

HOUSE BILL NO. HB0120

Employee drug testing-vulnerable adults.

Sponsored by: Representative(s) Harvey, Filer and Larsen
and Senator(s) Dockstader and Peterson

A BILL

for

1 AN ACT relating to public employees; providing for random
2 drug testing of state employees holding specified
3 positions; providing for testing of new employees;
4 specifying certain procedures and minimum requirements;
5 authorizing policies; providing for disciplinary action;
6 providing for self-reporting of controlled substance use;
7 providing for confidentiality; requiring a report;
8 providing an appropriation; and providing for effective
9 dates.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 9-13-201 through 9-13-206 are created
14 to read:

15

16

ARTICLE 2

1 CONTROLLED SUBSTANCE TESTING

2

3 9-13-201. Definitions.

4

5 (a) As used in this article, unless the context
6 clearly indicates otherwise:

7

8 (i) "Controlled substance" means as defined in
9 W.S. 35-7-1002(a)(iv);

10

11 (ii) "Department" means the department of
12 administration and information acting through the human
13 resources division;

14

15 (iii) "Drug testing" means testing for the
16 presence of controlled substances pursuant to this article;

17

18 (iv) "Employee" means a state employee who works
19 at a state institution and who:

20

21 (A) In the course of regular employment
22 duties, is in contact with children or vulnerable adults;
23 or

24

1 (B) Whose terms of employment require a
2 commercial driver's license pursuant to W.S. 31-7-304(a)(i)
3 and who operates a bus as defined in W.S. 31-7-102(a)(iii)
4 or mobile machinery as defined in W.S. 31-18-203(a)(i).

5

6 (v) "Established drug test" means the collection
7 and testing of specimens administered in a manner
8 equivalent to that required by the federal department of
9 health and human services' mandatory guidelines for federal
10 workplace drug testing programs, or other professionally
11 valid procedures approved by the department;

12

13 (vi) "Potential employee" means any employee
14 hired by a state agency after July 1, 2015 who, if hired,
15 would be an employee;

16

17 (vii) "Specimen" means a tissue, hair or product
18 of the human body capable of revealing the presence of
19 controlled substances or their metabolites;

20

21 (viii) "State institution" means any institution
22 in title 25 under the direct authority and control of the
23 department of health or the department of family services;

24

1 (ix) "Vulnerable adult" means as defined in W.S.
2 35-20-102(a)(xviii).

3

4 **9-13-202. Employees subject to random testing for**
5 **unlawful use of controlled substances.**

6

7 (a) Employees as defined in W.S. 9-13-201(a)(iv)
8 shall be subject to random testing for evidence of unlawful
9 use of controlled substances. Potential employees shall be
10 subject to the same type of test prior to employment, but
11 shall not be subject to random testing unless they are an
12 employee as defined in W.S. 9-13-201(a)(iv). The testing
13 shall be conducted immediately before, during or after the
14 regular work period of the employee and shall be deemed to
15 be performed during the work time for purposes of
16 determining compensation or benefits for the employee.

17

18 (b) For employees subject to random drug testing the
19 department shall adopt a policy to establish:

20

21 (i) The portion of employees that may be
22 selected at random for testing at each testing period. The
23 department may vary the portion of employees selected from

1 any employee group in order to meet minimum federal
2 requirements for specific employee groups;

3

4 (ii) Methods for assuring that employees are
5 selected for testing on a random basis;

6

7 (iii) Methods for assuring that privacy
8 intrusions are minimized during collection of specimens;

9

10 (iv) Methods for assuring that any specimens are
11 stored and transported to testing laboratories at proper
12 temperatures and under such conditions that the quality of
13 the specimens shall not be jeopardized;

14

15 (v) Procedures and forms for an employee to
16 provide any information he considers relevant to the test,
17 including identification of currently or recently used
18 prescription or nonprescription medication or other
19 relevant medical information. The forms shall provide
20 notice of the most common medications by brand name, common
21 name or chemical name which may alter or affect the test.
22 The providing of information shall be prior to
23 administration of the test;

24

1 (vi) Methods for confirmatory tests and an
2 employee's contest of a test;

3

4 (vii) Methods for assuring that the identity of
5 employees whose tests show the usage of a controlled
6 substance is limited to the employee's agency head and
7 department staff who are entitled to this information. The
8 policies shall provide for the identification of those
9 persons entitled to the information;

10

11 (viii) Disciplinary action in accordance with
12 personnel rules of the department;

13

14 (ix) Such other policies as the department may
15 deem appropriate to carry out the purposes of this article.

16

17 (c) The department shall establish a general policy
18 applicable to all potential employees, establishing
19 procedures and methods specified in paragraphs (b)(iii)
20 through (vii) and (ix) of this section.

21

22 (d) All state agencies employing persons subject to
23 testing under this article shall provide written policy
24 statements to the employees and applicants for any position

1 to be filled after July 1, 2015. The statements shall be
2 in a form approved by the department and shall identify:

3

4 (i) The types of testing that may be required;

5

6 (ii) Disciplinary action which may result from a
7 positive test;

8

9 (iii) A general statement concerning
10 confidentiality;

11

12 (iv) A listing of common medications by brand
13 name, common name or chemical name which may affect the
14 results of a test; and

15

16 (v) The consequences of refusing a test.

