

---

---

# A BILL FOR AN ACT

RELATING TO SUBSTANCE ABUSE.

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

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

4 "Substance abuse on-site screening test" means a portable  
5 substance abuse test that ~~[meets the requirements of the United~~  
6 ~~States Food and Drug Administration for commercial distribution~~  
7 ~~and is approved by the director for such pre-employment~~  
8 ~~screening.] may be used by an employer in a workplace, or by a~~  
9 union, in its normal course of business.

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



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

3 " ~~[+]~~ §329B-5.5 ~~[+]~~ **Substance abuse on-site screening tests,**  
4 **testing procedures, and confidentiality.** The substance abuse  
5 on-site screening test shall be administered ~~[for pre-employment~~  
6 ~~purposes only]~~ according to the instructions of the manufacturer  
7 and this section:

8 (1) Every employer or union using a substance abuse on-  
9 site screening test ~~[for pre-employment screening~~  
10 ~~shall administer the test according to the United~~  
11 ~~States Food and Drug Administration package insert~~  
12 ~~that accompanies the substance abuse test, and shall~~  
13 ~~adhere to any applicable on-site screening drug test~~  
14 ~~guidelines adopted by the United States Food and Drug~~  
15 ~~Administration. Any on-site screening test shall also~~  
16 ~~be approved by the director for such pre-employment~~  
17 ~~screening;]~~ shall administer the test according to the  
18 package insert that accompanies the substance abuse  
19 on-site screening test;

20 (2) ~~[Every employer using a substance abuse on-site~~  
21 ~~screening test for pre-employment screening shall~~  
22 ~~adhere to the rules adopted pursuant to section 329B-8~~



1 ~~pertaining to specimen collection, urine specimen,~~  
2 ~~shipping of specimens, chain of custody, and~~  
3 ~~confidentiality that may be applicable to on-site drug~~  
4 ~~testing;] Any indication of the presence of drugs,~~  
5 ~~alcohol, or the metabolites of drugs by the substance~~  
6 ~~abuse on-site screening test shall not be used to deny~~  
7 ~~or deprive a person of employment or any benefit, or~~  
8 ~~result in any adverse action against the employee or~~  
9 ~~prospective employee, unless a substance abuse test is~~  
10 ~~conducted according to section 329B-5 and the~~  
11 ~~requirements of paragraph (3) are met;~~

12 (3) ~~[If a substance abuse on-site screening test obtains a~~  
13 ~~test result that indicates the presence of drugs,~~  
14 ~~alcohol, or the metabolites of drugs; and if the test~~  
15 ~~result may be used to deny or deprive a person of~~  
16 ~~employment or any benefit, or may otherwise result in~~  
17 ~~an adverse action being taken against the person, then~~  
18 ~~the same sample that produced the test result shall be~~  
19 ~~submitted for a confirmatory test to a testing~~  
20 ~~laboratory licensed or approved by the department in~~  
21 ~~accordance with this chapter. A positive confirmatory~~  
22 ~~test shall be reviewed by a medical review officer~~



1 ~~licensed by the department in accordance with this~~  
2 ~~chapter; and] Upon the indication of the presence of  
3 drugs, alcohol, or the metabolites of drugs by the  
4 substance abuse on-site screening test, the employer  
5 or union shall refer the employee or prospective  
6 employee to a laboratory licensed by the department  
7 under section 329B-4, within two hours of the  
8 detection of drugs, alcohol, or the metabolites of  
9 drugs. The employer or union shall bear the cost of  
10 the laboratory referral;~~

11 (4) The operator who administers the substance abuse on-  
12 site screening test shall have been trained in the use  
13 and administering of the on-site screening test by the  
14 manufacturer of the on-site screening test or the  
15 manufacturer's designee[-]; and

16 (5) Any information concerning the substance abuse on-site  
17 screening test shall be strictly confidential; such  
18 information shall not be released to anyone without  
19 the informed written consent of the individual tested  
20 and shall not be released or made public upon subpoena  
21 or any other method of discovery, except that  
22 information related to a positive on-site screening



1           test result of an individual shall be disclosed to the  
 2           individual, the laboratory to which the individual is  
 3           referred, the third party, or the decision maker in a  
 4           lawsuit, grievance, or other proceeding initiated by  
 5           or on behalf of the individual tested and arising from  
 6           the positive on-site screening test result."

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

9           "**§378-32 Unlawful suspension, discharge, or**

10 **discrimination.** It shall be unlawful for any employer to  
 11 suspend, discharge, or discriminate against any of the  
 12 employer's employees:

13           (1) Solely because the employer was summoned as a  
 14 garnishee in a cause where the employee is the debtor  
 15 or because the employee has filed a petition in  
 16 proceedings for a wage earner plan under Chapter XIII  
 17 of the Bankruptcy Act; or

18           (2) Solely because the employee has suffered a work injury  
 19 which arose out of and in the course of the employee's  
 20 employment with the employer and which is compensable  
 21 under chapter 386 unless the employee is no longer  
 22 capable of performing the employee's work as a result



1 of the work injury and the employer has no other  
2 available work which the employee is capable of  
3 performing. Any employee who is discharged because of  
4 the work injury shall be given first preference of  
5 reemployment by the employer in any position which the  
6 employee is capable of performing and which becomes  
7 available after the discharge and during the period  
8 thereafter until the employee secures new employment.  
9 This paragraph shall not apply to any employer in  
10 whose employment there are less than three employees  
11 at the time of the work injury or who is a party to a  
12 collective bargaining agreement which prevents the  
13 continued employment or reemployment of the injured  
14 employee; or

15 (3) Because the employee testified or was subpoenaed to  
16 testify in a proceeding under this part~~[ ]~~; or

17 (4) Because an employee tested positive for the presence  
18 of drugs, alcohol, or the metabolites of drugs by the  
19 substance abuse on-site screening test conducted in  
20 accordance with section 329B-5.5."

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



1 SECTION 5. This Act shall take effect on January 1, 2050,  
2 and shall be repealed on January 1, 2012.



**REPORT Title:**

Substance Abuse Testing

**Description:**

Amends definitions of "substance abuse on-site screening test" and "substance abuse test". Allows testing according to the manufacturer's package insert. Prohibits adverse actions by employers and unions as a result of testing unless specified procedures are adhered to. Requires referral to a confirmatory test if forensic test result is positive. Requires confidentiality of test results. Effective date of January 1, 2050 and a sunset date of January 1, 2012. (SB1636 HD3)

