the costs of rehabilitation as
19 provided by this paragraph.

20 (1) If the employer has an employee benefit plan,
21 the costs of rehabilitation shall be apportioned as
22 provided under the employee benefit plan.

23 (2) If no employee benefit plan exists and the
24 employee has coverage for any portion of the costs of
25 rehabilitation under any health care plan of the
26 employee, the costs of rehabilitation shall be
27 apportioned as provided by the health care plan with
28 any costs not covered by the plan apportioned equally
29 between the employee and the employer. However, the
30 employer shall not be required to pay more than two
31 thousand dollars toward the costs not covered by the
32 employee's health care plan.

33 (3) If no employee benefit plan exists and the
34 employee does not have coverage for any portion of the
35 costs of rehabilitation under any health care plan of
36 the employee, the costs of rehabilitation shall be
37 apportioned equally between the employee and the
38 employer. However, the employer shall not be required
39 to pay more than two thousand dollars towards the cost
40 of rehabilitation under this subparagraph.

41 Rehabilitation required pursuant to this paragraph
42 shall not prevent an employer from taking any other
43 adverse employment action against the employee during
44 the rehabilitation if the employee fails to comply
45 with any requirements of the rehabilitation, including
46 any action by the employee to invalidate a test sample
47 provided by the employee pursuant to the
48 rehabilitation.

49 h. In order to conduct drug or alcohol testing
50 under this section, an employer shall require

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1 supervisory personnel of the employer involved with
2 drug or alcohol testing under this section to attend a
3 minimum of two hours of initial training and to
4 attend, on an annual basis thereafter, a minimum of
5 one hour of subsequent training. The training shall
6 include, but is not limited to, information concerning
7 the recognition of evidence of employee alcohol and
8 other drug abuse, the documentation and corroboration
9 of employee alcohol and other drug abuse, and the
10 referral of employees who abuse alcohol or other drugs
11 to the employee assistance program or to the resource
12 file of employee assistance services providers.

13 10. DISCIPLINARY PROCEDURES.

14 a. Upon receipt of a confirmed positive drug or
15 alcohol test result which indicates a violation of the
16 employer's written policy, or upon the refusal of an
17 employee or prospective employee to provide a testing
18 sample, an employer may use that test result or test
19 refusal as a valid basis for disciplinary or
20 rehabilitative actions pursuant to the requirements of
21 the employer's written policy and the requirements of
22 this section, which may include, among other actions,
23 the following:

24 (1) A requirement that the employee enroll in an
25 employer-provided or approved rehabilitation,
26 treatment, or counseling program, which may include
27 additional drug or alcohol testing, participation in
28 and successful completion of which may be a condition
29 of continued employment, and the costs of which may or
30 may not be covered by the employer's health plan or
31 policies.

32 (2) Suspension of the employee, with or without
33 pay, for a designated period of time.

34 (3) Termination of employment.

35 (4) Refusal to hire a prospective employee.

36 (5) Other adverse employment action in conformance
37 with the employer's written policy and procedures,
38 including any relevant collective bargaining agreement
39 provisions.

40 b. Following a drug or alcohol test, but prior to
41 receipt of the final results of the drug or alcohol
42 test, an employer may suspend a current employee, with
43 or without pay, pending the outcome of the test. An
44 employee who has been suspended shall be reinstated by
45 the employer, with back pay, and interest on such
46 amount at eighteen percent per annum compounded
47 annually, if applicable, if the result of the test is
48 not a confirmed positive drug or alcohol test which
49 indicates a violation of the employer's written
50 policy.

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1 11. EMPLOYER IMMUNITY. A cause of action shall
2 not arise against an employer who has established a
3 policy and initiated a testing program in accordance
4 with the testing and policy safeguards provided for
5 under this section, for any of the following:
6 a. Testing or taking action based on the results
7 of a positive drug or alcohol test result, indicating
8 the presence of drugs or alcohol, in good faith, or on
9 the refusal of an employee or prospective employee to
10 submit to a drug or alcohol test.
11 b. Failure to test for drugs or alcohol, or
12 failure to test for a specific drug or controlled
13 substance.
14 c. Failure to test for, or if tested for, failure
15 to detect, any specific drug or other controlled
16 substance.
17 d. Termination or suspension of any substance
18 abuse prevention or testing program or policy.
19 e. Any action taken related to a false negative
20 drug or alcohol test result.
21 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
22 RESULTS.
23 a. Except as otherwise provided in paragraph "b",
24 a cause of action shall not arise against an employer
25 who has established a program of drug or alcohol
26 testing in accordance with this section, unless all of
27 the following conditions exist:
28 (1) The employer's action was based on a false
29 positive test result.
30 (2) The employer knew or clearly should have known
31 that the test result was in error and ignored the
32 correct test result because of reckless, malicious, or
33 negligent disregard for the truth, or the willful
34 intent to deceive or to be deceived.
35 b. A cause of action for defamation, libel,
36 slander, or damage to reputation shall not arise
37 against an employer establishing a program of drug or
38 alcohol testing in accordance with this section unless
39 all of the following apply:
40 (1) The employer discloses the test results to a
41 person other than the employer, an authorized
42 employee, agent, or representative of the employer,
43 the tested employee or the tested applicant for
44 employment, an authorized substance abuse treatment
45 program or employee assistance program, or an
46 authorized agent or representative of the tested
47 employee or applicant.
48 (2) The test results disclosed incorrectly
49 indicate the presence of alcohol or drugs.
50 (3) The employer negligently discloses the

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1 results.

2 c. In any cause of action based upon a false
3 positive test result, all of the following conditions
4 apply:

5 (1) The results of a drug or alcohol test
6 conducted in compliance with this section are presumed
7 to be valid.

8 (2) An employer shall not be liable for monetary
9 damages if the employer's reliance on the false
10 positive test result was reasonable and in good faith.

11 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

12 a. All communications received by an employer
13 relevant to employee or prospective employee drug or
14 alcohol test results, or otherwise received through
15 the employer's drug or alcohol testing program, are
16 confidential communications and shall not be used or
17 received in evidence, obtained in discovery, or
18 disclosed in any public or private proceeding, except
19 as otherwise provided or authorized by this section.

20 b. An employee, or a prospective employee, who is
21 the subject of a drug or alcohol test conducted under
22 this section pursuant to an employer's written policy
23 and for whom a confirmed positive test result is
24 reported shall, upon written request, have access to
25 any records relating to the employee's drug or alcohol
26 test, including records of the laboratory where the
27 testing was conducted and any records relating to the
28 results of any relevant certification or review by a
29 medical review officer. However, a prospective
30 employee shall be entitled to records under this
31 paragraph only if the prospective employee requests
32 the records within fifteen calendar days from the date
33 the employer provided the prospective employee written
34 notice of the results of a drug or alcohol test as
35 provided in subsection 7, paragraph "i", subparagraph
36 (2).

37 c. Except as provided by this section and as
38 necessary to conduct drug or alcohol testing under
39 this section and to file a report pursuant to
40 subsection 16, a laboratory and a medical review
41 officer conducting drug or alcohol testing under this
42 section shall not use or disclose to any person any
43 personally identifiable information regarding such
44 testing, including the names of individuals tested,
45 even if unaccompanied by the results of the test.

46 d. An employer may use and disclose information
47 concerning the results of a drug or alcohol test
48 conducted pursuant to this section under any of the
49 following circumstances:

50 (1) In an arbitration proceeding pursuant to a

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1 collective bargaining agreement, or an administrative
2 agency proceeding or judicial proceeding under
3 workers' compensation laws or unemployment
4 compensation laws or under common or statutory laws
5 where action taken by the employer based on the test
6 is relevant or is challenged.

7 (2) To any federal agency or other unit of the
8 federal government as required under federal law,
9 regulation or order, or in accordance with compliance
10 requirements of a federal government contract.

11 (3) To any agency of this state authorized to
12 license individuals if the employee tested is licensed
13 by that agency and the rules of that agency require
14 such disclosure.

15 (4) To a union representing the employee if such
16 disclosure would be required by federal labor laws.

17 (5) To a substance abuse evaluation or treatment
18 facility or professional for the purpose of evaluation
19 or treatment of the employee.

20 However, positive test results from an employer
21 drug or alcohol testing program shall not be used as
22 evidence in any criminal action against the employee
23 or prospective employee tested.

24 14. CIVIL PENALTIES -- JURISDICTION.

25 a. Any laboratory or medical review officer which
26 discloses information in violation of the provisions
27 of subsection 7, paragraph "h" or "k", or any employer
28 who, through the selection process described in
29 subsection 1, paragraph "k", improperly targets or
30 exempts employees subject to unannounced drug or
31 alcohol testing, shall be subject to a civil penalty
32 of one thousand dollars for each violation. The
33 attorney general or the attorney general's designee
34 may maintain a civil action to enforce this
35 subsection. Any civil penalty recovered shall be
36 deposited in the general fund of the state.

37 b. A laboratory or medical review officer involved
38 in the conducting of a drug or alcohol test pursuant
39 to this section shall be deemed to have the necessary
40 contact with this state for the purpose of subjecting
41 the laboratory or medical review officer to the
42 jurisdiction of the courts of this state.

43 15. CIVIL REMEDIES. This section may be enforced
44 through a civil action.

45 a. A person who violates this section or who aids
46 in the violation of this section, is liable to an
47 aggrieved employee or prospective employee for
48 affirmative relief including reinstatement or hiring,
49 with or without back pay, or any other equitable
50 relief as the court deems appropriate including

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1 attorney fees and court costs.

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

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

15 16. REPORTS. A laboratory doing business for an
16 employer who conducts drug or alcohol tests pursuant
17 to this section shall file an annual report with the
18 Iowa department of public health by March 1 of each
19 year concerning the number of drug or alcohol tests
20 conducted on employees who work in this state pursuant
21 to this section, the number of positive and negative
22 results of the tests, during the previous calendar
23 year. In addition, the laboratory shall include in
24 its annual report the specific basis for each test as
25 authorized in subsection 8, the type of drug or drugs
26 which were found in the positive drug tests, and all
27 significant available demographic factors relating to
28 the positive test pool.

29 Sec. 2. EFFECTIVE DATE. This Act takes effect on
30 the thirtieth day following enactment.""

By STEVE KING
DERRYL McLAREN

S-5042 FILED FEBRUARY 18, 1998
RULED OUT OF ORDER

(P. 344)

HOUSE FILE 299

S-5044

1 Amend the amendment, S-3851, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 1, by striking lines 1 through 16 and
5 inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered a
19 controlled substance and included in schedule I, II,
20 III, IV, or V under the federal Controlled Substances
21 Act, 21 U.S.C. § 801 et seq.
22 c. "Employee" means a person in the service of an
23 employer in this state and includes the employer, and
24 any chief executive officer, president, vice
25 president, supervisor, manager, and officer of the
26 employer who is actively involved in the day-to-day
27 operations of the business.
28 d. "Employer" means a person, firm, company,
29 corporation, labor organization, or employment agency,
30 which has one or more full-time employees employed in
31 the same business, or in or about the same
32 establishment, under any contract of hire, express or
33 implied, oral or written, in this state. "Employer"
34 does not include the state, a political subdivision of
35 the state, including a city, county, or school
36 district, the United States, the United States postal
37 service, or a Native-American tribe.
38 e. "Good faith" means reasonable reliance on
39 facts, or that which is held out to be factual,
40 without the intent to be deceived, and without
41 reckless, malicious, or negligent disregard for the
42 truth.
43 f. "Medical review officer" means a licensed
44 physician, osteopathic physician, chiropractor, nurse
45 practitioner, or physician assistant authorized to
46 practice in any state of the United States, who is
47 responsible for receiving laboratory results generated
48 by an employer's drug or alcohol testing program, and
49 who has knowledge of substance abuse disorders and has
50 appropriate medical training to interpret and evaluate

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1 an individual's confirmed positive test result
2 together with the individual's medical history and any
3 other relevant biomedical information.

4 g. "Prospective employee" means a person who has
5 made application, whether written or oral, to an
6 employer to become an employee.

7 h. "Reasonable suspicion drug or alcohol testing"
8 means drug or alcohol testing based upon evidence that
9 an employee is using or has used alcohol or other
10 drugs in violation of the employer's written policy
11 drawn from specific objective and articulable facts
12 and reasonable inferences drawn from those facts in
13 light of experience. For purposes of this paragraph,
14 facts and inferences may be based upon, but not
15 limited to, any of the following:

16 (1) Observable phenomena while at work such as
17 direct observation of alcohol or drug use or abuse or
18 of the physical symptoms or manifestations of being
19 impaired due to alcohol or other drug use.

20 (2) Abnormal conduct or erratic behavior while at
21 work or a significant deterioration in work
22 performance.

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

25 (4) Evidence that an individual has tampered with
26 any drug or alcohol test during the individual's
27 employment with the current employer.

28 (5) Evidence that an employee has caused an
29 accident while at work which resulted in an injury to
30 a person for which injury, if suffered by an employee,
31 a record or report could be required under chapter 88,
32 or resulted in damage to property, including to
33 equipment, in an amount reasonably estimated at the
34 time of the accident to exceed one thousand dollars.

35 (6) Evidence that an employee has manufactured,
36 sold, distributed, solicited, possessed, used, or
37 transferred drugs while working or while on the
38 employer's premises or while operating the employer's
39 vehicle, machinery, or equipment.

40 i. "Safety-sensitive position" means a job wherein
41 an accident could cause loss of human life, serious
42 bodily injury, or significant property or
43 environmental damage, including a job with duties that
44 include immediate supervision of a person in a job
45 that meets the requirement of this paragraph.

46 j. "Sample" means such sample from the human body
47 capable of revealing the presence of alcohol or other
48 drugs, or their metabolites. However, sample does not
49 mean blood except as authorized pursuant to subsection
50 7, paragraph "1".

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1 k. "Unannounced drug or alcohol testing" means
2 testing for the purposes of detecting drugs or alcohol
3 which is conducted on a periodic basis, without
4 advance notice of the test to employees, other than
5 employees whose duties include responsibility for
6 administration of the employer's drug or alcohol
7 testing program, subject to testing prior to the day
8 of testing, and without individualized suspicion. The
9 selection of employees to be tested from the pool of
10 employees subject to testing shall be done based on a
11 neutral and objective selection process by an entity
12 independent from the employer and shall be made by a
13 computer-based random number generator that is matched
14 with employees' social security numbers, payroll
15 identification numbers, or other comparable
16 identifying numbers in which each member of the
17 employee population subject to testing has an equal
18 chance of selection for initial testing, regardless of
19 whether the employee has been selected or tested
20 previously. The random selection process shall be
21 conducted through a computer program that records each
22 selection attempt by date, time, and employee number.

23 2. APPLICABILITY. This section does not apply to
24 drug or alcohol tests conducted on employees required
25 to be tested pursuant to federal statutes, federal
26 regulations, or orders issued pursuant to federal law.
27 In addition, an employer, through its written policy,
28 may exclude from the pools of employees subject to
29 unannounced drug or alcohol testing pursuant to
30 subsection 8, paragraph "a", employee populations
31 required to be tested as described in this subsection.

32 3. TESTING OPTIONAL. This section does not
33 require or create a legal duty on an employer to
34 conduct drug or alcohol testing and the requirements
35 of this section shall not be construed to encourage,
36 discourage, restrict, limit, prohibit, or require such
37 testing. In addition, an employer may implement and
38 require drug or alcohol testing at some but not all of
39 the work sites of the employer and the requirements of
40 this section shall only apply to the employer and
41 employees who are at the work sites where drug or
42 alcohol testing pursuant to this section has been
43 implemented. A cause of action shall not arise in
44 favor of any person against an employer or agent of an
45 employer based on the failure of the employer to
46 establish a program or policy on substance abuse
47 prevention or to implement any component of testing as
48 permitted by this section.

49 4. TESTING AS CONDITION OF EMPLOYMENT --
50 REQUIREMENTS. To the extent provided in subsection 8,

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1 an employer may test employees and prospective
2 employees for the presence of drugs or alcohol as a
3 condition of continued employment or hiring. An
4 employer shall adhere to the requirements of this
5 section concerning the conduct of such testing and the
6 use and disposition of the results of such testing.

7 5. COLLECTION OF SAMPLES. In conducting drug or
8 alcohol testing, an employer may require the
9 collection of samples from its employees and
10 prospective employees, and may require presentation of
11 reliable individual identification from the person
12 being tested to the person collecting the samples.
13 Collection of a sample shall be in conformance with
14 the requirements of this section. The employer may
15 designate the type of sample to be used for this
16 testing.

17 6. SCHEDULING OF TESTS.

18 a. Drug or alcohol testing of employees conducted
19 by an employer shall normally occur during, or
20 immediately before or after, a regular work period.
21 The time required for such testing by an employer
22 shall be deemed work time for the purposes of
23 compensation and benefits for employees.

24 b. An employer shall pay all actual costs for drug
25 or alcohol testing of employees and prospective
26 employees required by the employer.

27 c. An employer shall provide transportation or pay
28 reasonable transportation costs to employees if drug
29 or alcohol sample collection is conducted at a
30 location other than the employee's normal work site.

31 7. TESTING PROCEDURES. All sample collection and
32 testing for drugs or alcohol under this section shall
33 be performed in accordance with the following
34 conditions:

35 a. The collection of samples shall be performed
36 under sanitary conditions and with regard for the
37 privacy of the individual from whom the specimen is
38 being obtained and in a manner reasonably calculated
39 to preclude contamination or substitution of the
40 specimen.

41 b. Sample collection for testing of current
42 employees shall be performed so that the specimen is
43 split into two components at the time of collection in
44 the presence of the individual from whom the sample or
45 specimen is collected. The second portion of the
46 specimen or sample shall be of sufficient quantity to
47 permit a second, independent confirmatory test as
48 provided in paragraph "i". If the specimen is urine,
49 the sample shall be split such that the primary sample
50 contains at least thirty milliliters and the secondary

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1 sample contains at least fifteen milliliters. Both
2 portions of the sample shall be forwarded to the
3 laboratory conducting the initial confirmatory
4 testing. In addition to any requirements for storage
5 of the initial sample that may be imposed upon the
6 laboratory as a condition for certification or
7 approval, the laboratory shall store the second
8 portion of any sample until receipt of a confirmed
9 negative test result or for a period of at least
10 forty-five calendar days following the completion of
11 the initial confirmatory testing, if the first portion
12 yielded a confirmed positive test result.

13 c. Sample collections shall be documented, and the
14 procedure for documentation shall include the
15 following:

16 (1) Samples shall be labeled so as to reasonably
17 preclude the possibility of misidentification of the
18 person tested in relation to the test result provided,
19 and samples shall be handled and tracked in a manner
20 such that control and accountability are maintained
21 from initial collection to each stage in handling,
22 testing, and storage, through final disposition.

23 (2) An employee or prospective employee shall be
24 provided an opportunity to provide any information
25 which may be considered relevant to the test,
26 including identification of prescription or
27 nonprescription drugs currently or recently used, or
28 other relevant medical information. To assist an
29 employee or prospective employee in providing the
30 information described in this subparagraph, the
31 employer shall provide an employee or prospective
32 employee with a list of the drugs to be tested.

33 d. Sample collection, storage, and transportation
34 to the place of testing shall be performed so as to
35 reasonably preclude the possibility of sample
36 contamination, adulteration, or misidentification.

37 e. All confirmatory drug testing shall be
38 conducted at a laboratory certified by the United
39 States department of health and human services'
40 substance abuse and mental health services
41 administration or approved under rules adopted by the
42 Iowa department of public health.

43 f. Drug or alcohol testing shall include
44 confirmation of any initial positive test results.
45 For drug or alcohol testing, confirmation shall be by
46 use of a different chemical process than was used in
47 the initial screen for drugs or alcohol. The
48 confirmatory drug or alcohol test shall be a
49 chromatographic technique such as gas chromatography
50 or mass spectrometry, or another comparably reliable

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1 analytical method. An employer may take adverse
2 employment action, including refusal to hire a
3 prospective employee, based on a confirmed positive
4 drug or alcohol test.

5 g. A medical review officer shall, prior to the
6 results being reported to an employer, review and
7 interpret any confirmed positive test results,
8 including both quantitative and qualitative test
9 results, to ensure that the chain of custody is
10 complete and sufficient on its face and that any
11 information provided by the individual pursuant to
12 paragraph "c", subparagraph (2), is considered.

13 h. In conducting drug or alcohol testing pursuant
14 to this section, the laboratory, the medical review
15 officer, and the employer shall ensure, to the extent
16 feasible, that the testing only measure, and the
17 records concerning the testing only show or make use
18 of information regarding, alcohol or drugs in the
19 body.

20 i. (1) If a confirmed positive drug or alcohol
21 test for a current employee is reported to the
22 employer by the medical review officer, the employer
23 shall notify the employee in writing by certified
24 mail, return receipt requested, of the results of the
25 test, the employee's right to request and obtain a
26 confirmatory test of the second sample collected
27 pursuant to paragraph "b" at an approved laboratory of
28 the employee's choice, and the fee payable by the
29 employee to the employer for reimbursement of expenses
30 concerning the test. The fee charged an employee
31 shall be an amount that represents the costs
32 associated with conducting the second confirmatory
33 test, which shall be consistent with the employer's
34 cost for conducting the initial confirmatory test on
35 an employee's sample. If the employee, in person or
36 by certified mail, return receipt requested, requests
37 a second confirmatory test, identifies an approved
38 laboratory to conduct the test, and pays the employer
39 the fee for the test within seven days from the date
40 the employer mails by certified mail, return receipt
41 requested, the written notice to the employee of the
42 employee's right to request a test, a second
43 confirmatory test shall be conducted at the laboratory
44 chosen by the employee. The results of the second
45 confirmatory test shall be reported to the medical
46 review officer who reviewed the initial confirmatory
47 test results and the medical review officer shall
48 review the results and issue a report to the employer
49 on whether the results of the second confirmatory test
50 confirmed the initial confirmatory test as to the

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1 presence of a specific drug or alcohol. If the
2 results of the second test do not confirm the results
3 of the initial confirmatory test, the employer shall
4 reimburse the employee for the fee paid by the
5 employee for the second test and the initial
6 confirmatory test shall not be considered a confirmed
7 positive drug or alcohol test for purposes of taking
8 disciplinary action pursuant to subsection 10.

9 (2) If a confirmed positive drug or alcohol test
10 for a prospective employee is reported to the employer
11 by the medical review officer, the employer shall
12 notify the prospective employee in writing of the
13 results of the test, of the name and address of the
14 medical review officer who made the report, and of the
15 prospective employee's right to request records under
16 subsection 13.

17 j. A laboratory conducting testing under this
18 section shall dispose of all samples for which a
19 negative test result was reported to an employer
20 within five working days after issuance of the
21 negative test result report.

22 k. Except as necessary to conduct drug or alcohol
23 testing pursuant to this section and to submit the
24 report required by subsection 16, a laboratory or
25 other medical facility shall only report to an
26 employer or outside entity information relating to the
27 results of a drug or alcohol test conducted pursuant
28 to this section concerning the determination of
29 whether the tested individual has engaged in conduct
30 prohibited by the employer's written policy with
31 regard to alcohol or drug use.

32 l. Notwithstanding the provisions of this
33 subsection, an employer may rely and take action upon
34 the results of any blood test for drugs or alcohol
35 made on any employee involved in an accident at work
36 if the test is administered by or at the direction of
37 the person providing treatment or care to the employee
38 without request or suggestion by the employer that a
39 test be conducted, and the employer has lawfully
40 obtained the results of the test. For purposes of
41 this paragraph, an employer shall not be deemed to
42 have requested or required a test in conjunction with
43 the provision of medical treatment following a
44 workplace accident by providing information concerning
45 the circumstance of the accident.

46 8. DRUG OR ALCOHOL TESTING. Employers may conduct
47 drug or alcohol testing as provided in this
48 subsection:

49 a. Employers may conduct unannounced drug or
50 alcohol testing of employees who are selected from any

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1 of the following pools of employees:

2 (1) The entire employee population at a particular
3 work site of the employer except for employees who are
4 not scheduled to be at work at the time the testing is
5 conducted because of the status of the employees or
6 who have been excused from work pursuant to the
7 employer's work policy prior to the time the testing
8 is announced to employees.

9 (2) The entire full-time active employee
10 population at a particular work site except for
11 employees who are not scheduled to be at work at the
12 time the testing is to be conducted because of the
13 status of the employee, or who have been excused from
14 work pursuant to the employer's working policy.