17

18 (e) The department shall establish and maintain a
19 list of those laboratories qualified to conduct established
20 drug tests and shall determine which controlled substances
21 will be the subject of testing.

22

23 (f) Any employee subject to this article who is
24 required by federal law to undergo more frequent testing

1 for controlled substances or other substances shall be
2 required to meet those federal requirements. In adopting
3 policies for testing under this article the department
4 shall accommodate such federal testing requirements for
5 those employees.

6

7 **9-13-203. Confirmatory tests; test costs; retention**
8 **of specimens.**

9

10 (a) If the results of a test indicate the presence of
11 a controlled substance, the employee or potential employee
12 shall be notified by the employer within seventy-two (72)
13 hours after receipt of a positive test result from the
14 testing laboratory. The employer shall provide a copy of
15 the test results upon the employee's or potential
16 employee's request. Upon informing the employee or
17 potential employee of the test results, the employer shall
18 inform the employee of the proposed disciplinary action, or
19 if a potential employee that he will not be hired, of his
20 right to submit documentation establishing that the
21 substance was used pursuant to a valid medical prescription
22 or was lawfully used as otherwise authorized by state or
23 federal law and of his right to request a confirmatory
24 test. An employee or potential employee shall have

1 seventy-two (72) hours after receipt of notice of a
2 positive test to submit the documentation and to have a new
3 specimen submitted for confirmation at another laboratory
4 listed pursuant to W.S. 9-13-202(d), chosen by the employee
5 or potential employee. The second laboratory must test at
6 equal or greater sensitivity for the controlled substance
7 in question as the first laboratory. The confirmatory test
8 shall use gas chromatography/mass spectrometry or an
9 equivalent or more accurately accepted method.

10

11 (b) Within five (5) working days after receipt of a
12 confirmed positive test, the employer shall notify the
13 employee or potential employee. The employer shall include
14 with this notice its determination as to whether the
15 explanation or challenge of the positive test results is
16 satisfactory to the employer. If the explanation or
17 challenge is unsatisfactory, the employer shall notify the
18 employee or potential employee of that fact and provide a
19 copy of the confirmed positive test results, together with
20 the proposed disciplinary action or decision not to hire,
21 as applicable. A permanent employee, as defined by rule of
22 the department, shall also be notified of his right to
23 institute an administrative challenge to the test result
24 and proposed disciplinary action.

1

2 (c) Any employee or potential employee who refuses to
3 provide a specimen, when requested to do so in accordance
4 with the random drug testing conducted pursuant to this
5 article and policies adopted under this article, shall have
6 the test recorded as a positive test for the unlawful use
7 of controlled substances. The employee or potential
8 employee shall be notified at the time of his refusal that
9 the refusal shall be treated as a positive result and shall
10 subject the employee to disciplinary action or decision not
11 to hire, as applicable.

12

13 (d) Every specimen which produces a positive result
14 shall be preserved by the laboratory that conducted the
15 initial test until receipt of notification from the
16 department that the initial test will not be subject to
17 confirmation and the specimen no longer needs to be
18 preserved. The laboratory conducting a confirmation test
19 which produces a positive result shall preserve the
20 specimen for thirty (30) days after the time to institute
21 an administrative or legal challenge to the test result has
22 lapsed. If an administrative or legal challenge to the
23 test results is taken, the confirmatory test specimen shall
24 be preserved until the matter is finally resolved.

1

2 (e) Costs of the initial and confirmatory testing
3 under this article shall be paid from public funds by the
4 employing state agency. Costs of testing beyond the
5 initial and confirmatory test shall be borne by the
6 employee or potential employee.

7

8 **9-13-204. Disciplinary action; review.**

9

10 (a) Any employee found to have a positive test
11 result, including employees refusing to provide a specimen
12 for testing, shall be subject to disciplinary action. Any
13 potential employee found to have a positive test result,
14 including potential employees refusing to provide a
15 specimen for testing, shall not be hired.

16

17 (b) An employee who has submitted documentation to
18 explain a positive test result or who has submitted a new
19 specimen for confirmation shall be placed in a position
20 which is not high risk or, if such a position is not
21 available, on leave status with pay pending the
22 confirmatory test. Disciplinary action shall be imposed
23 upon notification to the employee of the employer's receipt

1 of a confirmed positive test and that any explanation or
2 challenge has been determined to be unsatisfactory.

3

4 (c) Disciplinary actions pursuant to this article
5 shall be taken in accordance with personnel rules of the
6 department. A permanent employee subject to discipline
7 pursuant to this article may institute administrative
8 proceedings and subsequent legal review regarding the test
9 results and proposed discipline in accordance with
10 grievance procedures established by rule of the department.

11

12 (d) For purposes of this section, a positive initial
13 test and a positive confirmatory test shall be considered
14 as one (1) positive test. A positive initial test shall be
15 considered as one (1) positive test if an employee does not
16 submit a second specimen for a confirmatory test.

