

FILED FEB 25 '08

SENATE FILE 2173
BY COMMITTEE ON BUSINESS
AND LABOR RELATIONS

(SUCCESSOR TO SSB 3098)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning private sector employee drug testing relating
2 to authorized testing substances, confirmed positive test
3 results, and testing procedures, and providing an effective
4 date.

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

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SF 2173
BUSINESS & LABOR

1 Section 1. Section 730.5, subsection 1, Code 2003, is
2 amended by adding the following new paragraph after paragraph
3 a:

4 NEW PARAGRAPH. aa. "Confirmed positive test result"
5 means, except for alcohol testing conducted pursuant to
6 subsection 7, paragraph "f", subparagraph (2), the results of
7 a blood, urine, or oral fluid test in which the level of
8 controlled substances or metabolites in the specimen analyzed
9 meets or exceeds nationally accepted standards for determining
10 detectable levels of controlled substances as adopted by the
11 federal substance abuse and health services administration.

12 Sec. 2. Section 730.5, subsection 1, paragraph j, Code
13 2003, is amended to read as follows:

14 j. "Sample" means such sample from the human body capable
15 of revealing the presence of alcohol or other drugs, or their
16 metabolites, which shall include only urine, saliva, breath,
17 and blood. However, sample does not mean blood except as
18 authorized pursuant to subsection 7, paragraph "l".

19 Sec. 3. Section 730.5, subsection 7, paragraph b, Code
20 2003, is amended to read as follows:

21 b. Sample-collection Collection of a urine sample for
22 testing of current employees, ~~except for the collection of a~~
23 ~~sample for alcohol testing conducted pursuant to paragraph~~
24 ~~"f", subparagraph (2),~~ shall be performed so that the specimen
25 is split into two components at the time of collection in the
26 presence of the individual from whom the sample or specimen is
27 collected. The second portion of the specimen or sample shall
28 be of sufficient quantity to permit a second, independent
29 confirmatory test as provided in paragraph "i". ~~If the~~
30 ~~specimen is urine, the~~ The sample shall be split such that the
31 primary sample contains at least thirty milliliters and the
32 secondary sample contains at least fifteen milliliters. Both
33 portions of the sample shall be forwarded to the laboratory
34 conducting the initial confirmatory testing. In addition to
35 any requirements for storage of the initial sample that may be

1 imposed upon the laboratory as a condition for certification
2 or approval, the laboratory shall store the second portion of
3 any sample until receipt of a confirmed negative test result
4 or for a period of at least forty-five calendar days following
5 the completion of the initial confirmatory testing, if the
6 first portion yielded a confirmed positive test result.

7 Sec. 4. Section 730.5, subsection 7, paragraph f,
8 unnumbered paragraph 1, Code 2003, is amended to read as
9 follows:

10 Drug or alcohol testing shall include confirmation of any
11 initial positive test results. An employer may take adverse
12 employment action, including refusal to hire a prospective
13 employee, based on a confirmed positive ~~drug-or-alcohol~~ test
14 result for drugs or alcohol.

15 Sec. 5. Section 730.5, subsection 7, paragraph f, Code
16 2003, is amended by adding the following new subparagraph:

17 NEW SUBPARAGRAPH. (3) Notwithstanding any provision of
18 this section to the contrary, collection of an oral fluid
19 sample for testing shall be performed in the presence of the
20 individual from whom the sample or specimen is collected. The
21 specimen or sample shall be of sufficient quantity to permit a
22 second, independent, confirmatory test as provided in
23 paragraph "i". The sample shall be split in the approved
24 laboratory. In addition to any requirement for storage of the
25 initial sample that may be imposed upon the laboratory as a
26 condition for certification or approval, the laboratory shall
27 store the second portion of any sample until receipt of a
28 confirmed negative test result or for a period of at least
29 forty-five calendar days following the completion of the
30 initial confirmatory testing, if the portion yielded a
31 confirmed positive test result.

