

1 **SENATE FLOOR VERSION**

2 February 26, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 423

5 By: Daniels

6 An Act relating to the Standards for Workplace Drug
7 and Alcohol Testing Act; amending 40 O.S. 2011,
8 Sections 552, as amended by Section 17, Chapter 196,
9 O.S.L. 2012, and 559 (40 O.S. Supp. 2018, Section
10 552), which relate to definitions and sample
11 collection and testing; modifying definitions;
12 modifying required conditions for collection of
13 certain samples; updating statutory reference; and
14 providing an effective date.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 40 O.S. 2011, Section 552, as
17 amended by Section 17, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2018,
18 Section 552), is amended to read as follows:

19 Section 552. As used in the Standards for Workplace Drug and
20 Alcohol Testing Act:

- 21 1. "Alcohol" means ethyl alcohol or ethanol;
- 22 2. "Applicant" means a person who has applied for a position
23 with an employer and received a conditional offer of employment;
- 24 3. "Board" means the State Board of Health;
4. "Confirmation test" means a drug or alcohol test on a sample
to substantiate the results of a prior drug or alcohol test ~~on the~~

1 ~~same sample and which uses different chemical principles and that is~~
2 of equal or greater accuracy than the prior drug or alcohol test.
3 ~~Where a breathalyzer test is utilized, a confirmation test means a~~
4 ~~second sample test that confirms the prior result. Where a single-~~
5 ~~use test is utilized, a confirmation test means a second test~~
6 ~~confirmed by a testing facility and is performed in accordance with~~
7 the rules of the State Board of Health;

8 5. "Department" means the State Department of Health;

9 6. "Drug" means amphetamines, cannabinoids, cocaine,
10 phencyclidine (PCP), hallucinogens, methaqualone, opiates,
11 barbiturates, benzodiazepines, synthetic narcotics, designer drugs,
12 or a metabolite of any of the substances listed herein;

13 7. "Drug or alcohol test" means a chemical test administered
14 for the purpose of determining the presence or absence of a drug or
15 its metabolites or alcohol in a person's bodily tissue, fluids or
16 products. Adulteration of a specimen or of a drug or alcohol test
17 shall be considered as a refusal to test;

18 8. "Employee" means any person who supplies labor for
19 remuneration to his or her employer in this state and shall not
20 include an independent contractor, subcontractor or employees of an
21 independent contractor; provided, however, an independent
22 contractor, subcontractor, or employees of an independent
23 contractor, may be subject to a workplace drug or alcohol testing
24 policy under the terms of the contractual agreement when the drug or

1 alcohol testing policy applies to other workers at the job site or
2 workers who are in the same or similar classification or group;

3 9. "Employer" means any person, firm, corporation, partnership,
4 association, nonprofit organization or public employer, which has
5 one or more employees within this state, or which has offered or may
6 offer employment to one or more individuals in this state;

7 10. "Public employer" means the State of Oklahoma or any
8 political subdivision thereof, including any department, agency,
9 board, commission, institution, authority, public trust,
10 municipality, county, district or instrumentalities thereof;

11 11. "Review officer" means a person, qualified by the State
12 Board of Health, who is responsible for receiving results from a
13 testing facility which have been generated by an employer's drug or
14 alcohol testing program, and who has knowledge and training to
15 interpret and evaluate an individual's test results together with
16 the individual's medical history and any other relevant information;

17 12. "Sample" means tissue, fluid or product of the human body
18 chemically capable of revealing the presence of drugs or alcohol in
19 the human body. Urine, saliva, hair, **breath** or blood samples may be
20 used to test for the presence of drugs. Breath, saliva or blood
21 samples may be used to test for the presence of alcohol; and

22 13. "Testing facility" means a facility which provides
23 laboratory services to test samples for the presence of drugs or
24 alcohol.

1 SECTION 2. AMENDATORY 40 O.S. 2011, Section 559, is
2 amended to read as follows:

3 Section 559. All sample collection and testing for drugs and
4 alcohol pursuant to the provisions of this act shall be conducted in
5 accordance with the following conditions:

6 1. Samples shall be collected and tested only by individuals
7 deemed qualified by the State Board of Health and may be collected
8 on the premises of the employer;

9 2. Only samples ~~deemed appropriate by the State Board of Health~~
10 ~~for drug and alcohol testing~~ as defined in Section 552 of this title
11 shall be collected;

12 3. The collection of samples shall be performed in accordance
13 with the rules of the State Board of Health and under reasonable and
14 sanitary conditions;

15 4. A sample shall be collected in sufficient quantity for
16 splitting into two separate specimens, pursuant to rules of the
17 State Board of Health, to provide for any subsequent independent
18 analysis in the event of challenge of the test results of the main
19 specimen;

20 5. Samples shall be collected and tested with due regard to the
21 privacy of the individual being tested. In the instances of
22 urinalysis, no employer or representative, agent or designee of the
23 employer shall directly observe an applicant or employee in the
24 process of producing a urine sample; provided, however, collection

1 shall be in a manner reasonably calculated to prevent substitutions
2 or interference with the collection or testing of reliable samples;

3 6. Sample collection shall be documented, and the documentation
4 procedures shall include:

5 a. labeling of samples so as reasonably to preclude the
6 probability of erroneous identification of test
7 results, and

8 b. an opportunity for the applicant or employee to
9 provide notification of any information which the
10 applicant or employee considers relevant to the test,
11 including identification of currently or recently used
12 prescription or nonprescription drugs, or other
13 relevant information;

14 7. Sample collection, storage, and transportation to the
15 testing facility shall be performed so as reasonably to preclude the
16 probability of sample contamination or adulteration;

17 8. Sample testing shall conform to scientifically accepted
18 analytical methods and procedures. Testing shall include
19 confirmation of any positive test result by gas chromatography, gas
20 chromatography-mass spectroscopy, or an equivalent scientifically
21 accepted method of equal or greater accuracy as approved by Board
22 rule, at the cutoff levels as determined by Board rule, before the
23 result of any test may be used as a basis for refusal to hire a job
24

1 applicant or any action by an employer pursuant to Section ~~12~~ 562 of
2 this ~~act~~ title; and

3 9. A written record of the chain of custody of the sample shall
4 be maintained from the time of the collection of the sample until
5 the sample is no longer required.

6 SECTION 3. This act shall become effective November 1, 2019.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 February 26, 2019 - DO PASS AS AMENDED
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