

House File 313 - Introduced

HOUSE FILE 313

BY HORBACH

(COMPANION TO LSB 1782SS BY
WARD)

A BILL FOR

- 1 An Act concerning private sector employee drug testing.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 730.5, subsection 1, paragraphs b and k,
2 Code 2011, are amended to read as follows:

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

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

28 Sec. 2. Section 730.5, subsection 7, paragraphs a and b,
29 Code 2011, are amended to read as follows:

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

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

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

1 completion of the initial confirmatory testing, if the first
2 portion yielded a confirmed positive test result.

3 Sec. 3. Section 730.5, subsection 7, paragraph f,
4 subparagraphs (2) and (3), Code 2011, are amended to read as
5 follows:

6 (2) Notwithstanding any provision of this section to the
7 contrary, alcohol testing, including initial and confirmatory
8 testing, may be conducted pursuant to requirements established
9 by the employer's written policy. The written policy shall
10 include requirements governing evidential breath testing
11 devices, alcohol screening devices, and the qualifications for
12 personnel administering initial and confirmatory testing, which
13 shall be consistent with regulations adopted as of ~~January~~
14 ~~1, 1999~~ the effective date of this Act, by the United States
15 department of transportation governing alcohol testing required
16 to be conducted pursuant to the federal Omnibus Transportation
17 Employee Testing Act of 1991.

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

31 Sec. 4. Section 730.5, subsection 7, paragraph i,
32 subparagraph (2), Code 2011, is amended to read as follows:

33 (2) If a confirmed positive test result for drugs or alcohol
34 or a test result for drugs or alcohol that is inconclusive or
35 indicates that the sample has been diluted or altered for a

1 prospective employee is reported to the employer by the medical
2 review officer, the employer shall notify the prospective
3 employee in writing of the results of the test, of the name and
4 address of the medical review officer who made the report, and
5 of the prospective employee's right to request records under
6 subsection 13. The employer may allow a prospective employee
7 to obtain a confirmatory test at an approved laboratory of
8 the prospective employee's choice with costs payable by the
9 prospective employee.

10 Sec. 5. Section 730.5, subsection 10, paragraph a,
11 unnumbered paragraph 1, Code 2011, is amended to read as
12 follows:

13 Upon receipt of a confirmed positive test result for drugs
14 or alcohol which indicates a violation of the employer's
15 written policy, upon receipt of a test result of a prospective
16 employee that is inconclusive or indicates that the sample has
17 been diluted or altered, or upon the refusal of an employee
18 or prospective employee to provide a testing sample, an
19 employer may use that test result or test refusal as a valid
20 basis for disciplinary or rehabilitative actions pursuant to
21 the requirements of the employer's written policy and the
22 requirements of this section, which may include, among other
23 actions, the following:

24 EXPLANATION

25 This bill provides that private sector drug testing may be
26 conducted on any of those specimens that have been adopted by
27 the United States department of health and human services or
28 have been cleared or approved by the United States food and
29 drug administration for drug testing. Under current Iowa law,
30 drug testing is permitted only on samples of urine, saliva,
31 breath, and blood, and not on hair.

32 The bill provides that if the result of a test for drugs or
33 alcohol on a prospective employee is inconclusive or indicates
34 that the sample is altered or diluted, an employer may take
35 disciplinary or rehabilitative action against the prospective

1 employee in the same manner as if the result of the test was
2 positive for drugs or alcohol. The bill also provides that the
3 employer shall notify the prospective employee that the result
4 of the test is inconclusive or that the sample is altered or
5 diluted. If the result of the test is positive or inconclusive
6 or indicative of an altered or diluted sample, the bill
7 provides that the employer may allow the prospective employee
8 to obtain a confirmatory test at the employee's cost.