32 Sec. 6. Section 730.5, subsection 7, paragraph i, Code
33 2003, is amended to read as follows:

34 i. (1) If a confirmed positive ~~drug-or-alcohol~~ test
35 result for drugs or alcohol for a current employee is reported

1 to the employer by the medical review officer, the employer
2 shall notify the employee in writing by certified mail, return
3 receipt requested, of the results of the test, the employee's
4 right to request and obtain a confirmatory test of the second
5 sample collected pursuant to paragraph "b" at an approved
6 laboratory of the employee's choice, and the fee payable by
7 the employee to the employer for reimbursement of expenses
8 concerning the test. The fee charged an employee shall be an
9 amount that represents the costs associated with conducting
10 the second confirmatory test, which shall be consistent with
11 the employer's cost for conducting the initial confirmatory
12 test on an employee's sample. If the employee, in person or
13 by certified mail, return receipt requested, requests a second
14 confirmatory test, identifies an approved laboratory to
15 conduct the test, and pays the employer the fee for the test
16 within seven days from the date the employer mails by
17 certified mail, return receipt requested, the written notice
18 to the employee of the employee's right to request a test, a
19 second confirmatory test shall be conducted at the laboratory
20 chosen by the employee. The results of the second
21 confirmatory test shall be reported to the medical review
22 officer who reviewed the initial confirmatory test results and
23 the medical review officer shall review the results and issue
24 a report to the employer on whether the results of the second
25 confirmatory test confirmed the initial confirmatory test as
26 to the presence of a specific drug or alcohol. If the results
27 of the second test do not confirm the results of the initial
28 confirmatory test, the employer shall reimburse the employee
29 for the fee paid by the employee for the second test and the
30 initial confirmatory test shall not be considered a confirmed
31 positive drug-or-alcohol test result for drugs or alcohol for
32 purposes of taking disciplinary action pursuant to subsection
33 10.

34 (2) If a confirmed positive drug-or-alcohol test result
35 for drugs or alcohol for a prospective employee is reported to

1 the employer by the medical review officer, the employer shall
2 notify the prospective employee in writing of the results of
3 the test, of the name and address of the medical review
4 officer who made the report, and of the prospective employee's
5 right to request records under subsection 13.

6 Sec. 7. Section 730.5, subsection 9, paragraph b, Code
7 2003, is amended to read as follows:

8 b. The employer's written policy shall provide uniform
9 requirements for what disciplinary or rehabilitative actions
10 an employer shall take against an employee or prospective
11 employee upon receipt of a confirmed positive ~~drug-or-alcohol~~
12 test result for drugs or alcohol or upon the refusal of the
13 employee or prospective employee to provide a testing sample.
14 The policy shall provide that any action taken against an
15 employee or prospective employee shall be based only on the
16 results of the drug or alcohol test. The written policy shall
17 also provide that if rehabilitation is required pursuant to
18 paragraph "g", the employer shall not take adverse employment
19 action against the employee so long as the employee complies
20 with the requirements of rehabilitation and successfully
21 completes rehabilitation.

22 Sec. 8. Section 730.5, subsection 10, paragraph a,
23 unnumbered paragraph 1, Code 2003, is amended to read as
24 follows:

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

34 Sec. 9. Section 730.5, subsection 10, paragraph b, Code
35 2003, is amended to read as follows:

1 b. Following a drug or alcohol test, but prior to receipt
2 of the final results of the drug or alcohol test, an employer
3 may suspend a current employee, with or without pay, pending
4 the outcome of the test. An employee who has been suspended
5 shall be reinstated by the employer, with back pay, and
6 interest on such amount at eighteen percent per annum
7 compounded annually, if applicable, if the result of the test
8 is not a confirmed positive ~~drug-or-alcohol~~ test result for
9 drugs or alcohol which indicates a violation of the employer's
10 written policy.

11 Sec. 10. EMERGENCY RULES. The Iowa department of public
12 health may adopt emergency rules under section 17A.4,
13 subsection 2, and section 17A.5, subsection 2, paragraph "b",
14 to implement the provisions of this Act and the rules shall be
15 effective immediately upon filing unless a later date is
16 specified in the rules. Any rules adopted in accordance with
17 this section shall also be published as a notice of intended
18 action as provided in section 17A.4.

