

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2541

AN ACT

AMENDING SECTIONS 23-493 AND 23-493.06, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-493.12; RELATING TO DRUGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 23-493, Arizona Revised Statutes, is amended to
3 read:
4 23-493. Definitions
5 In this article, unless the context otherwise requires:
6 1. "Alcohol" means ethanol, isopropanol or methanol.
7 2. "CURRENT USE OF ANY DRUG" MEANS DRUG USE THAT HAS OCCURRED RECENTLY
8 ENOUGH TO JUSTIFY AN EMPLOYER'S REASONABLE BELIEF THAT INVOLVEMENT WITH DRUGS
9 IS ONGOING. CURRENT USE OF ANY DRUG IS NOT LIMITED TO ANY SPECIFIC TIME
10 FRAME AND DEPENDS ON THE FACTS OF EACH INDIVIDUAL CASE.
11 ~~2-~~ 3. "Drugs" means any substance considered unlawful under the
12 schedules of the controlled substances section of the comprehensive drug
13 abuse prevention and control act of 1970, AS AMENDED, (P.L. 91-513; 84 Stat.
14 1247; 21 United States Code section 812) OR PURSUANT TO TITLE 13, CHAPTER 34
15 or the metabolite of the substance.
16 ~~3-~~ 4. "Employee" means any person in the service of an employer.
17 ~~4-~~ 5. "Employer" means THIS STATE, A POLITICAL SUBDIVISION OF THIS
18 STATE OR any person, firm, company, corporation, labor organization,
19 employment agency or joint labor-management committee, including any public
20 utility, transit district or special taxing district organized pursuant to
21 title 48, chapter 17 or 22, that has one or more full-time employees employed
22 in the same business, or in or about the same establishment, under any
23 contract of hire, express or implied, oral or written. ~~Employer does not~~
24 ~~include the United States, this state and its agencies other than the~~
25 ~~department of public safety, the state department of corrections and the~~
26 ~~department of juvenile corrections, any political subdivision of this state~~
27 ~~or any Native American tribe. The department of public safety, the state~~
28 ~~department of corrections and the department of juvenile corrections are~~
29 ~~employers for purposes of this paragraph.~~
30 ~~5-~~ 6. "Good faith" means reasonable reliance on fact, or that which
31 is held out to be factual, without the intent to deceive or be deceived and
32 without reckless or malicious disregard for the truth. GOOD FAITH DOES NOT
33 INCLUDE A BELIEF FORMED WITH GROSS NEGLIGENCE. A GOOD FAITH BELIEF MAY BE
34 BASED ON ANY OF THE FOLLOWING:
35 (a) OBSERVED CONDUCT, BEHAVIOR OR APPEARANCE.
36 (b) INFORMATION REPORTED BY A PERSON BELIEVED TO BE RELIABLE,
37 INCLUDING A REPORT BY A PERSON WHO WITNESSED THE USE OR POSSESSION OF DRUGS
38 OR DRUG PARAPHERNALIA AT WORK.
39 (c) WRITTEN, ELECTRONIC OR VERBAL STATEMENTS.
40 (d) LAWFUL VIDEO SURVEILLANCE.
41 (e) RECORDS OF GOVERNMENT AGENCIES, LAW ENFORCEMENT AGENCIES OR
42 COURTS.
43 (f) RESULTS OF A TEST FOR THE USE OF ALCOHOL OR DRUGS.
44 (g) OTHER INFORMATION REASONABLY BELIEVED TO BE RELIABLE OR ACCURATE.

1 7. "IMPAIRMENT" MEANS SYMPTOMS THAT A PROSPECTIVE EMPLOYEE OR EMPLOYEE
2 WHILE WORKING MAY BE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL THAT MAY
3 DECREASE OR LESSEN THE EMPLOYEE'S PERFORMANCE OF THE DUTIES OR TASKS OF THE
4 EMPLOYEE'S JOB POSITION, INCLUDING SYMPTOMS OF THE EMPLOYEE'S SPEECH,
5 WALKING, STANDING, PHYSICAL DEXTERITY, AGILITY, COORDINATION, ACTIONS,
6 MOVEMENT, DEMEANOR, APPEARANCE, CLOTHING, ODOR, IRRATIONAL OR UNUSUAL
7 BEHAVIOR, NEGLIGENCE OR CARELESSNESS IN OPERATING EQUIPMENT, MACHINERY OR
8 PRODUCTION OR MANUFACTURING PROCESSES, DISREGARD FOR THE SAFETY OF THE
9 EMPLOYEE OR OTHERS, INVOLVEMENT IN AN ACCIDENT THAT RESULTS IN SERIOUS DAMAGE
10 TO EQUIPMENT, MACHINERY OR PROPERTY, DISRUPTION OF A PRODUCTION OR
11 MANUFACTURING PROCESS, ANY INJURY TO THE EMPLOYEE OR OTHERS OR OTHER SYMPTOMS
12 CAUSING A REASONABLE SUSPICION OF THE USE OF DRUGS OR ALCOHOL.

13 ~~6.~~ 8. "Prospective employee" means any person who has made
14 application to any employer, whether written or oral, to become an employee.

