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BUSINESS & LABOR

SENATE FILE **2233**

BY McLAREN

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 employees and
 2 prospective employees and providing remedies and a penalty and
 3 an effective date.

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

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S.F. 2233

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 licensed physician,
28 osteopathic physician, chiropractor, nurse practitioner, or
29 physician's assistant authorized to practice in any state of
30 the United States, who is responsible for receiving laboratory
31 results generated by an employer's drug testing program, and
32 who has knowledge of substance abuse disorders and has
33 appropriate medical training to interpret and evaluate an
34 individual's confirmed positive test result together with the
35 individual's medical history and any other relevant biomedical

1 information.

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

5 h. "Reasonable suspicion drug or alcohol testing" means
6 drug or alcohol testing based upon evidence that an employee
7 is using or has used alcohol or other drugs in violation of
8 the employer's written policy drawn from specific objective
9 and articulable facts and reasonable inferences drawn from
10 those facts in light of experience. For purposes of this
11 paragraph, 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 direct
14 observation of alcohol or other drug use or abuse or of the
15 physical symptoms or manifestations of being impaired due to
16 alcohol or other drug use.

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

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

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

24 (5) Evidence that an employee has caused an accident while
25 at work which resulted in an injury to an employee which is
26 required to be reported pursuant to chapter 88, or a
27 comparable injury to a person who is not an employee, or
28 resulted in damage to property, including to equipment, in an
29 amount reasonably estimated at the time of the accident to
30 exceed one thousand dollars.

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

35 i. "Sample" means such sample from the human body capable

1 of revealing the presence of alcohol or other drugs, or their
2 metabolites. However, sample does not mean blood except as
3 authorized pursuant to subsection 7, paragraph "k".

4 j. "Unannounced drug or alcohol testing" means testing for
5 the purposes of detecting drugs or alcohol which is conducted
6 on a periodic basis, without advance notice of the test to
7 employees subject to testing prior to the day of testing, and
8 without individualized suspicion. The selection of employees
9 to be tested from the pool of employees subject to testing
10 shall be done based on a neutral and objective selection
11 process by an entity independent from the employer and shall
12 be made by a computer-based random number generator that is
13 matched with employees' social security numbers, payroll
14 identification numbers, or other comparable identifying
15 numbers in which each member of the employee population
16 subject to testing has an equal chance of selection for
17 initial testing, regardless of whether the employee has been
18 selected or tested previously. The random selection process
19 shall be conducted through a computer program that records
20 each selection attempt by date, time, and employee number. In
21 addition, the neutral and objective selection process shall
22 not in any way, or to any degree, take into account race, age,
23 gender, job performance, job classification, seniority,
24 salary, representation status or activities, political
25 philosophy, religion, creed, national origin, or any other
26 personal factor, whether work-related or not, other than the
27 objective criteria necessary to the neutral selection process.

28 2. APPLICABILITY. This section does not apply to drug or
29 alcohol tests conducted on employees required to be tested
30 pursuant to federal statutes or federal regulations. However,
31 the requirements of subsection 9, paragraph "f", do apply to
32 the extent they are not inconsistent with any applicable
33 federal statute or regulation.

34 3. TESTING OPTIONAL. This section does not require an
35 employer to conduct drug or alcohol testing and the

1 requirements of this section shall not be construed to
2 encourage, discourage, restrict, limit, prohibit, or require
3 such testing. In addition, an employer may implement and
4 require drug or alcohol testing at some but not all of the
5 work sites of the employer and the requirements of this
6 section shall only apply to the employer and employees who are
7 at the work sites where drug or alcohol testing pursuant to
8 this section has been implemented.

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

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

24 6. SCHEDULING OF TESTS.

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

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

33 c. An employer shall provide transportation or pay
34 reasonable transportation costs to employees if drug or
35 alcohol sample collection is conducted at a location other

1 than the employee's normal work site.

2 7. TESTING PROCEDURES. All sample collection and testing
3 for drugs or alcohol under this section shall be performed in
4 accordance with the following conditions:

5 a. The collection of samples shall be performed under
6 sanitary conditions and with regard for the privacy of the
7 individual from whom the specimen is being obtained and in a
8 manner reasonably calculated to preclude contamination or
9 substitution of the specimen.

