

HOUSE OF REPRESENTATIVES

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REPRESENTATIVESAMENDMENT TO: H.B. No. 341, H.D. 3, RELATING TO EMPLOYMENT PRACTICESOFFERED BY: Representative Karl Rhoads *KR*DATE: March 8, 2011

SECTION 1. H.B. No. 341, H.D. 3, RELATING TO EMPLOYMENT PRACTICES, is amended by amending section 1 to read as follows:

SECTION 1. Section 378-32, Hawaii Revised Statutes, is amended to read as follows:

"§378-32 Unlawful suspension, discharge, or discrimination. (a) 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;

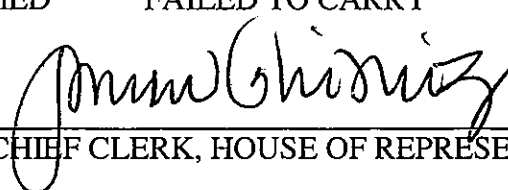
- (3) Because the employee testified or was subpoenaed to testify in a proceeding under this part; or
- (4) Because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5; provided 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.

(b) It shall be an unlawful practice for an employer or a labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave; provided that, after an employee uses three or more consecutive days of sick leave, an employer or labor organization may require the employee to provide written verification from a physician indicating that the employee was ill when the sick leave was used.

(c) Employers and labor organizations are not prohibited from barring or discharging from employment, withholding pay from, or demoting an employee if the employee is unable to fulfill the essential job functions or requirements of the employee's position.

(d) Subsections (b) and (c) shall only apply to employers who have:

- (1) A collective bargaining agreement with their employees; and
- (2) One hundred or more employees."

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