

STAND. COM. REP. NO. 1903

Honolulu, Hawaii

AJ 5, 2007

RE: S.B. No. 1636  
S.D. 2  
H.D. 3

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

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 1636, S.D. 2, H.D. 2, entitled:

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

begs leave to report as follows:

The purpose of this bill is to promote drug-free workplaces and improve on-site substance abuse testing by, among other things:

- (1) Amending the definition of "substance abuse on-site screening test" to allow for certain oral fluid screening tests; and
- (2) Allowing a confirmatory urine test to be conducted should a substance abuse on-site screening test using oral fluids produce a positive result.

Your Committee received testimony in support of the measure from Branan Medical Corporation, Building Industry Association of Hawaii, Castle & Cooke Homes Hawaii, Inc., Emerald Bay Consulting, LLC, General Contractors Association of Hawaii, Na Hoku Company, Mililani Town Association, Hawaii Carpenters Union, Local 745, Ralph S. Inouye Co., Ltd., Waiawa Ridge Development LLC, S & M Sakamoto, Inc., Hawaii Dredging Construction Company, Oceanic Time Warner Cable, Hidano Construction, Inc., The Pacific Resource Partnership, and Kapolei Property Development, LLC. The

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Department of Labor and Industrial Relations supported the intent of this bill and suggested amendments. Clinical Labs of Hawaii and Straub Doctors on Call opposed the measure. The Department of Health, Diagnostic Laboratory Services, Inc., and Reliable Drug Testing Services, Inc., submitted comments.

Your Committee has amended this measure by:

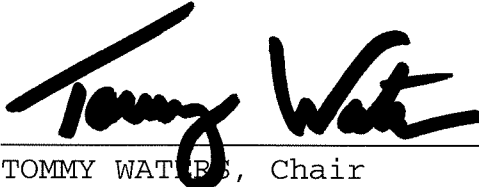
- (1) Redefining "substance abuse on-site screening test" to mean a portable substance abuse test that may be used by an employer in a workplace, or by a union, in its normal course of business;
- (2) Revising the definition of "substance abuse test" by repealing the provision that specifies that substance abuse on-site screening tests are included within the meaning of "substance abuse test";
- (3) Repealing existing substance abuse on-site screening test requirements relating to the FDA package insert, applicable guidelines adopted by the FDA, and approval by the Director of Health;
- (4) Establishing, in lieu of item (3), the requirement that every employer or union using a substance abuse on-site screening test administer it according to the package insert that accompanies the test;
- (5) Repealing the existing requirement that every employer using a substance abuse on-site screening test adhere to rules related to specimen collection, urine specimens, shipping of specimens, chain of custody, and confidentiality;
- (6) Establishing that an indication of the presence of drugs by the substance abuse on-site screening test shall not be used to deny or deprive a person of employment or benefits, or result in any adverse action against the employee or prospective employee, unless the substance abuse test is conducted according to certain established procedures and a follow up referral is made to a licensed laboratory as specified in item (8);



- (7) Deleting the provision that allows a confirmatory urine test to be conducted should a substance abuse on-site screening test using oral fluids produce a positive drug test result;
- (8) Repealing existing provisions relating to procedures and requirements for a positive drug test result and instead, establishing that upon the indication of the presence of drugs by the substance abuse on-site screening test, the employer or union shall refer the employee or prospective employee to a licensed laboratory within two hours of the detection of drug presence, at the cost of the employer or union;
- (9) Establishing that any information concerning the on-site screening test shall be strictly confidential;
- (10) Prohibiting employers from suspending, discharging, or discriminating against an employee because the employee tested positive for the presence of drugs through the substance abuse on-site screening test; and
- (11) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1636, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1636, S.D. 2, H.D. 3.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,

  
TOMMY WATERS, Chair



State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

HS 41903

**Record of Votes of the Committee on Judiciary**

<b>Bill/Resolution No.:</b> SB 1636, SD2, HD2 (HSCR 1406)		<b>Date:</b> <span style="font-size: 1.5em; font-weight: bold;">4/3/07</span>		
<b>Committee Referral:</b> <span style="font-size: 1.5em; font-weight: bold;">HCT, LAB,</span> JUD		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
<b>The recommendation is to:</b> <span style="margin-left: 20px;"><input type="checkbox"/> Pass, unamended</span> <span style="margin-left: 20px;"><input checked="" type="checkbox"/> Pass, with amendments</span> <span style="margin-left: 40px;"><input type="checkbox"/> Hold</span> <span style="margin-left: 20px;"><input type="checkbox"/> Pass, with amendments, for recommittal for further consideration</span>				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. WATERS, Tommy (C)	✓			
2. OSHIRO, Blake K. (VC)	✓			
3. CALDWELL, Kirk	✓			
4. EVANS, Cindy	.	✓		
5. GREEN, Josh, M.D.		✓		
6. ITO, Ken	✓			
7. LUKE, Sylvia	✓			
8. McKELVEY, Angus L.K.		✓		
9. MORITA, Hermina M.		✓		
10. SONSON, Alex M.	✓			
11. SOUKI, Joseph M.		✓		
12. TSUJI, Clift	✓			
13. YAMANE, Ryan I.	✓			
14. YAMASHITA, Kyle T.	✓			
15. MARUMOTO, Barbara C.	✓			
16. PINE, Kymberly Marcos	✓			
17. THIELEN, Cynthia		✓		
<b>TOTAL</b>	<b>11</b>	<b>6</b>		
<b>The recommendation is:</b> <span style="margin-left: 20px;"><input checked="" type="checkbox"/> Adopted</span> <span style="margin-left: 20px;"><input type="checkbox"/> Not Adopted</span>  If joint referral, _____ did not support recommendation. <div style="text-align: center; margin-left: 100px;">committee acronym(s)</div>				
<b>Vice Chair's or designee's signature:</b> <div style="text-align: center; margin-top: 10px;"> </div>				
<b>Distribution:</b> Original (White) – Committee       Duplicate (Yellow) – HMSO       Duplicate (Pink) – Clerk's Office				