19 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
20 immediate importance, takes effect upon enactment.

21 EXPLANATION

22 This bill concerns private sector drug testing.

23 The bill adds a definition of a confirmed positive test
24 result for nonalcohol drug testing to provide that the level
25 of drugs shall meet or exceed nationally accepted standards
26 adopted by the federal substance abuse and health services
27 administration.

28 The bill amends the definition of "sample" for purposes of
29 drug testing to specifically limit acceptable samples to
30 urine, saliva, breath, and blood.

31 The bill provides that the current sample collection
32 procedures applicable to sample collection for all but alcohol
33 testing is limited to urine testing.

34 The bill also adds a new subparagraph concerning sample
35 collection for oral fluid testing. This new subparagraph

1 provides that this testing shall be performed in the presence
2 of the individual to be tested. In addition, the sample
3 collected shall be of sufficient quantity to permit a second
4 confirmatory test and provides that the second portion of any
5 sample collected be stored until the first sample tests
6 negative or for 45 days following an initial positive test
7 result.

8 The bill authorizes the department of public health to
9 adopt emergency rules to implement the bill.

10 The bill takes effect upon enactment.

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SENATE FILE 2173

S-5070

1 Amend Senate File 2173 as follows:

2 1. Page 1, line 11, by inserting after the word
3 "administration." the following: "If nationally
4 accepted standards have not been adopted by the
5 federal substance abuse and health services
6 administration, the standards for determining
7 detectable levels of controlled substances for
8 purposes of determining a confirmed positive test
9 result shall be the same standard that has been
10 established by the federal food and drug
11 administration for the measuring instrument used to
12 perform the blood, urine, or oral fluid test."

13 2. Page 1, by inserting after line 18 the
14 following:

15 "Sec. ____ . Section 730.5, subsection 7, paragraph
16 a, Code 2003, is amended to read as follows:

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. If the sample collected is urine,
23 procedures shall be established to provide for
24 individual privacy in the collection of the sample
25 unless there is a reasonable suspicion that a
26 particular individual subject to testing may alter or
27 substitute the urine specimen to be provided, or has
28 previously altered or substituted a urine specimen
29 provided pursuant to a drug or alcohol test. For
30 purposes of this paragraph, "individual privacy" means
31 a location at the collection site where urination can
32 occur in private, which has been secured by visual
33 inspection to ensure that other persons are not
34 present, which provides that undetected access to the
35 location is not possible during urination, and which
36 provides for the ability to effectively restrict
37 access to the location during the time the specimen is
38 provided. If an individual is providing a urine
39 sample and collection of the urine sample is directly
40 monitored or observed by another individual, the
41 individual who is directly monitoring or observing the
42 collection shall be of the same gender as the
43 individual from whom the urine sample is being
44 collected."

45 3. Page 2, lines 23 and 24, by striking the words
46 "The sample shall be split in the approved
47 laboratory."

48 4. Page 2, line 27, by striking the word "second"
49 and inserting the following: "unused".

50 5. Page 5, by striking lines 11 through 18.

S-5070

S-5070

Page 2

1 6. By renumbering as necessary.

By NEAL SCHUERER

S-5070 FILED MARCH 10, 2004

ADOPTED

SENATE FILE 2173
BY COMMITTEE ON BUSINESS
AND LABOR RELATIONS

(SUCCESSOR TO SSB 3098)

(AS AMENDED AND PASSED BY THE SENATE MARCH 10, 2004)

_____ - New Language by the Senate
* - Language Stricken by the Senate

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning private sector employee drug testing relating
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S.F. 2173

1 Section 1. Section 730.5, subsection 1, Code 2003, is
2 amended by adding the following new paragraph after paragraph
3 a:

