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SENATE FILE **458**
BY COMMITTEE ON BUSINESS AND
LABOR

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 remedies and
3 a penalty and an effective date.

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

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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. "Probable cause drug or alcohol testing" means testing
2 for the purposes of detecting drugs or alcohol which is
3 conducted on an individual based on a criterion or criteria
4 that would suggest to a reasonable person that there are
5 reasonable grounds for belief the individual may have engaged
6 in illicit drug use or alcohol abuse, or has a substance abuse
7 problem.

8 h. "Prospective employee" means a person who has made
9 application, whether written or oral, to an employer to become
10 an employee and who has received a bona fide offer of
11 employment from the employer.

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. The independent entity shall be agreed
29 upon by representatives of the employees and the employer.

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

35 3. TESTING AS CONDITION OF EMPLOYMENT -- REQUIREMENTS. To

1 the extent provided in subsection 7, an employer may test
2 employees and prospective employees for the presence of drugs
3 or alcohol as a condition of continued employment or hiring.
4 An employer shall adhere to the requirements of this section
5 concerning the conduct of such testing and the use and
6 disposition of the results of such testing.

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

15 5. SCHEDULING OF TESTS.

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

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

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

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

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

1 b. Sample collections shall be obtained so that a portion
2 of the sample shall be retained and stored by the laboratory
3 conducting the confirmatory test, sufficient in quantity to
4 conduct a second confirmatory drug or alcohol test. The
5 sample retained and stored by the laboratory conducting the
6 first confirmatory test pursuant to this paragraph shall be
7 destroyed upon receipt of a confirmed negative drug or alcohol
8 test result.

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

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

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

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

34 e. All drug testing shall be conducted at a laboratory
35 certified by the United States department of health and human

1 services' substance abuse and mental health services
2 administration, approved by the United States department of
3 health and human services under the federal Clinical
4 Laboratory Improvement Act, or approved under rules adopted by
5 the Iowa department of public health.

6 f. Drug or alcohol testing shall include confirmation of
7 any initial positive test results and, if the initial positive
8 test result is confirmed, a second confirmatory test.

9 Confirmatory testing shall be conducted at approved
10 facilities mutually agreed upon as acceptable by both employee
11 and employer representatives. The agreed-upon facilities
12 shall be designated in the employer's written policy. The
13 first confirmatory test shall be conducted at an approved
14 facility that is selected by the employer and approved by
15 employee representatives. A second confirmatory test, if
16 necessary, shall be conducted at an approved facility other
17 than the facility for the first confirmation test, which
18 facility may be selected by the employee or prospective
19 employee from the list of approved, agreed-upon facilities.

20 g. For drug testing, confirmation testing shall be by use
21 of a different chemical process than was used in the initial
22 drug screen. The confirmatory drug test shall be a
23 chromatographic technique such as gas chromatography or mass
24 spectrometry, or another comparably reliable analytical
25 method.

26 h. A medical review officer shall, prior to the results
27 being reported to an employer, review and interpret any
28 confirmed positive test results, including both quantitative
29 and qualitative test results, to ensure that the chain of
30 custody is complete and sufficient on its face and that any
31 information provided by the individual pursuant to paragraph
32 "c", subparagraph (2), is considered.

33 i. In conducting drug or alcohol testing pursuant to this
34 section, the employer shall ensure to the extent feasible that
35 the testing only measure, and the records concerning the

1 testing only show or make use of information regarding,
2 alcohol or drugs in the body.

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

16 (2) If an initial positive test result is confirmed, a
17 report shall be prepared consistent with the requirements of
18 this paragraph but shall not be reported to the employer.
19 Instead, a copy of the report shall be delivered to the
20 facility conducting the second confirmatory test. Upon
21 completion of the second confirmatory test, a medical review
22 officer shall compare the results of the two confirmatory
23 tests. If the confirmatory tests agree that the test result
24 as to alcohol or a particular drug is positive, the test
25 result as to alcohol or that particular drug shall be
26 confirmed as positive and a report consistent with the
27 requirements of this paragraph shall be reported to the
28 employer. If the confirmatory tests do not agree that the
29 test result as to alcohol or a particular drug is positive,
30 the test result as to alcohol or that particular drug shall be
31 considered negative and a report consistent with the
32 requirements of this paragraph shall be reported to the
33 employer.

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

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

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

5 c. Employers may conduct drug or alcohol testing of
6 employees during, and after completion of, drug or alcohol
7 rehabilitation.

8 d. Employers may conduct probable cause drug or alcohol
9 testing if there is probable cause to believe, based on the
10 employee's performance, behavior, attendance, or other
11 observable criterion or criteria, that the employee has
12 engaged in illicit drug use, or may be under the influence of
13 alcohol, or may be otherwise impaired by drugs or alcohol, or
14 if an employer believes, in good faith, that the employee may
15 have violated the employer's written substance abuse
16 prevention policy.

17 e. Employers may conduct drug or alcohol testing of
18 prospective employees.

19 f. Employers may conduct drug or alcohol testing as
20 required by federal law or regulation.

21 g. Employers may conduct drug or alcohol testing in
22 investigating accidents in the workplace.

