

ACT 179

H.B. NO. 964

A Bill for an Act Relating to Substance Abuse.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 329B-2, Hawaii Revised Statutes, is amended by amending the definitions of “substance abuse on-site screening test” and “substance abuse test” to read as follows:

““Substance abuse on-site screening test” means a portable substance abuse test that meets the requirements of the United States Food and Drug Administration for commercial distribution ~~[and is approved by the director for such pre-employment screening;]~~ or is manufactured by a facility that is minimally certified as meeting the ISO 13485 standard established by the international organization for standardization and which may be used by an employer in the workplace.

“Substance abuse test” means any testing procedure designed to take and analyze body fluids or materials from the body for the purpose of measuring the amount of drugs, alcohol, or the metabolites of drugs in the sample tested. ~~[The term includes any substance abuse on-site screening test designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of drugs, alcohol, or the metabolites of drugs in the sample tested.]”~~

SECTION 2. Section 329B-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§329B-5.5]~~ Substance abuse on-site screening tests, testing procedures, and confidentiality.** The substance abuse on-site screening test shall be administered ~~[for pre-employment purposes only]~~ according to the instructions of the manufacturer and this section:

- (1) Every employer using a substance abuse on-site screening test ~~[for pre-employment screening shall administer the test according to the United States Food and Drug Administration package insert that accompanies the substance abuse test, and shall adhere to any applicable on-site screening drug test guidelines adopted by the United States Food and Drug Administration. Any on-site screening test shall also be approved by the director for such pre-employment screening;]~~ shall administer the test according to the package insert that accompanies the substance abuse on-site screening test;
- (2) ~~[Every employer using a substance abuse on-site screening test for pre-employment screening shall adhere to the rules adopted pursuant to section 329B-8 pertaining to specimen collection, urine specimen, shipping of specimens, chain of custody, and confidentiality that may be applicable to on-site drug testing;]~~ Any indication of the presence of

drugs, alcohol, or the metabolites of drugs by the substance abuse on-site screening test shall not be used to deny or deprive a person of employment or any benefit, or result in any adverse action against the employee or prospective employee, unless a substance abuse test is conducted according to section 329B-5 and the requirements of paragraph (3) are met;

- (3) [If a substance abuse on-site screening test obtains a test result that indicates the presence of drugs, alcohol, or the metabolites of drugs; and if the test result may be used to deny or deprive a person of employment or any benefit, or may otherwise result in an adverse action being taken against the person, then the same sample that produced the test result shall be submitted for a confirmatory test to a testing laboratory licensed or approved by the department in accordance with this chapter. A positive confirmatory test shall be reviewed by a medical review officer licensed by the department in accordance with this chapter; and] Upon the indication of the presence of drugs, alcohol, or the metabolites of drugs by the substance abuse on-site screening test, the employer shall have the employee or prospective employee report within four hours to a laboratory licensed by the department under section 329B-4 and be tested under section 329B-5. The employer shall bear the cost of the laboratory referral. An employee or prospective employee who fails to report for the substance abuse test may be denied or deprived of employment or any benefit, or have adverse action taken against the employee or prospective employee for refusing or failing to report for the substance abuse test; provided that the employer has provided to the employee or prospective employee written notice stating that:
  - (A) At the time of the substance abuse on-site screening test, the employer followed the procedures under section 329B-5.5;
  - (B) The employee or prospective employee was informed that the employee or prospective employee may refuse to submit to the substance abuse test; and
  - (C) If the employee or prospective employee refuses or fails to submit to the substance abuse test, the employer may take adverse employment action against the employee or prospective employee;
- (4) The operator who administers the substance abuse on-site screening test shall have been trained in the use and administering of the on-site screening test by the manufacturer of the on-site screening test or the manufacturer's designee[-]; and
- (5) Any information concerning the substance abuse on-site screening test shall be strictly confidential. Such information shall not be released to anyone without the informed written consent of the individual tested and shall not be released or made public upon subpoena or any other method of discovery, except that information relating to a positive on-site screening test result of an individual shall be disclosed to the individual, a third party, the laboratory to which the individual is referred, and the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual tested and arising from the positive on-site screening test result."

SECTION 3. Section 378-32, Hawaii Revised Statutes, is amended to read as follows:

**“§378-32 Unlawful suspension, discharge, or discrimination.** It shall be unlawful for any employer to suspend, discharge, or discriminate against any of the employer’s employees:

- (1) Solely because the employer was summoned as a garnishee in a cause where the employee is the debtor or because the employee has filed a petition in proceedings for a wage earner plan under Chapter XIII of the Bankruptcy Act; or
- (2) Solely because the employee has suffered a work injury which arose out of and in the course of the employee’s employment with the employer and which is compensable under chapter 386 unless the employee is no longer capable of performing the employee’s work as a result of the work injury and the employer has no other available work which the employee is capable of performing. Any employee who is discharged because of the work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during the period thereafter until the employee secures new employment. This paragraph shall not apply to any employer in whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or reemployment of the injured employee; [øø]
- (3) Because the employee testified or was subpoenaed to testify in a proceeding under this part[-]; or
- (4) Because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5; provided that this provision shall not apply to an employee who fails or refuses to report to a laboratory for a substance abuse test pursuant to section 329B-5.5.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2007.

(Approved June 14, 2007.)