
HOUSE BILL 2176

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Morton, Padden, Hargrove, Bowman, Ludwig, Ballard, Bray, Sheldon, Moyer, Casada, May and Kremen.

Read first time March 6, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to school bus driver drug testing; adding a new
2 chapter to Title 49 RCW; prescribing penalties; and declaring an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes that school
6 bus drivers occupy positions of trust and responsibility with the
7 citizens of this state in that they are charged with the duty to safely
8 transport the children of this state to and from school activities.
9 Because school bus drivers occupy a position involving the protection
10 of the health, safety, and welfare of school children, the public is
11 entitled to have confidence that school bus drivers are exercising
12 sound judgment in the transportation of children. The legislature
13 finds that impairment from the use of drugs or alcohol by school bus
14 drivers presents an unacceptable risk to the health, safety, and
15 welfare of the children of this state.

1 Therefore, in balancing the interests of school bus drivers, their
2 employers, and the welfare of the general public, the legislature finds
3 that fair and equitable testing for drugs and alcohol in the work
4 place, in accordance with this chapter, is in the best interest of all
5 parties. It is imperative that all school bus drivers employed in this
6 state maintain the utmost confidence of the citizenry by complying with
7 a drug testing program.

8 The legislature does not intend to prohibit an employee from
9 seeking damages or job reinstatement, if action was taken by the
10 employer based on a false drug or alcohol test result.

11 NEW SECTION. **Sec. 2.** Unless the context clearly requires
12 otherwise, the definitions in this section apply throughout this
13 chapter.

14 (1) "Alcohol" means ethyl alcohol or ethanol.

15 (2) "Drugs" means a substance recognized as a drug in the United
16 States Pharmacopeia, the National Formulary, the Homeopathic
17 Pharmacopeia, other drug compendia, or a supplement to these compendia.

18 (3) "Employer" means a school district, person, firm, or
19 corporation, including a transit district, that has one or more workers
20 or operators employed or under a contract of hire, express or implied,
21 oral or written for the purpose of transporting school children to and
22 from school activities.

23 (4) "Employee" means a person in the service of an employer.

24 (5) "Final drug test results" means either the results of: (a) The
25 initial drug test if no additional test is taken; or (b) a second or
26 subsequent drug test taken to eliminate a false positive result.

27 (6) "Illegal drugs" means controlled substances referenced under
28 chapter 69.50 RCW and legend drugs referenced under chapter 69.41 RCW,

1 unless the substance or drug is used pursuant to a valid prescription
2 or when used as otherwise authorized by state or federal law.

3 (7) "Prospective employee" means a person who has made application
4 to an employer, whether written or oral, to become an employee.

5 (8) "Sample" means urine, blood, breath, saliva, or hair.

6 (9) "School bus driver" means a driver hired by the district or a
7 driver of a commercial charter bus service hired for the transportation
8 of school children to and from school activities during or after school
9 hours.

10 NEW SECTION. **Sec. 3.** It is not unlawful for an employer to
11 test employees or prospective employees for the presence of drugs or
12 alcohol, in accordance with the provisions of this chapter, as a
13 condition of hiring or continued employment. However, if employers
14 perform these tests, employers and management in general shall submit
15 to the testing themselves on a periodic basis.

16 NEW SECTION. **Sec. 4.** In order to test reliably for the
17 presence of drugs or alcohol, an employer may require samples from its
18 employees and prospective employees, and may require presentation of
19 reliable identification to the person collecting the samples.
20 Collection of the sample shall be in conformance with the requirements
21 of this chapter. The employer may designate the type of sample to be
22 used for testing.

23 NEW SECTION. **Sec. 5.** (1) Drug or alcohol testing by an
24 employer shall occur during or immediately after the regular work
25 period. The testing by the employer is considered work time for the
26 purposes of compensation and benefits for current employees.

1 (2) An employer shall pay all costs of testing for drugs or alcohol
2 required by the employer, including the cost of transportation, if the
3 testing of a current employee is conducted at a location other than the
4 work place.

5 NEW SECTION. **Sec. 6.** All sample collection and testing for
6 drugs and alcohol under this chapter shall be performed in accordance
7 with the following conditions:

8 (1) The collection of samples shall be performed under reasonable
9 and sanitary conditions;

10 (2) Samples shall be collected and tested with due regard to the
11 privacy of the individual being tested, and in a manner reasonably
12 calculated to prevent substitutions or interference with the collection
13 or testing of reliable samples;

14 (3) Sample collections shall be documented, and said documentation
15 procedures shall include:

16 (a) Labeling of samples to reasonably preclude the probability of
17 erroneous identification of test results; and

18 (b) An opportunity for the employee or prospective employee to
19 provide notification of information that may be considered relevant to
20 the test, including identification of currently or recently used
21 prescriptions or nonprescription drugs, or other relevant medical
22 information;

23 (4) Sample collection, storage, and transportation to the place of
24 testing shall be performed so as to reasonably preclude the probability
25 of sample contamination or adulteration; and

26 (5) Sample testing shall comply to scientifically accepted
27 analytical methods and procedures. Testing shall include verification
28 or confirmation of a positive test result by gas chromatography, gas
29 chromatography-mass spectroscopy, or other comparably reliable

1 analytical method, before the result of a test may be used as a basis
2 for an action by an employer.

