

JAN 19 2007

A BILL FOR AN ACT

RELATING TO RANDOM DRUG TESTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the call for random
2 drug testing for department of education employees has been
3 recently renewed after the arrest on December 4, 2006, of two
4 public middle school teachers for allegedly smoking marijuana
5 before reporting for work. The issue first arose in October,
6 2006, after the arrest of a public high school teacher on
7 charges of selling crystal methamphetamine. These cases are
8 evidence of a possible drug use among public school employees
9 that is more than isolated or aberrational.

10 An article in *The Honolulu Advertiser* of December 6, 2006,
11 quotes the department of education as being committed to
12 maintaining a drug-free workplace, and that drug screening is
13 something the department may look into. Current law does not
14 provide for compulsory drug testing for new department of
15 education hires or for random drug screening. However, current
16 law does provide for criminal history background checks.



1 The legislature finds that drug screening of department of
2 education employees, including public library employees, when
3 hired and random drug testing thereafter is appropriate.

4 Teachers teach our children, who are innocent. The Legislature
5 believes that establishing a random drug screening program for
6 department of education employees is in the public interest,
7 promotes the safety of students, and would set an example by
8 adults who influence the children most outside of the family.

9 The purpose of this Act is to establish a random drug
10 screening program for all department of education and public
11 library employees.

12 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§302A- Employees of the department of education and
16 teacher trainees in any public school; random substance abuse
17 testing; employee assistance. (a) The department, including
18 the Hawaii state public library system, shall develop procedures
19 for random substance testing to obtain verifiable information
20 regarding use of controlled substances under chapter 329, by
21 persons who are employed or seeking employment in any position,



1 including teacher trainees, that places them in close proximity
2 to children. These procedures shall comply with chapter 329B.

3 Information obtained pursuant to this subsection shall be
4 used exclusively by the employer or prospective employer for the
5 purpose of determining whether a person is suitable for working
6 in close proximity to children.

7 An employee who refuses to submit to drug testing under
8 this subsection shall be placed on mandatory administrative
9 leave of _____ days.

10 (b) If the test results under subsection (a) are positive,
11 the employer or prospective employer may refuse to employ, or
12 may impose the following sanctions:

- 13 (1) Refuse to issue a teaching or other educational
14 certificate;
- 15 (2) Revoke the teaching or other educational certificate;
- 16 (3) Refuse to allow or continue to allow participation in
17 teacher training;
- 18 (4) Terminate the employment of any employee or deny
19 employment to an applicant; or
- 20 (5) Impose other administrative sanctions, including but
21 not limited to, administrative leave,



1 if the employer or prospective employer finds by reason of the
2 nature and circumstances of the use of controlled substances
3 that the person poses a risk to the health, safety, or
4 well-being of children, or otherwise negatively influences
5 children by setting a detrimental example. Refusal to employ
6 and sanctions under this subsection may occur only after
7 appropriate investigation and notification to the employee or
8 applicant for employment of results and planned action, and
9 after the employee or applicant for employment is given an
10 opportunity to meet and rebut the finding. Nothing in this
11 subsection shall abrogate any applicable appeal rights under
12 chapter 76 or 89, or administrative rule of the department of
13 education.

14 (c) In addition to the sanctions under subsection (b), the
15 department, by adoption of rules pursuant to chapter 91, shall
16 provide for substance abuse assessment, treatment, and
17 counseling, and referral to the employee assistance program
18 under subsection (e) if suitable, if the department determines
19 to retain the employee; provided that evidence of clinical
20 discharge from substance abuse treatment or substance abuse
21 counseling shall be a prerequisite to continued employment.



1 (d) Notwithstanding any other law to the contrary, for
2 purposes of this section, the department of education need not
3 conduct investigations, notifications, or hearings under this
4 section in accordance with chapter 91.

5 (e) The department shall establish an employee assistance
6 program to provide help to employees of the department of
7 education, including the Hawaii state public library system, who
8 may have substance abuse problems that interfere with daily
9 living and functioning in the work place. The employee
10 assistance program shall be open to referrals made under
11 subsection (c) and to other employees who voluntarily request to
12 be in the program. The department may contract with a private
13 provider of service for purposes of this subsection, or may
14 utilize substance abuse services provided by the department of
15 health.

16 (f) This section shall not apply to volunteers or other
17 non-remunerated personnel providing support services at
18 individual schools."

19 SECTION 3. The department of education shall report to the
20 legislature no later than twenty days prior to the convening of
21 the regular sessions of 2008 and 2009 on the implementation of
22 this Act, including but not limited to, costs of the testing,



1 impediments to implementation, and recommendations for any
2 statutory amendments.

3 SECTION 4. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$, or so
5 much thereof as may be necessary for fiscal year 2007-2008, and
6 the same sum, or so much thereof as may be necessary for fiscal
7 year 2008-2009, to implement random substance abuse testing
8 pursuant to this Act.

9 The sums appropriated shall be expended by the department
10 of education.

11 SECTION 5. New statutory material is underscored.

12 SECTION 6. This Act shall take effect upon its approval;
13 provided that section 4 shall take effect on July 1, 2007.

14

INTRODUCED BY: Norman Sakomih



Report Title:

Public School Personnel; Public Library Personnel; Drug Testing

Description:

Requires random drug testing of public school employees, teachers, and public library employees; requires department of education to adopt rules to determine sanctions for positive drug tests. Establishes employee assistance program.