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

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

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

1 stage in handling, testing, and storage, through final
2 disposition.

3 (2) An employee or prospective employee shall be provided
4 an opportunity to provide any information which may be
5 considered relevant to the test, including identification of
6 prescription or nonprescription drugs currently or recently
7 used, or other relevant medical information. To assist an
8 employee or prospective employee in providing the information
9 described in this subparagraph, the employer shall provide an
10 employee or prospective employee with a list of the drugs to
11 be tested.

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

16 e. All drug testing shall be performed using methodologies
17 required or approved by the United States department of health
18 and human services' substance abuse and mental health services
19 administration, the United States department of health and
20 human services under the federal Clinical Laboratory
21 Improvement Act, the United States food and drug
22 administration, or the Iowa department of public health.

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

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

1 prospective employee, based on a confirmed positive drug or
2 alcohol test.

3 g. A medical review officer shall, prior to the results
4 being reported to an employer, review and interpret any
5 confirmed positive drug test results, including both
6 quantitative and qualitative test results, to ensure that the
7 chain of custody is complete and sufficient on its face and
8 that any information provided by the individual pursuant to
9 paragraph "c", subparagraph (2), is considered.

10 h. In conducting drug or alcohol testing pursuant to this
11 section, the laboratory, the medical review officer, and the
12 employer shall ensure, to the extent feasible, that the
13 testing only measure, and the records concerning the testing
14 only show or make use of information regarding, alcohol or
15 drugs in the body.

16 i. (1) If a confirmed positive drug test for a current
17 employee is reported to the employer by the medical review
18 officer, the employer shall notify the employee in writing of
19 the results of the test, the employee's right to request and
20 obtain a confirmatory test of the second sample collected
21 pursuant to paragraph "b" at an approved laboratory of the
22 employee's choice, and the fee payable by the employee to the
23 employer for reimbursement of expenses concerning the test.
24 The fee charged an employee shall be an amount that represents
25 the costs associated with conducting the second confirmatory
26 test, which shall be consistent with the employer's cost for
27 conducting the initial confirmatory test on an employee's
28 sample. If the employee requests a second confirmatory test,
29 identifies an approved laboratory to conduct the test, and
30 pays the employer the fee for the test within five days from
31 the date the employee receives written notice of the right to
32 request a test, a second confirmatory test shall be conducted
33 at the laboratory chosen by the employee. The results of the
34 second confirmatory test shall be reported to the medical
35 review officer who reviewed the initial confirmatory test

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

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

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

22 k. The requirements of this subsection concerning sample
23 collection and testing shall not apply if the results of a
24 blood test conducted on an employee involved in an accident at
25 work which indicates the presence of drugs or alcohol were
26 lawfully obtained by an employer from the hospital or other
27 medical facility which had treated the employee following the
28 workplace accident.

29 8. DRUG OR ALCOHOL TESTING. Employers may conduct drug or
30 alcohol testing as provided in this subsection:

31 a. Employers may conduct unannounced drug or alcohol
32 testing of employees who are selected from a pool of employees
33 that consists of every employee at a particular work site of
34 the employer.

35 b. Employers may conduct drug or alcohol testing of

1 employees during, and after completion of, drug or alcohol
2 rehabilitation.

3 c. Employers may conduct reasonable suspicion drug or
4 alcohol testing.

5 d. Employers may conduct drug or alcohol testing of
6 prospective employees.

7 e. Employers may conduct drug or alcohol testing as
8 required by federal law or regulation or by law enforcement.

9 f. Employers may conduct drug or alcohol testing in
10 investigating accidents in the workplace in which the accident
11 resulted in an injury to an employee which is required to be
12 reported pursuant to chapter 88, or a comparable injury to a
13 person who is not an employee, or resulted in damage to
14 property, including to equipment, in an amount reasonably
15 estimated at the time of the accident to exceed one thousand
16 dollars.

