
HOUSE BILL 2706

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By Representatives Morton, Dorn, R. Johnson, Sheldon, Fuhrman, Kremen, Hochstatter, Winsley, Roland and Rasmussen

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1 AN ACT Relating to school bus driver and school bus maintenance
2 personnel drug testing; adding a new chapter to Title 49 RCW;
3 prescribing penalties; and declaring an 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 and school bus maintenance personnel occupy positions of
7 trust and responsibility with the citizens of this state in that they
8 are charged with the duty to safely transport the children of this
9 state to and from school activities. Because school bus drivers and
10 school bus maintenance personnel occupy a position involving the
11 protection of the health, safety, and welfare of school children, the
12 public is entitled to have confidence that school bus drivers and
13 school bus maintenance personnel are exercising sound judgment in the
14 transportation of children. The legislature finds that impairment from

1 the use of drugs or alcohol by school bus drivers and school bus
2 maintenance personnel presents an unacceptable risk to the health,
3 safety, and welfare of the children of this state.

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

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

15 NEW SECTION. **Sec. 2.** Unless the context clearly requires
16 otherwise, the definitions in this section apply throughout this
17 chapter.

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

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

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

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

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

4 (6) "Illegal drugs" means controlled substances referenced under
5 chapter 69.50 RCW and legend drugs referenced under chapter 69.41 RCW,
6 unless the substance or drug is used pursuant to a valid prescription
7 or when used as otherwise authorized by state or federal law.

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

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

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

15 (10) "School bus maintenance personnel" means a person hired for
16 the upkeep and repair of vehicles used to transport school children to
17 and from school activities during or after school hours.

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

24 NEW SECTION. **Sec. 4.** In order to test reliably for the
25 presence of drugs or alcohol, an employer may require samples from its
26 employees and prospective employees, and may require presentation of
27 reliable identification to the person collecting the samples.
28 Collection of the sample shall be in conformance with the requirements

1 of this chapter. The employer may designate the type of sample to be
2 used for testing.

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

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

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

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

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

20 (3) Sample collections shall be documented, and said documentation
21 procedures shall include:

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

24 (b) An opportunity for the employee or prospective employee to
25 provide notification of information that may be considered relevant to
26 the test, including identification of currently or recently used
27 prescription or nonprescription drugs, or other relevant medical
28 information;

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

4 (5) Sample testing shall comply to scientifically accepted
5 analytical methods and procedures. Testing shall include verification
6 or confirmation of a positive test result by gas chromatography, gas
7 chromatography-mass spectroscopy, or other comparably reliable
8 analytical method, before the result of a test may be used as a basis
9 for an action by an employer.

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

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

16 (a) Investigation of possible individual employee impairment;

17 (b) Investigation of accidents in the work place or incidents of
18 work place theft; or

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

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

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

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

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

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

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

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

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

13 (2) A person, other than the person who took the test, who
14 knowingly releases confidential test results is guilty of a
15 misdemeanor.

16 NEW SECTION. **Sec. 10.** An employee who tests positive for
17 medication is not subject to discipline or rehabilitative actions when
18 the employee is taking the medication under a doctor's written orders
19 and the employee is taking the medication in the amounts and at the
20 times that are prescribed by the doctor.

21 NEW SECTION. **Sec. 11.** Refusal of an employee or a prospective
22 employee to provide a sample may result in termination or any of the
23 other forms of disciplinary and rehabilitative actions available to the
24 employer when an employee violates the employer's written drug policy.
25 Upon receipt of a verified or confirmed positive drug or alcohol test
26 result that indicates a violation of the employer's written policy, an

1 employer may use that test result as the basis for disciplinary or
2 rehabilitative actions, that may include the following:

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

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

9 (3) Termination of employment;

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

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

13 NEW SECTION. **Sec. 12.** No cause of action arises in favor of a
14 person against an employer who has established a policy and initiated
15 a testing program in accordance with this chapter, for the following:

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

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

21 (3) Termination or suspension of a drug or testing program or
22 policy.

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

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

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

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

5 NEW SECTION. **Sec. 14.** No cause of action for defamation of
6 character, libel, slander, or damage to reputation arises in favor of
7 a person against an employer who has established a program of drug or
8 alcohol testing in accordance with this chapter, unless:

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

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

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

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

17 NEW SECTION. **Sec. 15.** No cause of action arises in favor of a
18 person based upon the failure of an employer to establish a program or
19 policy of drug or alcohol testing.

20 NEW SECTION. **Sec. 16.** All information, interviews, reports,
21 statements, memoranda, or test results received by the employer through
22 his or her drug or alcohol testing program are confidential
23 communications and may not be used or received in evidence, obtained in
24 discovery, or disclosed in a public or private proceeding, except in a
25 proceeding related to an action taken by an employer under this
26 chapter.

1 NEW SECTION. **Sec. 17.** This chapter may be known and cited as
2 the school bus driver and school bus maintenance personnel drug testing
3 act.

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

8 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect immediately.

12 NEW SECTION. **Sec. 20.** Sections 1 through 17 of this act shall
13 constitute a new chapter in Title 49 RCW.