15 (3) All employees at a particular work site who
16 are in a pool of employees in a safety-sensitive
17 position and who are scheduled to be at work at the
18 time testing is conducted, other than employees who
19 are not scheduled to be at work at the time the
20 testing is to be conducted or who have been excused
21 from work pursuant to the employer's work policy prior
22 to the time the testing is announced to employees.

23 b. Employers may conduct drug or alcohol testing
24 of employees during, and after completion of, drug or
25 alcohol rehabilitation.

26 c. Employers may conduct reasonable suspicion drug
27 or alcohol testing.

28 d. Employers may conduct drug or alcohol testing
29 of prospective employees.

30 e. Employers may conduct drug or alcohol testing
31 as required by federal law or regulation or by law
32 enforcement.

33 f. Employers may conduct drug or alcohol testing
34 in investigating accidents in the workplace in which
35 the accident resulted in an injury to a person for
36 which injury, if suffered by an employee, a record or
37 report could be required under chapter 88, or resulted
38 in damage to property, including to equipment, in an
39 amount reasonably estimated at the time of the
40 accident to exceed one thousand dollars.

41 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

42 a. Drug or alcohol testing or retesting by an
43 employer shall be carried out within the terms of a
44 written policy which has been provided to every
45 employee subject to testing, and is available for
46 review by employees and prospective employees.

47 b. The employer's written policy shall provide
48 uniform requirements for what disciplinary or
49 rehabilitative actions an employer shall take against
50 an employee or prospective employee upon receipt of a

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1 confirmed positive drug or alcohol test result or upon
2 the refusal of the employee or prospective employee to
3 provide a testing sample. The policy shall provide
4 that any action taken against an employee or
5 prospective employee shall be based only on the
6 results of the drug or alcohol test. The written
7 policy shall also provide that if rehabilitation is
8 required pursuant to paragraph "g", the employer shall
9 not take adverse employment action against the
10 employee so long as the employee complies with the
11 requirements of rehabilitation and successfully
12 completes rehabilitation.

13 c. Employers shall establish an awareness program
14 to inform employees of the dangers of drug and alcohol
15 use in the workplace and comply with the following
16 requirements in order to conduct drug or alcohol
17 testing under this section:

18 (1) If an employer has an employee assistance
19 program, the employer must inform the employee of the
20 benefits and services of the employee assistance
21 program. An employer shall post notice of the
22 employee assistance program in conspicuous places and
23 explore alternative routine and reinforcing means of
24 publicizing such services. In addition, the employer
25 must provide the employee with notice of the policies
26 and procedures regarding access to and utilization of
27 the program.

28 (2) If an employer does not have an employee
29 assistance program, the employer must maintain a
30 resource file of employee assistance services
31 providers, alcohol and other drug abuse programs
32 certified by the Iowa department of public health,
33 mental health providers, and other persons, entities,
34 or organizations available to assist employees with
35 personal or behavioral problems. The employer shall
36 provide all employees information about the existence
37 of the resource file and a summary of the information
38 contained within the resource file. The summary
39 should contain, but need not be limited to, all
40 information necessary to access the services listed in
41 the resource file. In addition, the employer shall
42 post in conspicuous places a listing of multiple
43 employee assistance providers in the area.

44 d. An employee or prospective employee whose drug
45 or alcohol test results are confirmed as positive in
46 accordance with this section shall not, by virtue of
47 those results alone, be considered as a person with a
48 disability for purposes of any state or local law or
49 regulation.

50 e. If the written policy provides for alcohol

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1 testing, the employer shall establish in the written
2 policy a standard for alcohol concentration which
3 shall be deemed to violate the policy. The standard
4 for alcohol concentration shall not be less than .04,
5 expressed in terms of grams of alcohol per two hundred
6 ten liters of breath, or its equivalent.

7 f. An employee of an employer who is designated by
8 the employer as being in a safety-sensitive position
9 shall be placed in only one pool of safety-sensitive
10 employees subject to drug or alcohol testing pursuant
11 to subsection 8, paragraph "a", subparagraph (3). An
12 employer may have more than one pool of safety-
13 sensitive employees subject to drug or alcohol testing
14 pursuant to subsection 8, paragraph "a", subparagraph
15 (3), but shall not include an employee in more than
16 one safety-sensitive pool.

17 g. Upon receipt of a confirmed positive alcohol
18 test which indicates an alcohol concentration greater
19 than the concentration level established by the
20 employer pursuant to this section but less than the
21 concentration level in section 321J.2 for operating
22 while under the influence of alcohol, and if the
23 employer has at least fifty employees, and if the
24 employee has been employed by the employer for at
25 least twelve of the preceding eighteen months, and if
26 rehabilitation is agreed upon by the employee, and if
27 the employee has not previously violated the
28 employer's substance abuse prevention policy pursuant
29 to this section, the written policy shall provide for
30 the rehabilitation of the employee pursuant to
31 subsection 10, paragraph "a", subparagraph (1), and
32 the apportionment of the costs of rehabilitation as
33 provided by this paragraph.

34 (1) If the employer has an employee benefit plan,
35 the costs of rehabilitation shall be apportioned as
36 provided under the employee benefit plan.

37 (2) If no employee benefit plan exists and the
38 employee has coverage for any portion of the costs of
39 rehabilitation under any health care plan of the
40 employee, the costs of rehabilitation shall be
41 apportioned as provided by the health care plan with
42 any costs not covered by the plan apportioned equally
43 between the employee and the employer. However, the
44 employer shall not be required to pay more than two
45 thousand dollars toward the costs not covered by the
46 employee's health care plan.

47 (3) If no employee benefit plan exists and the
48 employee does not have coverage for any portion of the
49 costs of rehabilitation under any health care plan of
50 the employee, the costs of rehabilitation shall be

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1 apportioned equally between the employee and the
2 employer. However, the employer shall not be required
3 to pay more than two thousand dollars towards the cost
4 of rehabilitation under this subparagraph.

5 Rehabilitation required pursuant to this paragraph
6 shall not preclude an employer from taking any adverse
7 employment action against the employee during the
8 rehabilitation based on the employee's failure to
9 comply with any requirements of the rehabilitation,
10 including any action by the employee to invalidate a
11 test sample provided by the employee pursuant to the
12 rehabilitation.

13 h. In order to conduct drug or alcohol testing
14 under this section, an employer shall require
15 supervisory personnel of the employer involved with
16 drug or alcohol testing under this section to attend a
17 minimum of two hours of initial training and to
18 attend, on an annual basis thereafter, a minimum of
19 one hour of subsequent training. The training shall
20 include, but is not limited to, information concerning
21 the recognition of evidence of employee alcohol and
22 other drug abuse, the documentation and corroboration
23 of employee alcohol and other drug abuse, and the
24 referral of employees who abuse alcohol or other drugs
25 to the employee assistance program or to the resource
26 file of employee assistance services providers.

27 10. DISCIPLINARY PROCEDURES.

28 a. Upon receipt of a confirmed positive drug or
29 alcohol test result which indicates a violation of the
30 employer's written policy, or upon the refusal of an
31 employee or prospective employee to provide a testing
32 sample, an employer may use that test result or test
33 refusal as a valid basis for disciplinary or
34 rehabilitative actions pursuant to the requirements of
35 the employer's written policy and the requirements of
36 this section, which may include, among other actions,
37 the following:

38 (1) A requirement that the employee enroll in an
39 employer-provided or approved rehabilitation,
40 treatment, or counseling program, which may include
41 additional drug or alcohol testing, participation in
42 and successful completion of which may be a condition
43 of continued employment, and the costs of which may or
44 may not be covered by the employer's health plan or
45 policies.

46 (2) Suspension of the employee, with or without
47 pay, for a designated period of time.

48 (3) Termination of employment.

49 (4) Refusal to hire a prospective employee.

50 (5) Other adverse employment action in conformance

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1 with the employer's written policy and procedures,
2 including any relevant collective bargaining agreement
3 provisions.

4 b. Following a drug or alcohol test, but prior to
5 receipt of the final results of the drug or alcohol
6 test, an employer may suspend a current employee, with
7 or without pay, pending the outcome of the test. An
8 employee who has been suspended shall be reinstated by
9 the employer, with back pay, and interest on such
10 amount at eighteen percent per annum compounded
11 annually, if applicable, if the result of the test is
12 not a confirmed positive drug or alcohol test which
13 indicates a violation of the employer's written
14 policy.

15 11. EMPLOYER IMMUNITY. A cause of action shall
16 not arise against an employer who has established a
17 policy and initiated a testing program in accordance
18 with the testing and policy safeguards provided for
19 under this section, for any of the following:

20 a. Testing or taking action based on the results
21 of a positive drug or alcohol test result, indicating
22 the presence of drugs or alcohol, in good faith, or on
23 the refusal of an employee or prospective employee to
24 submit to a drug or alcohol test.

25 b. Failure to test for drugs or alcohol, or
26 failure to test for a specific drug or controlled
27 substance.

28 c. Failure to test for, or if tested for, failure
29 to detect, any specific drug or other controlled
30 substance.

31 d. Termination or suspension of any substance
32 abuse prevention or testing program or policy.

33 e. Any action taken related to a false negative
34 drug or alcohol test result.

35 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
36 RESULTS.

37 a. Except as otherwise provided in paragraph "b",
38 a cause of action shall not arise against an employer
39 who has established a program of drug or alcohol
40 testing in accordance with this section, unless all of
41 the following conditions exist:

42 (1) The employer's action was based on a false
43 positive test result.

44 (2) The employer knew or clearly should have known
45 that the test result was in error and ignored the
46 correct test result because of reckless, malicious, or
47 negligent disregard for the truth, or the willful
48 intent to deceive or to be deceived.

49 b. A cause of action for defamation, libel,
50 slander, or damage to reputation shall not arise

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1 against an employer establishing a program of drug or
2 alcohol testing in accordance with this section unless
3 all of the following apply:

4 (1) The employer discloses the test results to a
5 person other than the employer, an authorized
6 employee, agent, or representative of the employer,
7 the tested employee or the tested applicant for
8 employment, an authorized substance abuse treatment
9 program or employee assistance program, or an
10 authorized agent or representative of the tested
11 employee or applicant.

12 (2) The test results disclosed incorrectly
13 indicate the presence of alcohol or drugs.

14 (3) The employer negligently discloses the
15 results.

16 c. In any cause of action based upon a false
17 positive test result, all of the following conditions
18 apply:

19 (1) The results of a drug or alcohol test
20 conducted in compliance with this section are presumed
21 to be valid.

22 (2) An employer shall not be liable for monetary
23 damages if the employer's reliance on the false
24 positive test result was reasonable and in good faith.

25 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

26 a. All communications received by an employer
27 relevant to employee or prospective employee drug or
28 alcohol test results, or otherwise received through
29 the employer's drug or alcohol testing program, are
30 confidential communications and shall not be used or
31 received in evidence, obtained in discovery, or
32 disclosed in any public or private proceeding, except
33 as otherwise provided or authorized by this section.

34 b. An employee, or a prospective employee, who is
35 the subject of a drug or alcohol test conducted under
36 this section pursuant to an employer's written policy
37 and for whom a confirmed positive test result is
38 reported shall, upon written request, have access to
39 any records relating to the employee's drug or alcohol
40 test, including records of the laboratory where the
41 testing was conducted and any records relating to the
42 results of any relevant certification or review by a
43 medical review officer. However, a prospective
44 employee shall be entitled to records under this
45 paragraph only if the prospective employee requests
46 the records within fifteen calendar days from the date
47 the employer provided the prospective employee written
48 notice of the results of a drug or alcohol test as
49 provided in subsection 7, paragraph "i", subparagraph

50 (2).

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1 c. Except as provided by this section and as
2 necessary to conduct drug or alcohol testing under
3 this section and to file a report pursuant to
4 subsection 16, a laboratory and a medical review
5 officer conducting drug or alcohol testing under this
6 section shall not use or disclose to any person any
7 personally identifiable information regarding such
8 testing, including the names of individuals tested,
9 even if unaccompanied by the results of the test.

10 d. An employer may use and disclose information
11 concerning the results of a drug or alcohol test
12 conducted pursuant to this section under any of the
13 following circumstances:

14 (1) In an arbitration proceeding pursuant to a
15 collective bargaining agreement, or an administrative
16 agency proceeding or judicial proceeding under
17 workers' compensation laws or unemployment
18 compensation laws or under common or statutory laws
19 where action taken by the employer based on the test
20 is relevant or is challenged.

21 (2) To any federal agency or other unit of the
22 federal government as required under federal law,
23 regulation or order, or in accordance with compliance
24 requirements of a federal government contract.

25 (3) To any agency of this state authorized to
26 license individuals if the employee tested is licensed
27 by that agency and the rules of that agency require
28 such disclosure.

29 (4) To a union representing the employee if such
30 disclosure would be required by federal labor laws.

31 (5) To a substance abuse evaluation or treatment
32 facility or professional for the purpose of evaluation
33 or treatment of the employee.

34 However, positive test results from an employer
35 drug or alcohol testing program shall not be used as
36 evidence in any criminal action against the employee
37 or prospective employee tested.

38 14. CIVIL PENALTIES -- JURISDICTION.

39 a. Any laboratory or medical review officer which
40 discloses information in violation of the provisions
41 of subsection 7, paragraph "h" or "k", or any employer
42 who, through the selection process described in
43 subsection 1, paragraph "k", improperly targets or
44 exempts employees subject to unannounced drug or
45 alcohol testing, shall be subject to a civil penalty
46 of one thousand dollars for each violation. The
47 attorney general or the attorney general's designee
48 may maintain a civil action to enforce this
49 subsection. Any civil penalty recovered shall be
50 deposited in the general fund of the state.

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1 b. A laboratory or medical review officer involved
2 in the conducting of a drug or alcohol test pursuant
3 to this section shall be deemed to have the necessary
4 contact with this state for the purpose of subjecting
5 the laboratory or medical review officer to the
6 jurisdiction of the courts of this state.

7 15. CIVIL REMEDIES. This section may be enforced
8 through a civil action.

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

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

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

29 16. REPORTS. A laboratory doing business for an
30 employer who conducts drug or alcohol tests pursuant
31 to this section shall file an annual report with the
32 Iowa department of public health by March 1 of each
33 year concerning the number of drug or alcohol tests
34 conducted on employees who work in this state pursuant
35 to this section, the number of positive and negative
36 results of the tests, during the previous calendar
37 year. In addition, the laboratory shall include in
38 its annual report the specific basis for each test as
39 authorized in subsection 8, the type of drug or drugs
40 which were found in the positive drug tests, and all
41 significant available demographic factors relating to
42 the positive test pool.

43 Sec. 2. EFFECTIVE DATE. This Act takes effect on
44 the thirtieth day following enactment."

By STEVE KING
DERRYL McLAREN

S-5044 FILED FEBRUARY 18, 1998
ADOPTED

(p. 343)

HOUSE FILE 299

S-5043

1 Amend the amendment, S-3851, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 1, by striking lines 1 through 16 and
5 inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered a
19 controlled substance and included in schedule I, II,
20 III, IV, or V under the federal Controlled Substances
21 Act, 21 U.S.C. § 801 et seq.
22 c. "Employee" means a person in the service of an
23 employer in this state and includes the employer, and
24 any chief executive officer, president, vice
25 president, supervisor, manager, and officer of the
26 employer who is actively involved in the day-to-day
27 operations of the business.
28 d. "Employer" means a person, firm, company,
29 corporation, labor organization, or employment agency,
30 which has one or more full-time employees employed in
31 the same business, or in or about the same
32 establishment, under any contract of hire, express or
33 implied, oral or written, in this state. "Employer"
34 does not include the state, a political subdivision of
35 the state, including a city, county, or school
36 district, the United States, the United States postal
37 service, or a Native-American tribe.
38 e. "Good faith" means reasonable reliance on
39 facts, or that which is held out to be factual,
40 without the intent to be deceived, and without
41 reckless, malicious, or negligent disregard for the
42 truth.
43 f. "Medical review officer" means a licensed
44 physician, osteopathic physician, chiropractor, nurse
45 practitioner, or physician assistant authorized to
46 practice in any state of the United States, who is
47 responsible for receiving laboratory results generated
48 by an employer's drug or alcohol testing program, and
49 who has knowledge of substance abuse disorders and has
50 appropriate medical training to interpret and evaluate

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1 an individual's confirmed positive test result
2 together with the individual's medical history and any
3 other relevant biomedical information.

4 g. "Prospective employee" means a person who has
5 made application, whether written or oral, to an
6 employer to become an employee.

7 h. "Reasonable suspicion drug or alcohol testing"
8 means drug or alcohol testing based upon evidence that
9 an employee is using or has used alcohol or other
10 drugs in violation of the employer's written policy
11 drawn from specific objective and articulable facts
12 and reasonable inferences drawn from those facts in
13 light of experience. For purposes of this paragraph,
14 facts and inferences may be based upon, but not
15 limited to, any of the following:

16 (1) Observable phenomena while at work such as
17 direct observation of alcohol or drug use or abuse or
18 of the physical symptoms or manifestations of being
19 impaired due to alcohol or other drug use.

20 (2) Abnormal conduct or erratic behavior while at
21 work or a significant deterioration in work
22 performance.

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

25 (4) Evidence that an individual has tampered with
26 any drug or alcohol test during the individual's
27 employment with the current employer.

28 (5) Evidence that an employee has caused an
29 accident while at work which resulted in an injury to
30 an employee which is required to be reported pursuant
31 to chapter 88, or a comparable injury to a person who
32 is not an employee, or resulted in damage to property,
33 including to equipment, in an amount reasonably
34 estimated at the time of the accident to exceed one
35 thousand dollars.

36 (6) Evidence that an employee has manufactured,
37 sold, distributed, solicited, possessed, used, or
38 transferred drugs while working or while on the
39 employer's premises or while operating the employer's
40 vehicle, machinery, or equipment.

41 i. "Safety-sensitive position" means a job wherein
42 an accident could cause loss of human life, serious
43 bodily injury, or significant property or
44 environmental damage, including a job with duties that
45 include immediate supervision of a person in a job
46 that meets the requirement of this paragraph.

47 j. "Sample" means such sample from the human body
48 capable of revealing the presence of alcohol or other
49 drugs, or their metabolites. However, sample does not
50 mean blood except as authorized pursuant to subsection

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1 7, paragraph "l".

2 k. "Unannounced drug or alcohol testing" means
3 testing for the purposes of detecting drugs or alcohol
4 which is conducted on a periodic basis, without
5 advance notice of the test to employees subject to
6 testing prior to the day of testing, and without
7 individualized suspicion. The selection of employees
8 to be tested from the pool of employees subject to
9 testing shall be done based on a neutral and objective
10 selection process by an entity independent from the
11 employer and shall be made by a computer-based random
12 number generator that is matched with employees'
13 social security numbers, payroll identification
14 numbers, or other comparable identifying numbers in
15 which each member of the employee population subject
16 to testing has an equal chance of selection for
17 initial testing, regardless of whether the employee
18 has been selected or tested previously. The random
19 selection process shall be conducted through a
20 computer program that records each selection attempt
21 by date, time, and employee number.

22 2. APPLICABILITY. This section does not apply to
23 drug or alcohol tests conducted on employees required
24 to be tested pursuant to federal statutes, federal
25 regulations, or orders issued pursuant to federal law.
26 In addition, an employer, through its written policy,
27 may exclude from the pools of employees subject to
28 unannounced drug or alcohol testing pursuant to
29 subsection 8, paragraph "a", employee populations
30 required to be tested as described in this subsection.

31 3. TESTING OPTIONAL. This section does not
32 require an employer to conduct drug or alcohol testing
33 and the requirements of this section shall not be
34 construed to encourage, discourage, restrict, limit,
35 prohibit, or require such testing. In addition, an
36 employer may implement and require drug or alcohol
37 testing at some but not all of the work sites of the
38 employer and the requirements of this section shall
39 only apply to the employer and employees who are at
40 the work sites where drug or alcohol testing pursuant
41 to this section has been implemented.

42 4. TESTING AS CONDITION OF EMPLOYMENT --
43 REQUIREMENTS. To the extent provided in subsection 8,
44 an employer may test employees and prospective
45 employees for the presence of drugs or alcohol as a
46 condition of continued employment or hiring. An
47 employer shall adhere to the requirements of this
48 section concerning the conduct of such testing and the
49 use and disposition of the results of such testing.

50 5. COLLECTION OF SAMPLES. In conducting drug or

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1 alcohol testing, an employer may require the
2 collection of samples from its employees and
3 prospective employees, and may require presentation of
4 reliable individual identification from the person
5 being tested to the person collecting the samples.
6 Collection of a sample shall be in conformance with
7 the requirements of this section. The employer may
8 designate the type of sample to be used for this
9 testing.

10 6. SCHEDULING OF TESTS.

11 a. Drug or alcohol testing of employees conducted
12 by an employer shall normally occur during, or
13 immediately before or after, a regular work period.
14 The time required for such testing by an employer
15 shall be deemed work time for the purposes of
16 compensation and benefits for employees.

17 b. An employer shall pay all actual costs for drug
18 or alcohol testing of employees and prospective
19 employees required by the employer.

20 c. An employer shall provide transportation or pay
21 reasonable transportation costs to employees if drug
22 or alcohol sample collection is conducted at a
23 location other than the employee's normal work site.

24 7. TESTING PROCEDURES. All sample collection and
25 testing for drugs or alcohol under this section shall
26 be performed in accordance with the following
27 conditions:

28 a. The collection of samples shall be performed
29 under sanitary conditions and with regard for the
30 privacy of the individual from whom the specimen is
31 being obtained and in a manner reasonably calculated
32 to preclude contamination or substitution of the
33 specimen.

34 b. Sample collection for testing of current
35 employees shall be performed so that the specimen is
36 split into two components at the time of collection in
37 the presence of the individual from whom the sample or
38 specimen is collected. The second portion of the
39 specimen or sample shall be of sufficient quantity to
40 permit a second, independent confirmatory test as
41 provided in paragraph "i". If the specimen is urine,
42 the sample shall be split such that the primary sample
43 contains at least thirty milliliters and the secondary
44 sample contains at least fifteen milliliters. Both
45 portions of the sample shall be forwarded to the
46 laboratory conducting the initial confirmatory
47 testing. In addition to any requirements for storage
48 of the initial sample that may be imposed upon the
49 laboratory as a condition for certification or
50 approval, the laboratory shall store the second

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1 portion of any sample until receipt of a confirmed
2 negative test result or for a period of at least
3 forty-five calendar days following the completion of
4 the initial confirmatory testing, if the first portion
5 yielded a confirmed positive test result.

6 c. Sample collections shall be documented, and the
7 procedure for documentation shall include the
8 following:

9 (1) Samples shall be labeled so as to reasonably
10 preclude the possibility of misidentification of the
11 person tested in relation to the test result provided,
12 and samples shall be handled and tracked in a manner
13 such that control and accountability are maintained
14 from initial collection to each stage in handling,
15 testing, and storage, through final disposition.

16 (2) An employee or prospective employee shall be
17 provided an opportunity to provide any information
18 which may be considered relevant to the test,
19 including identification of prescription or
20 nonprescription drugs currently or recently used, or
21 other relevant medical information. To assist an
22 employee or prospective employee in providing the
23 information described in this subparagraph, the
24 employer shall provide an employee or prospective
25 employee with a list of the drugs to be tested.

26 d. Sample collection, storage, and transportation
27 to the place of testing shall be performed so as to
28 reasonably preclude the possibility of sample
29 contamination, adulteration, or misidentification.

30 e. All confirmatory drug testing shall be
31 conducted at a laboratory certified by the United
32 States department of health and human services'
33 substance abuse and mental health services
34 administration or approved under rules adopted by the
35 Iowa department of public health.

36 f. Drug or alcohol testing shall include
37 confirmation of any initial positive test results.
38 For drug or alcohol testing, confirmation shall be by
39 use of a different chemical process than was used in
40 the initial screen for drugs or alcohol. The
41 confirmatory drug or alcohol test shall be a
42 chromatographic technique such as gas chromatography
43 or mass spectrometry, or another comparably reliable
44 analytical method. An employer may take adverse
45 employment action, including refusal to hire a
46 prospective employee, based on a confirmed positive
47 drug or alcohol test.