4 NEW PARAGRAPH. aa. "Confirmed positive test result"
5 means, except for alcohol testing conducted pursuant to
6 subsection 7, paragraph "f", subparagraph (2), the results of
7 a blood, urine, or oral fluid test in which the level of
8 controlled substances or metabolites in the specimen analyzed
9 meets or exceeds nationally accepted standards for determining
10 detectable levels of controlled substances as adopted by the
11 federal substance abuse and health services administration.
12 If nationally accepted standards have not been adopted by the
13 federal substance abuse and health services administration,
14 the standards for determining detectable levels of controlled
15 substances for purposes of determining a confirmed positive
16 test result shall be the same standard that has been
17 established by the federal food and drug administration for
18 the measuring instrument used to perform the blood, urine, or
19 oral fluid test.

20 Sec. 2. Section 730.5, subsection 1, paragraph j, Code
21 2003, is amended to read as follows:

22 j. "Sample" means such sample from the human body capable
23 of revealing the presence of alcohol or other drugs, or their
24 metabolites, which shall include only urine, saliva, breath,
25 and blood. However, sample does not mean blood except as
26 authorized pursuant to subsection 7, paragraph "l".

27 Sec. 3. Section 730.5, subsection 7, paragraph a, Code
28 2003, is amended to read as follows:

29 a. The collection of samples shall be performed under
30 sanitary conditions and with regard for the privacy of the
31 individual from whom the specimen is being obtained and in a
32 manner reasonably calculated to preclude contamination or
33 substitution of the specimen. If the sample collected is
34 urine, procedures shall be established to provide for
35 individual privacy in the collection of the sample unless

1 there is a reasonable suspicion that a particular individual
2 subject to testing may alter or substitute the urine specimen
3 to be provided, or has previously altered or substituted a
4 urine specimen provided pursuant to a drug or alcohol test.
5 For purposes of this paragraph, "individual privacy" means a
6 location at the collection site where urination can occur in
7 private, which has been secured by visual inspection to ensure
8 that other persons are not present, which provides that
9 undetected access to the location is not possible during
10 urination, and which provides for the ability to effectively
11 restrict access to the location during the time the specimen
12 is provided. If an individual is providing a urine sample and
13 collection of the urine sample is directly monitored or
14 observed by another individual, the individual who is directly
15 monitoring or observing the collection shall be of the same
16 gender as the individual from whom the urine sample is being
17 collected.

18 Sec. 4. Section 730.5, subsection 7, paragraph b, Code
19 2003, is amended to read as follows:

20 b. Sample-collection Collection of a urine sample for
21 testing of current employees, ~~except for the collection of a~~
22 ~~sample for alcohol testing conducted pursuant to paragraph~~
23 ~~"f", subparagraph (2),~~ shall be performed so that the specimen
24 is split into two components at the time of collection in the
25 presence of the individual from whom the sample or specimen is
26 collected. The second portion of the specimen or sample shall
27 be of sufficient quantity to permit a second, independent
28 confirmatory test as provided in paragraph "i". ~~If the~~
29 ~~specimen is urine, the~~ The sample shall be split such that the
30 primary sample contains at least thirty milliliters and the
31 secondary sample contains at least fifteen milliliters. Both
32 portions of the sample shall be forwarded to the laboratory
33 conducting the initial confirmatory testing. In addition to
34 any requirements for storage of the initial sample that may be
35 imposed upon the laboratory as a condition for certification

1 or approval, the laboratory shall store the second portion of
2 any sample until receipt of a confirmed negative test result
3 or for a period of at least forty-five calendar days following
4 the completion of the initial confirmatory testing, if the
5 first portion yielded a confirmed positive test result.

6 Sec. 5. Section 730.5, subsection 7, paragraph f,
7 unnumbered paragraph 1, Code 2003, is amended to read as
8 follows:

9 Drug or alcohol testing shall include confirmation of any
10 initial positive test results. 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 result for drugs or alcohol.

