Reprinted 3/87

MAR 1 1 1987

Place On Calendar

HOUSE FILE 469
BY COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS

(Formerly House File 63)

Passed House, Date 3-19-87 (p.692) Passed Senate, Date 4/30/87 (p. 1610)
Vote: Ayes 93 Nays 1 Vote: Ayes 31 Nays 16
Approved June 5, 1987

A BILL FOR

1 An Act to regulate the circumstance and procedure under which an
2 employer may request a drug test of an employee or an
3 applicant for employment and providing a penalty.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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HF 469

TLSB 2778HC 72
mf/sc/14

S.F. _____ H.F. 469

1 Section 1. NEW SECTION. 730.5 DRUG TESTING OF EMPLOYEES
2 OR APPLICANTS REGULATED.
3 1. As used in this section, "drug test" means any blood,
4 urine, saliva, chemical, or skin tissue test conducted for the
5 purpose of detecting the presence of a chemical substance in
6 an individual.
7 2. Except as provided in subsection 7, an employer shall
8 not require or request employees or applicants for employment
9 to submit to a drug test as a condition of employment,
10 preemployment, promotion, or change in status of employment.
11 An employer shall not request, require, or conduct random or
12 blanket drug testing of employees. However, this section does
13 not apply to drug tests authorized for peace officers or
14 correctional officers of the state, or to drug tests required
15 under federal statutes or regulations, or to drug tests
16 conducted to determine if an employee is ineligible to receive
17 workers' compensation under section 85.16, subsection 2.
18 3. This section does not prohibit an employer from
19 requiring a specific employee to submit to a drug test if all
20 of the following conditions are met:
21 a. The employer has reasonable suspicion to believe that
22 an employee's faculties are impaired on the job.
23 b. The employee is in a position where such impairment
24 presents a danger to the safety of the employee, another
25 employee, a member of the public, or the property of the
26 employer.
27 c. The test sample withdrawn from the employee is analyzed
28 by a laboratory or testing facility that has been approved
29 under rules adopted by the department of public health.
30 d. If a test is conducted and the results indicate that
31 the employee is under the influence of alcohol or a controlled
32 substance or indicate the presence of a controlled substance,
33 a second test using an alternative method of analysis shall be
34 conducted. When possible and practical, the second test shall
35 use a portion of the same test sample withdrawn from the

1 employee for use in the first test.
2 e. An employee shall be accorded a reasonable opportunity
3 to rebut or explain the results of a drug test.
4 f. The employer shall provide substance abuse evaluation
5 and treatment with costs apportioned as provided under the
6 employee benefit plan or at employer expense, if there is no
7 employee benefit plan, for those employees whose drug test
8 indicates the presence of alcohol or a controlled substance.
9 If an employee whose drug test indicates the presence of
10 alcohol or a controlled substance undergoes substance abuse
11 evaluation and successfully completes substance abuse
12 treatment, if recommended by the evaluation, the employer
13 shall take no disciplinary action against the employee.
14 However, if an employee fails to undergo substance abuse
15 evaluation when required under the results of a drug test, or
16 fails to successfully complete substance abuse treatment when
17 recommended by an evaluation, the employee may be disciplined
18 up to and including discharge. The substance abuse evaluation
19 and treatment provided by the employer shall take place under
20 a program approved by the department of public health.
21 4. In conducting those tests designed to identify the
22 presence of chemical substances in the body, the employer
23 shall ensure to the extent feasible that the tests only
24 measure and that the records of the tests only show or make
25 use of information regarding chemical substances in the body
26 which are likely to affect the ability of the employee to
27 perform safely the employee's duties while on the job.
28 5. This section does not restrict an employer's ability to
29 prohibit the use of alcohol or controlled substances during
30 work hours or to discipline employees for being under the
31 influence of alcohol or controlled substances during work
32 hours.
33 6. This section does not prevent an employer from
34 conducting medical screening in order to monitor exposure to
35 toxic or other unhealthy substances encountered in the

1 workplace or in the performance of their job responsibilities.
2 Any such screening must be limited to the specific substances
3 required to be monitored.
4 7. A drug test conducted as a part of a preemployment
5 physical or a regularly scheduled physical is only permissible
6 under the following circumstances:
7 a. For a preemployment physical, the employer shall
8 include notice that a drug test will be part of a
9 preemployment physical in any notice or advertisement
10 soliciting applicants for employment, and an applicant for
11 employment shall be personally informed of the requirement for
12 a drug test at the first interview.
13 b. For a regularly scheduled physical, the employer shall
14 give notice that a drug test will be part of the physical at
15 least thirty days prior to the date the physical is scheduled.
16 Drug testing conducted under this subsection shall conform
17 to the requirements of subsection 3, paragraphs "c", "d", "e",
18 and "f".
19 8. An employer shall protect the confidentiality of the
20 results of any drug test conducted on an employee. The
21 results of the test may be recorded in the employee's record;
22 however, if an employee whose test indicated the employee was
23 under the influence of alcohol or a controlled substance or
24 indicated the presence of a controlled substance has undergone
25 substance abuse evaluation and, when treatment is indicated
26 under the substance abuse evaluation, successfully completed
27 treatment for substance abuse, the employee's records shall be
28 expunged of any reference to the test or its results when the
29 employee leaves employment.
30 9. This section may be enforced through a civil action.
31 a. A person who violates this section or who aids in the
32 violation of this section is liable to the aggrieved employee
33 or applicant for employment for actual damages, attorney's
34 fees, and the costs of the action.
35 b. When a person commits, is committing, or proposes to

1 commit, an act in violation of this section, an injunction may
2 be granted through an action in district court to prohibit the
3 person from continuing such acts. The action for injunctive
4 relief may be brought by an aggrieved employee or applicant
5 for employment, the county attorney, or the attorney general.
6 In an action brought under this subsection alleging that an
7 employer has required or requested a drug test in violation of
8 this section, the employer has the burden of proving that the
9 requirements of this section were met.
10 10. An employee shall not be discharged, disciplined, or
11 discriminated against in any manner for filing a complaint or
12 testifying in any proceeding or action involving violations of
13 this section. An employee discharged, disciplined, or
14 otherwise discriminated against in violation of this section
15 shall be compensated by the employer in the amount of any loss
16 of wages and benefits arising out of the discrimination and
17 shall be restored to the employee's previous position of
18 employment.
19 11. A person who violates this section is, upon
20 conviction, guilty of a simple misdemeanor.
21 EXPLANATION
22 This bill regulates the circumstances and procedure under
23 which an employer may request a drug test of an employee or
24 applicant for employment. The bill prohibits blanket drug
25 tests except for certain specific exceptions. An employer may
26 request a drug test as a part of a preemployment or regularly
27 scheduled physical, or upon a reasonable suspicion that an
28 employee is under the influence of alcohol or a drug. The
29 employer is required to provide substance abuse evaluation and
30 treatment for those employees whose drug test indicates the
31 presence of alcohol or a controlled substance with costs of
32 evaluation and treatment apportioned according to the employee
33 benefit plan or at employer expense if there is no employee
34 benefit plan. If an employee completes evaluation and
35 treatment the employer is barred from taking disciplinary

1 action against the employee. An employer may discipline an
2 employee up to and including discharge if an employee refuses
3 evaluation or treatment when indicated under a drug test.
4 The bill provides for enforcement of its provisions through
5 a civil action by an aggrieved person. An employee or
6 applicant for employment may seek actual damages, attorney's
7 fees, and costs. An aggrieved person may also seek an
8 injunction against a person requesting or requiring a drug
9 test in violation of the restrictions. A person who violates
10 the restrictions of this bill commits a simple misdemeanor.
11

HOUSE FILE 469
FISCAL NOTE
REQUESTED BY REPRESENTATIVE BISIGNANO

In compliance with a written request received March 16, 1987, a fiscal note for HOUSE FILE 469 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 469 regulates the circumstances and procedures under which an employer may request an employee or prospective employee to undergo a drug test. The bill prohibits blanket drug tests except for certain specific exceptions. Employers are required to provide substance abuse evaluation and treatment for those employees who test positive for alcohol or a controlled substance, and an employer may not take disciplinary action against an employee who completes this evaluation and treatment. An employer may discipline or discharge an employee who refuses evaluation or treatment when indicated by a drug test.

The bill provides for enforcement of its provisions through a civil action by an aggrieved person, including seeking actual damages, attorney's fees, costs, and injunctive relief. A person who violates the restrictions of this bill commits a simple misdemeanor.

Fiscal Effect: House File 469 is estimated to have no significant fiscal effect upon state or local governments. Primary responsibility for enforcement is upon aggrieved persons: no increase in regulatory staff is anticipated. The increased law enforcement and judicial caseload is estimated to be minimal.