17 9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

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

23 b. The employer's written policy shall provide uniform
24 requirements for what disciplinary or rehabilitative actions
25 an employer shall take against an employee or prospective
26 employee upon receipt of a confirmed positive drug or alcohol
27 test result or upon the refusal of the employee or prospective
28 employee to provide a testing sample. The policy shall
29 provide that any action taken against an employee or
30 prospective employee shall be based only on the results of the
31 drug or alcohol test and shall not in any way, or to any
32 degree, take into account race, age, gender, job performance,
33 job classification, seniority, salary, representation status
34 or activities, political philosophy, religion, creed, national
35 origin, or any other personal factor, whether work-related or

1 not. An employer who fails to comply with the provisions of
2 this subsection as to a drug or alcohol test shall be
3 prohibited from taking any disciplinary action against an
4 employee or prospective employee pursuant to that test and
5 shall be prohibited from conducting an unannounced drug or
6 alcohol test pursuant to this section for one year following a
7 violation of this subsection.

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

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

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

34 d. An employee or prospective employee whose drug or
35 alcohol test results are confirmed as positive in accordance

1 with this section shall not, by virtue of those results alone,
2 be considered as a person with a disability for purposes of
3 any state or local law or regulation.

4 e. If the written policy provides for alcohol testing, the
5 employer shall establish in the written policy a standard for
6 alcohol concentration which shall be deemed to violate the
7 policy. The standard for alcohol concentration shall not be
8 less than .04, expressed in terms of grams of alcohol per two
9 hundred ten liters of breath, or its equivalent.

10 f. Upon receipt of a confirmed positive drug test, or upon
11 receipt of a confirmed positive alcohol test which indicates
12 an alcohol concentration greater than the concentration level
13 established by the employer pursuant to this section but less
14 than the concentration level in section 321J.2 for operating
15 while under the influence of alcohol, and if the employer has
16 at least fifty employees, if rehabilitation is agreed upon by
17 the employee, and if the employee has not previously violated
18 the employer's substance abuse prevention policy pursuant to
19 this section, the written policy shall provide for the
20 rehabilitation of the employee pursuant to subsection 10,
21 paragraph "a", subparagraph (1), and the apportionment of the
22 costs of rehabilitation as provided by this paragraph.

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

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

35 (3) If no employee benefit plan exists and the employee

1 does not have coverage for any portion of the costs of
2 rehabilitation under any health care plan of the employee, the
3 costs of rehabilitation shall be apportioned equally between
4 the employee and the employer. However, the employer shall
5 not be required to pay more than two thousand dollars towards
6 the cost of rehabilitation under this subparagraph.

7 Rehabilitation required pursuant to this paragraph shall
8 not prevent an employer from taking any other adverse
9 employment action against the employee during the
10 rehabilitation if the employee fails to comply with any
11 requirements of the rehabilitation, including any action by
12 the employee to invalidate a test sample provided by the
13 employee pursuant to the rehabilitation.

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

26 10. DISCIPLINARY PROCEDURES.

27 a. Upon receipt of a confirmed positive drug or alcohol
28 test result which indicates a violation of the employer's
29 written policy, or upon the refusal of an employee or
30 prospective employee to provide a testing sample, an employer
31 may use that test result or test refusal as a valid basis for
32 disciplinary or rehabilitative actions pursuant to the
33 requirements of the employer's written policy, which may
34 include, among other actions, the following:

35 (1) A requirement that the employee enroll in an employer-

1 provided or approved rehabilitation, treatment, or counseling
2 program, which may include additional drug or alcohol testing,
3 participation in and successful completion of which may be a
4 condition of continued employment, and the costs of which may
5 or may not be covered by the employer's health plan or
6 policies.

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

9 (3) Termination of employment.

10 (4) Refusal to hire a prospective employee.

11 (5) Other adverse employment action in conformance with
12 the employer's written policy and procedures, including any
13 relevant collective bargaining agreement provisions.