14 Sec. 6. Section 730.5, subsection 7, paragraph f, Code
15 2003, is amended by adding the following new subparagraph:

16 NEW SUBPARAGRAPH. (3) Notwithstanding any provision of
17 this section to the contrary, collection of an oral fluid
18 sample for testing shall be performed in the presence of the
19 individual from whom the sample or specimen is collected. The
20 specimen or sample shall be of sufficient quantity to permit a
21 second, independent, confirmatory test as provided in

* 22 paragraph "i". In addition to any requirement for storage of
23 the initial sample that may be imposed upon the laboratory as
24 a condition for certification or approval, the laboratory
25 shall store the unused portion of any sample until receipt of
26 a confirmed negative test result or for a period of at least
27 forty-five calendar days following the completion of the
28 initial confirmatory testing, if the portion yielded a
29 confirmed positive test result.

30 Sec. 7. Section 730.5, subsection 7, paragraph i, Code
31 2003, is amended to read as follows:

32 i. (1) If a confirmed positive ~~drug-or-alcohol~~ test
33 result for drugs or alcohol for a current employee is reported
34 to the employer by the medical review officer, the employer
35 shall notify the employee in writing by certified mail, return

1 receipt requested, of the results of the test, the employee's
2 right to request and obtain a confirmatory test of the second
3 sample collected pursuant to paragraph "b" at an approved
4 laboratory of the employee's choice, and the fee payable by
5 the employee to the employer for reimbursement of expenses
6 concerning the test. The fee charged an employee shall be an
7 amount that represents the costs associated with conducting
8 the second confirmatory test, which shall be consistent with
9 the employer's cost for conducting the initial confirmatory
10 test on an employee's sample. If the employee, in person or
11 by certified mail, return receipt requested, requests a second
12 confirmatory test, identifies an approved laboratory to
13 conduct the test, and pays the employer the fee for the test
14 within seven days from the date the employer mails by
15 certified mail, return receipt requested, the written notice
16 to the employee of the employee's right to request a test, a
17 second confirmatory test shall be conducted at the laboratory
18 chosen by the employee. The results of the second
19 confirmatory test shall be reported to the medical review
20 officer who reviewed the initial confirmatory test results and
21 the medical review officer shall review the results and issue
22 a report to the employer on whether the results of the second
23 confirmatory test confirmed the initial confirmatory test as
24 to the presence of a specific drug or alcohol. If the results
25 of the second test do not confirm the results of the initial
26 confirmatory test, the employer shall reimburse the employee
27 for the fee paid by the employee for the second test and the
28 initial confirmatory test shall not be considered a confirmed
29 positive ~~drug-or-alcohol~~ test result for drugs or alcohol for
30 purposes of taking disciplinary action pursuant to subsection
31 10.

32 (2) If a confirmed positive ~~drug-or-alcohol~~ test result
33 for drugs or alcohol for a prospective employee is reported to
34 the employer by the medical review officer, the employer shall
35 notify the prospective employee in writing of the results of

1 the test, of the name and address of the medical review
2 officer who made the report, and of the prospective employee's
3 right to request records under subsection 13.

4 Sec. 8. Section 730.5, subsection 9, paragraph b, Code
5 2003, is amended to read as follows:

6 b. The employer's written policy shall provide uniform
7 requirements for what disciplinary or rehabilitative actions
8 an employer shall take against an employee or prospective
9 employee upon receipt of a confirmed positive ~~drug-or-alcohol~~
10 test result for drugs or alcohol or upon the refusal of the
11 employee or prospective employee to provide a testing sample.
12 The policy shall provide that any action taken against an
13 employee or prospective employee shall be based only on the
14 results of the drug or alcohol test. The written policy shall
15 also provide that if rehabilitation is required pursuant to
16 paragraph "g", the employer shall not take adverse employment
17 action against the employee so long as the employee complies
18 with the requirements of rehabilitation and successfully
19 completes rehabilitation.