48 g. A medical review officer shall, prior to the
49 results being reported to an employer, review and
50 interpret any confirmed positive test results,

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1 including both quantitative and qualitative test
2 results, to ensure that the chain of custody is
3 complete and sufficient on its face and that any
4 information provided by the individual pursuant to
5 paragraph "c", subparagraph (2), is considered.
6 h. In conducting drug or alcohol testing pursuant
7 to this section, the laboratory, the medical review
8 officer, and the employer shall ensure, to the extent
9 feasible, that the testing only measure, and the
10 records concerning the testing only show or make use
11 of information regarding, alcohol or drugs in the
12 body.

13 i. (1) If a confirmed positive drug or alcohol
14 test for a current employee is reported to the
15 employer by the medical review officer, the employer
16 shall notify the employee in writing by certified
17 mail, return receipt requested, of the results of the
18 test, the employee's right to request and obtain a
19 confirmatory test of the second sample collected
20 pursuant to paragraph "b" at an approved laboratory of
21 the employee's choice, and the fee payable by the
22 employee to the employer for reimbursement of expenses
23 concerning the test. The fee charged an employee
24 shall be an amount that represents the costs
25 associated with conducting the second confirmatory
26 test, which shall be consistent with the employer's
27 cost for conducting the initial confirmatory test on
28 an employee's sample. If the employee, in person or
29 by certified mail, return receipt requested, requests
30 a second confirmatory test, identifies an approved
31 laboratory to conduct the test, and pays the employer
32 the fee for the test within seven days from the date
33 the employer mails by certified mail, return receipt
34 requested, the written notice to the employee of the
35 employee's right to request a test, a second
36 confirmatory test shall be conducted at the laboratory
37 chosen by the employee. The results of the second
38 confirmatory test shall be reported to the medical
39 review officer who reviewed the initial confirmatory
40 test results and the medical review officer shall
41 review the results and issue a report to the employer
42 on whether the results of the second confirmatory test
43 confirmed the initial confirmatory test as to the
44 presence of a specific drug or alcohol. If the
45 results of the second test do not confirm the results
46 of the initial confirmatory test, the employer shall
47 reimburse the employee for the fee paid by the
48 employee for the second test and the initial
49 confirmatory test shall not be considered a confirmed
50 positive drug or alcohol test for purposes of taking

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1 disciplinary action pursuant to subsection 10.

2 (2) If a confirmed positive drug or alcohol test
3 for a prospective employee is reported to the employer
4 by the medical review officer, the employer shall
5 notify the prospective employee in writing of the
6 results of the test, of the name and address of the
7 medical review officer who made the report, and of the
8 prospective employee's right to request records under
9 subsection 13.

10 j. A laboratory conducting testing under this
11 section shall dispose of all samples for which a
12 negative test result was reported to an employer
13 within five working days after issuance of the
14 negative test result report.

15 k. Except as necessary to conduct drug or alcohol
16 testing pursuant to this section and to submit the
17 report required by subsection 16, a laboratory or
18 other medical facility shall only report to an
19 employer or outside entity information relating to the
20 results of a drug or alcohol test conducted pursuant
21 to this section concerning the determination of
22 whether the tested individual has engaged in conduct
23 prohibited by the employer's written policy with
24 regard to alcohol or drug use.

25 l. The requirements of this subsection concerning
26 sample collection and testing shall not apply if the
27 results of a blood test conducted on an employee
28 involved in an accident at work which indicates the
29 presence of drugs or alcohol were lawfully obtained by
30 an employer from the hospital or other medical
31 facility which had treated the employee following the
32 workplace accident.

33 8. DRUG OR ALCOHOL TESTING. Employers may conduct
34 drug or alcohol testing as provided in this
35 subsection:

36 a. Employers may conduct unannounced drug or
37 alcohol testing of employees who are selected from any
38 of the following pools of employees:

39 (1) The entire employee population at a particular
40 work site of the employer except for employees who are
41 not scheduled to be at work at the time the testing is
42 conducted because of the status of the employees or
43 who have been excused from work pursuant to the
44 employer's work policy prior to the time the testing
45 is announced to employees.

46 (2) The entire full-time active employee
47 population at a particular work site.

48 (3) All employees at a particular work site who
49 are in a pool of employees in a safety-sensitive
50 position and who are scheduled to be at work at the

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1 time testing is conducted, other than employees who
2 are not scheduled to be at work at the time the
3 testing is to be conducted or who have been excused
4 from work pursuant to the employer's work policy prior
5 to the time the testing is announced to employees.

6 b. Employers may conduct drug or alcohol testing
7 of employees during, and after completion of, drug or
8 alcohol rehabilitation.

9 c. Employers may conduct reasonable suspicion drug
10 or alcohol testing.

11 d. Employers may conduct drug or alcohol testing
12 of prospective employees.

13 e. Employers may conduct drug or alcohol testing
14 as required by federal law or regulation or by law
15 enforcement.

16 f. Employers may conduct drug or alcohol testing
17 in investigating accidents in the workplace in which
18 the accident resulted in an injury to an employee
19 which is required to be reported pursuant to chapter
20 88, or a comparable injury to a person who is not an
21 employee, or resulted in damage to property, including
22 to equipment, in an amount reasonably estimated at the
23 time of the accident to exceed one thousand dollars.

24 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

25 a. Drug or alcohol testing or retesting by an
26 employer shall be carried out within the terms of a
27 written policy which has been provided to every
28 employee subject to testing, and is available for
29 review by employees and prospective employees.

30 b. The employer's written policy shall provide
31 uniform requirements for what disciplinary or
32 rehabilitative actions an employer shall take against
33 an employee or prospective employee upon receipt of a
34 confirmed positive drug or alcohol test result or upon
35 the refusal of the employee or prospective employee to
36 provide a testing sample. The policy shall provide
37 that any action taken against an employee or
38 prospective employee shall be based only on the
39 results of the drug or alcohol test. The written
40 policy shall also provide that if rehabilitation is
41 required pursuant to paragraph "g", the employer shall
42 not take adverse employment action against the
43 employee so long as the employee complies with the
44 requirements of rehabilitation and successfully
45 completes rehabilitation.

46 c. Employers shall establish an awareness program
47 to inform employees of the dangers of drug and alcohol
48 use in the workplace and comply with the following
49 requirements in order to conduct drug or alcohol
50 testing under this section:

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1 (1) If an employer has an employee assistance
2 program, the employer must inform the employee of the
3 benefits and services of the employee assistance
4 program. An employer shall post notice of the
5 employee assistance program in conspicuous places and
6 explore alternative routine and reinforcing means of
7 publicizing such services. In addition, the employer
8 must provide the employee with notice of the policies
9 and procedures regarding access to and utilization of
10 the program.

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

27 d. An employee or prospective employee whose drug
28 or alcohol test results are confirmed as positive in
29 accordance with this section shall not, by virtue of
30 those results alone, be considered as a person with a
31 disability for purposes of any state or local law or
32 regulation.

33 e. If the written policy provides for alcohol
34 testing, the employer shall establish in the written
35 policy a standard for alcohol concentration which
36 shall be deemed to violate the policy. The standard
37 for alcohol concentration shall not be less than .04,
38 expressed in terms of grams of alcohol per two hundred
39 ten liters of breath, or its equivalent.

40 f. An employee of an employer who is designated by
41 the employer as being in a safety-sensitive position
42 shall be placed in only one pool of safety-sensitive
43 employees subject to drug or alcohol testing pursuant
44 to subsection 8, paragraph "a", subparagraph (3). An
45 employer may have more than one pool of safety-
46 sensitive employees subject to drug or alcohol testing
47 pursuant to subsection 8, paragraph "a", subparagraph
48 (3), but shall not include an employee in more than
49 one safety-sensitive pool.

50 g. Upon receipt of a confirmed positive drug test

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1 relating to the abuse of lawfully prescribed drugs
2 currently or recently used by an employee, or upon
3 receipt of a confirmed positive alcohol test which
4 indicates an alcohol concentration greater than the
5 concentration level established by the employer
6 pursuant to this section but less than the
7 concentration level in section 321J.2 for operating
8 while under the influence of alcohol, and if the
9 employer has at least fifty employees, and if the
10 employee has been employed by the employer for at
11 least twelve of the preceding eighteen months, and if
12 rehabilitation is agreed upon by the employee, and if
13 the employee has not previously violated the
14 employer's substance abuse prevention policy pursuant
15 to this section, the written policy shall provide for
16 the rehabilitation of the employee pursuant to
17 subsection 10, paragraph "a", subparagraph (1), and
18 the apportionment of the costs of rehabilitation as
19 provided by this paragraph.

20 (1) If the employer has an employee benefit plan,
21 the costs of rehabilitation shall be apportioned as
22 provided under the employee benefit plan.

23 (2) If no employee benefit plan exists and the
24 employee has coverage for any portion of the costs of
25 rehabilitation under any health care plan of the
26 employee, the costs of rehabilitation shall be
27 apportioned as provided by the health care plan with
28 any costs not covered by the plan apportioned equally
29 between the employee and the employer. However, the
30 employer shall not be required to pay more than two
31 thousand dollars toward the costs not covered by the
32 employee's health care plan.

33 (3) If no employee benefit plan exists and the
34 employee does not have coverage for any portion of the
35 costs of rehabilitation under any health care plan of
36 the employee, the costs of rehabilitation shall be
37 apportioned equally between the employee and the
38 employer. However, the employer shall not be required
39 to pay more than two thousand dollars towards the cost
40 of rehabilitation under this subparagraph.

41 Rehabilitation required pursuant to this paragraph
42 shall not prevent an employer from taking any other
43 adverse employment action against the employee during
44 the rehabilitation if the employee fails to comply
45 with any requirements of the rehabilitation, including
46 any action by the employee to invalidate a test sample
47 provided by the employee pursuant to the
48 rehabilitation.

49 h. In order to conduct drug or alcohol testing
50 under this section, an employer shall require

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1 supervisory personnel of the employer involved with
 2 drug or alcohol testing under this section to attend a
 3 minimum of two hours of initial training and to
 4 attend, on an annual basis thereafter, a minimum of
 5 one hour of subsequent training. The training shall
 6 include, but is not limited to, information concerning
 7 the recognition of evidence of employee alcohol and
 8 other drug abuse, the documentation and corroboration
 9 of employee alcohol and other drug abuse, and the
 10 referral of employees who abuse alcohol or other drugs
 11 to the employee assistance program or to the resource
 12 file of employee assistance services providers.

13 10. DISCIPLINARY PROCEDURES.

14 a. Upon receipt of a confirmed positive drug or
 15 alcohol test result which indicates a violation of the
 16 employer's written policy, or upon the refusal of an
 17 employee or prospective employee to provide a testing
 18 sample, an employer may use that test result or test
 19 refusal as a valid basis for disciplinary or
 20 rehabilitative actions pursuant to the requirements of
 21 the employer's written policy and the requirements of
 22 this section, which may include, among other actions,
 23 the following:

24 (1) A requirement that the employee enroll in an
 25 employer-provided or approved rehabilitation,
 26 treatment, or counseling program, which may include
 27 additional drug or alcohol testing, participation in
 28 and successful completion of which may be a condition
 29 of continued employment, and the costs of which may or
 30 may not be covered by the employer's health plan or
 31 policies.

32 (2) Suspension of the employee, with or without
 33 pay, for a designated period of time.

34 (3) Termination of employment.

35 (4) Refusal to hire a prospective employee.

36 (5) Other adverse employment action in conformance
 37 with the employer's written policy and procedures,
 38 including any relevant collective bargaining agreement
 39 provisions.

40 b. Following a drug or alcohol test, but prior to
 41 receipt of the final results of the drug or alcohol
 42 test, an employer may suspend a current employee, with
 43 or without pay, pending the outcome of the test. An
 44 employee who has been suspended shall be reinstated by
 45 the employer, with back pay, and interest on such
 46 amount at eighteen percent per annum compounded
 47 annually, if applicable, if the result of the test is
 48 not a confirmed positive drug or alcohol test which
 49 indicates a violation of the employer's written
 50 policy.

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- 1 11. EMPLOYER IMMUNITY. A cause of action shall
2 not arise against an employer who has established a
3 policy and initiated a testing program in accordance
4 with the testing and policy safeguards provided for
5 under this section, for any of the following:
- 6 a. Testing or taking action based on the results
7 of a positive drug or alcohol test result, indicating
8 the presence of drugs or alcohol, in good faith, or on
9 the refusal of an employee or prospective employee to
10 submit to a drug or alcohol test.
- 11 b. Failure to test for drugs or alcohol, or
12 failure to test for a specific drug or controlled
13 substance.
- 14 c. Failure to test for, or if tested for, failure
15 to detect, any specific drug or other controlled
16 substance.
- 17 d. Termination or suspension of any substance
18 abuse prevention or testing program or policy.
- 19 e. Any action taken related to a false negative
20 drug or alcohol test result.
- 21 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
22 RESULTS.
- 23 a. Except as otherwise provided in paragraph "b",
24 a cause of action shall not arise against an employer
25 who has established a program of drug or alcohol
26 testing in accordance with this section, unless all of
27 the following conditions exist:
- 28 (1) The employer's action was based on a false
29 positive test result.
- 30 (2) The employer knew or clearly should have known
31 that the test result was in error and ignored the
32 correct test result because of reckless, malicious, or
33 negligent disregard for the truth, or the willful
34 intent to deceive or to be deceived.
- 35 b. A cause of action for defamation, libel,
36 slander, or damage to reputation shall not arise
37 against an employer establishing a program of drug or
38 alcohol testing in accordance with this section unless
39 all of the following apply:
- 40 (1) The employer discloses the test results to a
41 person other than the employer, an authorized
42 employee, agent, or representative of the employer,
43 the tested employee or the tested applicant for
44 employment, an authorized substance abuse treatment
45 program or employee assistance program, or an
46 authorized agent or representative of the tested
47 employee or applicant.
- 48 (2) The test results disclosed incorrectly
49 indicate the presence of alcohol or drugs.
- 50 (3) The employer negligently discloses the

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1 results.

2 c. In any cause of action based upon a false
3 positive test result, all of the following conditions
4 apply:

5 (1) The results of a drug or alcohol test
6 conducted in compliance with this section are presumed
7 to be valid.

8 (2) An employer shall not be liable for monetary
9 damages if the employer's reliance on the false
10 positive test result was reasonable and in good faith.

11 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

12 a. All communications received by an employer
13 relevant to employee or prospective employee drug or
14 alcohol test results, or otherwise received through
15 the employer's drug or alcohol testing program, are
16 confidential communications and shall not be used or
17 received in evidence, obtained in discovery, or
18 disclosed in any public or private proceeding, except
19 as otherwise provided or authorized by this section.

20 b. An employee, or a prospective employee, who is
21 the subject of a drug or alcohol test conducted under
22 this section pursuant to an employer's written policy
23 and for whom a confirmed positive test result is
24 reported shall, upon written request, have access to
25 any records relating to the employee's drug or alcohol
26 test, including records of the laboratory where the
27 testing was conducted and any records relating to the
28 results of any relevant certification or review by a
29 medical review officer. However, a prospective
30 employee shall be entitled to records under this
31 paragraph only if the prospective employee requests
32 the records within fifteen calendar days from the date
33 the employer provided the prospective employee written
34 notice of the results of a drug or alcohol test as
35 provided in subsection 7, paragraph "i", subparagraph
36 (2).

37 c. Except as provided by this section and as
38 necessary to conduct drug or alcohol testing under
39 this section and to file a report pursuant to
40 subsection 16, a laboratory and a medical review
41 officer conducting drug or alcohol testing under this
42 section shall not use or disclose to any person any
43 personally identifiable information regarding such
44 testing, including the names of individuals tested,
45 even if unaccompanied by the results of the test.

46 d. An employer may use and disclose information
47 concerning the results of a drug or alcohol test
48 conducted pursuant to this section under any of the
49 following circumstances:

50 (1) In an arbitration proceeding pursuant to a

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1 collective bargaining agreement, or an administrative
2 agency proceeding or judicial proceeding under
3 workers' compensation laws or unemployment
4 compensation laws or under common or statutory laws
5 where action taken by the employer based on the test
6 is relevant or is challenged.

7 (2) To any federal agency or other unit of the
8 federal government as required under federal law,
9 regulation or order, or in accordance with compliance
10 requirements of a federal government contract.

11 (3) To any agency of this state authorized to
12 license individuals if the employee tested is licensed
13 by that agency and the rules of that agency require
14 such disclosure.

15 (4) To a union representing the employee if such
16 disclosure would be required by federal labor laws.

17 (5) To a substance abuse evaluation or treatment
18 facility or professional for the purpose of evaluation
19 or treatment of the employee.

20 However, positive test results from an employer
21 drug or alcohol testing program shall not be used as
22 evidence in any criminal action against the employee
23 or prospective employee tested.

24 14. CIVIL PENALTIES -- JURISDICTION.

25 a. Any laboratory or medical review officer which
26 discloses information in violation of the provisions
27 of subsection 7, paragraph "h" or "k", or any employer
28 who, through the selection process described in
29 subsection 1, paragraph "k", improperly targets or
30 exempts employees subject to unannounced drug or
31 alcohol testing, shall be subject to a civil penalty
32 of one thousand dollars for each violation. The
33 attorney general or the attorney general's designee
34 may maintain a civil action to enforce this
35 subsection. Any civil penalty recovered shall be
36 deposited in the general fund of the state.

37 b. A laboratory or medical review officer involved
38 in the conducting of a drug or alcohol test pursuant
39 to this section shall be deemed to have the necessary
40 contact with this state for the purpose of subjecting
41 the laboratory or medical review officer to the
42 jurisdiction of the courts of this state.

43 15. CIVIL REMEDIES. This section may be enforced
44 through a civil action.

45 a. A person who violates this section or who aids
46 in the violation of this section, is liable to an
47 aggrieved employee or prospective employee for
48 affirmative relief including reinstatement or hiring,
49 with or without back pay, or any other equitable
50 relief as the court deems appropriate including

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1 attorney fees and court costs.

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

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

15 16. REPORTS. A laboratory doing business for an
16 employer who conducts drug or alcohol tests pursuant
17 to this section shall file an annual report with the
18 Iowa department of public health by March 1 of each
19 year concerning the number of drug or alcohol tests
20 conducted on employees who work in this state pursuant
21 to this section, the number of positive and negative
22 results of the tests, during the previous calendar
23 year. In addition, the laboratory shall include in
24 its annual report the specific basis for each test as
25 authorized in subsection 8, the type of drug or drugs
26 which were found in the positive drug tests, and all
27 significant available demographic factors relating to
28 the positive test pool.

29 Sec. 2. EFFECTIVE DATE. This Act takes effect on
30 the thirtieth day following enactment."

By STEVE KING
DERRYL McLAREN

S-5043 FILED FEBRUARY 18, 1998
RULED OUT OF ORDER

(P. 343)

HOUSE FILE 299

S-5045

1 Amend the amendment, S-5035, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. By striking page 1, line 1, through page 14,
5 line 19 and inserting the following:
6 "Amend House File 299, as amended, passed, and
7 reprinted by the House, as follows:
8 _____. By striking everything after the enacting
9 clause and inserting the following:
10 "Section 1. Section 730.5, Code 1997, is amended
11 by striking the section and inserting in lieu thereof
12 the following:
13 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.
14 1. DEFINITIONS. As used in this section, unless
15 the context otherwise requires:
16 a. "Alcohol" means ethanol, isopropanol, or
17 methanol.
18 b. "Drug" means a substance considered a
19 controlled substance and included in schedule I, II,
20 III, IV, or V under the federal Controlled Substances
21 Act, 21 U.S.C. § 801 et seq.
22 c. "Employee" means a person in the service of an
23 employer in this state and includes the employer, and
24 any chief executive officer, president, vice
25 president, supervisor, manager, and officer of the
26 employer who is actively involved in the day-to-day
27 operations of the business.
28 d. "Employer" means a person, firm, company,
29 corporation, labor organization, or employment agency,
30 which has one or more full-time employees employed in
31 the same business, or in or about the same
32 establishment, under any contract of hire, express or
33 implied, oral or written, in this state. "Employer"
34 does not include the state, a political subdivision of
35 the state, including a city, county, or school
36 district, the United States, the United States postal
37 service, or a Native-American tribe.
38 e. "Good faith" means reasonable reliance on
39 facts, or that which is held out to be factual,
40 without the intent to be deceived, and without
41 reckless, malicious, or negligent disregard for the
42 truth.
43 f. "Medical review officer" means a licensed
44 physician, osteopathic physician, chiropractor, nurse
45 practitioner, or physician assistant authorized to
46 practice in any state of the United States, who is
47 responsible for receiving laboratory results generated
48 by an employer's drug or alcohol testing program, and
49 who has knowledge of substance abuse disorders and has
50 appropriate medical training to interpret and evaluate

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HOUSE FILE 299

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1 Amend the amendment, S-5035, to House File 299, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 9, by inserting after line 11 the
5 following:
6 "In addition, an employer shall place no more than
7 twenty-five percent of the employee population subject
8 to drug or alcohol testing pursuant to subsection 8,
9 paragraph "a", in a pool of employees as described in
10 subsection 8, paragraph "a", subparagraphs (1) through
11 (3), during any calendar year."

By TOM FLYNN

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RULED OUT OF ORDER

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1 an individual's confirmed positive test result
2 together with the individual's medical history and any
3 other relevant biomedical information.

4 g. "Prospective employee" means a person who has
5 made application, whether written or oral, to an
6 employer to become an employee.

7 h. "Reasonable suspicion drug or alcohol testing"
8 means drug or alcohol testing based upon evidence that
9 an employee is using or has used alcohol or other
10 drugs in violation of the employer's written policy
11 drawn from specific objective and articulable facts
12 and reasonable inferences drawn from those facts in
13 light of experience. For purposes of this paragraph,
14 facts and inferences may be based upon, but not
15 limited to, any of the following:

16 (1) Observable phenomena while at work such as
17 direct observation of alcohol or drug use or abuse or
18 of the physical symptoms or manifestations of being
19 impaired due to alcohol or other drug use.

20 (2) Abnormal conduct or erratic behavior while at
21 work or a significant deterioration in work
22 performance.

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

25 (4) Evidence that an individual has tampered with
26 any drug or alcohol test during the individual's
27 employment with the current employer.

28 (5) Evidence that an employee has caused an
29 accident while at work which resulted in an injury to
30 a person for which injury, if suffered by an employee,
31 a record or report could be required under chapter 88,
32 or resulted in damage to property, including to
33 equipment, in an amount reasonably estimated at the
34 time of the accident to exceed one thousand dollars.

35 (6) Evidence that an employee has manufactured,
36 sold, distributed, solicited, possessed, used, or
37 transferred drugs while working or while on the
38 employer's premises or while operating the employer's
39 vehicle, machinery, or equipment.

40 i. "Safety-sensitive position" means a job wherein
41 an accident could cause loss of human life, serious
42 bodily injury, or significant property or
43 environmental damage, including a job with duties that
44 include immediate supervision of a person in a job
45 that meets the requirement of this paragraph.

46 j. "Sample" means such sample from the human body
47 capable of revealing the presence of alcohol or other
48 drugs, or their metabolites. However, sample does not
49 mean blood except as authorized pursuant to subsection
50 7, paragraph "1".

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1 k. "Unannounced drug or alcohol testing" means
2 testing for the purposes of detecting drugs or alcohol
3 which is conducted on a periodic basis, without
4 advance notice of the test to employees, other than
5 employees whose duties include responsibility for
6 administration of the employer's drug or alcohol
7 testing program, subject to testing prior to the day
8 of testing, and without individualized suspicion. The
9 selection of employees to be tested from the pool of
10 employees subject to testing shall be done based on a
11 neutral and objective selection process by an entity
12 independent from the employer and shall be made by a
13 computer-based random number generator that is matched
14 with employees' social security numbers, payroll
15 identification numbers, or other comparable
16 identifying numbers in which each member of the
17 employee population subject to testing has an equal
18 chance of selection for initial testing, regardless of
19 whether the employee has been selected or tested
20 previously. The random selection process shall be
21 conducted through a computer program that records each
22 selection attempt by date, time, and employee number.

23 2. APPLICABILITY. This section does not apply to
24 drug or alcohol tests conducted on employees required
25 to be tested pursuant to federal statutes, federal
26 regulations, or orders issued pursuant to federal law.
27 In addition, an employer, through its written policy,
28 may exclude from the pools of employees subject to
29 unannounced drug or alcohol testing pursuant to
30 subsection 8, paragraph "a", employee populations
31 required to be tested as described in this subsection.

