

Senate File 361 - Reprinted

SENATE FILE 361
BY COMMITTEE ON LABOR AND
BUSINESS RELATIONS

(SUCCESSOR TO SSB 1055)

(As Amended and Passed by the Senate March 17, 2021)

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, paragraph j, Code
2 2021, is amended to read as follows:

3 j. "*Safety-sensitive position*" means a ~~job~~ position
4 designated by the employer as one wherein an accident could
5 cause loss of human life, serious bodily injury, or significant
6 property or environmental damage, including a job with duties
7 that include immediate supervision of a person in a job that
8 meets the requirement of this paragraph.

9 Sec. 2. Section 730.5, subsection 7, paragraph j,
10 subparagraph (1), Code 2021, is amended to read as follows:

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

1 employer on whether the results of the second confirmatory test
2 confirmed the initial confirmatory test as to the presence of
3 a specific drug or alcohol. If the results of the second test
4 do not confirm the results of the initial confirmatory test,
5 the employer shall reimburse the employee for the fee paid by
6 the employee for the second test and the initial confirmatory
7 test shall not be considered a confirmed positive test result
8 for drugs or alcohol for purposes of taking disciplinary action
9 pursuant to subsection 10. In lieu of certified mail, return
10 receipt requested, an employer may offer an employee the option
11 to receive notifications and make requests as provided in this
12 subparagraph by in-person exchange of written materials or by
13 electronic notification. The employee may choose to receive
14 notifications and make requests by one of these methods or may
15 choose to receive notifications and make requests by certified
16 mail, return receipt requested.

17 Sec. 3. Section 730.5, subsection 9, paragraph a, Code 2021,
18 is amended by adding the following new subparagraph:

19 NEW SUBPARAGRAPH. (5) In lieu of certified mail, return
20 receipt requested, an employer may offer an employee,
21 prospective employee, or parent of a minor who is an employee
22 or prospective employee the option to receive copies and
23 notices as provided in subparagraph (1) or (2) by in-person
24 exchange of written materials or by electronic notification.
25 The employee, prospective employee, or parent of a minor who
26 is an employee or prospective employee may choose to receive
27 copies and notices by one of these methods or may choose to
28 receive copies and notices by certified mail, return receipt
29 requested.

30 Sec. 4. Section 730.5, subsection 15, Code 2021, is amended
31 to read as follows:

32 15. *Civil remedies.*

33 ~~a.~~ This section may be enforced through a civil action.

34 ~~(1)~~ a. A person who violates this section or who aids
35 in the violation of this section is liable to an aggrieved

1 employee or prospective employee for affirmative relief
2 including reinstatement or hiring, with or without back pay,
3 or any other equitable relief as the court deems appropriate
4 including reasonable attorney fees and court costs. An
5 aggrieved employee or prospective employee has the burden of
6 proving by a preponderance of the evidence that a violation of
7 this section directly caused any damages for which affirmative
8 relief is sought.

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

15 ~~b. In an action brought under this subsection alleging that~~
16 ~~an employer has required or requested a drug or alcohol test~~
17 ~~in violation of this section, the employer has the burden of~~
18 ~~proving that the requirements of this section were met.~~