20 Sec. 9. Section 730.5, subsection 10, paragraph a,
21 unnumbered paragraph 1, Code 2003, is amended to read as
22 follows:

23 Upon receipt of a confirmed positive ~~drug-or-alcohol~~ test
24 result for drugs or alcohol which indicates a violation of the
25 employer's written policy, or upon the refusal of an employee
26 or prospective employee to provide a testing sample, an
27 employer may use that test result or test refusal as a valid
28 basis for disciplinary or rehabilitative actions pursuant to
29 the requirements of the employer's written policy and the
30 requirements of this section, which may include, among other
31 actions, the following:

32 Sec. 10. Section 730.5, subsection 10, paragraph b, Code
33 2003, is amended to read as follows:

34 b. Following a drug or alcohol test, but prior to receipt
35 of the final results of the drug or alcohol test, an employer

1 may suspend a current employee, with or without pay, pending
2 the outcome of the test. An employee who has been suspended
3 shall be reinstated by the employer, with back pay, and
4 interest on such amount at eighteen percent per annum
5 compounded annually, if applicable, if the result of the test
6 is not a confirmed positive ~~drug-or-alcohol~~ test result for
7 drugs or alcohol which indicates a violation of the employer's
8 written policy.

* 9 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
10 immediate importance, takes effect upon enactment.

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SENATE FILE 2173

H-8276

- 1 Amend Senate File 2173, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 12, by inserting after the word
- 4 "standards" the following: "for oral fluid tests".
- 5 2. Page 1, line 18, by striking the words "blood,
- 6 urine, or".

By COMMITTEE ON COMMERCE, REGULATION AND
LABOR

JENKINS of Black Hawk, Chairperson

H-8276 FILED MARCH 18, 2004

**HOUSE AMENDMENT TO
SENATE FILE 2173**

S-5215

- 1 Amend Senate File 2173, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 12, by inserting after the word
- 4 "standards" the following: "for oral fluid tests".
- 5 2. Page 1, line 18, by striking the words "blood,
- 6 urine, or".

RECEIVED FROM THE HOUSE

S-5215 FILED MARCH 30, 2004

Schuerer
Wieck
Dearden

SSB# 3098
Business & Labor
SENATE FILE _____
BY (PROPOSED COMMITTEE ON
BUSINESS AND LABOR
RELATIONS BILL BY
CHAIRPERSON SCHUERER)

By
SF/HF 2173

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning private sector employee drug testing relating
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4 NEW PARAGRAPH. aa. "Confirmed positive test result"
5 means, except for alcohol testing conducted pursuant to
6 subsection 7, paragraph "f", subparagraph (2), the results of
7 a blood, urine, or oral fluid test in which the level of
8 controlled substances or metabolites in the specimen analyzed
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10 detectable levels of controlled substances as adopted by the
11 federal substance abuse and health services administration.

12 Sec. 2. Section 730.5, subsection 1, paragraph j, Code
13 2003, is amended to read as follows:

14 j. "Sample" means such sample from the human body capable
15 of revealing the presence of alcohol or other drugs, or their
16 metabolites, which shall include only urine, saliva, breath,
17 and blood. However, sample does not mean blood except as
18 authorized pursuant to subsection 7, paragraph "l".

19 Sec. 3. Section 730.5, subsection 7, paragraph b, Code
20 2003, is amended to read as follows:

21 b. ~~Sample-collection~~ Collection of a urine sample for
22 testing of current employees, ~~except for the collection of a~~
23 ~~sample for alcohol testing conducted pursuant to paragraph~~
24 ~~"f", subparagraph (2),~~ shall be performed so that the specimen
25 is split into two components at the time of collection in the
26 presence of the individual from whom the sample or specimen is
27 collected. The second portion of the specimen or sample shall
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29 confirmatory test as provided in paragraph "i". ~~If the~~
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32 secondary sample contains at least fifteen milliliters. Both
33 portions of the sample shall be forwarded to the laboratory
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35 any requirements for storage of the initial sample that may be