23 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

24 a. Drug or alcohol testing or retesting by an employer
25 shall be carried out within the terms of a written policy
26 which has been provided to every employee subject to testing,
27 and is available for review by employees and prospective
28 employees.

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

33 (1) If an employer has an employee assistance program, the
34 employer must inform the employee of the benefits and services
35 of the employee assistance program. An employer shall post

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

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

20 c. Within the terms of the written policy, an employer may
21 require the collection and testing of samples for, among other
22 legitimate drug or alcohol abuse prevention and treatment
23 purposes, any of the following:

24 (1) Deterrence and detection of illicit drug use,
25 possession, sale, conveyance, distribution, or manufacture of
26 drugs, intoxicants, or controlled substances in any amount or
27 in any manner, whether or not the employee is at work, or
28 deterrence and detection of abuse of alcohol or prescription
29 drugs.

30 (2) Investigation of individual employee impairment.

31 (3) Investigation of accidents in the workplace.

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

34 (5) Maintenance of productivity, quality of products or
35 services, or security of property or information.

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

6 e. If the written policy provides for alcohol testing, the
7 employer shall establish in the written policy a standard for
8 alcohol concentration which shall be deemed to violate the
9 policy. The standard for alcohol concentration shall not be
10 less than .10, expressed in terms of grams of alcohol per two
11 hundred ten liters of breath, or its equivalent.

12 9. DISCIPLINARY PROCEDURES.

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

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

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

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

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

18 (3) Termination of employment.

19 (4) Refusal to hire a prospective employee.

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

23 10. 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 11. 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 in a proceeding related to an
14 action taken by an employer under this section or by an
15 employee under this section.

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

24 12. CIVIL REMEDIES. This section may be enforced through
25 a civil action.

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

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

1 relief may be brought by an aggrieved employee or prospective
2 employee, the county attorney, or the attorney general.

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

7 13. OFFENSES. Samples collected, information provided by
8 an employee or prospective employee pursuant to subsection 6,
9 paragraph "c", subparagraph (2), and the results of drug or
10 alcohol testing shall be used solely for the purpose of
11 conducting drug or alcohol testing pursuant to this section
12 and shall not be sold, transferred, or disseminated, to any
13 person for any purpose not expressly authorized by this
14 section. A person who violates this subsection commits a
15 simple misdemeanor and, notwithstanding section 903.1, if a
16 monetary fine is imposed, the fine shall be one hundred
17 dollars. Each violation of this subsection constitutes a
18 separate offense.

19 Sec. 2. EFFECTIVE DATE. This Act takes effect on the
20 thirtieth day following enactment.

21 EXPLANATION

22 This bill makes changes to Iowa's law governing drug and
23 alcohol testing of employees and prospective employees by
24 repealing current law and replacing it with a new Code
25 section.

26 The bill provides that the drug and alcohol testing
27 requirements established by the bill apply only to private
28 sector employers and excludes the state and its political
29 subdivisions, as well as Native-American tribes and the
30 federal government, from the definition of employer.

31 The bill governs the procedures for conducting a drug or
32 alcohol test and provides for the collection of samples, the
33 scheduling of tests, and the conduct of the drug or alcohol
34 test. The bill provides that the results of drug testing
35 shall be confirmed by a laboratory certified by the United

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

13 The bill allows unannounced drug or alcohol testing, with
14 the drugs to be tested communicated to employees and
15 prospective employees before the testing, and testing for
16 prospective employees, employees in safety-sensitive
17 positions, and employees both during and after drug or alcohol
18 rehabilitation. The bill also permits drug or alcohol testing
19 if there exists probable cause to believe that the employee
20 has engaged in illicit drug use or alcohol abuse, has a
21 substance abuse problem, or has violated the employer's
22 written substance abuse prevention policy. The bill allows
23 testing as provided by federal law and in response to work
24 accidents.

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

33 The bill provides that an employer shall provide an
34 employee rehabilitation and treatment upon receipt of the
35 first positive drug or alcohol test of the employee. The bill

1 provides that an employer, as a result of a second positive
2 drug or alcohol test, or a first positive drug or alcohol test
3 of a prospective employee, can take several employment actions
4 consistent with the employer's written policy. The employer
5 can require the employee to enroll in rehabilitation or
6 counseling, suspend the employee with or without pay,
7 terminate the employment, or take any other adverse employment
8 action based on the employer's written policy, including any
9 collective bargaining agreement. The employer may also refuse
10 to hire a prospective employee.

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, however, that if a person violates
20 a provision of this new Code section, that person is liable to
21 an aggrieved employee or prospective employee through a civil
22 action for damages, including punitive damages, or injunctive
23 relief, as applicable.

24 The bill also provides for the confidentiality of test
25 results. However, the bill allows a tested employee to get
26 copies of any records of the employee's drug or alcohol test
27 if the test result was positive.

28 The bill also provides that samples collected, information
29 provided by an employee or prospective employee concerning a
30 drug or alcohol test, and test results shall be used only for
31 the purpose of conducting drug or alcohol testing and not for
32 any other purpose. A person who violates this provision
33 commits a simple misdemeanor and shall be fined \$100.

34 The bill takes effect 30 days after enactment.

35