3 NEW SECTION. **Sec. 7.** (1) Testing or retesting for the
4 presence of drugs or alcohol by an employer shall be carried out within
5 the terms of a written policy that has been distributed to every
6 employee and is available for review by prospective employees.

7 (2) Within the terms of the written policy, an employer may require
8 the collection and testing of samples for the following purpose:

9 (a) Investigation of possible individual employee impairment;

10 (b) Investigation of accidents in the work place or incidents of
11 work place theft; or

12 (c) Maintenance of safety for employees or the general public.

13 (3) The collection and testing of samples shall be conducted in
14 accordance with this chapter and need not be limited to circumstances
15 where there are indications of individual, job-related impairment of an
16 employee or prospective employee.

17 (4) The employer's use and disposition of all drug or alcohol test
18 results are subject to the limitations of this chapter.

19 NEW SECTION. **Sec. 8.** (1) Random drug or alcohol testing of
20 employees is permitted if the testing is administered in compliance
21 with this chapter and the following:

22 (a) The random testing is spread reasonably throughout the year;

23 (b) The total number of random tests conducted during a year is
24 equal to at least twenty-five percent of the number of covered
25 employees; and

26 (c) No one employee is required to submit to more than two random
27 tests during a twelve-month period.

1 (2) Random testing procedures shall ensure to the maximum extent
2 practicable that each employee shall perceive the possibility that a
3 random test may be required on any day the employee reports for work.

4 NEW SECTION. **Sec. 9.** (1) A person who intentionally
5 contaminates a drug test sample in a manner that is likely to prevent
6 appropriate analysis of the sample is guilty of a misdemeanor.

7 (2) A person, other than the person who took the test, who
8 knowingly releases confidential test results is guilty of a
9 misdemeanor.

10 NEW SECTION. **Sec. 10.** Upon receipt of a verified or confirmed
11 positive drug or alcohol test result that indicates a violation of the
12 employer's written policy, or upon the refusal of an employee or
13 prospective employee to provide a sample, an employer may use that test
14 or refusal as the basis for disciplinary or rehabilitative actions,
15 that may include the following:

16 (1) A requirement that the employee enroll in an employer-approved
17 rehabilitation, treatment, or counseling program, that may include
18 additional drug or alcohol testing, as a condition of continued
19 employment;

20 (2) Suspension of the employee with or without pay for a period of
21 time;

22 (3) Termination of employment;

23 (4) Refusal to hire a prospective employee; or

24 (5) Other disciplinary measures in conformance with the employer's
25 usual procedures, including a collective bargaining agreement.

1 NEW SECTION. **Sec. 11.** No cause of action arises in favor of a
2 person against an employer who has established a policy and initiated
3 a testing program in accordance with this chapter, for the following:

4 (1) Failure to test for drugs or alcohol, or failure to test for a
5 specific drug or other substance;

6 (2) Failure to test for, or if tested for, failure to detect, a
7 specific drug or other substance, disease, infectious agent, virus, or
8 other physical abnormality, problem, or defect of any kind; or

9 (3) Termination or suspension of a drug or testing program or
10 policy.

11 NEW SECTION. **Sec. 12.** (1) No cause of action arises in favor
12 of a person against an employer who has established a program of drug
13 or alcohol testing in accordance with this chapter, unless the
14 employer's action was based on a false test result.

15 (2) In a claim, including a claim under this chapter, where it is
16 alleged that an employer's action was based on a false test result:

17 (a) There is a rebuttable presumption that the test result was
18 valid if the employer complied with the provisions of this chapter; and

19 (b) The employer is not liable for monetary damages if his or her
20 reliance on a false test result was reasonable and in good faith.

21 NEW SECTION. **Sec. 13.** No cause of action for defamation of
22 character, libel, slander, or damage to reputation arises in favor of
23 a person against an employer who has established a program of drug or
24 alcohol testing in accordance with this chapter, unless:

25 (1) The results of that test were disclosed to a person other than
26 the employer, an authorized employee or agent of the employer, the
27 tested employee, or the tested prospective employee;

28 (2) The information disclosed was a false test result;

1 (3) The false test result was disclosed with malice; and

2 (4) All elements of an action for defamation of character, libel,
3 slander, or damage to reputation as established by statute or common
4 law, are satisfied.

5 NEW SECTION. **Sec. 14.** No cause of action arises in favor of a
6 person based upon the failure of an employer to establish a program or
7 policy of drug or alcohol testing.

8 NEW SECTION. **Sec. 15.** All information, interviews, reports,
9 statements, memoranda, or test results received by the employer through
10 his or her drug or alcohol testing program are confidential
11 communications and may not be used or received in evidence, obtained in
12 discovery, or disclosed in a public or private proceeding, except in a
13 proceeding related to an action taken by an employer under this
14 chapter.

15 NEW SECTION. **Sec. 16.** This chapter may be known and cited as
16 the school bus driver drug testing act.

17 NEW SECTION. **Sec. 17.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and shall take
24 effect immediately.

1 NEW SECTION. **Sec. 19.** Sections 1 through 16 of this act shall
2 constitute a new chapter in Title 49 RCW.