32 3. TESTING OPTIONAL. This section does not
33 require or create a legal duty on an employer to
34 conduct drug or alcohol testing and the requirements
35 of this section shall not be construed to encourage,
36 discourage, restrict, limit, prohibit, or require such
37 testing. In addition, an employer may implement and
38 require drug or alcohol testing at some but not all of
39 the work sites of the employer and the requirements of
40 this section shall only apply to the employer and
41 employees who are at the work sites where drug or
42 alcohol testing pursuant to this section has been
43 implemented. A cause of action shall not arise in
44 favor of any person against an employer or agent of an
45 employer based on the failure of the employer to
46 establish a program or policy on substance abuse
47 prevention or to implement any component of testing as
48 permitted by this section.

49 4. TESTING AS CONDITION OF EMPLOYMENT --
50 REQUIREMENTS. To the extent provided in subsection 8,

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1 an employer may test employees and prospective
2 employees for the presence of drugs or alcohol as a
3 condition of continued employment or hiring. An
4 employer shall adhere to the requirements of this
5 section concerning the conduct of such testing and the
6 use and disposition of the results of such testing.

7 5. COLLECTION OF SAMPLES. In conducting drug or
8 alcohol testing, an employer may require the
9 collection of samples from its employees and
10 prospective employees, and may require presentation of
11 reliable individual identification from the person
12 being tested to the person collecting the samples.
13 Collection of a sample shall be in conformance with
14 the requirements of this section. The employer may
15 designate the type of sample to be used for this
16 testing.

17 6. SCHEDULING OF TESTS.

18 a. Drug or alcohol testing of employees conducted
19 by an employer shall normally occur during, or
20 immediately before or after, a regular work period.
21 The time required for such testing by an employer
22 shall be deemed work time for the purposes of
23 compensation and benefits for employees.

24 b. An employer shall pay all actual costs for drug
25 or alcohol testing of employees and prospective
26 employees required by the employer.

27 c. An employer shall provide transportation or pay
28 reasonable transportation costs to employees if drug
29 or alcohol sample collection is conducted at a
30 location other than the employee's normal work site.

31 7. TESTING PROCEDURES. All sample collection and
32 testing for drugs or alcohol under this section shall
33 be performed in accordance with the following
34 conditions:

35 a. The collection of samples shall be performed
36 under sanitary conditions and with regard for the
37 privacy of the individual from whom the specimen is
38 being obtained and in a manner reasonably calculated
39 to preclude contamination or substitution of the
40 specimen.

41 b. Sample collection for testing of current
42 employees shall be performed so that the specimen is
43 split into two components at the time of collection in
44 the presence of the individual from whom the sample or
45 specimen is collected. The second portion of the
46 specimen or sample shall be of sufficient quantity to
47 permit a second, independent confirmatory test as
48 provided in paragraph "i". If the specimen is urine,
49 the sample shall be split such that the primary sample
50 contains at least thirty milliliters and the secondary

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1 sample contains at least fifteen milliliters. Both
2 portions of the sample shall be forwarded to the
3 laboratory conducting the initial confirmatory
4 testing. In addition to any requirements for storage
5 of the initial sample that may be imposed upon the
6 laboratory as a condition for certification or
7 approval, the laboratory shall store the second
8 portion of any sample until receipt of a confirmed
9 negative test result or for a period of at least
10 forty-five calendar days following the completion of
11 the initial confirmatory testing, if the first portion
12 yielded a confirmed positive test result.

13 c. Sample collections shall be documented, and the
14 procedure for documentation shall include the
15 following:

16 (1) Samples shall be labeled so as to reasonably
17 preclude the possibility of misidentification of the
18 person tested in relation to the test result provided,
19 and samples shall be handled and tracked in a manner
20 such that control and accountability are maintained
21 from initial collection to each stage in handling,
22 testing, and storage, through final disposition.

23 (2) An employee or prospective employee shall be
24 provided an opportunity to provide any information
25 which may be considered relevant to the test,
26 including identification of prescription or
27 nonprescription drugs currently or recently used, or
28 other relevant medical information. To assist an
29 employee or prospective employee in providing the
30 information described in this subparagraph, the
31 employer shall provide an employee or prospective
32 employee with a list of the drugs to be tested.

33 d. Sample collection, storage, and transportation
34 to the place of testing shall be performed so as to
35 reasonably preclude the possibility of sample
36 contamination, adulteration, or misidentification.

37 e. All confirmatory drug testing shall be
38 conducted at a laboratory certified by the United
39 States department of health and human services'
40 substance abuse and mental health services
41 administration or approved under rules adopted by the
42 Iowa department of public health.

43 f. Drug or alcohol testing shall include
44 confirmation of any initial positive test results.
45 For drug or alcohol testing, confirmation shall be by
46 use of a different chemical process than was used in
47 the initial screen for drugs or alcohol. The
48 confirmatory drug or alcohol test shall be a
49 chromatographic technique such as gas chromatography
50 or mass spectrometry, or another comparably reliable

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1 analytical method. An employer may take adverse
2 employment action, including refusal to hire a
3 prospective employee, based on a confirmed positive
4 drug or alcohol test.

5 g. A medical review officer shall, prior to the
6 results being reported to an employer, review and
7 interpret any confirmed positive test results,
8 including both quantitative and qualitative test
9 results, to ensure that the chain of custody is
10 complete and sufficient on its face and that any
11 information provided by the individual pursuant to
12 paragraph "c", subparagraph (2), is considered.

13 h. In conducting drug or alcohol testing pursuant
14 to this section, the laboratory, the medical review
15 officer, and the employer shall ensure, to the extent
16 feasible, that the testing only measure, and the
17 records concerning the testing only show or make use
18 of information regarding, alcohol or drugs in the
19 body.

20 i. (1) If a confirmed positive drug or alcohol
21 test for a current employee is reported to the
22 employer by the medical review officer, the employer
23 shall notify the employee in writing by certified
24 mail, return receipt requested, of the results of the
25 test, the employee's right to request and obtain a
26 confirmatory test of the second sample collected
27 pursuant to paragraph "b" at an approved laboratory of
28 the employee's choice, and the fee payable by the
29 employee to the employer for reimbursement of expenses
30 concerning the test. The fee charged an employee
31 shall be an amount that represents the costs
32 associated with conducting the second confirmatory
33 test, which shall be consistent with the employer's
34 cost for conducting the initial confirmatory test on
35 an employee's sample. If the employee, in person or
36 by certified mail, return receipt requested, requests
37 a second confirmatory test, identifies an approved
38 laboratory to conduct the test, and pays the employer
39 the fee for the test within seven days from the date
40 the employer mails by certified mail, return receipt
41 requested, the written notice to the employee of the
42 employee's right to request a test, a second
43 confirmatory test shall be conducted at the laboratory
44 chosen by the employee. The results of the second
45 confirmatory test shall be reported to the medical
46 review officer who reviewed the initial confirmatory
47 test results and the medical review officer shall
48 review the results and issue a report to the employer
49 on whether the results of the second confirmatory test
50 confirmed the initial confirmatory test as to the

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1 presence of a specific drug or alcohol. If the
2 results of the second test do not confirm the results
3 of the initial confirmatory test, the employer shall
4 reimburse the employee for the fee paid by the
5 employee for the second test and the initial
6 confirmatory test shall not be considered a confirmed
7 positive drug or alcohol test for purposes of taking
8 disciplinary action pursuant to subsection 10.

9 (2) If a confirmed positive drug or alcohol test
10 for a prospective employee is reported to the employer
11 by the medical review officer, the employer shall
12 notify the prospective employee in writing of the
13 results of the test, of the name and address of the
14 medical review officer who made the report, and of the
15 prospective employee's right to request records under
16 subsection 13.

17 j. A laboratory conducting testing under this
18 section shall dispose of all samples for which a
19 negative test result was reported to an employer
20 within five working days after issuance of the
21 negative test result report.

22 k. Except as necessary to conduct drug or alcohol
23 testing pursuant to this section and to submit the
24 report required by subsection 16, a laboratory or
25 other medical facility shall only report to an
26 employer or outside entity information relating to the
27 results of a drug or alcohol test conducted pursuant
28 to this section concerning the determination of
29 whether the tested individual has engaged in conduct
30 prohibited by the employer's written policy with
31 regard to alcohol or drug use.

32 l. Notwithstanding the provisions of this
33 subsection, an employer may rely and take action upon
34 the results of any blood test for drugs or alcohol
35 made on any employee involved in an accident at work
36 if the test is administered by or at the direction of
37 the person providing treatment or care to the employee
38 without request or suggestion by the employer that a
39 test be conducted, and the employer has lawfully
40 obtained the results of the test. For purposes of
41 this paragraph, an employer shall not be deemed to
42 have requested or required a test in conjunction with
43 the provision of medical treatment following a
44 workplace accident by providing information concerning
45 the circumstance of the accident.

46 8. DRUG OR ALCOHOL TESTING. Employers may conduct
47 drug or alcohol testing as provided in this
48 subsection:

49 a. Employers may conduct unannounced drug or
50 alcohol testing of employees who are selected from any

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1 of the following pools of employees:

2 (1) The entire employee population at a particular
3 work site of the employer except for employees who are
4 not scheduled to be at work at the time the testing is
5 conducted because of the status of the employees or
6 who have been excused from work pursuant to the
7 employer's work policy prior to the time the testing
8 is announced to employees.

9 (2) The entire full-time active employee
10 population at a particular work site except for
11 employees who are not scheduled to be at work at the
12 time the testing is to be conducted because of the
13 status of the employee, or who have been excused from
14 work pursuant to the employer's work policy.

15 (3) All employees at a particular work site who
16 are in a pool of employees in a safety-sensitive
17 position and who are scheduled to be at work at the
18 time testing is conducted, other than employees who
19 are not scheduled to be at work at the time the
20 testing is to be conducted or who have been excused
21 from work pursuant to the employer's work policy prior
22 to the time the testing is announced to employees.

23 b. Employers may conduct drug or alcohol testing
24 of employees during, and after completion of, drug or
25 alcohol rehabilitation.

26 c. Employers may conduct reasonable suspicion drug
27 or alcohol testing.

28 d. Employers may conduct drug or alcohol testing
29 of prospective employees.

30 e. Employers may conduct drug or alcohol testing
31 as required by federal law or regulation or by law
32 enforcement.

33 f. Employers may conduct drug or alcohol testing
34 in investigating accidents in the workplace in which
35 the accident resulted in an injury to a person for
36 which injury, if suffered by an employee, a record or
37 report could be required under chapter 88, or resulted
38 in damage to property, including to equipment, in an
39 amount reasonably estimated at the time of the
40 accident to exceed one thousand dollars.

41 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

42 a. Drug or alcohol testing or retesting by an
43 employer shall be carried out within the terms of a
44 written policy which has been provided to every
45 employee subject to testing, and is available for
46 review by employees and prospective employees.

47 b. The employer's written policy shall provide
48 uniform requirements for what disciplinary or
49 rehabilitative actions an employer shall take against
50 an employee or prospective employee upon receipt of a

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1 confirmed positive drug or alcohol test result or upon
2 the refusal of the employee or prospective employee to
3 provide a testing sample. The policy shall provide
4 that any action taken against an employee or
5 prospective employee shall be based only on the
6 results of the drug or alcohol test. The written
7 policy shall also provide that if rehabilitation is
8 required pursuant to paragraph "g", the employer shall
9 not take adverse employment action against the
10 employee so long as the employee complies with the
11 requirements of rehabilitation and successfully
12 completes rehabilitation.

13 c. Employers shall establish an awareness program
14 to inform employees of the dangers of drug and alcohol
15 use in the workplace and comply with the following
16 requirements in order to conduct drug or alcohol
17 testing under this section:

18 (1) If an employer has an employee assistance
19 program, the employer must inform the employee of the
20 benefits and services of the employee assistance
21 program. An employer shall post notice of the
22 employee assistance program in conspicuous places and
23 explore alternative routine and reinforcing means of
24 publicizing such services. In addition, the employer
25 must provide the employee with notice of the policies
26 and procedures regarding access to and utilization of
27 the program.

28 (2) If an employer does not have an employee
29 assistance program, the employer must maintain a
30 resource file of employee assistance services
31 providers, alcohol and other drug abuse programs
32 certified by the Iowa department of public health,
33 mental health providers, and other persons, entities,
34 or organizations available to assist employees with
35 personal or behavioral problems. The employer shall
36 provide all employees information about the existence
37 of the resource file and a summary of the information
38 contained within the resource file. The summary
39 should contain, but need not be limited to, all
40 information necessary to access the services listed in
41 the resource file. In addition, the employer shall
42 post in conspicuous places a listing of multiple
43 employee assistance providers in the area.

44 d. An employee or prospective employee whose drug
45 or alcohol test results are confirmed as positive in
46 accordance with this section shall not, by virtue of
47 those results alone, be considered as a person with a
48 disability for purposes of any state or local law or
49 regulation.

50 e. If the written policy provides for alcohol

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1 testing, the employer shall establish in the written
2 policy a standard for alcohol concentration which
3 shall be deemed to violate the policy. The standard
4 for alcohol concentration shall not be less than .04,
5 expressed in terms of grams of alcohol per two hundred
6 ten liters of breath, or its equivalent.

7 f. An employee of an employer who is designated by
8 the employer as being in a safety-sensitive position
9 shall be placed in only one pool of safety-sensitive
10 employees subject to drug or alcohol testing pursuant
11 to subsection 8, paragraph "a", subparagraph (3). An
12 employer may have more than one pool of safety-
13 sensitive employees subject to drug or alcohol testing
14 pursuant to subsection 8, paragraph "a", subparagraph
15 (3), but shall not include an employee in more than
16 one safety-sensitive pool.

17 g. Upon receipt of a confirmed positive alcohol
18 test which indicates an alcohol concentration greater
19 than the concentration level established by the
20 employer pursuant to this section but less than the
21 concentration level in section 321J.2 for operating
22 while under the influence of alcohol, and if the
23 employer has at least fifty employees, and if the
24 employee has been employed by the employer for at
25 least twelve of the preceding eighteen months, and if
26 rehabilitation is agreed upon by the employee, and if
27 the employee has not previously violated the
28 employer's substance abuse prevention policy pursuant
29 to this section, the written policy shall provide for
30 the rehabilitation of the employee pursuant to
31 subsection 10, paragraph "a", subparagraph (1), and
32 the apportionment of the costs of rehabilitation as
33 provided by this paragraph.

34 (1) If the employer has an employee benefit plan,
35 the costs of rehabilitation shall be apportioned as
36 provided under the employee benefit plan.

37 (2) If no employee benefit plan exists and the
38 employee has coverage for any portion of the costs of
39 rehabilitation under any health care plan of the
40 employee, the costs of rehabilitation shall be
41 apportioned as provided by the health care plan with
42 any costs not covered by the plan apportioned equally
43 between the employee and the employer. However, the
44 employer shall not be required to pay more than two
45 thousand dollars toward the costs not covered by the
46 employee's health care plan.

47 (3) If no employee benefit plan exists and the
48 employee does not have coverage for any portion of the
49 costs of rehabilitation under any health care plan of
50 the employee, the costs of rehabilitation shall be

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1 apportioned equally between the employee and the
2 employer. However, the employer shall not be required
3 to pay more than two thousand dollars towards the cost
4 of rehabilitation under this subparagraph.

5 Rehabilitation required pursuant to this paragraph
6 shall not preclude an employer from taking any adverse
7 employment action against the employee during the
8 rehabilitation based on the employee's failure to
9 comply with any requirements of the rehabilitation,
10 including any action by the employee to invalidate a
11 test sample provided by the employee pursuant to the
12 rehabilitation.

13 h. In order to conduct drug or alcohol testing
14 under this section, an employer shall require
15 supervisory personnel of the employer involved with
16 drug or alcohol testing under this section to attend a
17 minimum of two hours of initial training and to
18 attend, on an annual basis thereafter, a minimum of
19 one hour of subsequent training. The training shall
20 include, but is not limited to, information concerning
21 the recognition of evidence of employee alcohol and
22 other drug abuse, the documentation and corroboration
23 of employee alcohol and other drug abuse, and the
24 referral of employees who abuse alcohol or other drugs
25 to the employee assistance program or to the resource
26 file of employee assistance services providers.

27 10. DISCIPLINARY PROCEDURES.

28 a. Upon receipt of a confirmed positive drug or
29 alcohol test result which indicates a violation of the
30 employer's written policy, or upon the refusal of an
31 employee or prospective employee to provide a testing
32 sample, an employer may use that test result or test
33 refusal as a valid basis for disciplinary or
34 rehabilitative actions pursuant to the requirements of
35 the employer's written policy and the requirements of
36 this section, which may include, among other actions,
37 the following:

38 (1) A requirement that the employee enroll in an
39 employer-provided or approved rehabilitation,
40 treatment, or counseling program, which may include
41 additional drug or alcohol testing, participation in
42 and successful completion of which may be a condition
43 of continued employment, and the costs of which may or
44 may not be covered by the employer's health plan or
45 policies.

46 (2) Suspension of the employee, with or without
47 pay, for a designated period of time.

48 (3) Termination of employment.

49 (4) Refusal to hire a prospective employee.

50 (5) Other adverse employment action in conformance

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1 with the employer's written policy and procedures,
2 including any relevant collective bargaining agreement
3 provisions.

4 b. Following a drug or alcohol test, but prior to
5 receipt of the final results of the drug or alcohol
6 test, an employer may suspend a current employee, with
7 or without pay, pending the outcome of the test. An
8 employee who has been suspended shall be reinstated by
9 the employer, with back pay, and interest on such
10 amount at eighteen percent per annum compounded
11 annually, if applicable, if the result of the test is
12 not a confirmed positive drug or alcohol test which
13 indicates a violation of the employer's written
14 policy.

15 11. EMPLOYER IMMUNITY. A cause of action shall
16 not arise against an employer who has established a
17 policy and initiated a testing program in accordance
18 with the testing and policy safeguards provided for
19 under this section, for any of the following:

20 a. Testing or taking action based on the results
21 of a positive drug or alcohol test result, indicating
22 the presence of drugs or alcohol, in good faith, or on
23 the refusal of an employee or prospective employee to
24 submit to a drug or alcohol test.

25 b. Failure to test for drugs or alcohol, or
26 failure to test for a specific drug or controlled
27 substance.

28 c. Failure to test for, or if tested for, failure
29 to detect, any specific drug or other controlled
30 substance.

31 d. Termination or suspension of any substance
32 abuse prevention or testing program or policy.

33 e. Any action taken related to a false negative
34 drug or alcohol test result.

35 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
36 RESULTS.

37 a. Except as otherwise provided in paragraph "b",
38 a cause of action shall not arise against an employer
39 who has established a program of drug or alcohol
40 testing in accordance with this section, unless all of
41 the following conditions exist:

42 (1) The employer's action was based on a false
43 positive test result.

44 (2) The employer knew or clearly should have known
45 that the test result was in error and ignored the
46 correct test result because of reckless, malicious, or
47 negligent disregard for the truth, or the willful
48 intent to deceive or to be deceived.

49 b. A cause of action for defamation, libel,
50 slander, or damage to reputation shall not arise

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1 against an employer establishing a program of drug or
2 alcohol testing in accordance with this section unless
3 all of the following apply:

4 (1) The employer discloses the test results to a
5 person other than the employer, an authorized
6 employee, agent, or representative of the employer,
7 the tested employee or the tested applicant for
8 employment, an authorized substance abuse treatment
9 program or employee assistance program, or an
10 authorized agent or representative of the tested
11 employee or applicant.

12 (2) The test results disclosed incorrectly
13 indicate the presence of alcohol or drugs.

14 (3) The employer negligently discloses the
15 results.

16 c. In any cause of action based upon a false
17 positive test result, all of the following conditions
18 apply:

19 (1) The results of a drug or alcohol test
20 conducted in compliance with this section are presumed
21 to be valid.

22 (2) An employer shall not be liable for monetary
23 damages if the employer's reliance on the false
24 positive test result was reasonable and in good faith.

25 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

26 a. All communications received by an employer
27 relevant to employee or prospective employee drug or
28 alcohol test results, or otherwise received through
29 the employer's drug or alcohol testing program, are
30 confidential communications and shall not be used or
31 received in evidence, obtained in discovery, or
32 disclosed in any public or private proceeding, except
33 as otherwise provided or authorized by this section.

34 b. An employee, or a prospective employee, who is
35 the subject of a drug or alcohol test conducted under
36 this section pursuant to an employer's written policy
37 and for whom a confirmed positive test result is
38 reported shall, upon written request, have access to
39 any records relating to the employee's drug or alcohol
40 test, including records of the laboratory where the
41 testing was conducted and any records relating to the
42 results of any relevant certification or review by a
43 medical review officer. However, a prospective
44 employee shall be entitled to records under this
45 paragraph only if the prospective employee requests
46 the records within fifteen calendar days from the date
47 the employer provided the prospective employee written
48 notice of the results of a drug or alcohol test as
49 provided in subsection 7, paragraph "i", subparagraph
50 (2).

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1 c. Except as provided by this section and as
2 necessary to conduct drug or alcohol testing under
3 this section and to file a report pursuant to
4 subsection 16, a laboratory and a medical review
5 officer conducting drug or alcohol testing under this
6 section shall not use or disclose to any person any
7 personally identifiable information regarding such
8 testing, including the names of individuals tested,
9 even if unaccompanied by the results of the test.

10 d. An employer may use and disclose information
11 concerning the results of a drug or alcohol test
12 conducted pursuant to this section under any of the
13 following circumstances:

14 (1) In an arbitration proceeding pursuant to a
15 collective bargaining agreement, or an administrative
16 agency proceeding or judicial proceeding under
17 workers' compensation laws or unemployment
18 compensation laws or under common or statutory laws
19 where action taken by the employer based on the test
20 is relevant or is challenged.

21 (2) To any federal agency or other unit of the
22 federal government as required under federal law,
23 regulation or order, or in accordance with compliance
24 requirements of a federal government contract.

25 (3) To any agency of this state authorized to
26 license individuals if the employee tested is licensed
27 by that agency and the rules of that agency require
28 such disclosure.

29 (4) To a union representing the employee if such
30 disclosure would be required by federal labor laws.

31 (5) To a substance abuse evaluation or treatment
32 facility or professional for the purpose of evaluation
33 or treatment of the employee.

34 However, positive test results from an employer
35 drug or alcohol testing program shall not be used as
36 evidence in any criminal action against the employee
37 or prospective employee tested.

38 14. CIVIL PENALTIES -- JURISDICTION.

39 a. Any laboratory or medical review officer which
40 discloses information in violation of the provisions
41 of subsection 7, paragraph "h" or "k", or any employer
42 who, through the selection process described in
43 subsection 1, paragraph "k", improperly targets or
44 exempts employees subject to unannounced drug or
45 alcohol testing, shall be subject to a civil penalty
46 of one thousand dollars for each violation. The
47 attorney general or the attorney general's designee
48 may maintain a civil action to enforce this
49 subsection. Any civil penalty recovered shall be
50 deposited in the general fund of the state.

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1 b. A laboratory or medical review officer involved
2 in the conducting of a drug or alcohol test pursuant
3 to this section shall be deemed to have the necessary
4 contact with this state for the purpose of subjecting
5 the laboratory or medical review officer to the
6 jurisdiction of the courts of this state.

7 15. CIVIL REMEDIES. This section may be enforced
8 through a civil action.

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

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

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

29 16. REPORTS. A laboratory doing business for an
30 employer who conducts drug or alcohol tests pursuant
31 to this section shall file an annual report with the
32 Iowa department of public health by March 1 of each
33 year concerning the number of drug or alcohol tests
34 conducted on employees who work in this state pursuant
35 to this section, the number of positive and negative
36 results of the tests, during the previous calendar
37 year. In addition, the laboratory shall include in
38 its annual report the specific basis for each test as
39 authorized in subsection 8, the type of drug or drugs
40 which were found in the positive drug tests, and all
41 significant available demographic factors relating to
42 the positive test pool.

43 Sec. 2. EFFECTIVE DATE. This Act takes effect on
44 the thirtieth day following enactment.""

By STEVE KING
DERRYL McLAREN

S-5045 FILED FEBRUARY 18, 1998
RULED OUT OF ORDER

(p. 344)

SENATE AMENDMENT TO HOUSE FILE 299

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1 Amend House File 299, 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, Code 1997, is amended
6 by striking the section and inserting in lieu thereof
7 the following:

8 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

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

11 a. "Alcohol" means ethanol, isopropanol, or
12 methanol.