Sources: Departments of Public Health and Employment Services (LSB 2778H, JMN)

FILED MARCH 17, 1987 BY DENNIS PROUTY, FISCAL DIRECTOR

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HOUSE FILE 469

H-3212

1 Amend House File 469 as follows:
2 1. Page 1, line 16, by inserting after the words
3 "conducted to" the following: "a vocational category
4 with the highest injury and illness incident rate as
5 reported annually by the Iowa bureau of labor,
6 provided that category has an incident rate that is at
7 least fifty percent higher than the second highest
8 category or to".

BY HALVORSON of Clayton
HARBOR of Mills

H-3212 FILED MARCH 18, 1987

Lost 3/19/87 (J. 690)

HOUSE FILE 469

H-3213

1 Amend amendment, H-3210, to House File 469 as
2 follows:
3 1. Page 1, line 9, by inserting after the word
4 "appropriate" the words "including attorney fees and
5 court costs".

H-3213 FILED MARCH 18, 1987 BY HESTER of Pottawattamie

Adopted 3/19/87 (J. 691)

HOUSE FILE 469

H-3192

1 Amend House File 469 as follows:
2 1. Page 1, line 13, by inserting before the word
3 "drug" the following: "preemployment".

BY CONNORS of Polk
PLATT of Muscatine
RUNNING of Linn
BEAMAN of Union

H-3192 FILED MARCH 16, 1987
Adopted 3/19/87 (J. 690)

HOUSE FILE 469

H-3208

1 Amend House File 469 as follows:
2 1. Page 2, line 11, by striking the word "and"
3 and inserting the words "which indicates an addiction
4 for which substance abuse treatment is recommended,
5 and if the employee".

BY HESTER of Pottawattamie
CONNORS of Polk

H-3208 FILED MARCH 17, 1987
Adopted 3/19/87 (J. 691)

HOUSE FILE 469

H-3209

1 Amend House File 469 as follows:
2 1. Page 1, line 26, by inserting after the word
3 "employer" the words ", or when impairment due to
4 intoxication is a violation of a known rule of the
5 employer".

BY HESTER of Pottawattamie
CONNORS of Polk

H-3209 FILED MARCH 17, 1987
Adopted 3/19/87 (J. 691)

HOUSE FILE 469

H-3210

1 Amend House File 469 as follows:
2 1. Page 3, by striking lines 31 through 34 and
3 inserting the following:
4 "a. A person who violates this section or who aids
5 in the violation of this section is liable to an
6 aggrieved employee or applicant for employment for
7 affirmative relief including reinstatement or hiring,
8 with or without back pay, or any other equitable
9 relief as the court deems appropriate."

BY CONNORS of Polk
~~HESTER of Pottawattamie~~
COREY of Louisa
RUNNING of Linn

H-3210 FILED MARCH 17, 1987
Adopted as amended by 3213 3/19/87 (J. 691)

HOUSE FILE 469
BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS
Sub. for 87.2 4/10/87

(As Amended and Passed by the House March 19, 1987)

Passed House, Date 5/5/87 (p. 1980) Passed Senate, Date 4/30/87 (p. 1610)
Vote: Ayes 93 Nays 0 Vote: Ayes 31 Nays 16
Approved June 5, 1987
Proposed Senate 5/6/87 (p. 1720)
39-8
Motion to reconsider (p. 1734) failed 5/10/87

A BILL FOR

1 An Act to regulate the circumstance and procedure under which an
2 employer may request a drug test of an employee or an
3 applicant for employment and providing a penalty.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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6 House Amendments _____
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HF 469
mf/pk/25

S.F. _____ H.F. 469

1 Section 1. NEW SECTION. 730.5 DRUG TESTING OF EMPLOYEES
2 OR APPLICANTS REGULATED.
3 1. As used in this section, "drug test" means any blood,
4 urine, saliva, chemical, or skin tissue test conducted for the
5 purpose of detecting the presence of a chemical substance in
6 an individual.
7 2. Except as provided in subsection 7, an employer shall
8 not require or request employees or applicants for employment
9 to submit to a drug test as a condition of employment,
10 preemployment, promotion, or change in status of employment.
11 An employer shall not request, require, or conduct random or
12 blanket drug testing of employees. However, this section does
13 not apply to preemployment drug tests authorized for peace
14 officers or correctional officers of the state, or to drug
15 tests required under federal statutes or regulations, or to
16 drug tests conducted to determine if an employee is ineligible
17 to receive workers' compensation under section 85.16,
18 subsection 2.
19 3. This section does not prohibit an employer from
20 requiring a specific employee to submit to a drug test if all
21 of the following conditions are met:
22 a. The employer has reasonable suspicion to believe that
23 an employee's faculties are impaired on the job.
24 b. The employee is in a position where such impairment
25 presents a danger to the safety of the employee, another
26 employee, a member of the public, or the property of the
27 employer, or when impairment due to intoxication is a
28 violation of a known rule of the employer.
29 c. The test sample withdrawn from the employee is analyzed
30 by a laboratory or testing facility that has been approved
31 under rules adopted by the department of public health.
32 d. If a test is conducted and the results indicate that
33 the employee is under the influence of alcohol or a controlled
34 substance or indicate the presence of a controlled substance,
35 a second test using an alternative method of analysis shall be

1 conducted. When possible and practical, the second test shall
2 use a portion of the same test sample withdrawn from the
3 employee for use in the first test.
4 e. An employee shall be accorded a reasonable opportunity
5 to rebut or explain the results of a drug test.
6 f. The employer shall provide substance abuse evaluation
7 and treatment with costs apportioned as provided under the
8 employee benefit plan or at employer expense, if there is no
9 employee benefit plan, for those employees whose drug test
10 indicates the presence of alcohol or a controlled substance.
11 If an employee whose drug test indicates the presence of
12 alcohol or a controlled substance undergoes substance abuse
13 evaluation which indicates an addiction for which substance
14 abuse treatment is recommended, and if the employee
15 successfully completes substance abuse treatment, if
16 recommended by the evaluation, the employer shall take no
17 disciplinary action against the employee. However, if an
18 employee fails to undergo substance abuse evaluation when
19 required under the results of a drug test, or fails to
20 successfully complete substance abuse treatment when
21 recommended by an evaluation, the employee may be disciplined
22 up to and including discharge. The substance abuse evaluation
23 and treatment provided by the employer shall take place under
24 a program approved by the department of public health.
25 4. In conducting those tests designed to identify the
26 presence of chemical substances in the body, the employer
27 shall ensure to the extent feasible that the tests only
28 measure and that the records of the tests only show or make
29 use of information regarding chemical substances in the body
30 which are likely to affect the ability of the employee to
31 perform safely the employee's duties while on the job.
32 5. This section does not restrict an employer's ability to
33 prohibit the use of alcohol or controlled substances during
34 work hours or to discipline employees for being under the
35 influence of alcohol or controlled substances during work

1 hours.
2 6. This section does not prevent an employer from
3 conducting medical screening in order to monitor exposure to
4 toxic or other unhealthy substances encountered in the
5 workplace or in the performance of their job responsibilities.
6 Any such screening must be limited to the specific substances
7 required to be monitored.
8 7. A drug test conducted as a part of a preemployment
9 physical or a regularly scheduled physical is only permissible
10 under the following circumstances:
11 a. For a preemployment physical, the employer shall
12 include notice that a drug test will be part of a
13 preemployment physical in any notice or advertisement
14 soliciting applicants for employment, and an applicant for
15 employment shall be personally informed of the requirement for
16 a drug test at the first interview.
17 b. For a regularly scheduled physical, the employer shall
18 give notice that a drug test will be part of the physical at
19 least thirty days prior to the date the physical is scheduled.
20 Drug testing conducted under this subsection shall conform
21 to the requirements of subsection 3, paragraphs "c", "d", "e",
22 and "f".
23 8. An employer shall protect the confidentiality of the
24 results of any drug test conducted on an employee. The
25 results of the test may be recorded in the employee's record;
26 however, if an employee whose test indicated the employee was
27 under the influence of alcohol or a controlled substance or
28 indicated the presence of a controlled substance has undergone
29 substance abuse evaluation and, when treatment is indicated
30 under the substance abuse evaluation, successfully completed
31 treatment for substance abuse, the employee's records shall be
32 expunged of any reference to the test or its results when the
33 employee leaves employment.
34 9. This section may be enforced through a civil action.
35 a. A person who violates this section or who aids in the

1 violation of this section is liable to an aggrieved employee
2 or applicant for employment for affirmative relief including
3 reinstatement or hiring, with or without back pay, or any
4 other equitable relief as the court deems appropriate
5 including attorney fees and court costs.
6 b. When a person commits, is committing, or proposes to
7 commit, an act in violation of this section, an injunction may
8 be granted through an action in district court to prohibit the
9 person from continuing such acts. The action for injunctive
10 relief may be brought by an aggrieved employee or applicant
11 for employment, the county attorney, or the attorney general.
12 In an action brought under this subsection alleging that an
13 employer has required or requested a drug test in violation of
14 this section, the employer has the burden of proving that the
15 requirements of this section were met.
16 10. An employee shall not be discharged, disciplined, or
17 discriminated against in any manner for filing a complaint or
18 testifying in any proceeding or action involving violations of
19 this section. An employee discharged, disciplined, or
20 otherwise discriminated against in violation of this section
21 shall be compensated by the employer in the amount of any loss
22 of wages and benefits arising out of the discrimination and
23 shall be restored to the employee's previous position of
24 employment.
25 11. A person who violates this section is, upon
26 conviction, guilty of a simple misdemeanor.
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HOUSE FILE 469