14 b. Following a drug or alcohol test, but prior to receipt
15 of the final results of the drug or alcohol test, an employer
16 may suspend a current employee, with or without pay, pending
17 the outcome of the test. An employee who has been suspended
18 shall be reinstated by the employer, with back pay, and
19 interest on such amount at eighteen percent per annum
20 compounded annually, if applicable, if the result of the test
21 is not a confirmed positive drug or alcohol test which
22 indicates a violation of the employer's written policy.

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

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

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

35 c. Failure to test for, or if tested for, failure to

1 detect, any specific drug or other controlled substance.

2 d. Termination or suspension of any substance abuse
3 prevention or testing program or policy.

4 e. Any action taken related to a false negative drug or
5 alcohol test result.

6 12. EMPLOYER LIABILITY -- FALSE POSITIVE TEST RESULTS.

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

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

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

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

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

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

33 (3) The employer negligently discloses the results.

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

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

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

6 13. CONFIDENTIALITY OF RESULTS -- EXCEPTION.

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

16 b. An employee, or a prospective employee, who is the
17 subject of a drug or alcohol test conducted under this section
18 pursuant to an employer's written policy and for whom a
19 confirmed positive test result is reported shall, upon written
20 request, have access to any records relating to the employee's
21 drug or alcohol test, including records of the laboratory
22 where the testing was conducted and any records relating to
23 the results of any relevant certification or review by a
24 medical review officer. However, a prospective employee shall
25 be entitled to records under this paragraph only if the
26 prospective employee requests the records within fifteen
27 calendar days from the date the employer provided the
28 prospective employee written notice of the results of a drug
29 test as provided in subsection 7, paragraph "i", subparagraph
30 (2).

31 c. Except as provided by this subsection and as necessary
32 to conduct drug or alcohol testing under this section and to
33 file a report pursuant to subsection 16, a laboratory and a
34 medical review officer conducting drug or alcohol testing
35 under this section shall not use or disclose to any person any

1 information regarding such testing, including the names of
2 individuals tested, even if unaccompanied by the results of
3 the test.

4 14. CIVIL PENALTIES -- JURISDICTION.

5 a. Any laboratory or medical review officer who discloses
6 information in violation of the provisions of subsection 13,
7 paragraph "c", or who conducts a drug or alcohol test in
8 violation of the provisions of subsection 7, paragraph "h",
9 shall be subject to a civil penalty of one thousand dollars
10 for each violation. The attorney general or the attorney
11 general's designee may maintain a civil action to enforce this
12 subsection. Any civil penalty recovered shall be deposited in
13 the general fund of the state.

14 b. A laboratory or medical review officer involved in the
15 conducting of a drug or alcohol test pursuant to this section
16 shall be deemed to have the necessary contact with this state
17 for the purpose of subjecting the laboratory or medical review
18 officer to the jurisdiction of the courts of this state.

19 15. CIVIL REMEDIES. This section may be enforced through
20 a civil action.

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

27 b. When a person commits, is committing, or proposes to
28 commit, an act in violation of this section, an injunction may
29 be granted through an action in district court to prohibit the
30 person from continuing such acts. The action for injunctive
31 relief may be brought by an aggrieved employee or prospective
32 employee, the county attorney, or the attorney general.

33 In an action brought under this subsection alleging that an
34 employer has required or requested a drug or alcohol test in
35 violation of this section, the employer has the burden of

1 proving that the requirements of this section were met.

2 16. REPORTS. A laboratory doing business for an employer
3 who conducts an unannounced drug or alcohol test pursuant to
4 this section shall file an annual report with the Iowa
5 department of public health by March 1 of each year concerning
6 the number of unannounced drug or alcohol tests conducted on
7 employees pursuant to this section, and the number of positive
8 results of the tests, during the previous calendar year.

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

11 EXPLANATION

12 This bill makes changes to Iowa's law governing drug and
13 alcohol testing of employees and prospective employees by
14 repealing current law and replacing it with a new Code
15 section.

16 The bill provides that the drug and alcohol testing
17 requirements established by the bill apply only to private
18 sector employers and excludes the state and its political
19 subdivisions, as well as Native American tribes and the
20 federal government, from the definition of employer. The bill
21 also provides that the requirements of the bill do not apply
22 to drug or alcohol tests of employees required by federal law
23 except that the provisions governing rehabilitation after
24 certain positive alcohol tests does apply if not inconsistent
25 with federal law.