13 b. "Drug" means a substance considered a
14 controlled substance and included in schedule I, II,
15 III, IV, or V under the federal Controlled Substances
16 Act, 21 U.S.C. § 801 et seq.

17 c. "Employee" means a person in the service of an
18 employer in this state and includes the employer, and
19 any chief executive officer, president, vice
20 president, supervisor, manager, and officer of the
21 employer who is actively involved in the day-to-day
22 operations of the business.

23 d. "Employer" means a person, firm, company,
24 corporation, labor organization, or employment agency,
25 which has one or more full-time employees employed in
26 the same business, or in or about the same
27 establishment, under any contract of hire, express or
28 implied, oral or written, in this state. "Employer"
29 does not include the state, a political subdivision of
30 the state, including a city, county, or school
31 district, the United States, the United States postal
32 service, or a Native-American tribe.

33 e. "Good faith" means reasonable reliance on
34 facts, or that which is held out to be factual,
35 without the intent to be deceived, and without
36 reckless, malicious, or negligent disregard for the
37 truth.

38 f. "Medical review officer" means a licensed
39 physician, osteopathic physician, chiropractor, nurse
40 practitioner, or physician assistant authorized to
41 practice in any state of the United States, who is
42 responsible for receiving laboratory results generated
43 by an employer's drug or alcohol testing program, and
44 who has knowledge of substance abuse disorders and has
45 appropriate medical training to interpret and evaluate
46 an individual's confirmed positive test result
47 together with the individual's medical history and any
48 other relevant biomedical information.

49 g. "Prospective employee" means a person who has
made application, whether written or oral, to an

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1 employer to become an employee.

2 h. "Reasonable suspicion drug or alcohol testing"
3 means drug or alcohol testing based upon evidence that
4 an employee is using or has used alcohol or other
5 drugs in violation of the employer's written policy
6 drawn from specific objective and articulable facts
7 and reasonable inferences drawn from those facts in
8 light of experience. For purposes of this paragraph,
9 facts and inferences may be based upon, but not
10 limited to, any of the following:

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

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

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

20 (4) Evidence that an individual has tampered with
21 any drug or alcohol test during the individual's
22 employment with the current employer.

23 (5) Evidence that an employee has caused an
24 accident while at work which resulted in an injury to
25 a person for which injury, if suffered by an employee,
26 a record or report could be required under chapter 88,
27 or resulted in damage to property, including to
28 equipment, in an amount reasonably estimated at the
29 time of the accident to exceed one thousand dollars.

30 (6) Evidence that an employee has manufactured,
31 sold, distributed, solicited, possessed, used, or
32 transferred drugs while working or while on the
33 employer's premises or while operating the employer's
34 vehicle, machinery, or equipment.

35 i. "Safety-sensitive position" means a job wherein
36 an accident could cause loss of human life, serious
37 bodily injury, or significant property or
38 environmental damage, including a job with duties that
39 include immediate supervision of a person in a job
40 that meets the requirement of this paragraph.

41 j. "Sample" means such sample from the human body
42 capable of revealing the presence of alcohol or other
43 drugs, or their metabolites. However, sample does not
44 mean blood except as authorized pursuant to subsection
45 7, paragraph "l".

46 k. "Unannounced drug or alcohol testing" means
47 testing for the purposes of detecting drugs or alcohol
48 which is conducted on a periodic basis, without
49 advance notice of the test to employees, other than
50 employees whose duties include responsibility for

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1 administration of the employer's drug or alcohol
2 testing program, subject to testing prior to the day
3 of testing, and without individualized suspicion. The
4 selection of employees to be tested from the pool of
5 employees subject to testing shall be done based on a
6 neutral and objective selection process by an entity
7 independent from the employer and shall be made by a
8 computer-based random number generator that is matched
9 with employees' social security numbers, payroll
10 identification numbers, or other comparable
11 identifying numbers in which each member of the
12 employee population subject to testing has an equal
13 chance of selection for initial testing, regardless of
14 whether the employee has been selected or tested
15 previously. The random selection process shall be
16 conducted through a computer program that records each
17 selection attempt by date, time, and employee number.

18 2. APPLICABILITY. This section does not apply to
19 drug or alcohol tests conducted on employees required
20 to be tested pursuant to federal statutes, federal
21 regulations, or orders issued pursuant to federal law.
22 In addition, an employer, through its written policy,
23 may exclude from the pools of employees subject to
24 unannounced drug or alcohol testing pursuant to
25 subsection 8, paragraph "a", employee populations
26 required to be tested as described in this subsection.

27 3. TESTING OPTIONAL. This section does not
28 require or create a legal duty on an employer to
29 conduct drug or alcohol testing and the requirements
30 of this section shall not be construed to encourage,
31 discourage, restrict, limit, prohibit, or require such
32 testing. In addition, an employer may implement and
33 require drug or alcohol testing at some but not all of
34 the work sites of the employer and the requirements of
35 this section shall only apply to the employer and
36 employees who are at the work sites where drug or
37 alcohol testing pursuant to this section has been
38 implemented. A cause of action shall not arise in
39 favor of any person against an employer or agent of an
40 employer based on the failure of the employer to
41 establish a program or policy on substance abuse
42 prevention or to implement any component of testing as
43 permitted by this section.

44 4. TESTING AS CONDITION OF EMPLOYMENT --
45 REQUIREMENTS. To the extent provided in subsection 8,
46 an employer may test employees and prospective
47 employees for the presence of drugs or alcohol as a
48 condition of continued employment or hiring. An
49 employer shall adhere to the requirements of this
50 section concerning the conduct of such testing and the

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1 use and disposition of the results of such testing.

2 5. COLLECTION OF SAMPLES. In conducting drug or
3 alcohol testing, an employer may require the
4 collection of samples from its employees and
5 prospective employees, and may require presentation of
6 reliable individual identification from the person
7 being tested to the person collecting the samples.
8 Collection of a sample shall be in conformance with
9 the requirements of this section. The employer may
10 designate the type of sample to be used for this
11 testing.

12 6. SCHEDULING OF TESTS.

13 a. Drug or alcohol testing of employees conducted
14 by an employer shall normally occur during, or
15 immediately before or after, a regular work period.
16 The time required for such testing by an employer
17 shall be deemed work time for the purposes of
18 compensation and benefits for employees.

19 b. An employer shall pay all actual costs for drug
20 or alcohol testing of employees and prospective
21 employees required by the employer.

22 c. An employer shall provide transportation or pay
23 reasonable transportation costs to employees if drug
24 or alcohol sample collection is conducted at a
25 location other than the employee's normal work site.

26 7. TESTING PROCEDURES. All sample collection and
27 testing for drugs or alcohol under this section shall
28 be performed in accordance with the following
29 conditions:

30 a. The collection of samples shall be performed
31 under sanitary conditions and with regard for the
32 privacy of the individual from whom the specimen is
33 being obtained and in a manner reasonably calculated
34 to preclude contamination or substitution of the
35 specimen.

36 b. Sample collection for testing of current
37 employees shall be performed so that the specimen is
38 split into two components at the time of collection in
39 the presence of the individual from whom the sample or
40 specimen is collected. The second portion of the
41 specimen or sample shall be of sufficient quantity to
42 permit a second, independent confirmatory test as
43 provided in paragraph "i". If the specimen is urine,
44 the sample shall be split such that the primary sample
45 contains at least thirty milliliters and the secondary
46 sample contains at least fifteen milliliters. Both
47 portions of the sample shall be forwarded to the
48 laboratory conducting the initial confirmatory
49 testing. In addition to any requirements for storage
50 of the initial sample that may be imposed upon the

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1 laboratory as a condition for certification or
2 approval, the laboratory shall store the second
3 portion of any sample until receipt of a confirmed
4 negative test result or for a period of at least
5 forty-five calendar days following the completion of
6 the initial confirmatory testing, if the first portion
7 yielded a confirmed positive test result.

8 c. Sample collections shall be documented, and the
9 procedure for documentation shall include the
10 following:

11 (1) Samples shall be labeled so as to reasonably
12 preclude the possibility of misidentification of the
13 person tested in relation to the test result provided,
14 and samples shall be handled and tracked in a manner
15 such that control and accountability are maintained
16 from initial collection to each stage in handling,
17 testing, and storage, through final disposition.

18 (2) An employee or prospective employee shall be
19 provided an opportunity to provide any information
20 which may be considered relevant to the test,
21 including identification of prescription or
22 nonprescription drugs currently or recently used, or
23 other relevant medical information. To assist an
24 employee or prospective employee in providing the
25 information described in this subparagraph, the
26 employer shall provide an employee or prospective
27 employee with a list of the drugs to be tested.

28 d. Sample collection, storage, and transportation
29 to the place of testing shall be performed so as to
30 reasonably preclude the possibility of sample
31 contamination, adulteration, or misidentification.

32 e. All confirmatory drug testing shall be
33 conducted at a laboratory certified by the United
34 States department of health and human services'
35 substance abuse and mental health services
36 administration or approved under rules adopted by the
37 Iowa department of public health.

38 f. Drug or alcohol testing shall include
39 confirmation of any initial positive test results.
40 For drug or alcohol testing, confirmation shall be by
41 use of a different chemical process than was used in
42 the initial screen for drugs or alcohol. The
43 confirmatory drug or alcohol test shall be a
44 chromatographic technique such as gas chromatography
45 or mass spectrometry, or another comparably reliable
46 analytical method. An employer may take adverse
47 employment action, including refusal to hire a
48 prospective employee, based on a confirmed positive
49 drug or alcohol test.

50 g. A medical review officer shall, prior to the

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1 results being reported to an employer, review and
2 interpret any confirmed positive test results,
3 including both quantitative and qualitative test
4 results, to ensure that the chain of custody is
5 complete and sufficient on its face and that any
6 information provided by the individual pursuant to
7 paragraph "c", subparagraph (2), is considered.

8 h. In conducting drug or alcohol testing pursuant
9 to this section, the laboratory, the medical review
10 officer, and the employer shall ensure, to the extent
11 feasible, that the testing only measure, and the
12 records concerning the testing only show or make use
13 of information regarding, alcohol or drugs in the
14 body.

15 i. (1) If a confirmed positive drug or alcohol
16 test for a current employee is reported to the
17 employer by the medical review officer, the employer
18 shall notify the employee in writing by certified
19 mail, return receipt requested, of the results of the
20 test, the employee's right to request and obtain a
21 confirmatory test of the second sample collected
22 pursuant to paragraph "b" at an approved laboratory of
23 the employee's choice, and the fee payable by the
24 employee to the employer for reimbursement of expenses
25 concerning the test. The fee charged an employee
26 shall be an amount that represents the costs
27 associated with conducting the second confirmatory
28 test, which shall be consistent with the employer's
29 cost for conducting the initial confirmatory test on
30 an employee's sample. If the employee, in person or
31 by certified mail, return receipt requested, requests
32 a second confirmatory test, identifies an approved
33 laboratory to conduct the test, and pays the employer
34 the fee for the test within seven days from the date
35 the employer mails by certified mail, return receipt
36 requested, the written notice to the employee of the
37 employee's right to request a test, a second
38 confirmatory test shall be conducted at the laboratory
39 chosen by the employee. The results of the second
40 confirmatory test shall be reported to the medical
41 review officer who reviewed the initial confirmatory
42 test results and the medical review officer shall
43 review the results and issue a report to the employer
44 on whether the results of the second confirmatory test
45 confirmed the initial confirmatory test as to the
46 presence of a specific drug or alcohol. If the
47 results of the second test do not confirm the results
48 of the initial confirmatory test, the employer shall
49 reimburse the employee for the fee paid by the
50 employee for the second test and the initial

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1 confirmatory test shall not be considered a confirmed
2 positive drug or alcohol test for purposes of taking
3 disciplinary action pursuant to subsection 10.

4 (2) If a confirmed positive drug or alcohol test
5 for a prospective employee is reported to the employer
6 by the medical review officer, the employer shall
7 notify the prospective employee in writing of the
8 results of the test, of the name and address of the
9 medical review officer who made the report, and of the
10 prospective employee's right to request records under
11 subsection 13.

12 j. A laboratory conducting testing under this
13 section shall dispose of all samples for which a
14 negative test result was reported to an employer
15 within five working days after issuance of the
16 negative test result report.

17 k. Except as necessary to conduct drug or alcohol
18 testing pursuant to this section and to submit the
19 report required by subsection 16, a laboratory or
20 other medical facility shall only report to an
21 employer or outside entity information relating to the
22 results of a drug or alcohol test conducted pursuant
23 to this section concerning the determination of
24 whether the tested individual has engaged in conduct
25 prohibited by the employer's written policy with
26 regard to alcohol or drug use.

27 1. Notwithstanding the provisions of this
28 subsection, an employer may rely and take action upon
29 the results of any blood test for drugs or alcohol
30 made on any employee involved in an accident at work
31 if the test is administered by or at the direction of
32 the person providing treatment or care to the employee
33 without request or suggestion by the employer that a
34 test be conducted, and the employer has lawfully
35 obtained the results of the test. For purposes of
36 this paragraph, an employer shall not be deemed to
37 have requested or required a test in conjunction with
38 the provision of medical treatment following a
39 workplace accident by providing information concerning
40 the circumstance of the accident.

41 8. DRUG OR ALCOHOL TESTING. Employers may conduct
42 drug or alcohol testing as provided in this
43 subsection:

44 a. Employers may conduct unannounced drug or
45 alcohol testing of employees who are selected from any
46 of the following pools of employees:

47 (1) The entire employee population at a particular
48 work site of the employer except for employees who are
49 not scheduled to be at work at the time the testing is
50 conducted because of the status of the employees or

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1 who have been excused from work pursuant to the
2 employer's work policy prior to the time the testing
3 is announced to employees.

4 (2) The entire full-time active employee
5 population at a particular work site except for
6 employees who are not scheduled to be at work at the
7 time the testing is to be conducted because of the
8 status of the employee, or who have been excused from
9 work pursuant to the employer's working policy.

10 (3) All employees at a particular work site who
11 are in a pool of employees in a safety-sensitive
12 position and who are scheduled to be at work at the
13 time testing is conducted, other than employees who
14 are not scheduled to be at work at the time the
15 testing is to be conducted or who have been excused
16 from work pursuant to the employer's work policy prior
17 to the time the testing is announced to employees.

18 b. Employers may conduct drug or alcohol testing
19 of employees during, and after completion of, drug or
20 alcohol rehabilitation.

21 c. Employers may conduct reasonable suspicion drug
22 or alcohol testing.

23 d. Employers may conduct drug or alcohol testing
24 of prospective employees.

25 e. Employers may conduct drug or alcohol testing
26 as required by federal law or regulation or by law
27 enforcement.

28 f. Employers may conduct drug or alcohol testing
29 in investigating accidents in the workplace in which
30 the accident resulted in an injury to a person for
31 which injury, if suffered by an employee, a record or
32 report could be required under chapter 88, or resulted
33 in damage to property, including to equipment, in an
34 amount reasonably estimated at the time of the
35 accident to exceed one thousand dollars.

36 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

37 a. Drug or alcohol testing or retesting by an
38 employer shall be carried out within the terms of a
39 written policy which has been provided to every
40 employee subject to testing, and is available for
41 review by employees and prospective employees.

42 b. The employer's written policy shall provide
43 uniform requirements for what disciplinary or
44 rehabilitative actions an employer shall take against
45 an employee or prospective employee upon receipt of a
46 confirmed positive drug or alcohol test result or upon
47 the refusal of the employee or prospective employee to
48 provide a testing sample. The policy shall provide
49 that any action taken against an employee or
50 prospective employee shall be based only on the

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1 results of the drug or alcohol test. The written
2 policy shall also provide that if rehabilitation is
3 required pursuant to paragraph "g", the employer shall
4 not take adverse employment action against the
5 employee so long as the employee complies with the
6 requirements of rehabilitation and successfully
7 completes rehabilitation.

8 c. Employers shall establish an awareness program
9 to inform employees of the dangers of drug and alcohol
10 use in the workplace and comply with the following
11 requirements in order to conduct drug or alcohol
12 testing under this section:

13 (1) If an employer has an employee assistance
14 program, the employer must inform the employee of the
15 benefits and services of the employee assistance
16 program. An employer shall post notice of the
17 employee assistance program in conspicuous places and
18 explore alternative routine and reinforcing means of
19 publicizing such services. In addition, the employer
20 must provide the employee with notice of the policies
21 and procedures regarding access to and utilization of
22 the program.

23 (2) If an employer does not have an employee
24 assistance program, the employer must maintain a
25 resource file of employee assistance services
26 providers, alcohol and other drug abuse programs
27 certified by the Iowa department of public health,
28 mental health providers, and other persons, entities,
29 or organizations available to assist employees with
30 personal or behavioral problems. The employer shall
31 provide all employees information about the existence
32 of the resource file and a summary of the information
33 contained within the resource file. The summary
34 should contain, but need not be limited to, all
35 information necessary to access the services listed in
36 the resource file. In addition, the employer shall
37 post in conspicuous places a listing of multiple
38 employee assistance providers in the area.

39 d. An employee or prospective employee whose drug
40 or alcohol test results are confirmed as positive in
41 accordance with this section shall not, by virtue of
42 those results alone, be considered as a person with a
43 disability for purposes of any state or local law or
44 regulation.

45 e. If the written policy provides for alcohol
46 testing, the employer shall establish in the written
47 policy a standard for alcohol concentration which
48 shall be deemed to violate the policy. The standard
49 for alcohol concentration shall not be less than .04,
50 expressed in terms of grams of alcohol per two hundred

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1 ten liters of breath, or its equivalent.

2 f. An employee of an employer who is designated by
3 the employer as being in a safety-sensitive position
4 shall be placed in only one pool of safety-sensitive
5 employees subject to drug or alcohol testing pursuant
6 to subsection 8, paragraph "a", subparagraph (3). An
7 employer may have more than one pool of safety-
8 sensitive employees subject to drug or alcohol testing
9 pursuant to subsection 8, paragraph "a", subparagraph
10 (3), but shall not include an employee in more than
11 one safety-sensitive pool.

12 g. Upon receipt of a confirmed positive alcohol
13 test which indicates an alcohol concentration greater
14 than the concentration level established by the
15 employer pursuant to this section but less than the
16 concentration level in section 321J.2 for operating
17 while under the influence of alcohol, and if the
18 employer has at least fifty employees, and if the
19 employee has been employed by the employer for at
20 least twelve of the preceding eighteen months, and if
21 rehabilitation is agreed upon by the employee, and if
22 the employee has not previously violated the
23 employer's substance abuse prevention policy pursuant
24 to this section, the written policy shall provide for
25 the rehabilitation of the employee pursuant to
26 subsection 10, paragraph "a", subparagraph (1), and
27 the apportionment of the costs of rehabilitation as
28 provided by this paragraph.

29 (1) If the employer has an employee benefit plan,
30 the costs of rehabilitation shall be apportioned as
31 provided under the employee benefit plan.

32 (2) If no employee benefit plan exists and the
33 employee has coverage for any portion of the costs of
34 rehabilitation under any health care plan of the
35 employee, the costs of rehabilitation shall be
36 apportioned as provided by the health care plan with
37 any costs not covered by the plan apportioned equally
38 between the employee and the employer. However, the
39 employer shall not be required to pay more than two
40 thousand dollars toward the costs not covered by the
41 employee's health care plan.

42 (3) If no employee benefit plan exists and the
43 employee does not have coverage for any portion of the
44 costs of rehabilitation under any health care plan of
45 the employee, the costs of rehabilitation shall be
46 apportioned equally between the employee and the
47 employer. However, the employer shall not be required
48 to pay more than two thousand dollars towards the cost
49 of rehabilitation under this subparagraph.

50 Rehabilitation required pursuant to this paragraph

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1 shall not preclude an employer from taking any adverse
2 employment action against the employee during the
3 rehabilitation based on the employee's failure to
4 comply with any requirements of the rehabilitation,
5 including any action by the employee to invalidate a
6 test sample provided by the employee pursuant to the
7 rehabilitation.

8 h. In order to conduct drug or alcohol testing
9 under this section, an employer shall require
10 supervisory personnel of the employer involved with
11 drug or alcohol testing under this section to attend a
12 minimum of two hours of initial training and to
13 attend, on an annual basis thereafter, a minimum of
14 one hour of subsequent training. The training shall
15 include, but is not limited to, information concerning
16 the recognition of evidence of employee alcohol and
17 other drug abuse, the documentation and corroboration
18 of employee alcohol and other drug abuse, and the
19 referral of employees who abuse alcohol or other drugs
20 to the employee assistance program or to the resource
21 file of employee assistance services providers.

22 10. DISCIPLINARY PROCEDURES.

23 a. Upon receipt of a confirmed positive drug or
24 alcohol test result which indicates a violation of the
25 employer's written policy, or upon the refusal of an
26 employee or prospective employee to provide a testing
27 sample, an employer may use that test result or test
28 refusal as a valid basis for disciplinary or
29 rehabilitative actions pursuant to the requirements of
30 the employer's written policy and the requirements of
31 this section, which may include, among other actions,
32 the following:

33 (1) A requirement that the employee enroll in an
34 employer-provided or approved rehabilitation,
35 treatment, or counseling program, which may include
36 additional drug or alcohol testing, participation in
37 and successful completion of which may be a condition
38 of continued employment, and the costs of which may or
39 may not be covered by the employer's health plan or
40 policies.

41 (2) Suspension of the employee, with or without
42 pay, for a designated period of time.

43 (3) Termination of employment.

44 (4) Refusal to hire a prospective employee.

45 (5) Other adverse employment action in conformance
46 with the employer's written policy and procedures,
47 including any relevant collective bargaining agreement
48 provisions.

49 b. Following a drug or alcohol test, but prior to
50 receipt of the final results of the drug or alcohol

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1 test, an employer may suspend a current employee, with
2 or without pay, pending the outcome of the test. An
3 employee who has been suspended shall be reinstated by
4 the employer, with back pay, and interest on such
5 amount at eighteen percent per annum compounded
6 annually, if applicable, if the result of the test is
7 not a confirmed positive drug or alcohol test which
8 indicates a violation of the employer's written
9 policy.

10 11. EMPLOYER IMMUNITY. A cause of action shall
11 not arise against an employer who has established a
12 policy and initiated a testing program in accordance
13 with the testing and policy safeguards provided for
14 under this section, for any of the following:

15 a. Testing or taking action based on the results
16 of a positive drug or alcohol test result, indicating
17 the presence of drugs or alcohol, in good faith, or on
18 the refusal of an employee or prospective employee to
19 submit to a drug or alcohol test.

20 b. Failure to test for drugs or alcohol, or
21 failure to test for a specific drug or controlled
22 substance.

23 c. Failure to test for, or if tested for, failure
24 to detect, any specific drug or other controlled
25 substance.

26 d. Termination or suspension of any substance
27 abuse prevention or testing program or policy.

28 e. Any action taken related to a false negative
29 drug or alcohol test result.

30 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST
31 RESULTS.

32 a. Except as otherwise provided in paragraph "b",
33 a cause of action shall not arise against an employer
34 who has established a program of drug or alcohol
35 testing in accordance with this section, unless all of
36 the following conditions exist:

37 (1) The employer's action was based on a false
38 positive test result.

39 (2) The employer knew or clearly should have known
40 that the test result was in error and ignored the
41 correct test result because of reckless, malicious, or
42 negligent disregard for the truth, or the willful
43 intent to deceive or to be deceived.

44 b. A cause of action for defamation, libel,
45 slander, or damage to reputation shall not arise
46 against an employer establishing a program of drug or
47 alcohol testing in accordance with this section unless
48 all of the following apply:

49 (1) The employer discloses the test results to a
50 person other than the employer, an authorized

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1 employee, agent, or representative of the employer,
2 the tested employee or the tested applicant for
3 employment, an authorized substance abuse treatment
4 program or employee assistance program, or an
5 authorized agent or representative of the tested
6 employee or applicant.

7 (2) The test results disclosed incorrectly
8 indicate the presence of alcohol or drugs.

9 (3) The employer negligently discloses the
10 results.

11 c. In any cause of action based upon a false
12 positive test result, all of the following conditions
13 apply:

14 (1) The results of a drug or alcohol test
15 conducted in compliance with this section are presumed
16 to be valid.

17 (2) An employer shall not be liable for monetary
18 damages if the employer's reliance on the false
19 positive test result was reasonable and in good faith.