S-3497

1 Amend House File 469, as amended, passed, and
2 reprinted by the House as follows:
3 1. Page 1, line 7 by striking the word and figure
4 "subsection 7" and inserting the following:
5 "subsections 7 and 8".
6 2. Page 1, line 11 by striking the word "An" and
7 inserting the following: "Except as provided in
8 subsection 8, an".
9 3. Page 3, by inserting after line 22 the
10 following:
11 "8. An employer may randomly drug test employees
12 in the vocational category with the highest injury and
13 illness incident rate as reported annually by the Iowa
14 bureau of labor, provided that the category has an
15 incident rate that is at least fifty percent higher
16 than the second highest category and provided that the
17 following conditions are satisfied:
18 a. The conditions of subsection 3, paragraphs "c"
19 through "f" are satisfied.
20 b. An employee testing positive after completing a
21 substance abuse treatment program under this
22 subsection may be disciplined up to and including
23 discharge."
24 4. By renumbering as necessary.

S-3497
Filed April 9, 1987
Placed c/o 4/30 (p. 1607)

BY RICHARD F. DARKE
LINN FUHRMAN
HURLEY W. HALL
FORREST SCHWENGELS
CALVIN O. HULTMAN

HOUSE FILE 469

S-3548

1 Amend House File 469 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 2, lines 8 and 9, by striking the words
4 "or at employer expense, if there is no employee
5 benefit plan,".

S-3548
Filed April 14, 1987
Placed c/o 4/30 (p. 1607)

BY CALVIN O. HULTMAN

HOUSE FILE 469

S-3388

1 Amend House File 469, as amended, passed, and re-
2 printed by the House as follows:
3 1. Page 1, line 15, by inserting after the word
4 "regulations," the words "or to drug tests conducted
5 pursuant to a nuclear regulatory commission policy
6 statement for employees hired directly by a utility
7 company operating a nuclear power plant not including
8 employees employed by a contractor or subcontractor,".

S-3388
Filed April 2, 1987 BY JAMES D. WELLS
Placed o/c 4/30 (of 1609)

HOUSE FILE 469

S-3443

1 Amend House File 469, as amended, passed, and re-
2 printed by the House as follows:
3 1. Page 1, line 15, by inserting after the word
4 "regulations," the words "or to drug tests conducted
5 pursuant to a nuclear regulatory commission policy
6 statement,".

S-3443
Filed April 7, 1987 BY JAMES D. WELLS
Placed o/c 4/30 (of 1609) HURLEY W. HALL
CALVIN O. HULTMAN
JAMES R. RIORDAN
WILLIAM D. PALMER

HOUSE FILE 469

S-3549

1 Amend House File 469 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, by inserting after line 6 the
4 following:
5 ___. As used in this section, "employer" means a
6 person, who in this state employs for wages more than
7 twenty-five natural persons. An employer does not
8 include a client, patient, customer, or other person
9 who obtains professional services from a licensed
10 person who provides services on a fee service basis or
11 as an independent contractor. An employer also does
12 not include a fraternal, charitable, or religious
13 association or corporation if the association or
14 corporation is not organized either for private profit
15 or to provide accommodations or services that are
16 available on a nonmembership basis. An employer does
17 include the state of Iowa, or a political subdivision
18 of the state if the subdivision employs more than
19 twenty-five natural persons."

S-3549
Filed April 14, 1987 BY CALVIN O. HULTMAN
Placed o/c 4/30 (of 1609)

HOUSE FILE 469

S-3704

1 Amend the Senate amendment, S-3685, to House File
2 469 as amended, passed, and reprinted by the House as
3 follows:
4 1. By striking page 2, line 3 through page 3,
5 line 35, and inserting the following:
6 "Sec. 2. NEW SECTION. 730.5 DRUG TESTING OF
7 EMPLOYEES OR APPLICANTS REGULATED.
8 1. As used in this section, "drug test" means any
9 blood, urine, saliva, chemical, or skin tissue test
10 conducted for the purpose of detecting the presence of
11 a chemical substance in an individual.
12 2. Except as provided in subsection 7, an employer
13 shall not require or request employees or applicants
14 for employment to submit to a drug test as a condition
15 of employment, preemployment, promotion, or change in
16 status of employment. An employer shall not request,
17 require, or conduct random or blanket drug testing of
18 employees. However, this section does not apply to
19 preemployment drug tests authorized for peace officers
20 or correctional officers of the state, or to drug
21 tests required under federal statutes, or to drug
22 tests conducted pursuant to a nuclear regulatory
23 commission policy statement, or to drug tests
24 conducted to determine if an employee is ineligible to
25 receive workers' compensation under section 85.16,
26 subsection 2.
27 3. This section does not prohibit an employer from
28 requiring a specific employee to submit to a drug test
29 if all of the following conditions are met:
30 a. The employer has probable cause to believe that
31 an employee's faculties are impaired on the job.
32 b. The employee is in a position where such
33 impairment restricts the ability of the employee to
34 meet the performance standards imposed by the
35 employer, or presents a danger to the safety of the
36 employee, another employee, a member of the public, or
37 the property of the employer, or when impairment due
38 to intoxication is a violation of a known rule of the
39 employer.
40 c. The test sample withdrawn from the employee is
41 analyzed by a laboratory or testing facility that has
42 been approved under rules adopted by the department of
43 public health or is duly licensed or approved under
44 applicable state laws where the laboratory or testing
45 facility is located.
46 d. If a test is conducted and the results indicate
47 that the employee is under the influence of alcohol or
48 a controlled substance or indicate the presence of
49 alcohol or a controlled substance, a second test using
50 an alternative method of analysis shall be conducted.

1 When possible and practical, the second test shall use
2 a portion of the same test sample withdrawn from the
3 employee for use in the first test.
4 e. An employee shall be accorded a reasonable
5 opportunity to rebut or explain the results of a drug
6 test.
7 f. The employer shall provide substance abuse
8 evaluation, and treatment if recommended by the
9 evaluation, with costs apportioned as provided under
10 the employee benefit plan or at employer expense, if
11 there is no employee benefit plan, for those employees
12 whose drug test indicates the presence of alcohol or a
13 controlled substance. If an employee whose drug test
14 indicates the presence of alcohol or a controlled
15 substance undergoes substance abuse evaluation which
16 indicates an addiction for which substance abuse
17 treatment is recommended, and if the employee
18 successfully completes substance abuse treatment, if
19 recommended by the evaluation, the employer shall take
20 no disciplinary action against the employee. However,
21 if an employee fails to undergo substance abuse
22 evaluation when required under the results of a drug
23 test, or fails to successfully complete substance
24 abuse treatment when recommended by an evaluation, the
25 employee may be disciplined up to and including
26 discharge. The substance abuse evaluation and
27 treatment provided by the employer shall take place
28 under a program approved by the department of public
29 health or accredited by the joint commission on
30 accreditation of hospitals.
31 4. In conducting those tests designed to identify
32 the presence of chemical substances in the body, the
33 employer shall ensure to the extent feasible that the
34 tests only measure and that the records of the tests
35 only show or make use of information regarding
36 chemical substances in the body which are likely to
37 affect the ability of the employee to perform safely
38 the employee's duties while on the job or to meet
39 performance standards imposed by the employer.
40 5. This section does not restrict an employer's
41 ability to prohibit the use of alcohol or controlled
42 substances during work hours or to discipline
43 employees for being under the influence of alcohol or
44 controlled substances during work hours.
45 6. This section does not prevent an employer from
46 conducting medical screening in order to monitor
47 exposure to toxic or other unhealthy substances
48 encountered in the workplace or in the performance of
49 their job responsibilities. Any such screening must
50 be limited to the specific substances required to be

1 monitored.
2 7. A drug test conducted as a part of a physical
3 examination performed as a part of a preemployment
4 physical or a physical in connection with a promotion
5 or a change of status in employment or as a part of a
6 regularly scheduled physical is only permissible under
7 the following circumstances:
8 a. For a preemployment physical, the employer
9 shall notify the job applicant of the requirement for
10 a drug test at the time of the interview and hiring.
11 b. For a regularly scheduled physical, the
12 employer shall give notice that a drug test will be
13 part of the physical at least fifteen days prior to
14 the date the physical is scheduled.
15 Drug testing conducted under this subsection shall
16 conform to the requirements of subsection 3,
17 paragraphs "c", "d", "e", and "f"; however, paragraph
18 "f" shall not apply to drug tests conducted as a part
19 of a preemployment physical.
20 8. An employer shall protect the confidentiality
21 of the results of any drug test conducted on an
22 employee. The results of the test may be recorded in
23 the employee's medical and personnel records; however,
24 if an employee whose test indicated the employee was
25 under the influence of alcohol or a controlled
26 substance or indicated the presence of a controlled
27 substance has undergone substance abuse evaluation
28 and, when treatment is indicated under the substance
29 abuse evaluation, successfully completed treatment for
30 substance abuse, the employee's personnel records
31 shall be expunged of any reference to the test or its
32 results when the employee leaves employment.
33 9. This section may be enforced through a civil
34 action under section 730.6. In an action brought
35 under this subsection alleging that an employer has
36 required or requested a drug test in violation of this
37 section, the employer has the burden of proving that
38 the requirements of this section were met.
39 10. An employee shall not be discharged,
40 disciplined, or discriminated against in any manner
41 for filing a complaint or testifying in any proceeding
42 or action involving violations of this section. An
43 employee discharged, disciplined, or otherwise
44 discriminated against in violation of this section
45 shall be compensated by the employer in the amount of
46 any loss of wages and benefits arising out of the
47 discrimination and shall be restored to the employee's
48 previous position of employment.
49 11. A person who violates this section is, upon
50 conviction, guilty of a simple misdemeanor."

