

LEGISLATIVE BILL 582

Approved by the Governor January 29, 1988

Introduced by Lynch, 13; Ashford, 6

AN ACT relating to employment; to state intent; to define terms; to provide restrictions on the use of results of tests on body fluid and breath specimens; to provide requirements for such tests; and to provide penalties.

Be it enacted by the people of the State of Nebraska,

Section 1. It is the intent of the Legislature through this act to help in the treatment and elimination of drug and alcohol use and abuse in the workplace while protecting the employee's rights. Nothing in this act shall be construed to require employers to conduct drug and alcohol testing of their employees nor shall this act be determinative of the cases or circumstances under which such tests may be given.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Alcohol shall mean any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor defined in subdivisions (2) to (5) of section 53-103, alcohol, spirits, wine, and beer, every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device shall mean intoxicilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator shall mean a person who has obtained or been issued a permit pursuant to the department rules and regulations;

(4) Department shall mean the Department of Health;

(5) Department rules and regulations shall mean the techniques and methods authorized pursuant to section 39-669.11;

(6) Drug shall mean any substance, chemical,

or compound as described, defined, or delineated in sections 28-405 and 28-419 or any metabolite or conjugated form thereof, except that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee shall mean any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer shall mean the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

Sec. 3. Any results of any test performed on the body fluid or breath specimen of an employee, as directed by the employer, to determine the presence of drugs or alcohol shall not be used to deny any continued employment or in any disciplinary or administrative action unless the following requirements are met:

(1) A positive finding of drugs by preliminary screening procedures has been subsequently confirmed by gas chromatography-mass spectrometry or other scientific testing technique which has been or may be approved by the department; and

(2) A positive finding of alcohol by preliminary screening procedures is subsequently confirmed by either:

(a) Gas chromatography with a flame ionization detector or other scientific testing technique which has been or may be approved by the department; or

(b) A breath-testing device operated by a breath-testing-device operator. Nothing in this subdivision shall be construed to preclude an employee from immediately requesting further confirmation of any breath-testing results by a blood sample if the employee voluntarily submits to give a blood sample taken by qualified medical personnel in accordance with the rules and regulations adopted and promulgated by the department. If the confirmatory blood test results do not confirm a violation of the employer's work rules, any disciplinary or administrative action shall be rescinded.

Except for a confirmatory breath test as provided in subdivision (2)(b) of this section, all confirmatory tests shall be performed by a clinic,

hospital, or laboratory which is licensed pursuant to the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a, or which is accredited by the College of American Pathologists.

Sec. 4. Except for breath test specimens as provided in subdivision (2)(b) of section 3 of this act, all specimens which result in a finding of drugs or alcohol shall be refrigerated and preserved in a sufficient quantity for retesting for a period of at least one hundred eighty days.

Sec. 5. Except for breath test specimens as provided in subdivision (2)(b) of section 3 of this act, a written record of the chain of custody of the specimen shall be maintained from the time of the collection of the specimen until the specimen is no longer required.

Sec. 6. The employer or its, his, or her agents shall not release or disclose the test results to the public, except that such results shall be released as required by law or to the employee upon request. Test results may be released to those officers, agents, or employees of the employer who need to know the information for reasons connected with their employment.

Sec. 7. Nothing in sections 1 to 6 of this act shall be construed to establish any rule, right, or duty not expressly provided for in such sections.

Sec. 8. (1) It shall be unlawful to provide, acquire, or use body fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol.

(2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample.

(3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

Sec. 9. (1) No person shall tamper with or aid or assist another in tampering with body fluids at any time during or after the collection or analysis of such fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol.

(2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample.

(3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

Sec. 10. Any employee who refuses the lawful

directive of an employer to provide a body fluid or breath sample as provided in section 3 of this act may be subject to disciplinary or administrative action by the employer, including denial of continued employment.