20 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

21 a. All communications received by an employer
22 relevant to employee or prospective employee drug or
23 alcohol test results, or otherwise received through
24 the employer's drug or alcohol testing program, are
25 confidential communications and shall not be used or
26 received in evidence, obtained in discovery, or
27 disclosed in any public or private proceeding, except
28 as otherwise provided or authorized by this section.

29 b. An employee, or a prospective employee, who is
30 the subject of a drug or alcohol test conducted under
31 this section pursuant to an employer's written policy
32 and for whom a confirmed positive test result is
33 reported shall, upon written request, have access to
34 any records relating to the employee's drug or alcohol
35 test, including records of the laboratory where the
36 testing was conducted and any records relating to the
37 results of any relevant certification or review by a
38 medical review officer. However, a prospective
39 employee shall be entitled to records under this
40 paragraph only if the prospective employee requests
41 the records within fifteen calendar days from the date
42 the employer provided the prospective employee written
43 notice of the results of a drug or alcohol test as
44 provided in subsection 7, paragraph "i", subparagraph
45 (2).

46 c. Except as provided by this section and as
47 necessary to conduct drug or alcohol testing under
48 this section and to file a report pursuant to
49 subsection 16, a laboratory and a medical review
50 officer conducting drug or alcohol testing under this

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1 section shall not use or disclose to any person any
2 personally identifiable information regarding such
3 testing, including the names of individuals tested,
4 even if unaccompanied by the results of the test.

5 d. An employer may use and disclose information
6 concerning the results of a drug or alcohol test
7 conducted pursuant to this section under any of the
8 following circumstances:

9 (1) In an arbitration proceeding pursuant to a
10 collective bargaining agreement, or an administrative
11 agency proceeding or judicial proceeding under
12 workers' compensation laws or unemployment
13 compensation laws or under common or statutory laws
14 where action taken by the employer based on the test
15 is relevant or is challenged.

16 (2) To any federal agency or other unit of the
17 federal government as required under federal law,
18 regulation or order, or in accordance with compliance
19 requirements of a federal government contract.

20 (3) To any agency of this state authorized to
21 license individuals if the employee tested is licensed
22 by that agency and the rules of that agency require
23 such disclosure.

24 (4) To a union representing the employee if such
25 disclosure would be required by federal labor laws.

26 (5) To a substance abuse evaluation or treatment
27 facility or professional for the purpose of evaluation
28 or treatment of the employee.

29 However, positive test results from an employer
30 drug or alcohol testing program shall not be used as
31 evidence in any criminal action against the employee
32 or prospective employee tested.

33 14. CIVIL PENALTIES -- JURISDICTION.

34 a. Any laboratory or medical review officer which
35 discloses information in violation of the provisions
36 of subsection 7, paragraph "h" or "k", or any employer
37 who, through the selection process described in
38 subsection 1, paragraph "k", improperly targets or
39 exempts employees subject to unannounced drug or
40 alcohol testing, shall be subject to a civil penalty
41 of one thousand dollars for each violation. The
42 attorney general or the attorney general's designee
43 may maintain a civil action to enforce this
44 subsection. Any civil penalty recovered shall be
45 deposited in the general fund of the state.

46 b. A laboratory or medical review officer involved
47 in the conducting of a drug or alcohol test pursuant
48 to this section shall be deemed to have the necessary
49 contact with this state for the purpose of subjecting
50 the laboratory or medical review officer to the

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1 jurisdiction of the courts of this state.

2 15. CIVIL REMEDIES. This section may be enforced
3 through a civil action.

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

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

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

24 16. REPORTS. A laboratory doing business for an
25 employer who conducts drug or alcohol tests pursuant
26 to this section shall file an annual report with the
27 Iowa department of public health by March 1 of each
28 year concerning the number of drug or alcohol tests
29 conducted on employees who work in this state pursuant
30 to this section, the number of positive and negative
31 results of the tests, during the previous calendar
32 year. In addition, the laboratory shall include in
33 its annual report the specific basis for each test as
34 authorized in subsection 8, the type of drug or drugs
35 which were found in the positive drug tests, and all
36 significant available demographic factors relating to
37 the positive test pool.

38 Sec. 2. EFFECTIVE DATE. This Act takes effect on
39 the thirtieth day following enactment."

RECEIVED FROM THE SENATE

H-8119 FILED FEBRUARY 25, 1998

House Concurred
3/4/98 (p. 524)

HOUSE FILE 299

H-8143

- 1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 3, line 23, by striking the word "pools"
5 and inserting the following: "pool".
6 2. By striking page 7, line 45, through page 8,
7 line 10, and inserting the following: "alcohol
8 testing of employees who are selected from a pool of
9 employees that consists of all employees at a
10 particular work site who".
11 3. Page 10, line 6, by striking the words "
12 subparagraph (3)".
13 4. Page 10, lines 9 and 10, by striking the words
14 ", subparagraph (3)".

By WISE of Lee

H-8143 FILED MARCH 2, 1998

lost 3/4/98 (P.497)

HOUSE FILE 299

H-8186

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. By striking page 12, line 10, through page 13,
5 line 19, and inserting the following:

6 "11. EMPLOYER LIABILITY. A cause of action for
7 defamation, libel, slander, or damage to reputation
8 shall arise against an employer establishing a program
9 of drug or alcohol testing in accordance with this
10 section if the employer discloses the results to a
11 person other than the employer, an authorized
12 employee, agent, or representative of the employer,
13 the tested employee or prospective employee, an
14 authorized substance abuse treatment program or
15 employee assistance program, an authorized agent or
16 representative of the tested employee or prospective
17 employee, or a person to whom disclosure is otherwise
18 authorized pursuant to this section."

19 2. By renumbering and correcting internal
20 references as necessary.

By DOTZLER of Black Hawk

H-8186 FILED MARCH 3, 1998

lost 3/4/98
(p. 506)

HOUSE FILE 299

H-8187

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, by striking line 50 and inserting the
5 following: "received a bona fide offer, whether
6 written or oral, from an".

By KINZER of Scott

H-8187 FILED MARCH 3, 1998

lost 3/4/98
(p. 495)

HOUSE FILE 299

H-8184

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 10, line 12, by inserting after the word
5 "receipt" the following: "of a confirmed positive
6 drug test relating to the use of drugs that had
7 previously been lawfully prescribed to the employee,
8 or upon receipt".

9 2. Page 10, by striking lines 15 through 17 and
10 inserting the following: "employer pursuant to this
11 section, and if the".

By DOTZLER of Black Hawk

H-8184 FILED MARCH 3, 1998

Last 3/4/98

(p.509)

HOUSE FILE 299

H-8185

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 10, by striking lines 38 through 41 and
5 inserting the following: "between the employee and
6 the employer."

7 2. Page 10, by striking lines 47 through 49 and
8 inserting the following: "employer."

By WISE of Lee

H-8185 FILED MARCH 3, 1998

Last 3/4/98

(p.503)

HOUSE FILE 299

H-8190

- 1 Amend the Senate amendment, H-8119, to House File
- 2 299, as amended, passed, and reprinted by the House,
- 3 as follows:
- 4 1. By striking page 12, line 10, through page 13,
- 5 line 19.
- 6 2. By renumbering as necessary.

By CHAPMAN of Linn

H-8190 FILED MARCH 3, 1998

Lost 3/4/98 (p. 506)

HOUSE FILE 299

H-8191

- 1 Amend the Senate amendment, H-8119, to House File
- 2 299, as amended, passed, and reprinted by the House,
- 3 as follows:
- 4 1. Page 8, by striking lines 37 through 40 and
- 5 inserting the following:
- 6 "a. Prior to conducting drug or alcohol testing
- 7 under this section, an employer shall establish a
- 8 written policy which is consistent with the
- 9 requirements of this section governing such testing
- 10 and which has been agreed to by representatives of the
- 11 employees and the employer. The employer shall comply
- 12 with this section and the requirements of the written
- 13 policy to conduct drug or alcohol testing of employees
- 14 and prospective employees and shall provide the
- 15 written policy to every employee subject to testing
- 16 and shall make the policy available for".

By TAYLOR of Linn

H-8191 FILED MARCH 3, 1998

*Lost 3/4/98
(p. 500)*

HOUSE FILE 299

H-8192

- 1 Amend the Senate amendment, H-8119, to House File
- 2 299, as amended, passed, and reprinted by the House,
- 3 as follows:
- 4 1. Page 11, by inserting after line 21 the
- 5 following:
- 6 "i. If an employee is under eighteen years of age,
- 7 in order to conduct drug or alcohol testing under this
- 8 section, the employer shall, prior to conducting a
- 9 test, notify the employee's parent or grandparent that
- 10 a test shall be conducted and the basis for the test.
- 11 For purposes of this paragraph, "parent" means one
- 12 parent or a legal guardian or custodian of the
- 13 employee."
- 14 2. By renumbering as necessary.

By HUSER of Polk

H-8192 FILED MARCH 3, 1998

*Withdrawn
3/4/98 (p. 503)*

HOUSE FILE 299

H-8188

1 Amend the Senate amendment, H-8119, to House File
 2 299, as amended, passed, and reprinted by the House,
 3 as follows:
 4 1. Page 15, by striking lines 24 through 37 and
 5 inserting the following:
 6 "16. REPORTS.
 7 a. An employer who conducts a drug test pursuant
 8 to this section shall, for each fiscal year beginning
 9 on or after July 1, 1999, file an annual report with
 10 the division of labor services of the department of
 11 workforce development, on forms provided by the
 12 division, documenting the number of accidents,
 13 including the number of personal injuries and the
 14 dollar loss for property damage arising out of the
 15 accidents, caused by the use of drugs or alcohol by
 16 employees and documenting separately for each category
 17 of testing described in subsection 8 the following
 18 information:
 19 (1) The number of drug or alcohol tests conducted
 20 in each category.
 21 (2) The results of drug or alcohol tests conducted
 22 in each category.
 23 (3) The cumulative direct costs of drug or alcohol
 24 tests in each category. Direct costs includes
 25 employee work hours lost due to the conducting of drug
 26 or alcohol testing pursuant to this section.
 27 (4) The cost of substance abuse evaluation and
 28 treatment for employees in each category.
 29 b. The division of labor services of the
 30 department of workforce development shall compile the
 31 information submitted by employers pursuant to this
 32 subsection and shall submit an annual report to the
 33 general assembly on this information."
 34 2. By renumbering as necessary.

By CONNORS of Polk

H-8188 FILED MARCH 3, 1998

Lost
(p. 508)

HOUSE FILE 299

H-8189

1 Amend the Senate amendment, H-8119, to House File
 2 299, as amended, passed, and reprinted by the House,
 3 as follows:
 4 1. Page 12, by striking line 4 and inserting the
 5 following: "the employer and shall be paid an amount
 6 to make the employee whole for all wages lost during
 7 the suspension, with interest on such".

By WHITEAD of Woodbury

H-8189 FILED MARCH 3, 1998

Lost 3/4/98
(p. 503)

HOUSE FILE 299

H-8197

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 10, by inserting after line 11 the
5 following:

6 "In addition, an employer shall place no more than
7 twenty-five percent of the employee population subject
8 to drug or alcohol testing pursuant to subsection 8,
9 paragraph "a", in a pool of employees as described in
10 subsection 8, paragraph "a", subparagraphs (1) through
11 (3), during any calendar year."

By TAYLOR of Linn

H-8197 FILED MARCH 3, 1998

*Lost 3/4/98**(p.500)*

HOUSE FILE 299

H-8198

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 9, line 49, by striking the figure ".04"
5 and inserting the following: ".06".

6 2. Page 10, by striking lines 15 through 17 and
7 inserting the following: "employer pursuant to this
8 section, and if the".

By DOTZLER of Black Hawk

H-8198 FILED MARCH 3, 1998

Withdrawn 3/4/98 (p.500)

HOUSE FILE 299

H-8199

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 3, line 17, by inserting after the word
5 "number." the following: "In addition, the neutral
6 and objective selection process shall not in any way,
7 or to any degree, take into account race, age, gender,
8 job performance, job classification, seniority,
9 salary, representation status or activities, political
10 philosophy, religion, creed, national origin, or any
11 other personal factor, whether work-related or not,
12 other than the objective criteria necessary to the
13 neutral selection process."

By DOTZLER of Black Hawk

H-8199 FILED MARCH 3, 1998

*Lost 3/4/98**(p.495)*

HOUSE FILE 299

H-8193

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 10, line 12, by inserting after the word
5 "receipt" the following: "of a confirmed positive
6 drug test, or upon receipt".

7 2. Page 10, by striking lines 15 through 17 and
8 inserting the following: "employer pursuant to this
9 section, and if the".

By CHAPMAN of Linn

H-8193 FILED MARCH 3, 1998

A. *lost 3/4/98 (p. 502)*
B. *withdrawn 3/4/98 (p. 502)*

HOUSE FILE 299

H-8194

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, by striking lines 21 and 22 and
5 inserting the following: "employer."

By SCHERRMAN of Dubuque

H-8194 FILED MARCH 3, 1998

lost 3/4/98 (p. 494)

HOUSE FILE 299

H-8195

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 15, by striking lines 34 through 37 and
5 inserting the following: "authorized in subsection 8
6 and the type of drug or drugs which were found in the
7 positive drug tests."

By MURPHY of Dubuque

H-8195 FILED MARCH 3, 1998

WITHDRAWN *3/4/98 (p. 509)*

HOUSE FILE 299

H-8196

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, line 17, by inserting after the word
5 "means" the following: "a member of the general
6 assembly, or".

7 2. Page 8, line 41, by inserting after the words
8 "prospective employees." the following: "For drug or
9 alcohol testing or retesting of members of the general
10 assembly, the written policy governing testing shall
11 be established by the legislative council created in
12 section 2.41."

By FALLON of Polk

H-8196 FILED MARCH 3, 1998

Not Gernone 3/4/98
(p. 492)

HOUSE FILE 299

H-8203

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

- 4 1. Page 2, by striking lines 35 through 40.
- 5 2. Page 8, by striking lines 10 through 17.
- 6 3. Page 10, by striking lines 2 through 11.
- 7 4. By renumbering as necessary.

By O'BRIEN of Boone

H-8203 FILED MARCH 3, 1998

Lost 3/4/98 (p.495)

HOUSE FILE 299

H-8204

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

- 4 1. Page 3, by inserting after line 17 the
5 following:
6 "1. "Work site" means the place, scene, or general
7 area under the control of an employer where one or
8 multiple structures of the same business exist in
9 proximity to one another."
10 2. By renumbering as necessary.

By O'BRIEN of Boone

H-8204 FILED MARCH 3, 1998

Lost 3/4/98 (p.496)

HOUSE FILE 299

H-8205

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

- 4 1. Page 15, line 37, by inserting after the word
5 "pool." the following: "The department of public
6 health shall compile an annual report based on the
7 information received pursuant to this subsection but
8 shall not reproduce, release, or disclose any
9 information obtained pursuant to this subsection which
10 reveals the identity of any employee or prospective
11 employee, a medical review officer, employer, or
12 laboratory involved in drug or alcohol testing
13 pursuant to this section."

By FALCK of Fayette

H-8205 FILED MARCH 3, 1998

Lost 3/4/98 (p.506)

HOUSE FILE 299

H-8206

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

- 4 1. Page 15, by striking lines 38 and 39.
- 5 2. By renumbering as necessary.

By MUNDIE of Webster

H-8206 FILED MARCH 3, 1998

*3/3/98***WITHDRAWN**

HOUSE FILE 299

H-8200

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 10, by inserting after line 11 the
5 following:
6 "In addition, notwithstanding any provision of this
7 section to the contrary, an employee who has been
8 tested six times pursuant to subsection 8, paragraph
9 "a", during a calendar year shall be excluded from any
10 pool of employees subject to unannounced drug or
11 alcohol testing pursuant to subsection 8, paragraph
12 "a", for the remainder of the calendar year."

By TAYLOR of Linn

H-8200 FILED MARCH 3, 1998

Lost 3/4/98 (p. 501)

HOUSE FILE 299

H-8201

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 10, by striking line 20 and inserting the
5 following: "least six months, and if".

By TAYLOR of Linn

H-8201 FILED MARCH 3, 1998

Lost 3/4/98 (p. 502)

HOUSE FILE 299

H-8202

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 8, line 19, by striking the word "after"
5 and inserting the following: "for up to three months
6 after successful".
7 2. Page 14, by inserting after line 32 the
8 following:
9 "e. An employer shall protect the confidentiality
10 of the results of any drug or alcohol test conducted
11 on an employee. The results of the test may be
12 recorded in the employee's personnel records.
13 However, if an employee whose test indicated the
14 presence of drugs or alcohol in violation of the
15 employer's written policy has undergone substance
16 abuse rehabilitation pursuant to this section and has
17 successfully completed rehabilitation for substance
18 abuse, any reference to the test in the employee's
19 personnel records shall be expunged upon successful
20 completion of rehabilitation."
21 3. By renumbering as necessary.

By TAYLOR of Linn

H-8202 FILED MARCH 3, 1998

*Lost 3/4/98**(p. 499)**WWW.HOUSE.TI.W*

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H-8215

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:
4 1. By striking everything after the enacting
5 clause and inserting the following:
6 "Section 1. Section 730.5, Code 1997, is amended
7 by striking the section and inserting in lieu thereof
8 the following:
9 730.5 DRUG-FREE WORKPLACES.
10 1. DEFINITIONS. As used in this section, unless
11 the context otherwise requires:
12 a. "Alcohol" means ethanol, isopropanol, or
13 methanol.
14 b. "Drug" means a substance considered unlawful
15 under the federal Controlled Substances Act, 21 U.S.C.
16 § 801 et seq.
17 c. "Employee" means a person in the service of an
18 employer.
19 d. "Employer" means a person which has one or more
20 employees employed in the same business, or in or
21 about the same establishment, in this state.
22 e. "Good faith" means reasonable reliance on
23 facts.
24 f. "Medical review officer" means a physician
25 licensed to practice medicine and surgery or
26 osteopathic medicine and surgery in any state of the
27 United States, responsible for receiving laboratory
28 results generated by an employer's drug testing
29 program, who is independent from the employer and is
30 agreed upon by representatives of the employer and the
31 employees, and who has knowledge of substance abuse
32 disorders and has appropriate medical training to
33 interpret and evaluate an individual's confirmed
34 positive test result together with the individual's
35 medical history and any other relevant biomedical
36 information.
37 g. "Prospective employee" means a person who has
38 made application, whether written or oral, to an
39 employer to become an employee and who has received a
40 bona fide offer of employment from the employer.
41 h. "Reasonable suspicion drug or alcohol testing"
42 means drug or alcohol testing based upon evidence
43 which would cause a reasonable person to conclude that
44 an employee is using or has used alcohol or other
45 drugs and which use impairs the employee's performance
46 while on the job in violation of the employer's
47 written policy. For purposes of this paragraph,
48 evidence may include, but is not limited to, any of
49 the following:
50 (1) Observable phenomena while at work such as
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1 direct observation of alcohol or other drug use or
2 abuse or of the physical symptoms or manifestations of
3 being impaired due to alcohol or other drug use.

4 (2) Abnormal conduct or erratic behavior while at
5 work or a significant deterioration in work
6 performance.

7 (3) A report of alcohol or other drug use while at
8 work provided by a reliable and credible source.

9 (4) Evidence that an individual has tampered with
10 the individual's own drug or alcohol test during the
11 individual's employment with the current employer.

12 (5) Evidence that an employee has caused an
13 accident while at work which resulted in a personal
14 injury which required medical treatment away from the
15 workplace or damage to property, including equipment,
16 in an amount reasonably estimated to exceed one
17 thousand dollars at the time of the accident.

18 (6) Evidence that an employee has possessed or
19 used drugs while working or while on the employer's
20 premises or while operating the employer's vehicle,
21 machinery, or equipment.

22 i. "Sample" means such sample of urine from the
23 human body capable of revealing the presence of
24 alcohol or other drugs, or their metabolites.

25 2. APPLICABILITY. This section does not prevent
26 an employer from conducting medical screening for
27 substances other than drugs or alcohol in order to
28 monitor employee exposure to toxic or other unhealthy
29 substances encountered in the workplace or in the
30 performance of the employees' job responsibilities.
31 Any such screening must be limited to the specific
32 substances required to be monitored.

33 3. TESTING AS CONDITION OF EMPLOYMENT --
34 REQUIREMENTS. To the extent provided in subsection 7,
35 an employer may test employees and prospective
36 employees for the presence of drugs or alcohol as a
37 condition of continued employment or hiring. An
38 employer shall adhere to the requirements of this
39 section concerning the conduct of such testing and the
40 use and disposition of the results of such testing.

41 4. COLLECTION OF SAMPLES. In conducting drug or
42 alcohol testing, an employer may require the
43 collection of samples from its employees and
44 prospective employees, and may require presentation of
45 reliable individual identification from the person
46 being tested to the person collecting the samples.
47 Collection of a sample shall be in conformance with
48 the requirements of this section.

49 5. SCHEDULING OF TESTS.

50 a. Drug or alcohol testing of employees conducted

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1 by an employer shall normally occur during, or
2 immediately before or after, a regular work period.
3 The time required for such testing by an employer
4 shall be deemed work time for the purposes of
5 compensation and benefits for employees.

6 b. An employer shall pay all actual costs for drug
7 or alcohol testing of employees and prospective
8 employees required by the employer.

9 c. An employer shall provide transportation or pay
10 reasonable transportation costs to employees for all
11 drug or alcohol testing under this section.

12 6. TESTING PROCEDURES. All sample collection and
13 testing for drugs or alcohol under this section shall
14 be performed in accordance with the following
15 conditions:

16 a. The collection of samples shall be performed
17 under sanitary conditions and with regard for the
18 privacy of the individual from whom the specimen is
19 being obtained and in a manner reasonably calculated
20 to preclude contamination or substitution of the
21 specimen.

22 b. Sample collection for testing of current
23 employees shall be performed so that the specimen is
24 split into two components at the time of collection in
25 the presence of the individual from whom the sample or
26 specimen is collected. The second portion of the
27 specimen or sample shall be of sufficient quantity to
28 permit a second, independent confirmatory test as
29 provided in paragraph "i". The sample shall be split
30 such that the primary sample contains at least thirty
31 milliliters and the secondary sample contains at least
32 fifteen milliliters. Both portions of the sample
33 shall be forwarded to the laboratory conducting the
34 initial confirmatory testing. In addition to any
35 requirements for storage of the initial sample that
36 may be imposed upon the laboratory as a condition for
37 certification or approval, the laboratory shall store
38 the second portion of any sample until receipt of a
39 confirmed negative test result or for a period of at
40 least forty-five calendar days following the
41 completion of the initial confirmatory testing, if the
42 first portion yielded a confirmed positive test
43 result.

44 c. Sample collections shall be documented, and the
45 procedure for documentation shall include the
46 following:

47 (1) Samples shall be labeled so as to reasonably
48 preclude the possibility of misidentification of the
49 individual tested in relation to the test result
50 provided, and samples shall be handled and tracked in

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1 a manner such that control and accountability are
2 maintained from initial collection to each stage in
3 handling, testing, and storage, through final
4 disposition.

5 (2) An employee or prospective employee shall be
6 provided an opportunity to provide any information
7 which may be considered relevant to the test,
8 including identification of prescription or
9 nonprescription drugs currently or recently used, or
10 other relevant medical information. Information
11 provided by the employee or prospective employee shall
12 not be disclosed to the employer but shall be
13 delivered to the facility conducting confirmatory
14 testing. To assist an employee or prospective
15 employee in providing the information described in
16 this subparagraph, the employer shall provide an
17 employee or prospective employee with a list of the
18 drugs to be tested.

19 d. Sample collection, storage, and transportation
20 to the place of testing shall be performed so as to
21 reasonably preclude the possibility of sample
22 contamination, adulteration, or misidentification.

23 e. All drug testing, including both initial and
24 confirmatory testing, shall be conducted at a
25 laboratory certified by the United States department
26 of health and human services' substance abuse and
27 mental health services administration or approved
28 under rules adopted by the Iowa department of public
29 health.

30 f. Drug or alcohol testing shall include
31 confirmation of any initial positive test results.
32 For drug testing, confirmation shall be by use of a
33 different chemical process than was used in the
34 initial drug screen. The confirmatory drug test shall
35 be a chromatographic technique such as gas
36 chromatography or mass spectrometry, or another
37 comparably reliable analytical method.