SENATE 9
April 22, 1987

S-3704 pg. 4

1 2. Page 4, by striking lines 16 through 18 and
2 inserting the following: "in the violation of this
3 section is liable for affirmative relief for damages
4 sustained including but not limited to reinstatement
5 or hiring,".

S-3704
Filed April 21, 1987 BY JAMES R. RIORDAN
Placed o/c 4/30 (pg 1609)

HOUSE FILE 469

S-3871

1 Amend House File 469 as amended, passed and
2 reprinted by the House as follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. NEW SECTION. 730.5 DRUG TESTING BY
6 EMPLOYER PROHIBITED -- EXCEPTIONS -- REMEDIES --
7 PENALTY.
8 1. As used in this section, "drug test" means any
9 blood, urine, saliva, chemical, or skin tissue test
10 conducted for the purpose of detecting the presence of
11 a chemical substance in an individual.
12 2. An employer shall not request, require,
13 conduct, or cause to be conducted random or blanket
14 drug testing of employees.
15 3. An employer shall not as a condition of
16 employment, promotion, or change in status of
17 employment, as an express or implied condition of a
18 benefit or privilege of employment, or as a pre-
19 employment condition, do any of the following:
20 a. Request or require that an employee or
21 applicant for employment take, submit to, or undergo a
22 drug test.
23 b. Conduct, cause to be conducted, threaten to
24 conduct, or attempt to conduct a drug test to detect
25 the presence of a chemical substance in an employee or
26 applicant for employment.
27 c. Request or require that an employee or
28 applicant for employment give an express or implied
29 waiver with respect to a practice prohibited by this
30 section.
31 4. Subsection 3 does not prohibit an employer from
32 requiring a specific employee to submit to a drug test
33 if all of the following requirements are met:
34 a. The employer has a reasonable suspicion that
35 the employee's faculties are impaired on the job and
36 that the impairment is attributable in whole or in
37 part to the presence of a chemical substance in the
38 body.
39 b. The employee is in a position where the
40 impairment presents a clear and present danger to the
41 physical safety of the employee, another employee or a
42 member of the public.
43 c. The employer provides the employee, at the
44 employer's expense, the opportunity to have the sample
45 tested or evaluated by an independent laboratory or
46 testing facility and provides the employee with a
47 reasonable opportunity to rebut or explain the
48 results.
49 5. In conducting a test designed to identify the
50 presence of chemical substances in the body, and not

1 prohibited by this section, the employer shall ensure
2 to the extent feasible that the test only measure and
3 that its records only show or make use of information
4 regarding chemical substances in the body which are
5 likely to affect the ability of the employee to
6 perform safely the employee's duties while on the job.
7 6. This section does not:
8 a. Restrict an employer's ability to prohibit the
9 use of intoxicating substances during work hours or to
10 discipline employees for being under the influence of
11 intoxicating substances during work hours.
12 b. Prevent an employer from conducting medical
13 screening, with the express written consent of the
14 employees, to monitor exposure to toxic or other
15 unhealthy substances in the workplace or in the
16 performance of their job responsibilities. Any such
17 screening or test shall be limited to the specific
18 substances expressly identified in the employee
19 consent form.
20 7. This section may be enforced through a civil
21 action under section 730.6. In an action brought
22 under this subsection alleging that an employer has
23 required or requested a drug test in violation of this
24 section, the employer has the burden of proving that
25 the requirements of this section were met.
26 8. An employee shall not be discharged,
27 disciplined, or discriminated against in any manner
28 for filing a complaint or testifying in any proceeding
29 or action involving violations of this section. An
30 employee discharged, disciplined, or otherwise
31 discriminated against in violation of this section
32 shall be compensated by the employer in the amount of
33 any loss of wages and benefits arising out of the
34 discrimination and shall be restored to the employee's
35 previous position of employment.
36 9. A person who violates this section is guilty of
37 a serious misdemeanor.
38 Sec. 2. NEW SECTION. 730.6 PUBLIC POLICY
39 VIOLATION -- EMPLOYEE ACTION FOR DAMAGES.
40 1. As used in this section, unless the context
41 otherwise requires:
42 a. "Public policy" means an expression of public
43 will as found in a statute, ordinance, administrative
44 regulation or decision, judicial decision, or standard
45 of professional conduct or ethics.
46 b. "Act against public policy" includes, but is
47 not limited to, the following:
48 (1) An act intended to induce or compel an
49 employee to violate public policy.
50 (2) An act intended to deprive an employee of a

1 right or benefit conferred by public policy.
2 (3) An act intended to induce or compel an
3 employee to refuse to perform an obligation created by
4 public policy.
5 (4) An act committed in reckless disregard of the
6 probability of violating a public policy designed for
7 the protection of the employee.
8 2. A person who has been injured as a result of an
9 act against public policy may, within two years from
10 the date of the act, bring an action for damages sus-
11 tained, and this action may be joined with any other
12 action, except an administrative proceeding, which
13 arises from the employment or act against public
14 policy.
15 a. A person who violates this section or who aids
16 in the violation of this section is liable to an
17 aggrieved employee or applicant for employment for
18 affirmative relief including reinstatement or hiring,
19 with or without back pay, or any other equitable
20 relief as the court deems appropriate including
21 attorney fees and court costs.
22 b. When a person commits, is committing, or
23 proposes to commit, an act in violation of this
24 section, an injunction may be granted through an
25 action in district court to prohibit the person from
26 continuing such acts. The action for injunctive
27 relief may be brought by an aggrieved employee or
28 applicant for employment, the county attorney, or the
29 attorney general."
30 2. Title page, line 1, by striking the words "to
31 regulate" and inserting the following: "relating to
32 employment practices and employee rights, by providing
33 civil damages for employees injured as a result of
34 employer acts which violate public policy or result in
35 the wrongful discharge of an employee, and by
36 regulating".

S-3871
Filed April 28, 1987 BY TOM MANN, JR.
Adopted as amended by 3865
4/30/87 (p. 1608)

HOUSE FILE 469

S-3685

1 Amend House File 469 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section 730.4, Code 1987, is amended
6 by striking the section and inserting in lieu thereof
7 the following:
8 730.4 POLYGRAPH EXAMINATION BY EMPLOYER PROHIBITED
9 -- EXCEPTION -- REMEDIES -- PENALTY.
10 1. As used in this section, "polygraph
11 examination" means any procedure which involves the
12 use of instrumentation or a mechanical or electrical
13 device to enable or assist the detection of deception,
14 the verification of truthfulness, or the rendering of
15 a diagnostic opinion regarding either of these, and
16 includes a lie detector or similar test.
17 2. An employer shall not as a condition of
18 employment, promotion, or change in status of
19 employment, as an express or implied condition of a
20 benefit or privilege of employment, or as a
21 preemployment condition, do any of the following:
22 a. Request or require that an employee or
23 applicant for employment take or submit to a polygraph
24 examination.
25 b. Administer, cause to be administered, threaten
26 to administer, or attempt to administer a polygraph
27 examination to an employee or applicant for
28 employment.
29 c. Request or require that an employee or
30 applicant for employment give an express or implied
31 waiver with respect to a practice prohibited by this
32 section.
33 3. Subsection 2 does not apply to the state or a
34 political subdivision of the state when in the process
35 of selecting a candidate for employment as a peace
36 officer.
37 4. This section may be enforced through a civil
38 action under section 730.6.
39 5. An employee shall not be discharged,
40 disciplined, or discriminated against in any manner
41 for filing a complaint or testifying in any proceeding
42 or action involving violations of this section. An
43 employee discharged, disciplined, or otherwise
44 discriminated against in violation of this section
45 shall be compensated by the employer the amount of any
46 loss of wages and benefits arising out of the
47 discrimination and shall be restored to the employee's
48 previous position of employment.
49 6. A person who violates this section is guilty of
50 a serious misdemeanor."

