

Sec. 5. Section 12C.23A, subsection 3, paragraph f, Code Supplement 2003, is amended by striking the paragraph.

Sec. 6. Section 12C.23A, subsection 3, paragraph g, Code Supplement 2003, is amended to read as follows:

g. If a bank fails to pay its assessment when due and the proceeds from liquidation of the collateral pledged by the bank are not sufficient to pay the assessment against the bank, the treasurer of state shall notify the superintendent or the comptroller of the currency, as applicable, of the failure to pay the assessment. If the bank that has failed to pay the assessment is a nationally chartered financial institution, the superintendent shall immediately notify the bank's primary federal regulator. If the assessment is not paid within thirty days after the bank received the notice of assessment, the treasurer of state shall initiate a lawsuit to collect the amount of the assessment. If a bank is found to have failed to pay the assessment as required by this subsection and is ordered to pay the assessment, the court shall also order that the bank pay court costs and reasonable attorney fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state.

Sec. 7. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 16, 2004

CHAPTER 1081

PRIVATE SECTOR EMPLOYEE DRUG TESTING

S.F. 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:

NEWSUBPARAGRAPH. (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.

Approved April 16, 2004

CHAPTER 1082

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP AND AGRICULTURAL REGULATION — MISCELLANEOUS CHANGES

S.F. 2208

AN ACT relating to the powers and duties of the department of agriculture and land stewardship, and making penalties applicable.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I GENERAL AUTHORITY OF THE DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

Section 1. Section 7A.4, subsection 2, Code 2003, is amended by striking the subsection.

Sec. 2. Section 159.11, Code Supplement 2003, is repealed.

Sec. 3. Section 159.13, Code 2003, is repealed.

DIVISION II AGRICULTURAL ENERGY MANAGEMENT FUND

Sec. 4. Section 159.6, subsection 10, Code Supplement 2003, is amended to read as follows:
10. Soil and water conservation as set forth in chapters 161A, ~~161B~~, 161C, 161E, and 161F.

Sec. 5. Section 455E.11, subsection 2, paragraph e, subparagraph (7), Code Supplement 2003, is amended by striking the subparagraph.

Sec. 6. Chapter 161B, Code 2003,¹ is repealed.

DIVISION III SECRETARY'S DESIGNEE AS A MEMBER OF THE ECONOMIC DEVELOPMENT BOARD

Sec. 7. Section 15.103, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The Iowa economic development board is created, consisting of eleven voting members appointed by the governor and seven ex officio nonvoting members. The ex officio nonvoting

¹ "Code Supplement 2003" probably intended