38 g. A medical review officer shall, prior to the
39 results being reported to an employer and the employee
40 or prospective employee tested, review and interpret
41 any confirmed positive test results, including both
42 quantitative and qualitative test results, to ensure
43 that the chain of custody is complete and sufficient
44 on its face and that any information provided by the
45 individual pursuant to paragraph "c", subparagraph
46 (2), is considered.

47 h. In conducting drug or alcohol testing pursuant
48 to this section, the employer shall ensure that the
49 testing only measure, and the records concerning the
50 testing only show or make use of information

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1 regarding, alcohol or drugs in the body.
2 i. If a positive drug or alcohol test for an
3 employee or prospective employee is confirmed by the
4 medical review officer, the medical review officer
5 shall notify the employee or prospective employee in
6 writing of the results of the test, the employee's or
7 prospective employee's right to request and obtain a
8 confirmatory test of the second sample collected
9 pursuant to paragraph "b" at a certified or approved
10 laboratory of the employee's or prospective employee's
11 choice, and the fee established by the employer's
12 written policy to be payable by the employee or
13 prospective employee to the medical review officer for
14 reimbursement of expenses concerning the test. The
15 fee charged an employee or prospective employee shall
16 be an amount, not in excess of one hundred dollars,
17 that represents the costs associated with conducting
18 the second confirmatory test, which shall be
19 consistent with the employer's cost for conducting the
20 initial confirmatory test on an employee's or
21 prospective employee's sample. If the employee or
22 prospective employee requests a second confirmatory
23 test, identifies a certified or approved laboratory to
24 conduct the test, and pays the medical review officer
25 the fee for the test within fifteen days from the date
26 the employee or prospective employee receives written
27 notice of the right to request a test, a second
28 confirmatory test shall be conducted at the laboratory
29 chosen by the employee or prospective employee. The
30 results of the second confirmatory test shall be
31 reported to the medical review officer who reviewed
32 the initial confirmatory test results and the medical
33 review officer shall review the results and issue a
34 report to the employer and the employee or prospective
35 employee tested that the results of the drug or
36 alcohol test were confirmed as positive if the results
37 of the second confirmatory test confirmed the initial
38 confirmatory test as to the presence of a specific
39 drug or alcohol. If the results of the second test do
40 not confirm the results of the initial confirmatory
41 test, the medical review officer shall report to the
42 employer that the result of the drug or alcohol test
43 is negative and not a confirmed positive test result
44 for purposes of this section.
45 j. A report of the results of a drug or alcohol
46 test issued to an employer and the individual tested
47 shall only indicate, as to an employee or prospective
48 employee, whether the test results were positive or
49 negative, pursuant to the review and interpretation of
50 a medical review officer as provided in this

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1 subsection. An inconclusive test result shall be
2 reported as a negative test result. If the test
3 results are positive, the report shall only indicate
4 whether drugs or alcohol were present, which drugs
5 were present if applicable, information concerning the
6 amount of alcohol present, and a statement from the
7 medical review officer that any information provided
8 by the employee or prospective employee fails to
9 explain the results.

10 7. DRUG OR ALCOHOL TESTING. Employers may conduct
11 drug or alcohol testing as provided in this
12 subsection:

13 a. Employers may conduct drug or alcohol testing
14 of employees for up to two years after completion of
15 drug or alcohol rehabilitation.

16 b. Employers may conduct reasonable suspicion drug
17 or alcohol testing.

18 c. Employers may conduct drug or alcohol testing
19 of prospective employees.

20 d. Employers may conduct drug or alcohol testing
21 as required by federal law or regulation.

22 e. Employers may conduct drug or alcohol testing
23 in investigating accidents in the workplace which
24 result in a personal injury which requires medical
25 treatment away from the workplace or damage to
26 property, including equipment, in an amount reasonably
27 estimated to exceed one thousand dollars at the time
28 of the accident.

29 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

30 a. Prior to conducting drug or alcohol testing
31 under this section, an employer shall establish,
32 following consultation with representatives of
33 employees, a written policy consistent with the
34 requirements of this section governing such testing.
35 The employer shall comply with this section and the
36 requirements of the written policy to conduct drug or
37 alcohol testing of employees and prospective employees
38 and shall provide the written policy to every employee
39 subject to testing and shall make the policy available
40 for review by employees and prospective employees. In
41 addition, the employer's written policy shall provide
42 for notice to prospective employees if a drug or
43 alcohol test will be required of a prospective
44 employee prior to employment.

45 b. The employer's written policy shall provide
46 uniform requirements for what disciplinary or
47 rehabilitative actions an employer shall take against
48 an employee or prospective employee upon receipt of a
49 confirmed positive drug or alcohol test result or upon
50 the refusal of the employee or prospective employee to

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1 provide a testing sample. The policy shall provide
2 that any action taken against an employee or
3 prospective employee shall be based only on the
4 results of the drug or alcohol test and shall not in
5 any way, or to any degree, take into account race,
6 age, gender, job performance, job classification,
7 seniority, salary, representation status or
8 activities, political philosophy, religion, creed,
9 national origin, or any other personal factor, whether
10 work-related or not. An employer who fails to comply
11 with the provisions of this subsection as to a drug or
12 alcohol test shall be prohibited from taking any
13 disciplinary action against an employee or prospective
14 employee pursuant to that test.

15 c. Employers shall establish an awareness program
16 to inform employees of the dangers of drug and alcohol
17 use in the workplace and shall comply with the
18 following requirements in order to conduct drug or
19 alcohol testing under this section:

20 (1) If an employer has an employee assistance
21 program, the employer must inform the employee of the
22 benefits and services of the employee assistance
23 program. An employer shall post notice of the
24 employee assistance program in conspicuous places and
25 explore alternative routine and reinforcing means of
26 publicizing such services. In addition, the employer
27 must provide the employee with notice of the policies
28 and procedures regarding access to and utilization of
29 the program.

30 (2) If an employer does not have an employee
31 assistance program, the employer must maintain a
32 resource file of employee assistance services
33 providers, alcohol and other drug abuse programs
34 certified by the Iowa department of public health,
35 mental health providers, and other persons, entities,
36 or organizations available to assist employees with
37 personal or behavioral problems. The employer shall
38 provide all employees information about the existence
39 of the resource file and a summary of the information
40 contained within the resource file. The summary
41 should contain, but need not be limited to, all
42 information necessary to access the services listed in
43 the resource file. In addition, the employer shall
44 post in conspicuous places a listing of multiple
45 employee assistance providers in the area.

46 d. An employee or prospective employee whose drug
47 or alcohol test results are confirmed as positive in
48 accordance with this section shall not, by virtue of
49 those results alone, be considered as a person with a
50 disability for purposes of any state or local law or

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1 regulation.

2 e. If the written policy provides for alcohol
3 testing, the employer shall establish in the written
4 policy a standard for alcohol concentration which
5 shall be deemed to violate the policy. The standard
6 for alcohol concentration shall not be less than .04,
7 expressed in terms of grams of alcohol per two hundred
8 ten liters of breath, or its equivalent.

9 f. In order to conduct drug or alcohol testing
10 under this section, an employer shall require all
11 supervisory personnel of the employer to attend a
12 minimum of two hours of initial training and to
13 attend, on an annual basis thereafter, a minimum of
14 one hour of subsequent training. The training shall
15 be based upon standards adopted by the Iowa department
16 of public health and shall include, but is not limited
17 to, information concerning the recognition of evidence
18 of employee alcohol and other drug abuse, the
19 documentation and corroboration of employee alcohol
20 and other drug abuse, and the referral of employees
21 who abuse alcohol or other drugs to the employee
22 assistance program or to the resource file of employee
23 assistance services providers. For purposes of this
24 paragraph, "supervisory personnel" means persons
25 having authority, in the interest of the employer, to
26 hire, transfer, suspend, lay off, recall, promote,
27 discharge, assign, reward, or discipline other
28 employees, or responsibly to direct them, or to adjust
29 their grievances, or effectively to recommend such
30 action, if in connection with the foregoing the
31 exercise of such authority is not of a merely routine
32 or clerical nature, but requires the use of
33 independent judgment.

34 g. If an employee is under eighteen years of age,
35 in order to conduct drug or alcohol testing under this
36 section, the employer shall, prior to conducting a
37 test, notify the employee's parent or grandparent that
38 a test shall be conducted and the basis for the test.
39 For purposes of this paragraph, "parent" means one
40 parent or a legal guardian or custodian of the
41 employee.

42 9. DISCIPLINARY PROCEDURES.

43 a. Upon receipt for an employee of the first
44 confirmed positive drug or alcohol test result, the
45 employer shall provide the employee with a substance
46 abuse evaluation, and treatment if recommended by the
47 evaluation, with costs apportioned as provided under
48 the employee benefit plan or at employer expense, if
49 an employee benefit plan is not in effect which
50 apportions costs. The employer shall take no

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1 disciplinary action against the employee upon receipt
2 of the first confirmed positive drug or alcohol test
3 result if the employee undergoes a substance abuse
4 evaluation, and if the employee successfully completes
5 substance abuse treatment if treatment is recommended
6 by the evaluation. However, if an employee fails to
7 undergo substance abuse evaluation when required as a
8 result of a drug or alcohol test, or fails to
9 successfully complete substance abuse treatment when
10 recommended by an evaluation, the employee may be
11 disciplined as provided in paragraph "b". The
12 substance abuse evaluation and treatment provided by
13 the employer shall take place under a program approved
14 by the Iowa department of public health or accredited
15 by the joint commission on the accreditation of health
16 care organizations.

17 b. Upon receipt for an employee of a second
18 confirmed positive drug or alcohol test result or upon
19 receipt for a prospective employee of a confirmed
20 positive drug or alcohol test result, upon the failure
21 of an employee to comply with the requirements of
22 paragraph "a", or upon the refusal of an employee or
23 prospective employee to provide a testing sample, an
24 employer may use that test result or test refusal as a
25 valid basis for disciplinary or rehabilitative actions
26 consistent with the employer's written policy, which
27 may include, among other actions, the following:

28 (1) A requirement that the employee enroll in an
29 employer-provided or approved rehabilitation,
30 treatment, or counseling program, which may include
31 additional drug or alcohol testing, participation in
32 and successful completion of which may be a condition
33 of continued employment, and the costs of which may or
34 may not be covered by the employer's health plan or
35 policies.

36 (2) Suspension of the employee, with or without
37 pay, for a designated period of time.

38 (3) Termination of employment.

39 (4) Refusal to hire a prospective employee.

40 (5) Other adverse employment action in conformance
41 with the employer's written policy and procedures,
42 including any relevant collective bargaining agreement
43 provisions.

44 10. EMPLOYER IMMUNITY. A cause of action shall
45 not arise against an employer who, in good faith, has
46 established a written policy in accordance with this
47 section and has complied with the requirements of the
48 written policy and this section for testing or taking
49 action based on the results of a confirmed positive
50 drug or alcohol test result, indicating the presence

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1 of drugs or alcohol, or the refusal of an employee or
2 prospective employee to submit to a drug or alcohol
3 test.

4 11. RELEASE OF INFORMATION -- CONFIDENTIALITY --
5 EXCEPTIONS.

6 a. Except as provided in paragraph "b", all
7 communications received by an employer relevant to
8 employee or prospective employee drug or alcohol test
9 results, or otherwise received through the employer's
10 drug or alcohol testing program, are confidential
11 communications and shall not be used or received in
12 evidence, obtained in discovery, or disclosed in any
13 public or private proceeding, except as provided by
14 this section or in a proceeding related to an action
15 taken by an employer under this section or by an
16 employee under this section.

17 b. An employee, or a prospective employee, who is
18 the subject of a drug or alcohol test conducted under
19 this section pursuant to an employer's written policy
20 and for whom a confirmed positive test result is
21 reported shall receive, at the same time the report is
22 issued to the employer, a copy of the report issued to
23 the employer and shall receive any records relating to
24 the employee's drug or alcohol test, including records
25 of the laboratory where the testing was conducted and
26 any records relating to the results of any relevant
27 review by a medical review officer.

28 12. CIVIL REMEDIES. This section may be enforced
29 through a civil action.

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

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

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

50 13. OFFENSES. Samples collected, information

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1 provided by an employee or prospective employee
2 pursuant to subsection 6, paragraph "c", subparagraph
3 (2), and the results of drug or alcohol testing shall
4 be used solely for the purpose of conducting drug or
5 alcohol testing pursuant to this section and shall not
6 be sold, transferred, or disseminated, to any person
7 for any purpose not expressly authorized by this
8 section. A person who violates this subsection
9 commits a simple misdemeanor and, notwithstanding
10 section 903.1, if a monetary fine is imposed, the fine
11 shall be one hundred dollars. Each violation of this
12 subsection constitutes a separate offense.

13 14. REPORTS.

14 a. An employer who conducts a drug test pursuant
15 to this section shall, for each fiscal year beginning
16 on or after July 1, 1999, file an annual report with
17 the division of labor services of the department of
18 workforce development, on forms provided by the
19 division, documenting the number of accidents,
20 including the number of personal injuries and the
21 dollar loss for property damage arising out of the
22 accidents, caused by the use of drugs or alcohol by
23 employees and documenting separately for each category
24 of testing described in subsection 7, the following
25 information:

26 (1) The number of drug or alcohol tests conducted
27 in each category.

28 (2) The results of drug or alcohol tests conducted
29 in each category.

30 (3) The cumulative direct costs of drug or alcohol
31 tests in each category. Direct costs include employee
32 work hours lost due to the conducting of drug or
33 alcohol testing pursuant to this section.

34 (4) The cost of substance abuse evaluation and
35 treatment for employees in each category.

36 b. The division of labor services of the
37 department of workforce development shall compile the
38 information submitted by employers pursuant to this
39 subsection and shall submit an annual report to the
40 general assembly on this information."

By TAYLOR of Linn
 BELL of Jasper
 BRAND of Tama
 BUKTA of Clinton
 BURNETT of Story
 CATALDO of Polk
 CHAPMAN of Linn
 CHIODO of Polk
 COHOON of Des Moines
 CONNORS of Polk
 DODERER of Johnson
 DOTZLER of Black Hawk
 DREES of Carroll
 FALCK of Fayette
 FALLON of Polk
 FOEGE of Linn
 FORD of Polk
 FREVERT of Palo Alto
 HOLVECK of Polk
 HUSER of Polk
 JOCHUM of Dubuque
 KINZER of Scott
 KOENIGS of Mitchell

KREIMAN of Davis
 LARKIN of Lee
 MASCHER of Johnson
 MAY of Worth
 MERTZ of Kossuth
 MORELAND of Wapello
 MUNDIE of Webster
 MURPHY of Dubuque
 MYERS of Johnson
 O'BRIEN of Boone
 OSTERHAUS of Jackson
 REYNOLDS-KNIGHT of Van Buren
 RICHARDSON of Warren
 SCHERRMAN of Dubuque
 SCHRADER of Marion
 SHOULTZ of Black Hawk
 THOMAS of Clayton
 WARNSTADT of Woodbury
 WEIGEL of Chickasaw
 WHITEAD of Woodbury
 WISE of Lee
 WITT of Black Hawk

H-8215 FILED MARCH 4, 1998
 LOST

(P523)

HOUSE FILE 299

H-8216

1 Amend the Senate amendment, H-8119, to House File
 2 299, as amended, passed, and reprinted by the House,
 3 as follows:
 4 1. Page 8, line 41, by inserting after the words
 5 "prospective employees." the following:
 6 "The written policy shall provide that in order to
 7 conduct drug or alcohol testing under this section of
 8 an employee who is under eighteen years of age, the
 9 employer shall, prior to employment of the employee,
 10 provide written notification, by certified mail,
 11 return receipt requested, to the employee's parent or
 12 grandparent concerning the employer's drug or alcohol
 13 testing policy pursuant to this section. For purposes
 14 of this paragraph, "parent" means one parent or a
 15 legal guardian or custodian of the employee."

By HUSER of Polk

H-8216 FILED MARCH 4, 1998
 LOST

(P.509)

H-8238

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 8, line 41, by inserting after the words
5 "prospective employees." the following: "The written
6 policy shall also provide that if an employee under
7 eighteen years of age is subjected to a drug or
8 alcohol test pursuant to this section, the sample
9 shall be collected in a manner that ensures the
10 greatest possible privacy to the employee without
11 compromising the integrity of the testing and, if the
12 sample shall be collected in the presence of another
13 person, the person shall be of the same sex as the
14 employee subjected to the test."

By WEIGEL of Chickasaw

H-8238 FILED MARCH 4, 1998

LOST

(P.524)

HOUSE FILE 299

H-8208

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 3, by inserting after line 26 the
5 following:

6 "This section also does not prevent an employer
7 from conducting medical screening for substances other
8 than drugs or alcohol in order to monitor employee
9 exposure to toxic or other unhealthy substances
10 encountered in the workplace or in the performance of
11 the employees' job responsibilities. Any such
12 screening must be limited to the specific substances
13 required to be monitored."

By DOTZLER of Black Hawk

H-8208 FILED MARCH 4, 1998

LOST

(P.498)

HOUSE FILE 299

H-8213

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 10, by striking lines 15 through 17 and
5 inserting the following: "employer pursuant to this
6 section, and if the".

By DOTZLER of Black Hawk

H-8213 FILED MARCH 4, 1998

LOST

(P.502)

HOUSE FILE 299

H-8214

1 Amend the Senate amendment, H-8119, to House File
2 299, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 9, line 49, by striking the figure ".04"
5 and inserting the following: ".05".

By DOTZLER of Black Hawk

H-8214 FILED MARCH 4, 1998

LOST

(P.500)

HOUSE FILE 299

H-8227

- 1 Amend the Senate amendment, H-8119, to House File
- 2 299, as amended, passed, and reprinted by the House,
- 3 as follows:
- 4 1. Page 11, by striking line 43.
- 5 2. By renumbering as necessary.

By RICHARDSON of Warren

H-8227 FILED MARCH 4, 1998

LOST

(p. 504)

HOUSE FILE 299

H-8228

- 1 Amend the Senate amendment, H-8119, to House File
- 2 299, as amended, passed, and reprinted by the House,
- 3 as follows:
- 4 1. By striking page 11, line 49, through page 12,
- 5 line 9.
- 6 2. By renumbering and correcting internal
- 7 references as necessary.

By TAYLOR of Linn

H-8228 FILED MARCH 4, 1998

LOST

(p. 505)

HOUSE FILE 299

H-8232

- 1 Amend the Senate amendment, H-8119, to House File
- 2 299, as amended, passed, and reprinted by the House,
- 3 as follows:
- 4 1. Page 8, line 41, by inserting after the words
- 5 "prospective employees." the following:
- 6 "The written policy shall provide that in order to
- 7 conduct drug or alcohol testing under this section of
- 8 an employee who is under eighteen years of age, the
- 9 employer shall, prior to employment of the employee,
- 10 provide written notification, by certified mail,
- 11 return receipt requested, to the employee's parent or
- 12 grandparent concerning the employer's drug or alcohol
- 13 testing policy pursuant to this section. In addition,
- 14 the written policy shall provide that the parent or
- 15 grandparent of an employee under eighteen years of age
- 16 shall be provided written notification, by certified
- 17 mail, return receipt requested, if the employee has a
- 18 confirmed positive drug or alcohol test result. For
- 19 purposes of this paragraph, "parent" means one parent
- 20 or a legal guardian or custodian of the employee."

By CONNORS of Polk

H-8232 FILED MARCH 4, 1998

LOST

(p. 511)

Sukup
Barry
Murphy

HSB 105

LABOR & INDUSTRIAL RELATIONS

Succeeded By
SF/HF 299

SENATE/HOUSE FILE _____
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act concerning drug and alcohol testing of private sector
2 employees and prospective employees and providing an effective
3 date.

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

- 5
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By ~~bebe~~

1 Section 1. Section 730.5, Code 1997, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

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

7 a. "Alcohol" means ethanol, isopropanol, or methanol.

8 b. "Drug" means a substance considered unlawful under the
9 federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

10 c. "Employee" means a person in the service of an employer
11 and includes the employer, and any chief executive officer,
12 president, vice president, supervisor, manager, and officer of
13 the employer.

14 d. "Employer" means a person, firm, company, corporation,
15 labor organization, employment agency, or joint labor-
16 management committee, including any public utility or public
17 transportation entity, which has one or more full-time
18 employees employed in the same business, or in or about the
19 same establishment, under any contract of hire, express or
20 implied, oral or written, in this state. "Employer" does not
21 include the state, a political subdivision of the state,
22 including a city, county, or school district, the United
23 States, the United States postal service, or a Native-American
24 tribe.

25 e. "Good faith" means reasonable reliance on facts, or
26 that which is held out to be factual, without the intent to be
27 deceived, and without reckless, malicious, or negligent
28 disregard for the truth.

29 f. "Medical review officer" means a physician licensed to
30 practice medicine and surgery or osteopathic medicine and
31 surgery in any state of the United States, responsible for
32 receiving laboratory results generated by an employer's drug
33 testing program, who has knowledge of substance abuse
34 disorders and has appropriate medical training to interpret
35 and evaluate an individual's confirmed positive test result

1 together with the individual's medical history and any other
2 relevant biomedical information.

3 g. "Prospective employee" means a person who has made
4 application, whether written or oral, to an employer to become
5 an employee.

6 h. "Reasonable suspicion drug and alcohol testing" means
7 testing for the purposes of detecting drugs or alcohol which
8 is conducted on an individual based on a criterion or criteria
9 that would suggest to a reasonable person that the individual
10 may have engaged in illicit drug use or alcohol abuse, or has
11 a substance abuse problem.

12 i. "Safety-sensitive position" means a job wherein an
13 accident could cause loss of human life, serious bodily
14 injury, or significant property or environmental damage.

15 j. "Sample" means such sample of the human body capable of
16 revealing the presence of alcohol or other drugs, or their
17 metabolites.

18 k. "Unannounced drug and alcohol testing" means testing
19 for the purposes of detecting drugs or alcohol which is
20 conducted on a periodic basis, without advance notice of the
21 test, and without individualized suspicion, and with a neutral
22 and objective selection process in which each member of the
23 employee population subject to testing has an equal chance of
24 selection for initial testing.

25 2. TESTING OPTIONAL. This section does not require an
26 employer to conduct drug and alcohol testing and the
27 requirements of this section shall not be construed to
28 encourage, discourage, restrict, limit, prohibit, or require
29 such testing.

30 3. TESTING AS CONDITION OF EMPLOYMENT -- REQUIREMENTS. To
31 the extent provided in subsection 7, an employer may test
32 employees and prospective employees for the presence of drugs
33 or alcohol as a condition of continued employment or hiring.
34 An employer shall adhere to the requirements of this section
35 concerning the conducting of such testing and the use and

1 disposition of the results of such testing.

2 4. COLLECTION OF SAMPLES. In conducting drug and alcohol
3 testing, an employer may require the collection of samples
4 from its employees and prospective employees, and may require
5 presentation of reliable individual identification from the
6 person being tested to the person collecting the samples.
7 Collection of a sample shall be in conformance with the
8 requirements of this section. The employer may designate the
9 type of sample to be used for this testing.

10 5. SCHEDULING OF TESTS.

11 a. Drug or alcohol testing of employees conducted by an
12 employer shall normally occur during, or immediately before or
13 after, a regular work period. The time required for such
14 testing by an employer shall be deemed work time for the
15 purposes of compensation and benefits for employees.

16 b. An employer shall pay all actual costs for drug and
17 alcohol testing of employees and prospective employees
18 required by the employer.

19 c. An employer shall provide transportation or pay
20 reasonable transportation costs to employees if drug and
21 alcohol testing is conducted at a location other than the
22 employee's normal work site.

23 6. TESTING PROCEDURES. All sample collection and testing
24 for drugs and alcohol under this section shall be performed in
25 accordance with the following conditions:

26 a. The collection of samples shall be performed under
27 sanitary conditions and with regard for the privacy of the
28 individual from whom the specimen is being obtained and in a
29 manner reasonably calculated to preclude contamination or
30 substitution of the specimen.

31 b. Sample collections shall be documented, and the
32 procedure for documentation shall include the following:

33 (1) Samples shall be labeled so as to reasonably preclude
34 the possibility of misidentification of the person tested in
35 relation to the test result provided, and samples shall be

1 handled and tracked in a manner such that control and
2 accountability are maintained from initial collection to each
3 stage in handling, testing, and storage, through final
4 disposition.