1 2. By striking page 1, line 1 through page 4,
2 line 26 and inserting the following:
3 "Sec. 2. NEW SECTION. 730.5 DRUG TESTING BY
4 EMPLOYER PROHIBITED -- EXCEPTIONS -- REMEDIES --
5 PENALTY.
6 1. As used in this section, "drug test" means any
7 blood, urine, saliva, chemical, or skin tissue test
8 conducted for the purpose of detecting the presence of
9 a chemical substance in an individual.
10 2. An employer shall not request, require,
11 conduct, or cause to be conducted random or blanket
12 drug testing of employees.
13 3. An employer shall not as a condition of
14 employment, promotion, or change in status of
15 employment, as an express or implied condition of a
16 benefit or privilege of employment, or as a pre-
17 employment condition, do any of the following:
18 a. Request or require that an employee or
19 applicant for employment take, submit to, or undergo a
20 drug test.
21 b. Conduct, cause to be conducted, threaten to
22 conduct, or attempt to conduct a drug test to detect
23 the presence of a chemical substance in an employee or
24 applicant for employment.
25 c. Request or require that an employee or
26 applicant for employment give an express or implied
27 waiver with respect to a practice prohibited by this
28 section.
29 4. Subsection 3 does not prohibit an employer from
30 requiring a specific employee to submit to a drug test
31 if all of the following requirements are met:
32 a. The employer has a reasonable suspicion that
33 the employee's faculties are impaired on the job and
34 that the impairment is attributable in whole or in
35 part to the presence of a chemical substance in the
36 body.
37 b. The employee is in a position where the
38 impairment presents a clear and present danger to the
39 physical safety of the employee, another employee or a
40 member of the public.
41 c. The employer provides the employee, at the
42 employer's expense, the opportunity to have the sample
43 tested or evaluated by an independent laboratory or
44 testing facility and provides the employee with a
45 reasonable opportunity to rebut or explain the
46 results.
47 5. In conducting a test designed to identify the
48 presence of chemical substances in the body, and not
49 prohibited by this section, the employer shall ensure
50 to the extent feasible that the test only measure and

1 that its records only show or make use of information
2 regarding chemical substances in the body which are
3 likely to affect the ability of the employee to
4 perform safely the employee's duties while on the job.
5 6. This section does not:
6 a. Restrict an employer's ability to prohibit the
7 use of intoxicating substances during work hours or to
8 discipline employees for being under the influence of
9 intoxicating substances during work hours.
10 b. Prevent an employer from conducting medical
11 screening, with the express written consent of the
12 employees, to monitor exposure to toxic or other
13 unhealthy substances in the workplace or in the
14 performance of their job responsibilities. Any such
15 screening or test shall be limited to the specific
16 substances expressly identified in the employee
17 consent form.
18 7. This section may be enforced through a civil
19 action under section 730.6. In an action brought
20 under this subsection alleging that an employer has
21 required or requested a drug test in violation of this
22 section, the employer has the burden of proving that
23 the requirements of this section were met.
24 8. An employee shall not be discharged,
25 disciplined, or discriminated against in any manner
26 for filing a complaint or testifying in any proceeding
27 or action involving violations of this section. An
28 employee discharged, disciplined, or otherwise
29 discriminated against in violation of this section
30 shall be compensated by the employer in the amount of
31 any loss of wages and benefits arising out of the
32 discrimination and shall be restored to the employee's
33 previous position of employment.
34 9. A person who violates this section is guilty of
35 a serious misdemeanor."
36 3. Page 4, by inserting after line 26 the
37 following:
38 "Sec. 3. NEW SECTION. 730.6 PUBLIC POLICY
39 VIOLATION -- EMPLOYEE ACTION FOR DAMAGES.
40 1. As used in this section, unless the context
41 otherwise requires:
42 a. "Public policy" means an expression of public
43 will as found in a statute, ordinance, administrative
44 regulation or decision, judicial decision, or standard
45 of professional conduct or ethics.
46 b. "Act against public policy" includes, but is
47 not limited to, the following:
48 (1) An act intended to induce or compel an
49 employee to violate public policy.
50 (2) An act intended to deprive an employee of a

1 right or benefit conferred by public policy.
2 (3) An act intended to induce or compel an
3 employee to refuse to perform an obligation created by
4 public policy.
5 (4) An act committed in reckless disregard of the
6 probability of violating a public policy designed for
7 the protection of the employee.
8 2. A person who has been injured as a result of an
9 act against public policy may, within two years from
10 the date of the act, bring an action for damages sus-
11 tained, and this action may be joined with any other
12 action, except an administrative proceeding, which
13 arises from the employment or act against public
14 policy.
15 a. A person who violates this section or who aids
16 in the violation of this section is liable to an
17 aggrieved employee or applicant for employment for
18 affirmative relief including reinstatement or hiring,
19 with or without back pay, or any other equitable
20 relief as the court deems appropriate including
21 attorney fees and court costs.
22 b. When a person commits, is committing, or
23 proposes to commit, an act in violation of this
24 section, an injunction may be granted through an
25 action in district court to prohibit the person from
26 continuing such acts. The action for injunctive
27 relief may be brought by an aggrieved employee or
28 applicant for employment, the county attorney, or the
29 attorney general."
30 4. Title page, by striking lines 1 through 3, and
31 inserting the following: "An Act relating to
32 employment practices and employee rights, by providing
33 civil damages for employees injured as a result of
34 employer acts which violate public policy or result in
35 the wrongful discharge of an employee and restricting
36 the use of polygraph examinations and drug tests,
37 providing remedies, and providing penalties."

S-3685
Filed April 20, 1987 BY TOM MANN, JR.
Ruled not germane 4/28/87 (p. 1558)

HOUSE FILE 469

S-3883

1 Amend the Senate amendment, S-3871, to House File
2 469 as amended, passed, and reprinted by the House as
3 follows:
4 1. By striking page 1, line 5 through page 2,
5 line 37, and inserting the following:
6 "Sec. 1. NEW SECTION. 730.5 DRUG TESTING OF
7 EMPLOYEES OR APPLICANTS REGULATED.
8 1. As used in this section, "drug test" means any
9 blood, urine, saliva, chemical, or skin tissue test
10 conducted for the purpose of detecting the presence of
11 a chemical substance in an individual.
12 2. Except as provided in subsection 7, an employer
13 shall not require or request employees or applicants
14 for employment to submit to a drug test as a condition
15 of employment, preemployment, promotion, or change in
16 status of employment. An employer shall not request,
17 require, or conduct random or blanket drug testing of
18 employees. However, this section does not apply to
19 preemployment drug tests authorized for peace officers
20 or correctional officers of the state, or to drug
21 tests required under federal statutes, or to drug
22 tests conducted pursuant to a nuclear regulatory
23 commission policy statement, or to drug tests
24 conducted to determine if an employee is ineligible to
25 receive workers' compensation under section 85.16,
26 subsection 2.
27 3. This section does not prohibit an employer from
28 requiring a specific employee to submit to a drug test
29 if all of the following conditions are met:
30 a. The employer has probable cause to believe that
31 an employee's faculties are impaired on the job.
32 b. The employee is in a position where such
33 impairment restricts the ability of the employee to
34 meet the performance standards imposed by the
35 employer, or presents a danger to the safety of the
36 employee, another employee, a member of the public, or
37 the property of the employer, or when impairment due
38 to intoxication is a violation of a known rule of the
39 employer.
40 c. The test sample withdrawn from the employee is
41 analyzed by a laboratory or testing facility that has
42 been approved under rules adopted by the department of
43 public health or is duly licensed or approved under
44 applicable state laws where the laboratory or testing
45 facility is located.
46 d. If a test is conducted and the results indicate
47 that the employee is under the influence of alcohol or
48 a controlled substance or indicate the presence of
49 alcohol or a controlled substance, a second test using
50 an alternative method of analysis shall be conducted.

