

Honolulu, Hawaii

April 26, 2007

RE: H.B. No. 964  
H.D. 1  
S.D. 2  
C.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 964, H.D. 1, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO SUBSTANCE ABUSE,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to ensure the safety of workers by providing a cost effective detection and deterrence tool of drug testing. Specifically, this bill facilitates employment-related drug testing by:

- (1) Including, in the definition of "substance abuse on-site screening test" under the Substance Abuse Testing law, the use of screening tests that may be used for forensic testing as a workplace testing device;



- (2) Requiring employers using a screening test for pre-employment screening to administer the test in accordance with the manufacturer's package insert if there is no United States Food and Drug Administration insert; and
- (3) Authorizing employers to drug test job applicants and unions to drug test members.

Drug use, especially the use of "crystal meth", is a major problem facing Hawaii, and is a growing problem in the workplace that contributes to an impaired workforce resulting in work quality issues. In an effort to promote drug-free environments, many employers require prospective employees to be subjected to substance abuse screening prior to employment. However, these tests can be costly and difficult to schedule since only a few laboratories conduct them. Your Committee on Conference finds that the use of oral fluid drug screening devices may provide a cost effective way for employers to provide drug screening of potential employees.

However, your Committee on Conference is also cognizant of concerns raised about this bill by both opponents and proponents of the measure, particularly with regard to confidentiality and false positive results. Accordingly, your Committee on Conference has amended this measure by:

- (1) Clarifying the definition of "substance abuse on-site screening test" (screening test) to mean a test that is manufactured by a facility that is certified as meeting the ISO 13485:2003 standard established by the International Organization for Standardization and which may be used by an employer in the workplace;
- (2) Deleting reference to a screening test under the definition of "substance abuse test" under Hawaii's Substance Abuse Testing law;
- (3) Deleting the requirement that a screening test be used for pre-employment screening purposes only;
- (4) Stipulating that every employer using a screening test administer the test according to the package insert accompanying the screening test;



- (5) Removing the authority of unions to drug test members;
- (6) Deleting the requirement that employers using a screening test adhere to rules pertaining to specimen collection, urine specimen, shipping of specimens, chain of custody, and confidentiality that may be applicable to on-site drug testing;
- (7) Inserting language stipulating that any indication of the presence of drugs, alcohol, or the metabolites of drugs by the screening test shall not be used to deny or deprive a person of employment or any benefit, or result in any adverse action against an employee or prospective employee unless a substance abuse test is conducted and certain requirements are met, including requiring an employer to have an employee or prospective employee report within 4 hours to a licensed laboratory for a substance abuse test;
- (8) Requiring the employer to bear the cost of the laboratory referral;
- (9) Allowing an employee or prospective employee to be denied or deprived of employment or benefits, or have adverse action taken against the employer or prospective employee, if the employee or prospective employee refuses to take or fails to report for a substance abuse test, provided that the employer gave written notice stating that:
  - (A) The employer followed statutorily established procedures for administering the screening test;
  - (B) The employee or prospective employee was informed that they may refuse to submit to the screening test; and
  - (C) If the employee or prospective employee fails to submit to a substance abuse test, the employer may take adverse employment action against the employee or prospective employee;
- (10) Establishing strict confidentiality requirements with regard to any information concerning the screening test; and



- (11) Making it unlawful for any employer to suspend, discharge, or discriminate against an employee because the employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a screening test unless an employee fails or refuses to report to a laboratory for a substance abuse test.

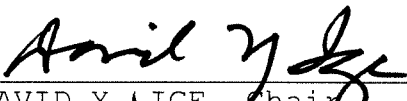
Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 964, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 964, H.D. 1, S.D. 2, C.D. 1.

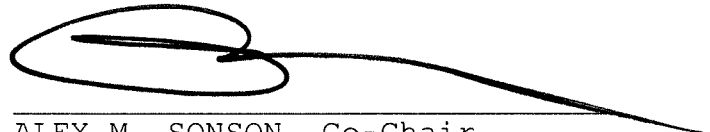
Respectfully submitted on behalf  
of the managers:

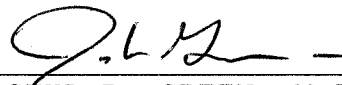
ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE

  
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DAVID Y. IGE, Chair

  
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CLAYTON HEE, Co-Chair

  
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ALEX M. SONSON, Co-Chair

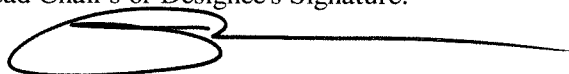
  
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JOSHUA B. GREEN, M.D., Co-Chair

  
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TOMMY WATERS, Co-Chair



**Hawaii State Legislature**  
**Record of Votes of a**  
**Conference Committee**

CCP67

Bill / Concurrent Resolution No.: HB 964, HD 1, SD 2					Date/Time: <i>April 25, 2007: 4:00pm</i>				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
IGE, David Y., Chr.	✓				SONSON, Alex M., Co-Chr.	✓			
HEE, Clayton, Co-Chr.	✓				GREEN, Josh, M.D., Co-Chr.	✓			
FUKUNAGA, Carol	✓				WATERS, Tommy, Co-Chr.				✓
WHALEN, Paul				✓	OSHIRO, Blake K.	✓			
					MARUMOTO, Barbara C.	✓			
TOTAL	3			1	TOTAL	4			1
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is:					House Recommendation is:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Senate Lead Chair's or Designee's Signature:					House Lead Chair's or Designee's Signature:				
<i>David Y. Ige</i>									
Distribution:									
Original <i>File with Conference Committee Report</i>			Yellow <i>House Clerk's Office</i>		Pink <i>Senate Clerk's Office</i>		Goldenrod <i>Drafting Agency</i>		