1 imposed upon the laboratory as a condition for certification
2 or approval, the laboratory shall store the second portion of
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17 NEW SUBPARAGRAPH. (3) Notwithstanding any provision of
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19 sample for testing shall be performed in the presence of the
20 individual from whom the sample or specimen is collected. The
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22 second, independent, confirmatory test as provided in
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3 receipt requested, of the results of the test, the employee's
4 right to request and obtain a confirmatory test of the second
5 sample collected pursuant to paragraph "b" at an approved
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13 by certified mail, return receipt requested, requests a second
14 confirmatory test, identifies an approved laboratory to
15 conduct the test, and pays the employer the fee for the test
16 within seven days from the date the employer mails by
17 certified mail, return receipt requested, the written notice
18 to the employee of the employee's right to request a test, a
19 second confirmatory test shall be conducted at the laboratory
20 chosen by the employee. The results of the second
21 confirmatory test shall be reported to the medical review
22 officer who reviewed the initial confirmatory test results and
23 the medical review officer shall review the results and issue
24 a report to the employer on whether the results of the second
25 confirmatory test confirmed the initial confirmatory test as
26 to the presence of a specific drug or alcohol. If the results
27 of the second test do not confirm the results of the initial
28 confirmatory test, the employer shall reimburse the employee
29 for the fee paid by the employee for the second test and the
30 initial confirmatory test shall not be considered a confirmed
31 positive drug-or-alcohol test result for drugs or alcohol for
32 purposes of taking disciplinary action pursuant to subsection
33 10.

34 (2) If a confirmed positive drug-or-alcohol test result
35 for drugs or alcohol for a prospective employee is reported to

1 the employer by the medical review officer, the employer shall
2 notify the prospective employee in writing of the results of
3 the test, of the name and address of the medical review
4 officer who made the report, and of the prospective employee's
5 right to request records under subsection 13.

6 Sec. 7. Section 730.5, subsection 9, paragraph b, Code
7 2003, is amended to read as follows:

8 b. The employer's written policy shall provide uniform
9 requirements for what disciplinary or rehabilitative actions
10 an employer shall take against an employee or prospective
11 employee upon receipt of a confirmed positive ~~drug-or-alcohol~~
12 test result for drugs or alcohol or upon the refusal of the
13 employee or prospective employee to provide a testing sample.
14 The policy shall provide that any action taken against an
15 employee or prospective employee shall be based only on the
16 results of the drug or alcohol test. The written policy shall
17 also provide that if rehabilitation is required pursuant to
18 paragraph "g", the employer shall not take adverse employment
19 action against the employee so long as the employee complies
20 with the requirements of rehabilitation and successfully
21 completes rehabilitation.

22 Sec. 8. Section 730.5, subsection 10, paragraph a,
23 unnumbered paragraph 1, Code 2003, is amended to read as
24 follows:

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

34 Sec. 9. Section 730.5, subsection 10, paragraph b, Code
35 2003, is amended to read as follows:

1 b. Following a drug or alcohol test, but prior to receipt
2 of the final results of the drug or alcohol test, an employer
3 may suspend a current employee, with or without pay, pending
4 the outcome of the test. An employee who has been suspended
5 shall be reinstated by the employer, with back pay, and
6 interest on such amount at eighteen percent per annum
7 compounded annually, if applicable, if the result of the test
8 is not a confirmed positive ~~drug-or-alcohol~~ test result for
9 drugs or alcohol which indicates a violation of the employer's
10 written policy.

11 Sec. 10. EMERGENCY RULES. The Iowa department of public
12 health may adopt emergency rules under section 17A.4,
13 subsection 2, and section 17A.5, subsection 2, paragraph "b",
14 to implement the provisions of this Act and the rules shall be
15 effective immediately upon filing unless a later date is
16 specified in the rules. Any rules adopted in accordance with
17 this section shall also be published as a notice of intended
18 action as provided in section 17A.4.

19 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
20 immediate importance, takes effect upon enactment.

21 EXPLANATION

22 This bill concerns private sector drug testing.

23 The bill adds a definition of a confirmed positive test
24 result for nonalcohol drug testing to provide that the level
25 of drugs shall meet or exceed nationally accepted standards
26 adopted by the federal substance abuse and health services
27 administration.

28 The bill amends the definition of "sample" for purposes of
29 drug testing to specifically limit acceptable samples to
30 urine, saliva, breath, and blood.