1 When possible and practical, the second test shall use
2 a portion of the same test sample withdrawn from the
3 employee for use in the first test.
4 e. An employee shall be accorded a reasonable
5 opportunity to rebut or explain the results of a drug
6 test.
7 f. The employer shall provide substance abuse
8 evaluation, and treatment if recommended by the
9 evaluation, with costs apportioned as provided under
10 the employee benefit plan or at employer expense, if
11 there is no employee benefit plan, for those employees
12 whose drug test indicates the presence of alcohol or a
13 controlled substance. If an employee whose drug test
14 indicates the presence of alcohol or a controlled
15 substance undergoes substance abuse evaluation which
16 indicates an addiction for which substance abuse
17 treatment is recommended, and if the employee
18 successfully completes substance abuse treatment, if
19 recommended by the evaluation, the employer shall take
20 no disciplinary action against the employee. However,
21 if an employee fails to undergo substance abuse
22 evaluation when required under the results of a drug
23 test, or fails to successfully complete substance
24 abuse treatment when recommended by an evaluation, the
25 employee may be disciplined up to and including
26 discharge. The substance abuse evaluation and
27 treatment provided by the employer shall take place
28 under a program approved by the department of public
29 health or accredited by the joint commission on
30 accreditation of hospitals.
31 4. In conducting those tests designed to identify
32 the presence of chemical substances in the body, the
33 employer shall ensure to the extent feasible that the
34 tests only measure and that the records of the tests
35 only show or make use of information regarding
36 chemical substances in the body which are likely to
37 affect the ability of the employee to perform safely
38 the employee's duties while on the job or to meet
39 performance standards imposed by the employer.
40 5. This section does not restrict an employer's
41 ability to prohibit the use of alcohol or controlled
42 substances during work hours or to discipline
43 employees for being under the influence of alcohol or
44 controlled substances during work hours.
45 6. This section does not prevent an employer from
46 conducting medical screening in order to monitor
47 exposure to toxic or other unhealthy substances
48 encountered in the workplace or in the performance of
49 their job responsibilities. Any such screening must
50 be limited to the specific substances required to be

1 monitored.
2 7. A drug test conducted as a part of a physical
3 examination performed as a part of a preemployment
4 physical or a physical in connection with a promotion
5 or a change of status in employment or as a part of a
6 regularly scheduled physical is only permissible under
7 the following circumstances:
8 a. For a preemployment physical, the employer
9 shall notify the job applicant of the requirement for
10 a drug test at the time of the interview and hiring.
11 b. For a regularly scheduled physical, the
12 employer shall give notice that a drug test will be
13 part of the physical at least fifteen days prior to
14 the date the physical is scheduled.
15 Drug testing conducted under this subsection shall
16 conform to the requirements of subsection 3,
17 paragraphs "c", "d", "e", and "f"; however, paragraph
18 "f" shall not apply to drug tests conducted as a part
19 of a preemployment physical.
20 8. An employer shall protect the confidentiality
21 of the results of any drug test conducted on an
22 employee. The results of the test may be recorded in
23 the employee's medical and personnel records; however,
24 if an employee whose test indicated the employee was
25 under the influence of alcohol or a controlled
26 substance or indicated the presence of a controlled
27 substance has undergone substance abuse evaluation
28 and, when treatment is indicated under the substance
29 abuse evaluation, successfully completed treatment for
30 substance abuse, the employee's personnel records
31 shall be expunged of any reference to the test or its
32 results when the employee leaves employment.
33 9. This section may be enforced through a civil
34 action under section 730.6. In an action brought
35 under this subsection alleging that an employer has
36 required or requested a drug test in violation of this
37 section, the employer has the burden of proving that
38 the requirements of this section were met.
39 10. An employee shall not be discharged,
40 disciplined, or discriminated against in any manner
41 for filing a complaint or testifying in any proceeding
42 or action involving violations of this section. An
43 employee discharged, disciplined, or otherwise
44 discriminated against in violation of this section
45 shall be compensated by the employer in the amount of
46 any loss of wages and benefits arising out of the
47 discrimination and shall be restored to the employee's
48 previous position of employment.
49 11. A person who violates this section is, upon
50 conviction, guilty of a simple misdemeanor."

1 2. Page 3, by striking lines 16 through 18 and
2 inserting the following: "in the violation of this
3 section is liable for affirmative relief for damages
4 sustained including but not limited to reinstatement
5 or hiring,".

S-3883
Filed April 28, 1987
Adopted 4/30/87 (p. 1609)

BY JAMES R. RIORDAN

SENATE FILE 469

S-3877

1 Amend amendment S-3871 to House File 469 as
2 amended, passed and reprinted by the House as follows:
3 1. Page 2, by inserting after line 19 the
4 following:
5 "c. Apply to drug tests conducted pursuant to a
6 nuclear regulatory commission policy statement."

S-3877
Filed April 28, 1987 BY JAMES D. WELLS
Placed o/c 4/20 (p. 1603)

HOUSE FILE 469

S-3784

1 Amend amendment S-3685 to House File 469 as
2 amended, passed and reprinted by the House as follows:
3 1. Page 3, by inserting after line 17 the
4 following:
5 "c. Apply to drug tests conducted pursuant to a
6 nuclear regulatory commission policy statement."

S-3784
Filed April 24, 1987 BY JAMES D. WELLS
Placed o/c 4/20 (p. 1609)

SENATE 44
May 6, 1987

HOUSE AMENDMENT TO
SENATE AMENDMENT TO
HOUSE FILE 469

S-4009

1 Amend the Senate amendment, H-4099, to House File
2 469 as amended, passed, and reprinted by the House as
3 follows:
4 1. Page 1, by striking lines 32 through 34 and
5 inserting the following: "impairment presents a
6 danger to the safety of the".
7 2. Page 1, line 37, by striking the word
8 "intoxication" and inserting the following: "the
9 effects of a controlled substance".
10 3. Page 1, by striking lines 42 through 44 and
11 inserting the following: "public health."
12 4. Page 2, lines 10 and 11, by striking the words
13 "for those employees whose" and inserting the
14 following: "the first time an employee's".
15 5. Page 2, by striking lines 12 through 19 and
16 inserting the following: "controlled substance. An
17 employer shall take no disciplinary action against an
18 employee due to the employee's drug involvement the
19 first time the employee's drug test indicates the
20 presence of alcohol or a controlled substance if the
21 employee undergoes a substance abuse evaluation, and
22 if the employee successfully completes substance abuse
23 treatment if treatment is recommended by the
24 evaluation. However,".
25 6. Page 2, by striking lines 37 and 38, and
26 inserting the following: "the employee's duties while
27 on the job."
28 7. Page 3, by striking lines 3 and 4, and
29 inserting the following: "physical or as a part of
30 a".
31 8. Page 3, by striking lines 7, 8, and 9 and
32 inserting the following:
33 "a. For a preemployment physical, the employer
34 shall include notice that a drug test will be part of
35 a preemployment physical in any notice or
36 advertisement soliciting applicants for employment or
37 in the application for employment, and an applicant
38 for employment shall be personally informed of the
39 requirement for a drug test at the first interview."
40 9. Page 3, line 12, by striking the word
41 "fifteen" and inserting the word "thirty".
42 10. Page 3, line 22, by striking the words
43 "medical and".
44 11. Page 3, by striking lines 32 through 37 and
45 inserting the following:
46 "9. This section may be enforced through a civil
47 action.
48 a. A person who violates this section or who aids
49 in the violation of this section is liable to an
50 aggrieved employee or applicant for employment for

1 affirmative relief including reinstatement or hiring,
2 with or without back pay, or any other equitable
3 relief as the court deems appropriate including
4 attorney fees and court costs.
5 b. When a person commits, is committing, or
6 proposes to commit, an act in violation of this
7 section, an injunction may be granted through an
8 action in district court to prohibit the person from
9 continuing such acts. The action for injunctive
10 relief may be brought by an aggrieved employee or
11 applicant for employment, the county attorney, or the
12 attorney general.
13 In an action brought under this subsection alleging
14 that an employer has required or requested a drug test
15 in violation of this section, the employer has the
16 burden of proving that the requirements of this
17 section were met."
18 12. By striking page 3, line 50 through page 4,
19 line 48.

S-4009
Filed May 5, 1987

RECEIVED FROM THE HOUSE

Senate concurred 5/6/87 (J 1720)

Senator Drake

STATE OF IOWA

FISCAL NOTE TO HOUSE FILE 469

LSB No. 2778H.2
Staff ID. JMN

REQ. BY SENATOR DRAKE

In compliance with a written request received March 30, 1986, a fiscal note for **HOUSE FILE 469 AS PASSED BY THE HOUSE** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 469 as passed by the House would regulate the circumstances under which employers can require their employees to undergo drug tests. The bill prohibits random or blanket drug testing of employees, but allows pre-employment drug testing of peace officers or correctional officers, testing required under federal statutes or regulations, and testing to determine eligibility for workers' compensation.

An employer may require a specific employee to submit to a drug test if certain conditions are met. If these requirements are met, and the test results are positive, a second test using an alternative method of analysis shall be conducted. The employer is required to provide licensed substance abuse evaluation and treatment to employees whose test indicates the presence of alcohol or a controlled substance; the cost is apportioned as provided under the employee benefit plan or at employer expense, if there is no employee benefit plan. If an employee who tests positive is evaluated as having an addiction for which substance abuse treatment is recommended, and if the employee successfully completes recommended substance treatment, no disciplinary action may be taken against the employee.

An employee whose employer violates the provisions of this bill can sue the employer, either for reinstatement or hiring, with or without back pay, or for other relief as the court deems appropriate including attorney fees and court costs. A court may also grant an injunction prohibiting actions which violate this bill, and violators of these provisions are guilty of a simple misdemeanor.

Fiscal Effect: House File 469 will increase expenditures by state and local governments, but the increase is estimated to be minimal.