26 The bill governs the procedures for conducting a drug or
27 alcohol test and provides for the collection of samples, the
28 scheduling of tests, and the conduct of the drug or alcohol
29 test. The bill also requires that the results of drug or
30 alcohol testing be confirmed and specifies the methodology by
31 which a drug test shall be confirmed. The bill provides that
32 samples collected from current employees shall be split into
33 two so that an employee has an opportunity to have the second
34 sample tested if the test of the first sample indicating the
35 presence of drugs or alcohol is confirmed.

1 The bill permits unannounced drug or alcohol testing of all
2 employees at a particular work site of the employer and
3 testing of employees during and after completion of drug or
4 alcohol rehabilitation. The bill also permits drug or alcohol
5 testing based on reasonable suspicion, on prospective
6 employees, in investigating an accident at work, and as
7 required by federal law or regulation or by law enforcement.

8 The bill requires an employer to establish a written
9 policy, available to employees and prospective employees,
10 governing drug or alcohol testing. The written policy shall
11 provide for uniform requirements for what disciplinary or
12 rehabilitative actions an employer can take following a
13 positive drug or alcohol test that shall be based only on the
14 results of the test. The bill also provides what disciplinary
15 or rehabilitative actions are permissible as a part of the
16 employer's written policy. The bill also provides that an
17 employer who violates the uniform requirements concerning
18 disciplinary or rehabilitative actions as to a particular drug
19 or alcohol test is prohibited from taking adverse action
20 against any employee or prospective employee based on that
21 test and that the employer shall not conduct an unannounced
22 drug or alcohol test for one year. The bill further provides
23 that for a positive drug test and for certain positive alcohol
24 tests, the employer shall provide rehabilitation to the
25 employee. The requirement for rehabilitation shall only apply
26 to certain larger employers and to employees who have not
27 previously violated the employer's substance abuse policy.
28 The written policy shall also provide, if applicable, a
29 minimum level for a positive alcohol test result, but in no
30 event lower than .04, and information about the employer's
31 employee assistance program, if applicable, or community
32 services concerning alcohol and drug abuse.

33 The bill also makes provisions governing the liability of
34 an employer. The bill provides that an employer shall not be
35 liable for actions taken in good faith based on a positive

1 drug or alcohol test, for failing to test for drugs and
2 alcohol or for failing to detect any specific drug or other
3 controlled substance or medical condition, for terminating or
4 suspending a drug and alcohol testing program or policy, or
5 for failing to take action relating to a false negative test
6 result. The bill provides that an employer shall be liable
7 for actions taken based upon a false positive test only if the
8 employer knew or clearly should have known the test was
9 incorrect and ignored the correct result because of a reckless
10 disregard for the truth. In addition, the bill also provides
11 that an employer is not liable for an action based on libel,
12 slander, or defamation unless certain additional requirements
13 are met, generally requiring a finding that an incorrect
14 positive test result was disclosed negligently. The bill
15 establishes that a drug or alcohol test conducted in
16 accordance with the bill is presumed valid and that an
17 employer is not liable for monetary damages if the employer's
18 reliance on a false positive test was reasonable and in good
19 faith.

20 The bill also provides for the confidentiality of test
21 results and provides that laboratories and medical review
22 officers conducting drug or alcohol testing pursuant to this
23 bill who violate the confidentiality provisions or who do not
24 limit testing to a determination of whether the sample
25 contains drugs or alcohol are subject to a civil penalty of
26 \$1,000. The bill also provides that a person who violates the
27 provisions of this new Code section is liable to an aggrieved
28 employee or prospective employee through a civil action for
29 affirmative relief such as reinstatement or for injunctive
30 relief, as applicable.

31 The bill further provides for reporting of the number and
32 results of unannounced drug or alcohol tests conducted during
33 a calendar year to the Iowa department of public health.

34 The bill takes effect 30 days after enactment.

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