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; AMENDING SECTION 36-2807, ARIZONA REVISED STATUTES; RELATING TO DRUGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-493, Arizona Revised Statutes, is amended to read:

23-493. Definitions
In this article, unless the context otherwise requires:
1. "Alcohol" means ethanol, isopropanol or methanol.
2. "CURRENT USE OF ANY DRUG" MEANS DRUG USE THAT HAS OCCURRED RECENTLY ENOUGH TO JUSTIFY AN EMPLOYER'S REASONABLE BELIEF THAT INVOLVEMENT WITH DRUGS IS ONGOING. CURRENT USE OF ANY DRUG IS NOT LIMITED TO ANY SPECIFIC TIME FRAME AND DEPENDS ON THE FACTS OF EACH INDIVIDUAL CASE.
3. "Drugs" means any substance considered unlawful under the schedules of the controlled substances section of the comprehensive drug abuse prevention and control act of 1970, AS AMENDED, (P.L. 91-513; 84 Stat. 1247; 21 United States Code section 812) OR PURSUANT TO TITLE 13, CHAPTER 34 or the metabolite of the substance.
4. "Employee" means any person in the service of an employer.
5. "Employer" means THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE OR any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, including any public utility, transit district or special taxing district organized pursuant to title 48, chapter 17 or 22, that has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written. Employer does not include the United States, this state and its agencies other than the department of public safety, the state department of corrections and the department of juvenile corrections, any political subdivision of this state or any Native American tribe. The department of public safety, the state department of corrections and the department of juvenile corrections are employers for purposes of this paragraph.
6. "Good faith" means reasonable reliance on fact, or that which is held out to be factual, without the intent to deceive or be deceived and without reckless or malicious disregard for the truth. GOOD FAITH DOES NOT INCLUDE A BELIEF FORMED WITH GROSS NEGLIGENCE. A GOOD FAITH BELIEF MAY BE BASED ON ANY OF THE FOLLOWING:
   (a) OBSERVED CONDUCT, BEHAVIOR OR APPEARANCE.
   (b) INFORMATION REPORTED BY A PERSON BELIEVED TO BE RELIABLE, INCLUDING A REPORT BY A PERSON WHO WITNESSED THE USE OR POSSESSION OF DRUGS OR DRUG PARAPHERNALIA AT WORK.
   (c) WRITTEN, ELECTRONIC OR VERBAL STATEMENTS.
   (d) LAWFUL VIDEO SURVEILLANCE.
   (e) RECORDS OF GOVERNMENT AGENCIES, LAW ENFORCEMENT AGENCIES OR COURTS.
   (f) RESULTS OF A TEST FOR THE USE OF ALCOHOL OR DRUGS.
   (g) OTHER INFORMATION REASONABLY BELIEVED TO BE RELIABLE OR ACCURATE.
7. "IMPAIRMENT" means symptoms that a prospective employee or employee while working may be under the influence of drugs or alcohol that may decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment, machinery or production or manufacturing processes, disregard for the safety of the employee or others, involvement in an accident that results in serious damage to equipment, machinery or property, disruption of a production or manufacturing process, any injury to the employee or others or other symptoms causing a reasonable suspicion of the use of drugs or alcohol.

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

9. "SAFETY-SENSITIVE POSITION" means any job designated by an employer as a safety-sensitive position or any job that includes tasks or duties that the employer in good faith believes could affect the safety or health of the employee performing the task or others, including any of the following:
   (a) operating a motor vehicle, other vehicle, equipment, machinery or power tools.
   (b) repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage.
   (c) performing duties in the residential or commercial premises of a customer, supplier or vendor.
   (d) preparing or handling food or medicine.
   (e) working in any occupation regulated pursuant to Title 32.

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

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

23-493.06. Employer protection from litigation

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

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

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

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

4. Termination or suspension of any substance abuse prevention or testing program or policy.
5. ACTIONS BASED ON THE EMPLOYER’S GOOD FAITH BELIEF THAT AN EMPLOYEE USED OR POSSESSED ANY DRUG WHILE ON THE EMPLOYER’S PREMISES OR DURING THE HOURS OF EMPLOYMENT.

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

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

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

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

23-493.12. Severability

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

Sec. 4. Subject to the requirements of article IV, part 1, section 1, Constitution of Arizona, section 36-2807, Arizona Revised Statutes, is amended to read:

36-2807. Verification system

A. Within one hundred twenty days of the effective date of this chapter, the department shall establish a secure, password-protected, web-based verification system for use on a twenty-four hour basis by law enforcement personnel, and nonprofit medical marijuana dispensary agents AND EMPLOYERS to verify registry identification cards. AN EMPLOYER MAY USE THE VERIFICATION SYSTEM ONLY TO VERIFY A REGISTRY IDENTIFICATION CARD THAT IS PROVIDED TO THE EMPLOYER BY A CURRENT EMPLOYEE OR BY AN APPLICANT WHO HAS RECEIVED A CONDITIONAL OFFER OF EMPLOYMENT.
B. The verification system must allow law enforcement personnel and nonprofit medical marijuana dispensary agents to enter a registry identification number and verify whether the number corresponds with a current, valid identification card.

C. The system shall disclose:
   1. The name of the cardholder, but must not disclose the cardholder's address.
   2. The amount of marijuana that each registered qualifying patient received from nonprofit medical marijuana dispensaries during the past sixty days.

D. The verification system must include the following data security features:
   1. Any time an authorized user enters five invalid registry identification numbers within five minutes, that user cannot log in to the system again for ten minutes.
   2. A user's log-in information shall be deactivated after five incorrect login attempts until the authorized user contacts the department and verifies his THE USER'S identity.
   3. The server must reject any log-in request that is not over an encrypted connection.

Sec. 5. Retroactivity
This act applies retroactively to from and after April 12, 2011.

Sec. 6. Requirements for enactment; three-fourths vote
Pursuant to article IV, part 1, section 1, Constitution of Arizona, section 36-2807, Arizona Revised Statutes, as amended by this act, is effective only on the affirmative vote of at least three-fourths of the members of each house of the legislature.