17

18 **9-13-205. Employee's voluntary admission of**
19 **controlled substances use.**

20

21 (a) An employee who admits to misuse of controlled
22 substances is not subject to discipline pursuant to W.S.
23 9-13-204 provided that:

24

1 (i) The admission is in accordance with a self-
2 identification program or policy that meets the
3 requirements of subsection (b) of this section;

4

5 (ii) The employee does not self-identify in
6 order to avoid testing under the requirements of this
7 article;

8

9 (iii) The employee makes the admission of
10 controlled substance use prior to performing a safety
11 sensitive function; and

12

13 (iv) The employee does not perform a safety
14 sensitive function until the employer is satisfied that the
15 employee has been evaluated and has successfully completed
16 education or treatment requirements in accordance with the
17 self-identification program guidelines.

18

19 (b) A qualified voluntary self-identification program
20 or policy shall:

21

22 (i) Prohibit the employer from taking adverse
23 action against an employee making a voluntary admission of

1 controlled substance use within the parameters of the
2 program or policy and subsection (a) of this section;

3

4 (ii) Allow the employee sufficient opportunity
5 to seek evaluation, education or treatment to establish
6 control over the employee's drug problem;

7

8 (iii) Permit the employee to return to safety
9 sensitive duties only upon successful completion of an
10 educational or treatment program, as determined by a
11 qualified drug counselor;

12

13 (iv) Require that, prior to the employee
14 returning to duty, the employee shall undergo a controlled
15 substance test with a verified negative test result for
16 controlled substances use; and

17

18 (v) Incorporate employee monitoring and follow-
19 up testing as appropriate.

20

21 **9-13-206. Confidentiality.**

22

23 (a) Test results and all other information regarding
24 individual employees or potential employees which is

1 received or produced pursuant to this article shall remain
2 confidential in accordance with W.S. 16-4-203(d)(iii) and
3 shall not be made publicly available unless necessary for
4 the administration of this article or otherwise mandated by
5 other state or federal law.

6

7 (b) All notices required to be provided by a state
8 agency, employee or potential employee under this article
9 shall be provided in writing.

10

11 **Section 2.** W.S. 9-2-1022(a) by creating a new
12 paragraph (xv) and 16-4-203(d)(iii) are amended to read:

13

14 **9-2-1022. Duties of department performed through**
15 **human resources division.**

16

17 (a) Subject to subsection (b) of this section, the
18 department through the human resources division shall:

19

20 (xv) Perform all duties of the department
21 required by W.S. 9-13-201 through 9-13-206.

22

1 16-4-203. Right of inspection; grounds for denial;
2 access of news media; order permitting or restricting
3 disclosure.

4
5 (d) The custodian shall deny the right of inspection
6 of the following records, unless otherwise provided by law:

7
8 (iii) Personnel files except those files shall
9 be available to the duly elected and appointed officials
10 who supervise the work of the person in interest.
11 Applications, performance ratings and scholastic
12 achievement data shall be available only to the person in
13 interest and to the duly elected and appointed officials
14 who supervise his work. Drug testing results and other
15 information produced or received pursuant to W.S. 9-13-201
16 through 9-13-206, shall be available only to the person in
17 interest, the department of administration and information
18 staff administering the provisions of W.S. 9-13-201 through
19 9-13-206, and to the director of the department or, if a
20 separate operating agency, the agency head, employing the
21 person. Employment contracts, working agreements or other
22 documents setting forth the terms and conditions of
23 employment of public officials and employees are not

1 considered part of a personnel file and shall be available
2 for public inspection;

3

4 **Section 3.** The department of administration and
5 information and each state agency subject to the provisions
6 of this act shall adopt policies to implement the
7 provisions of this act no later than July 1, 2015.

8

9 **Section 4.** There is appropriated from the general
10 fund to the department of administration and information
11 one hundred thousand dollars (\$100,000.00), or as much
12 thereof as is necessary, and one (1) at-will contract
13 employee is authorized to the department, for purposes of
14 this act.

15

16 **Section 5.**

17

18 (a) The department of administration and information
19 shall report to the joint labor, health and social services
20 interim committee by October 1, 2015, regarding the
21 department's rules adopted to implement the drug testing
22 program created by W.S. 9-13-201 through 9-13-206.

23

1 (b) The department of administration and information
2 shall report to the joint labor, health and social services
3 interim committee by October 1, 2016, regarding the number
4 of drug tests administered pursuant to W.S. 9-13-201
5 through 9-13-206, the number of positive drug tests and the
6 number of employees voluntarily reporting pursuant to W.S.
7 9-13-205. The information provided shall be in the
8 aggregate without any personally identifying information.

9

10 **Section 6.**

11

12 (a) Section 3 of this act is effective immediately
13 upon completion of all acts necessary for a bill to become
14 law as provided by Article 4, Section 8 of the Wyoming
15 Constitution.

16

17 (b) Except as provided under subsection (a) of this
18 section, this act is effective July 1, 2014.

19

20

(END)