31 The bill provides that the current sample collection
32 procedures applicable to sample collection for all but alcohol
33 testing is limited to urine testing.

34 The bill also adds a new subparagraph concerning sample
35 collection for oral fluid testing. This new subparagraph

1 provides that this testing shall be performed in the presence
 2 of the individual to be tested. In addition, the sample
 3 collected shall be of sufficient quantity to permit a second
 4 confirmatory test and provides that the second portion of any
 5 sample collected be stored until the first sample tests
 6 negative or for 45 days following an initial positive test
 7 result.

8 The bill authorizes the department of public health to
 9 adopt emergency rules to implement the bill.

10 The bill takes effect upon enactment.

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SENATE FILE 2173

AN ACT

CONCERNING PRIVATE SECTOR EMPLOYEE DRUG TESTING RELATING TO AUTHORIZED TESTING SUBSTANCES, CONFIRMED POSITIVE TEST RESULTS, AND TESTING PROCEDURES, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 730.5, subsection 1, Code 2003, is amended by adding the following new paragraph after paragraph a:

NEW PARAGRAPH. aa. "Confirmed positive test result" means, except for alcohol testing conducted pursuant to subsection 7, paragraph "f", subparagraph (2), the results of a blood, urine, or oral fluid test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds nationally accepted standards for determining detectable levels of controlled substances as adopted by the federal substance abuse and health services administration. If nationally accepted standards for oral fluid tests have not been adopted by the federal substance abuse and health services administration, the standards for determining detectable levels of controlled substances for purposes of determining a confirmed positive test result shall be the same standard that has been established by the federal food and drug administration for the measuring instrument used to perform the oral fluid test.

Sec. 2. Section 730.5, subsection 1, paragraph j, Code 2003, is amended to read as follows:

j. "Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites, which shall include only urine, saliva, breath,

and blood. However, sample does not mean blood except as authorized pursuant to subsection 7, paragraph "1".

Sec. 3. Section 730.5, subsection 7, paragraph a, Code 2003, is amended to read as follows:

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. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "individual privacy" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a urine sample and collection of the urine sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the urine sample is being collected.

Sec. 4. Section 730.5, subsection 7, paragraph b, Code 2003, is amended to read as follows:

b. ~~Sample-collection~~ Collection of a urine sample for testing of current employees, ~~except for the collection of a sample for alcohol testing conducted pursuant to paragraph "f", subparagraph (2),~~ 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~~ 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.

Sec. 5. Section 730.5, subsection 7, paragraph f, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Drug or alcohol testing shall include confirmation of any initial positive test results. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive ~~drug-or-alcohol~~ test result for drugs or alcohol.

Sec. 6. Section 730.5, subsection 7, paragraph f, Code 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) Notwithstanding any provision of this section to the contrary, collection of an oral fluid sample for testing shall be performed in the presence of the individual from whom the sample or specimen is collected. The specimen or sample shall be of sufficient quantity to permit a second, independent, confirmatory test as provided in paragraph "i". In addition to any requirement 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 unused 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 portion yielded a confirmed positive test result.

Sec. 7. Section 730.5, subsection 7, paragraph i, Code 2003, is amended to read as follows:

i. (1) If a confirmed positive ~~drug-or-alcohol~~ test result for drugs or alcohol 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 result for drugs or alcohol for purposes of taking disciplinary action pursuant to subsection 10.

(2) If a confirmed positive ~~drug-or-alcohol~~ test result for drugs or alcohol 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.

Sec. 8. Section 730.5, subsection 9, paragraph b, Code 2003, is amended to read as follows:

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 for drugs or alcohol 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.

Sec. 9. Section 730.5, subsection 10, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Upon receipt of a confirmed positive ~~drug-or-alcohol~~ test result for drugs or alcohol 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:

Sec. 10. Section 730.5, subsection 10, paragraph b, Code 2003, is amended to read as follows:

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 result for drugs or alcohol which indicates a violation of the employer's written policy.

Sec. 11. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2173, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2004

THOMAS J. VILSACK
Governor