A comprehensive database concerning the percentage of employees that test positive does not exist. Information from the Department of Public Safety and the Department of Corrections indicates that fewer than 5 percent of the tests conducted have been positive. Neither of these Departments anticipate any expansion of drug testing if this bill is enacted.

There is the potential for increased expenditures for evaluation and treatment of employees. Although these costs cannot be accurately estimated, they are not expected to be large. The state would be required to pay for evaluation and treatment when the employee tested positive for the presence of alcohol or a controlled substance. Based upon the experience of the two departments, this is not expected to be a large number.

The cost to the state would be the portion of the evaluation and treatment cost not covered by health insurance. Treatment costs vary: out-patient treatment at a free-standing clinic averages $2,100, while in-patient treatment at a hospital averages $5,225. The health insurance coverage chosen by most state employees covers treatment in hospitals, and although hospital treatment is not available in all geographical areas of the state, most state

STATE OF IOWA

FISCAL NOTE

LSB No. 2778H.2
Staff ID. JMN

employees reside in areas where it is available. The cost to the state will depend upon the number of employees who test positive, and either have health benefits that do not cover hospital treatment or use a free-standing facility.

If the state choose to expand its health insurance coverage to include all treatment facilities, and if the state paid all of the increased premium, it would cost $172,276 annually. Based upon the estimated small number of positive drug tests, this would not be a cost-effective option.

Sources: Departments of Personnel, Public Safety, Corrections, Public Health and Board of Regents.

(LSB 2778H.2, JMN)

Dennis C. Prouty
Fiscal Director
Legislative Fiscal Bureau
Date: 4/2/87

Filed by the Sec. of the Senate April 3, 1987

SENATE AMENDMENT TO HOUSE FILE 469

H-4099

1 Amend House File 469 as amended, passed and
2 reprinted by the House as follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Sec. 1. NEW SECTION. 730.5 DRUG TESTING OF
6 EMPLOYEES OR APPLICANTS REGULATED.
7 1. As used in this section, "drug test" means any
8 blood, urine, saliva, chemical, or skin tissue test
9 conducted for the purpose of detecting the presence of
10 a chemical substance in an individual.
11 2. Except as provided in subsection 7, an employer
12 shall not require or request employees or applicants
13 for employment to submit to a drug test as a condition
14 of employment, preemployment, promotion, or change in
15 status of employment. An employer shall not request,
16 require, or conduct random or blanket drug testing of
17 employees. However, this section does not apply to
18 preemployment drug tests authorized for peace officers
19 or correctional officers of the state, or to drug
20 tests required under federal statutes, or to drug
21 tests conducted pursuant to a nuclear regulatory
22 commission policy statement, or to drug tests
23 conducted to determine if an employee is ineligible to
24 receive workers' compensation under section 85.16,
25 subsection 2.
26 3. This section does not prohibit an employer from
27 requiring a specific employee to submit to a drug test
28 if all of the following conditions are met:
29 a. The employer has probable cause to believe that
30 an employee's faculties are impaired on the job.
31 b. The employee is in a position where such
32 impairment restricts the ability of the employee to
33 meet the performance standards imposed by the
34 employer, or presents a danger to the safety of the
35 employee, another employee, a member of the public, or
36 the property of the employer, or when impairment due
37 to intoxication is a violation of a known rule of the
38 employer.
39 c. The test sample withdrawn from the employee is
40 analyzed by a laboratory or testing facility that has
41 been approved under rules adopted by the department of
42 public health or is duly licensed or approved under
43 applicable state laws where the laboratory or testing
44 facility is located.
45 d. If a test is conducted and the results indicate
46 that the employee is under the influence of alcohol or
47 a controlled substance or indicate the presence of
48 alcohol or a controlled substance, a second test using
49 an alternative method of analysis shall be conducted.
50 When possible and practical, the second test shall use

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1 a portion of the same test sample withdrawn from the
2 employee for use in the first test.
3 e. An employee shall be accorded a reasonable
4 opportunity to rebut or explain the results of a drug
5 test.
6 f. The employer shall provide substance abuse
7 evaluation, and treatment if recommended by the
8 evaluation, with costs apportioned as provided under
9 the employee benefit plan or at employer expense, if
10 there is no employee benefit plan, for those employees
11 whose drug test indicates the presence of alcohol or a
12 controlled substance. If an employee whose drug test
13 indicates the presence of alcohol or a controlled
14 substance undergoes substance abuse evaluation which
15 indicates an addiction for which substance abuse
16 treatment is recommended, and if the employee
17 successfully completes substance abuse treatment, if
18 recommended by the evaluation, the employer shall take
19 no disciplinary action against the employee. However,
20 if an employee fails to undergo substance abuse
21 evaluation when required under the results of a drug
22 test, or fails to successfully complete substance
23 abuse treatment when recommended by an evaluation, the
24 employee may be disciplined up to and including
25 discharge. The substance abuse evaluation and
26 treatment provided by the employer shall take place
27 under a program approved by the department of public
28 health or accredited by the joint commission on
29 accreditation of hospitals.
30 4. In conducting those tests designed to identify
31 the presence of chemical substances in the body, the
32 employer shall ensure to the extent feasible that the
33 tests only measure and that the records of the tests
34 only show or make use of information regarding
35 chemical substances in the body which are likely to
36 affect the ability of the employee to perform safely
37 the employee's duties while on the job or to meet
38 performance standards imposed by the employer.
39 5. This section does not restrict an employer's
40 ability to prohibit the use of alcohol or controlled
41 substances during work hours or to discipline
42 employees for being under the influence of alcohol or
43 controlled substances during work hours.
44 6. This section does not prevent an employer from
45 conducting medical screening in order to monitor
46 exposure to toxic or other unhealthy substances
47 encountered in the workplace or in the performance of
48 their job responsibilities. Any such screening must
49 be limited to the specific substances required to be
50 monitored.

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1 7. A drug test conducted as a part of a physical
2 examination performed as a part of a preemployment
3 physical or a physical in connection with a promotion
4 or a change of status in employment or as a part of a
5 regularly scheduled physical is only permissible under
6 the following circumstances:
7 a. For a preemployment physical, the employer
8 shall notify the job applicant of the requirement for
9 a drug test at the time of the interview and hiring.
10 b. For a regularly scheduled physical, the
11 employer shall give notice that a drug test will be
12 part of the physical at least fifteen days prior to
13 the date the physical is scheduled.
14 Drug testing conducted under this subsection shall
15 conform to the requirements of subsection 3,
16 paragraphs "c", "d", "e", and "f"; however, paragraph
17 "f" shall not apply to drug tests conducted as a part
18 of a preemployment physical.
19 8. An employer shall protect the confidentiality
20 of the results of any drug test conducted on an
21 employee. The results of the test may be recorded in
22 the employee's medical and personnel records; however,
23 if an employee whose test indicated the employee was
24 under the influence of alcohol or a controlled
25 substance or indicated the presence of a controlled
26 substance has undergone substance abuse evaluation
27 and, when treatment is indicated under the substance
28 abuse evaluation, successfully completed treatment for
29 substance abuse, the employee's personnel records
30 shall be expunged of any reference to the test or its
31 results when the employee leaves employment.
32 9. This section may be enforced through a civil
33 action under section 730.6. In an action brought
34 under this subsection alleging that an employer has
35 required or requested a drug test in violation of this
36 section, the employer has the burden of proving that
37 the requirements of this section were met.
38 10. An employee shall not be discharged,
39 disciplined, or discriminated against in any manner
40 for filing a complaint or testifying in any proceeding
41 or action involving violations of this section. An
42 employee discharged, disciplined, or otherwise
43 discriminated against in violation of this section
44 shall be compensated by the employer in the amount of
45 any loss of wages and benefits arising out of the
46 discrimination and shall be restored to the employee's
47 previous position of employment.
48 11. A person who violates this section is, upon
49 conviction, guilty of a simple misdemeanor.
50 Sec. 2. NEW SECTION. 730.6 PUBLIC POLICY

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1 VIOLATION -- EMPLOYEE ACTION FOR DAMAGES.
2 1. As used in this section, unless the context
3 otherwise requires:
4 a. "Public policy" means an expression of public
5 will as found in a statute, ordinance, administrative
6 regulation or decision, judicial decision, or standard
7 of professional conduct or ethics.
8 b. "Act against public policy" includes, but is
9 not limited to, the following:
10 (1) An act intended to induce or compel an
11 employee to violate public policy.
12 (2) An act intended to deprive an employee of a
13 right or benefit conferred by public policy.
14 (3) An act intended to induce or compel an
15 employee to refuse to perform an obligation created by
16 public policy.
17 (4) An act committed in reckless disregard of the
18 probability of violating a public policy designed for
19 the protection of the employee.
20 2. A person who has been injured as a result of an
21 act against public policy may, within two years from
22 the date of the act, bring an action for damages sus-
23 tained, and this action may be joined with any other
24 action, except an administrative proceeding, which
25 arises from the employment or act against public
26 policy.
27 a. A person who violates this section or who aids
28 in the violation of this section is liable for
29 affirmative relief for damages sustained including but
30 not limited to reinstatement or hiring, with or
31 without back pay, or any other equitable relief as the
32 court deems appropriate including attorney fees and
33 court costs.
34 b. When a person commits, is committing, or
35 proposes to commit, an act in violation of this
36 section, an injunction may be granted through an
37 action in district court to prohibit the person from
38 continuing such acts. The action for injunctive
39 relief may be brought by an aggrieved employee or
40 applicant for employment, the county attorney, or the
41 attorney general."
42 2. Title page, line 1, by striking the words "to
43 regulate" and inserting the following: "relating to
44 employment practices and employee rights, by providing
45 civil damages for employees injured as a result of
46 employer acts which violate public policy or result in
47 the wrongful discharge of an employee, and by
48 regulating".