15 9. "SAFETY-SENSITIVE POSITION" MEANS ANY JOB DESIGNATED BY AN EMPLOYER
16 AS A SAFETY-SENSITIVE POSITION OR ANY JOB THAT INCLUDES TASKS OR DUTIES THAT
17 THE EMPLOYER IN GOOD FAITH BELIEVES COULD AFFECT THE SAFETY OR HEALTH OF THE
18 EMPLOYEE PERFORMING THE TASK OR OTHERS, INCLUDING ANY OF THE FOLLOWING:

19 (a) OPERATING A MOTOR VEHICLE, OTHER VEHICLE, EQUIPMENT, MACHINERY OR
20 POWER TOOLS.

21 (b) REPAIRING, MAINTAINING OR MONITORING THE PERFORMANCE OR OPERATION
22 OF ANY EQUIPMENT, MACHINERY OR MANUFACTURING PROCESS, THE MALFUNCTION OR
23 DISRUPTION OF WHICH COULD RESULT IN INJURY OR PROPERTY DAMAGE.

24 (c) PERFORMING DUTIES IN THE RESIDENTIAL OR COMMERCIAL PREMISES OF A
25 CUSTOMER, SUPPLIER OR VENDOR.

26 (d) PREPARING OR HANDLING FOOD OR MEDICINE.

27 (e) WORKING IN ANY OCCUPATION REGULATED PURSUANT TO TITLE 32.

28 ~~7.~~ 10. "Sample" means urine, blood, breath, saliva, hair or other
29 substances from the person being tested.

30 Sec. 2. Section 23-493.06, Arizona Revised Statutes, is amended to
31 read:

32 23-493.06. Employer protection from litigation

33 A. No cause of action is or may be established for any person against
34 an employer who has established a policy and initiated a testing program in
35 accordance with this article for any of the following:

36 1. Actions in good faith based on the results of a positive drug test
37 or alcohol impairment test.

38 2. Failure to test for drugs or alcohol impairment or failure to test
39 for a specific drug or any other controlled substance.

40 3. Failure to test or, if tested, failure to detect any specific drug
41 or other substance, any medical condition or any mental, emotional or
42 psychological disorder or condition.

43 4. Termination or suspension of any substance abuse prevention or
44 testing program or policy.

1 5. ACTIONS BASED ON THE EMPLOYER'S GOOD FAITH BELIEF THAT AN EMPLOYEE
2 USED OR POSSESSED ANY DRUG WHILE ON THE EMPLOYER'S PREMISES OR DURING THE
3 HOURS OF EMPLOYMENT.

4 6. ACTIONS BASED ON THE EMPLOYER'S GOOD FAITH BELIEF THAT AN EMPLOYEE
5 HAD AN IMPAIRMENT WHILE WORKING WHILE ON THE EMPLOYER'S PREMISES OR DURING
6 HOURS OF EMPLOYMENT.

7 7. ACTIONS TO EXCLUDE AN EMPLOYEE FROM PERFORMING A SAFETY-SENSITIVE
8 POSITION, INCLUDING REASSIGNING THE EMPLOYEE TO ANOTHER POSITION OR PLACING
9 AN EMPLOYEE ON PAID OR UNPAID LEAVE, BASED ON THE EMPLOYER'S GOOD FAITH
10 BELIEF THAT THE EMPLOYEE IS ENGAGED IN THE CURRENT USE OF ANY DRUG, WHETHER
11 LEGAL, PRESCRIBED BY A PHYSICIAN OR OTHERWISE, IF THE DRUG COULD CAUSE AN
12 IMPAIRMENT OR OTHERWISE DECREASE OR LESSEN THE EMPLOYEE'S JOB PERFORMANCE OR
13 ABILITY TO PERFORM THE EMPLOYEE'S JOB DUTIES. THE BELIEF REGARDING THE
14 EFFECTS OF THE DRUG MAY BE BASED ON INFORMATION INCLUDING RESULTS OF A TEST
15 FOR THE USE OF ALCOHOL OR DRUGS, WARNING LABELS OR OTHER PRINTED MATERIALS
16 THAT ACCOMPANY INSTRUCTIONS FOR USE OF THE DRUG, STATEMENTS BY THE EMPLOYEE,
17 INFORMATION FROM A PHYSICIAN OR PHARMACIST, INFORMATION FROM REPUTABLE
18 REFERENCE SOURCES IN PRINT OR ON THE INTERNET OR OTHER INFORMATION THE
19 EMPLOYER IN GOOD FAITH BELIEVES TO BE RELIABLE.

20 B. THE ACTIONS OF AN EMPLOYER PROTECTED BY THIS SECTION INCLUDE
21 IMPLEMENTING, MONITORING OR MEASURES TO ASSESS, SUPERVISE OR CONTROL THE JOB
22 PERFORMANCE OF THE EMPLOYEE, REASSIGNMENT OF AN EMPLOYEE TO A DIFFERENT
23 POSITION OR JOB DUTIES OR SUSPENSION OR TERMINATION OF EMPLOYMENT.

24 Sec. 3. Title 23, chapter 2, article 14, Arizona Revised Statutes, is
25 amended by adding section 23-493.12, to read:

26 23-493.12. Severability

27 IF A PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR
28 CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
29 PROVISIONS OR APPLICATIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT
30 THE INVALID PROVISION OR APPLICATION AND, TO THIS END, THE PROVISIONS OF THIS
31 ARTICLE ARE SEVERABLE.