SENATE FILE 361
BY COMMITTEE ON LABOR AND
BUSINESS RELATIONS

(SUCCESSOR TO SSB 1055)

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

_____ and [ = New Language by the Senate

## A BILL FOR

An Act concerning private sector employee drug testing.

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

Section 1. Section 730.5, subsection 1, paragraph j, Code 2021, is amended to read as follows:

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

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

(1) If a confirmed positive 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

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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 test result for drugs or alcohol for purposes of taking disciplinary action pursuant to subsection 10. In lieu of certified mail, return receipt requested, an employer may offer an employee the option to receive notifications and make requests as provided in this subparagraph by in-person exchange of written materials or by electronic notification. The employee may choose to receive notifications and make requests by one of these methods or may choose to receive notifications and make requests by certified mail, return receipt requested.

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

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

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

15. *Civil remedies.*

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

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

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

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

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