5 (2) An employee or prospective employee shall be provided
6 an opportunity to provide any information which may be
7 considered relevant to the test, including identification of
8 prescription or nonprescription drugs currently or recently
9 used, or other relevant medical information. A medical review
10 officer shall review and verify a laboratory sample which
11 tests positive in a confirmatory test to ensure consideration
12 of information provided pursuant to this subparagraph prior to
13 the results being reported to an employer.

14 c. Sample collection, storage, and transportation to the
15 place of testing shall be performed so as reasonably to
16 preclude the possibility of sample contamination,
17 adulteration, or misidentification.

18 d. Confirmatory drug testing shall be conducted at a
19 laboratory certified by the United States department of health
20 and human services' substance abuse and mental health services
21 administration, approved by the United States department of
22 health and human services under the federal Clinical
23 Laboratory Improvement Act, or approved under rules adopted by
24 the Iowa department of public health.

25 e. Drug and alcohol testing shall include confirmation of
26 any initial positive test results. For drug testing,
27 confirmation shall be by use of a different chemical process
28 than was used by the employer in the initial drug screen. The
29 confirmatory drug test shall be a chromatographic technique
30 such as gas chromatography or mass spectrometry, or another
31 comparably reliable analytical method. An employer may take
32 adverse employment action, including refusal to hire a
33 prospective employee, based only on a confirmed positive drug
34 or alcohol test.

35 7. DRUG AND ALCOHOL TESTING. Employers may conduct drug

1 and alcohol testing as provided in this subsection:

2 a. Employers may conduct unannounced drug and alcohol
3 testing of the employee population at large or of segments of
4 employee work groups.

5 b. Employers may conduct drug and alcohol testing of
6 employees in a safety-sensitive position.

7 c. Employers may conduct drug and alcohol testing of
8 employees during, and after completion of, drug or alcohol
9 rehabilitation.

10 d. Employers may conduct reasonable suspicion drug and
11 alcohol testing if there is reasonable suspicion to believe,
12 based on the employee's performance, behavior, attendance, or
13 other observable criterion or criteria, that the employee has
14 engaged in illicit drug use, or may be under the influence of
15 alcohol, or may be otherwise impaired by drugs or alcohol, or
16 if an employer believes, in good faith, that the employee may
17 have violated the employer's written substance abuse
18 prevention policy.

19 e. Employers may conduct drug and alcohol testing of
20 prospective employees.

21 f. Employers may conduct drug and alcohol testing as
22 required by federal law or regulation.

23 g. Employers may conduct drug and alcohol testing in
24 investigating accidents in the workplace or incidents of
25 workplace theft or other employee misconduct.

26 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

27 a. Drug and alcohol testing or retesting by an employer
28 shall be carried out within the terms of a written policy
29 which has been provided to every employee subject to testing,
30 and is available for review by prospective employees.

31 b. Employers shall provide employees, when requested and
32 as appropriate, with information as to the existence and
33 availability within the local community of counseling,
34 employee assistance, rehabilitation, and other alcohol and
35 drug abuse treatment programs of which the employer is aware.

1 c. Within the terms of the written policy, an employer may
2 require the collection and testing of samples for, among other
3 legitimate drug abuse prevention and treatment purposes, any
4 of the following:

5 (1) Deterrence and detection of possible illicit drug use,
6 possession, sale, conveyance, distribution, or manufacture of
7 drugs, intoxicants, or controlled substances in any amount or
8 in any manner, whether or not the employee is at work, or
9 deterrence and detection of possible abuse of alcohol or
10 prescription drugs.

11 (2) Investigation of possible individual employee
12 impairment.

13 (3) Investigation of accidents in the workplace or
14 incidents of workplace theft or other employee misconduct.

15 (4) Maintenance of safety for employees, customers,
16 clients, or the general public.

17 (5) Maintenance of productivity, quality of products or
18 services, or security of property or information.

19 d. An employee or prospective employee whose drug or
20 alcohol test results are confirmed as positive in accordance
21 with this section shall not, by virtue of those results alone,
22 be considered as a person with a disability for purposes of
23 any state or local law or regulation.

24 9. DISCIPLINARY PROCEDURES. Upon receipt of a confirmed
25 positive drug or alcohol test result which indicates a
26 violation of the employer's written policy, or upon the
27 refusal of an employee or prospective employee to provide a
28 testing sample, an employer may use that test result or test
29 refusal as a valid basis for disciplinary or rehabilitative
30 actions, which may include, among other actions, the
31 following:

32 a. A requirement that the employee enroll in an employer-
33 provided or approved rehabilitation, treatment, or counseling
34 program, which may include additional drug or alcohol testing,
35 participation in and successful completion of which may be a

1 condition of continued employment, and the costs of which may
2 or may not be covered by the employer's health plan or
3 policies.

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

6 c. Termination of employment.

7 d. Refusal to hire a prospective employee.

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

11 10. EMPLOYER IMMUNITY. A cause of action shall not arise
12 against an employer who has established a policy and initiated
13 a testing program in accordance with the testing and policy
14 safeguards provided for under this section, for any of the
15 following:

16 a. Testing or taking action based on the results of a
17 positive drug or alcohol test result, indicating the presence
18 of drugs or alcohol, in good faith, or the refusal of an
19 employee or prospective employee to submit to a drug or
20 alcohol test.

21 b. Failure to test for drugs or alcohol, or failure to
22 test for a specific drug or controlled substance.

23 c. Failure to test for, or if tested for, failure to
24 detect, any specific drug or other controlled substance, any
25 medical condition, or any mental, emotional, or psychological
26 disorder or condition.

27 d. Termination or suspension of any substance abuse
28 prevention or testing program or policy.

29 e. Any action taken related to a false negative drug or
30 alcohol test result.

31 11. EMPLOYER LIABILITY -- FALSE POSITIVE TEST RESULTS.

32 a. Except as otherwise provided in paragraph "b", a cause
33 of action shall not arise against an employer who has
34 established a program of drug and alcohol testing in
35 accordance with this section, unless all of the following

1 conditions exist:

2 (1) The employer's action was based on a false positive
3 test result.

4 (2) The employer knew or clearly should have known that
5 the test result was in error and ignored the correct test
6 result because of reckless, malicious, or negligent disregard
7 for the truth, or the willful intent to deceive or to be
8 deceived.

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

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

19 (2) The test results disclosed incorrectly indicate the
20 presence of alcohol or drugs.

21 (3) The employer negligently discloses the results.

22 c. In any cause of action based upon a false positive test
23 result, all of the following conditions apply:

24 (1) The results of a drug and alcohol test conducted in
25 compliance with this section are presumed to be valid.

26 (2) An employer shall not be liable for monetary damages
27 if the employer's reliance on the false positive test result
28 was reasonable and in good faith.

29 12. CONFIDENTIALITY OF RESULTS. All communications
30 received by an employer relevant to employee or prospective
31 employee drug and alcohol test results, or otherwise received
32 through the employer's drug or alcohol testing program, are
33 confidential communications and shall not be used or received
34 in evidence, obtained in discovery, or disclosed in any public
35 or private proceeding, except in a proceeding related to an

1 action taken by an employer under this section or by an
2 employee under subsection 11.

3 Sec. 2. EFFECTIVE DATE. This Act takes effect on the
4 thirtieth day following enactment.

5 EXPLANATION

6 This bill makes changes to Iowa's law governing drug and
7 alcohol testing of employees and prospective employees by
8 repealing current law and replacing it with a new Code
9 section.

10 The bill provides that the drug and alcohol testing
11 requirements established by the bill apply only to private
12 sector employers and excludes the state and its political
13 subdivisions, as well as Native-American tribes and the
14 federal government, from the definition of employer.

15 The bill governs the procedures for conducting a drug and
16 alcohol test and provides for the collection of samples, the
17 scheduling of tests, and the conduct of the drug or alcohol
18 test. The bill provides that the results of drug testing
19 shall be confirmed by a laboratory certified by the United
20 States department of health and human services under federal
21 law, by the department's substance abuse and mental health
22 services administration, or by the Iowa department of public
23 health. The bill also provides that any positive drug or
24 alcohol test shall be confirmed by a second test. The bill
25 also requires an employer to establish a written policy,
26 available to employees and prospective employees, governing
27 drug and alcohol testing.

28 The bill allows unannounced drug and alcohol testing, and
29 testing for prospective employees, employees in safety-
30 sensitive positions, and employees both during and after drug
31 or alcohol rehabilitation. The bill also permits drug and
32 alcohol testing if there exists a reasonable suspicion that
33 the employee has engaged in illicit drug use or alcohol abuse,
34 has a substance abuse problem, or has violated the employer's
35 written substance abuse prevention policy. The bill allows

1 testing as provided by federal law and in response to work
2 accidents, thefts, and misconduct.

3 The bill also allows testing of samples collected for
4 deterrence and detection of possible illicit drug use or abuse
5 of alcohol or prescription drugs, the investigation of
6 possible individual employee impairment, the investigation of
7 workplace accidents, thefts, and misconduct, the maintenance
8 of employee and public safety, and the maintenance of
9 productivity or security of property or information of the
10 employer.

11 The bill provides that an employer, as a result of a
12 positive drug and alcohol test, can take several employment
13 actions. The employer can require the employee to enroll in
14 rehabilitation or counseling, suspend the employee with or
15 without pay, terminate the employee, refuse to hire a
16 prospective employee, or take any other adverse employment
17 action based on the employer's written policy, including any
18 collective bargaining agreement. The bill does not require
19 that the cost of any rehabilitation services be covered by an
20 employer's health plan.

21 The bill also makes provisions governing the liability of
22 an employer. The bill provides that an employer shall not be
23 liable for actions taken in good faith based on a positive
24 drug or alcohol test, for failing to test for drugs and
25 alcohol or for failing to detect any specific drug or other
26 controlled substance or medical condition, for terminating or
27 suspending a drug and alcohol testing program or policy, or
28 for failing to take action relating to a false negative test
29 result. The bill provides that an employer shall be liable
30 for actions taken based upon a false positive test only if the
31 employer knew or clearly should have known the test was
32 incorrect and ignored the correct result because of a reckless
33 disregard for the truth. In addition, the bill also provides
34 that an employer is not liable for an action based on libel,
35 slander, or defamation unless certain additional requirements

1 are met, generally requiring a finding that an incorrect
2 positive test result was disclosed negligently. The bill
3 establishes that a drug or alcohol test conducted in
4 accordance with the bill is presumed valid and that an
5 employer is not liable for monetary damages if the employer's
6 reliance on a false positive test was reasonable and in good
7 faith.

8 The bill also provides for the confidentiality of test
9 results.

10 The bill takes effect 30 days after enactment.

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HOUSE FILE 299

AN ACT
CONCERNING DRUG AND ALCOHOL TESTING OF PRIVATE SECTOR
EMPLOYEES AND PROSPECTIVE EMPLOYEES AND PROVIDING
REMEDIES AND AN EFFECTIVE DATE.

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

Section 1. Section 730.5, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

1. DEFINITIONS. As used in this section, unless the context otherwise requires:
 - a. "Alcohol" means ethanol, isopropanol, or methanol.
 - b. "Drug" means a substance considered a controlled substance and included in schedule I, II, III, IV, or V under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.
 - c. "Employee" means a person in the service of an employer in this state and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.
 - d. "Employer" means a person, firm, company, corporation, labor organization, or employment agency, which has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, in this state. "Employer" does not include the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native-American tribe.
 - e. "Good faith" means reasonable reliance on facts, or that which is held out to be factual, without the intent to be deceived, and without reckless, malicious, or negligent disregard for the truth.

f. "Medical review officer" means a licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer's drug or alcohol testing program, and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

g. "Prospective employee" means a person who has made application, whether written or oral, to an employer to become an employee.

h. "Reasonable suspicion drug or alcohol testing" means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

- (1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.
- (2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- (3) A report of alcohol or other drug use provided by a reliable and credible source.
- (4) Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer.
- (5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to

property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

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

i. "Safety-sensitive position" means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

j. "Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. However, sample does not mean blood except as authorized pursuant to subsection 7, paragraph "1".

k. "Unannounced drug or alcohol testing" means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer's drug or alcohol testing program, subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

2. APPLICABILITY. This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law. In addition, an employer, through its written policy, may exclude from the pools of employees subject to unannounced drug or alcohol testing pursuant to subsection 8, paragraph "a", employee populations required to be tested as described in this subsection.

3. TESTING OPTIONAL. This section does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of this section shall not be construed to encourage, discourage, restrict, limit, prohibit, or require such testing. In addition, an employer may implement and require drug or alcohol testing at some but not all of the work sites of the employer and the requirements of this section shall only apply to the employer and employees who are at the work sites where drug or alcohol testing pursuant to this section has been implemented. A cause of action shall not arise in favor of any person against an employer or agent of an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing as permitted by this section.

4. TESTING AS CONDITION OF EMPLOYMENT -- REQUIREMENTS. To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing.

5. COLLECTION OF SAMPLES. In conducting drug or alcohol testing, an employer may require the collection of samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of a sample shall be in conformance with the

requirements of this section. The employer may designate the type of sample to be used for this testing.

6. SCHEDULING OF TESTS.

a. Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

b. An employer shall pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer.

c. An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site.

7. TESTING PROCEDURES. All sample collection and testing for drugs or alcohol under this section shall be performed in accordance with the following conditions:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen.

b. Sample collection for testing of current employees shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample or specimen is collected. The second portion of the specimen or sample shall be of sufficient quantity to permit a second, independent confirmatory test as provided in paragraph "i". If the specimen is urine, the sample shall be split such that the primary sample contains at least thirty milliliters and the secondary sample contains at least fifteen milliliters. Both portions of the sample shall be forwarded to the laboratory conducting the initial confirmatory testing. In addition to any requirements for storage of the initial sample that may be

imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the second portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the first portion yielded a confirmed positive test result.

c. Sample collections shall be documented, and the procedure for documentation shall include the following:

(1) Samples shall be labeled so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided, and samples shall be handled and tracked in a manner such that control and accountability are maintained from initial collection to each stage in handling, testing, and storage, through final disposition.

(2) An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing the information described in this subparagraph, the employer shall provide an employee or prospective employee with a list of the drugs to be tested.

d. Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

e. All confirmatory drug testing shall be conducted at a laboratory certified by the United States department of health and human services' substance abuse and mental health services administration or approved under rules adopted by the Iowa department of public health.

f. Drug or alcohol testing shall include confirmation of any initial positive test results. For drug or alcohol testing, confirmation shall be by use of a different chemical

process than was used in the initial screen for drugs or alcohol. The confirmatory drug or alcohol test shall be a chromatographic technique such as gas chromatography or mass spectrometry, or another comparably reliable analytical method. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive drug or alcohol test.

g. A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results, to ensure that the chain of custody is complete and sufficient on its face and that any information provided by the individual pursuant to paragraph "c", subparagraph (2), is considered.

h. In conducting drug or alcohol testing pursuant to this section, the laboratory, the medical review officer, and the employer shall ensure, to the extent feasible, that the testing only measure, and the records concerning the testing only show or make use of information regarding, alcohol or drugs in the body.

i. (1) If a confirmed positive drug or alcohol test for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample. If the employee, in person or by certified mail, return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and

pays the employer the fee for the test within seven days from the date the employer mails by certified mail, return receipt requested, the written notice to the employee of the employee's right to request a test, a second confirmatory test shall be conducted at the laboratory chosen by the employee. The results of the second confirmatory test shall be reported to the medical review officer who reviewed the initial confirmatory test results and the medical review officer shall review the results and issue a report to the employer on whether the results of the second confirmatory test confirmed the initial confirmatory test as to the presence of a specific drug or alcohol. If the results of the second test do not confirm the results of the initial confirmatory test, the employer shall reimburse the employee for the fee paid by the employee for the second test and the initial confirmatory test shall not be considered a confirmed positive drug or alcohol test for purposes of taking disciplinary action pursuant to subsection 10.

(2) If a confirmed positive drug or alcohol test for a prospective employee is reported to the employer by the medical review officer, the employer shall notify the prospective employee in writing of the results of the test, of the name and address of the medical review officer who made the report, and of the prospective employee's right to request records under subsection 13.

j. A laboratory conducting testing under this section shall dispose of all samples for which a negative test result was reported to an employer within five working days after issuance of the negative test result report.

k. Except as necessary to conduct drug or alcohol testing pursuant to this section and to submit the report required by subsection 16, a laboratory or other medical facility shall only report to an employer or outside entity information relating to the results of a drug or alcohol test conducted pursuant to this section concerning the determination of whether the tested individual has engaged in conduct

prohibited by the employer's written policy with regard to alcohol or drug use.

1. Notwithstanding the provisions of this subsection, an employer may rely and take action upon the results of any blood test for drugs or alcohol made on any employee involved in an accident at work if the test is administered by or at the direction of the person providing treatment or care to the employee without request or suggestion by the employer that a test be conducted, and the employer has lawfully obtained the results of the test. For purposes of this paragraph, an employer shall not be deemed to have requested or required a test in conjunction with the provision of medical treatment following a workplace accident by providing information concerning the circumstance of the accident.

8. DRUG OR ALCOHOL TESTING. Employers may conduct drug or alcohol testing as provided in this subsection:

a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:

(1) The entire employee population at a particular work site of the employer except for employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

(2) The entire full-time active employee population at a particular work site except for employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee, or who have been excused from work pursuant to the employer's working policy.

(3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees who are not scheduled to be at work at the time the testing is to be conducted or who have been

excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

b. Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.

c. Employers may conduct reasonable suspicion drug or alcohol testing.

d. Employers may conduct drug or alcohol testing of prospective employees.

e. Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.

f. Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

a. Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees.

b. The employer's written policy shall provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive drug or alcohol test result or upon the refusal of the employee or prospective employee to provide a testing sample. The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test. The written policy shall also provide that if rehabilitation is required pursuant to paragraph "g", the employer shall not take adverse employment action against the employee so long as the employee complies with the

requirements of rehabilitation and successfully completes rehabilitation.

c. Employers shall establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with the following requirements in order to conduct drug or alcohol testing under this section:

(1) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(2) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance services providers, alcohol and other drug abuse programs certified by the Iowa department of public health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

d. An employee or prospective employee whose drug or alcohol test results are confirmed as positive in accordance with this section shall not, by virtue of those results alone, be considered as a person with a disability for purposes of any state or local law or regulation.

e. If the written policy provides for alcohol testing, the employer shall establish in the written policy a standard for alcohol concentration which shall be deemed to violate the

policy. The standard for alcohol concentration shall not be less than .04, expressed in terms of grams of alcohol per two hundred ten liters of breath, or its equivalent.

f. An employee of an employer who is designated by the employer as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3). An employer may have more than one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3), but shall not include an employee in more than one safety-sensitive pool.

g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section but less than the concentration level in section 321J.2 for operating while under the influence of alcohol, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph "a", subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

(1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan.

(2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the

employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee's health care plan.

(3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph.

Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee's failure to comply with any requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employee pursuant to the rehabilitation.

h. In order to conduct drug or alcohol testing under this section, an employer shall require supervisory personnel of the employer involved with drug or alcohol testing under this section to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file of employee assistance services providers.

10. DISCIPLINARY PROCEDURES.

a. Upon receipt of a confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the

requirements of the employer's written policy and the requirements of this section, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies.

(2) Suspension of the employee, with or without pay, for a designated period of time.

(3) Termination of employment.

(4) Refusal to hire a prospective employee.

(5) Other adverse employment action in conformance with the employer's written policy and procedures, including any relevant collective bargaining agreement provisions.

b. Following a drug or alcohol test, but prior to receipt of the final results of the drug or alcohol test, an employer may suspend a current employee, with or without pay, pending the outcome of the test. An employee who has been suspended shall be reinstated by the employer, with back pay, and interest on such amount at eighteen percent per annum compounded annually, if applicable, if the result of the test is not a confirmed positive drug or alcohol test which indicates a violation of the employer's written policy.

11. EMPLOYER IMMUNITY. A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguards provided for under this section, for any of the following:

a. Testing or taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test.

b. Failure to test for drugs or alcohol, or failure to test for a specific drug or controlled substance.

c. Failure to test for, or if tested for, failure to detect, any specific drug or other controlled substance.

d. Termination or suspension of any substance abuse prevention or testing program or policy.

e. Any action taken related to a false negative drug or alcohol test result.

12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST RESULTS.

a. Except as otherwise provided in paragraph "b", a cause of action shall not arise against an employer who has established a program of drug or alcohol testing in accordance with this section, unless all of the following conditions exist:

(1) The employer's action was based on a false positive test result.

(2) The employer knew or clearly should have known that the test result was in error and ignored the correct test result because of reckless, malicious, or negligent disregard for the truth, or the willful intent to deceive or to be deceived.

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

(1) The employer discloses the test results to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee or the tested applicant for employment, an authorized substance abuse treatment program or employee assistance program, or an authorized agent or representative of the tested employee or applicant.

(2) The test results disclosed incorrectly indicate the presence of alcohol or drugs.

(3) The employer negligently discloses the results.

c. In any cause of action based upon a false positive test result, all of the following conditions apply:

(1) The results of a drug or alcohol test conducted in compliance with this section are presumed to be valid.

(2) An employer shall not be liable for monetary damages if the employer's reliance on the false positive test result was reasonable and in good faith.

13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

a. All communications received by an employer relevant to employee or prospective employee drug or alcohol test results, or otherwise received through the employer's drug or alcohol testing program, are confidential communications and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as otherwise provided or authorized by this section.

b. An employee, or a prospective employee, who is the subject of a drug or alcohol test conducted under this section pursuant to an employer's written policy and for whom a confirmed positive test result is reported shall, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the laboratory where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee shall be entitled to records under this paragraph only if the prospective employee requests the records within fifteen calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test as provided in subsection 7, paragraph "i", subparagraph (2).

c. Except as provided by this section and as necessary to conduct drug or alcohol testing under this section and to file a report pursuant to subsection 16, a laboratory and a medical review officer conducting drug or alcohol testing under this section shall not use or disclose to any person any personally identifiable information regarding such testing, including the

names of individuals tested, even if unaccompanied by the results of the test.

d. An employer may use and disclose information concerning the results of a drug or alcohol test conducted pursuant to this section under any of the following circumstances:

(1) In an arbitration proceeding pursuant to a collective bargaining agreement, or an administrative agency proceeding or judicial proceeding under workers' compensation laws or unemployment compensation laws or under common or statutory laws where action taken by the employer based on the test is relevant or is challenged.

(2) To any federal agency or other unit of the federal government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract.

(3) To any agency of this state authorized to license individuals if the employee tested is licensed by that agency and the rules of that agency require such disclosure.

(4) To a union representing the employee if such disclosure would be required by federal labor laws.

(5) To a substance abuse evaluation or treatment facility or professional for the purpose of evaluation or treatment of the employee.

However, positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested.

14. CIVIL PENALTIES -- JURISDICTION.

a. Any laboratory or medical review officer which discloses information in violation of the provisions of subsection 7, paragraph "h" or "k", or any employer who, through the selection process described in subsection 1, paragraph "k", improperly targets or exempts employees subject to unannounced drug or alcohol testing, shall be subject to a civil penalty of one thousand dollars for each violation. The attorney general or the attorney general's designee may

maintain a civil action to enforce this subsection. Any civil penalty recovered shall be deposited in the general fund of the state.

b. A laboratory or medical review officer involved in the conducting of a drug or alcohol test pursuant to this section shall be deemed to have the necessary contact with this state for the purpose of subjecting the laboratory or medical review officer to the jurisdiction of the courts of this state.

15. CIVIL REMEDIES. This section may be enforced through a civil action.

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

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

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

16. REPORTS. A laboratory doing business for an employer who conducts drug or alcohol tests pursuant to this section shall file an annual report with the Iowa department of public health by March 1 of each year concerning the number of drug or alcohol tests conducted on employees who work in this state pursuant to this section, the number of positive and negative results of the tests, during the previous calendar year. In addition, the laboratory shall include in its annual report the specific basis for each test as authorized in subsection 8, the type of drug or drugs which were found in the positive

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drug tests, and all significant available demographic factors relating to the positive test pool.

Sec. 2. EFFECTIVE DATE. This Act takes effect on the thirtieth day following enactment.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 299, Seventy-seventh General Assembly.

Approved March 17, 1998

ELIZABETH ISAACSON
Chief Clerk of the House

TERRY E. BRANSTAD
Governor