H-4099 FILED APRIL 30, 1987 RECEIVED FROM THE SENATE

House amended (4213) Y
concurred 5/5/87 (of 1980)

HOUSE FILE 469

H-4213

1 Amend the Senate amendment, H-4099, to House File
2 469 as amended, passed, and reprinted by the House as
3 follows:
4 1. Page 1, by striking lines 32 through 34 and
5 inserting the following: "impairment presents a
6 danger to the safety of the".
7 2. Page 1, line 37, by striking the word
8 "intoxication" and inserting the following: "the
9 effects of a controlled substance".
10 3. Page 1, by striking lines 42 through 44 and
11 inserting the following: "public health."
12 4. Page 2, lines 10 and 11, by striking the words
13 "for those employees whose" and inserting the
14 following: "the first time an employee's".
15 5. Page 2, by striking lines 12 through 19 and
16 inserting the following: "controlled substance. An
17 employer shall take no disciplinary action against an
18 employee due to the employee's drug involvement the
19 first time the employee's drug test indicates the
20 presence of alcohol or a controlled substance if the
21 employee undergoes a substance abuse evaluation, and
22 if the employee successfully completes substance abuse
23 treatment if treatment is recommended by the
24 evaluation. However,".
25 6. Page 2, by striking lines 37 and 38, and
26 inserting the following: "the employee's duties while
27 on the job."
28 7. Page 3, by striking lines 3 and 4, and
29 inserting the following: "physical or as a part of
30 a".
31 8. Page 3, by striking lines 7, 8, and 9 and
32 inserting the following:
33 "a. For a preemployment physical, the employer
34 shall include notice that a drug test will be part of
35 a preemployment physical in any notice or
36 advertisement soliciting applicants for employment or
37 in the application for employment, and an applicant
38 for employment shall be personally informed of the
39 requirement for a drug test at the first interview."
40 9. Page 3, line 12, by striking the word
41 "fifteen" and inserting the word "thirty".
42 10. Page 3, line 22, by striking the words
43 "medical and".
44 11. Page 3, by striking lines 32 through 37 and
45 inserting the following:
46 "9. This section may be enforced through a civil
47 action.
48 a. A person who violates this section or who aids
49 in the violation of this section is liable to an
50 aggrieved employee or applicant for employment for

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1 affirmative relief including reinstatement or hiring,
2 with or without back pay, or any other equitable
3 relief as the court deems appropriate including
4 attorney fees and court costs.
5 b. When a person commits, is committing, or
6 proposes to commit, an act in violation of this
7 section, an injunction may be granted through an
8 action in district court to prohibit the person from
9 continuing such acts. The action for injunctive
10 relief may be brought by an aggrieved employee or
11 applicant for employment, the county attorney, or the
12 attorney general.
13 In an action brought under this subsection alleging
14 that an employer has required or requested a drug test
15 in violation of this section, the employer has the
16 burden of proving that the requirements of this
17 section were met."
18 12. By striking page 3, line 50 through page 4,
19 line 48.

BY BISIGNANO of Polk
COREY of Louisa
HESTER of Pottawattamie

H-4213 FILED MAY 5, 1987
ADOPTED (p 1986)

HOUSE FILE 469

AN ACT

TO REGULATE THE CIRCUMSTANCE AND PROCEDURE UNDER WHICH AN EMPLOYER MAY REQUEST A DRUG TEST OF AN EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT AND PROVIDING A PENALTY.

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

Section 1. NEW SECTION. 730.5 DRUG TESTING OF EMPLOYEES OR APPLICANTS REGULATED.

1. As used in this section, "drug test" means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual.

2. Except as provided in subsection 7, an employer shall not require or request employees or applicants for employment to submit to a drug test as a condition of employment, preemployment, promotion, or change in status of employment. An employer shall not request, require, or conduct random or blanket drug testing of employees. However, this section does not apply to preemployment drug tests authorized for peace officers or correctional officers of the state, or to drug tests required under federal statutes, or to drug tests conducted pursuant to a nuclear regulatory commission policy statement, or to drug tests conducted to determine if an employee is ineligible to receive workers' compensation under section 85.16, subsection 2.

3. This section does not prohibit an employer from requiring a specific employee to submit to a drug test if all of the following conditions are met:

a. The employer has probable cause to believe that an employee's faculties are impaired on the job.

b. The employee is in a position where such impairment presents a danger to the safety of the employee, another

employee, a member of the public, or the property of the employer, or when impairment due to the effects of a controlled substance is a violation of a known rule of the employer.

c. The test sample withdrawn from the employee is analyzed by a laboratory or testing facility that has been approved under rules adopted by the department of public health.

d. If a test is conducted and the results indicate that the employee is under the influence of alcohol or a controlled substance or indicate the presence of alcohol or a controlled substance, a second test using an alternative method of analysis shall be conducted. When possible and practical, the second test shall use a portion of the same test sample withdrawn from the employee for use in the first test.

e. An employee shall be accorded a reasonable opportunity to rebut or explain the results of a drug test.

f. The employer shall provide substance abuse evaluation, and treatment if recommended by the evaluation, with costs apportioned as provided under the employee benefit plan or at employer expense, if there is no employee benefit plan, the first time an employee's drug test indicates the presence of alcohol or a controlled substance. An employer shall take no disciplinary action against an employee due to the employee's drug involvement the first time the employee's drug test indicates the presence of alcohol or a controlled substance if the employee undergoes a substance abuse evaluation, and if the employee successfully completes substance abuse treatment if treatment is recommended by the evaluation. However, if an employee fails to undergo substance abuse evaluation when required under the results of a drug test, or fails to successfully complete substance abuse treatment when recommended by an evaluation, the employee may be disciplined up to and including discharge. The substance abuse evaluation and treatment provided by the employer shall take place under a program approved by the department of public health or

accredited by the joint commission on accreditation of hospitals.

4. In conducting those tests designed to identify the presence of chemical substances in the body, the employer shall ensure to the extent feasible that the tests only measure and that the records of the tests only show or make use of information regarding chemical substances in the body which are likely to affect the ability of the employee to perform safely the employee's duties while on the job.

5. This section does not restrict an employer's ability to prohibit the use of alcohol or controlled substances during work hours or to discipline employees for being under the influence of alcohol or controlled substances during work hours.

6. This section does not prevent an employer from conducting medical screening in order to monitor exposure to toxic or other unhealthy substances encountered in the workplace or in the performance of their job responsibilities. Any such screening must be limited to the specific substances required to be monitored.

7. A drug test conducted as a part of a physical examination performed as a part of a preemployment physical or as a part of a regularly scheduled physical is only permissible under the following circumstances:

a. For a preemployment physical, the employer shall include notice that a drug test will be part of a preemployment physical in any notice or advertisement soliciting applicants for employment or in the application for employment, and an applicant for employment shall be personally informed of the requirement for a drug test at the first interview.

b. For a regularly scheduled physical, the employer shall give notice that a drug test will be part of the physical at least thirty days prior to the date the physical is scheduled.

Drug testing conducted under this subsection shall conform to the requirements of subsection 3, paragraphs "c", "d", "e", and "f"; however, paragraph "f" shall not apply to drug tests conducted as a part of a preemployment physical.

8. An employer shall protect the confidentiality of the results of any drug test conducted on an employee. The results of the test may be recorded in the employee's personnel records; however, if an employee whose test indicated the employee was under the influence of alcohol or a controlled substance or indicated the presence of a controlled substance has undergone substance abuse evaluation and, when treatment is indicated under the substance abuse evaluation, successfully completed treatment for substance abuse, the employee's personnel records shall be expunged of any reference to the test or its results when the employee leaves employment.

9. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee or applicant for employment for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

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 applicant for employment, the county attorney, or the attorney general.

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

10. An employee shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or

testifying in any proceeding or action involving violations of this section. An employee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer in the amount of any loss of wages and benefits arising out of the discrimination and shall be restored to the employee's previous position of employment.

11. A person who violates this section is, upon conviction, guilty of a simple misdemeanor.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 469, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved June 5, 1987

TERRY E. BRANSTAD
Governor

H. F. 469