

ACT 206

S.B. NO. 635

A Bill for an Act Relating to Substance Abuse Testing.

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

SECTION 1. Chapter 329B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§329B- 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;
- (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;
- (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
- (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.”

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

1. By adding a new definition to be appropriately inserted and to read:

““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.”

2. By amending the definition of “substance abuse test” to read:

““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 3. Section 329B-3, Hawaii Revised Statutes, is amended to read as follows:

“[~~§329B-3~~] **Limitations.** No third party shall require, request, or suggest that any individual submit to a substance abuse test that does not meet all the requirements of this chapter except for third parties who are covered by [any] a drug testing regulation [promulgated] adopted by the [Hawaii] department of transportation or the United States Department of Transportation or any other federal agencies. All costs, including confirmatory testing costs, shall be paid for by the third party. Nothing in this chapter shall be construed to preclude the department or any laboratory certifying agency approved by the director from examining the records of laboratories, including substance abuse on-site screening locations, licensed for substance abuse testing to ascertain compliance with licensure or certification requirements, or to preclude the administration of breath tests to determine the alcohol content of the tested individual’s blood for purposes of this chapter.”

SECTION 4. Section 329B-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All substance abuse testing performed in the State shall be performed by a testing laboratory licensed by the department for that purpose, or certified for substance abuse testing by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services, and approved by the director[.], except as provided in section 329B-_____.”

SECTION 5. Section 329B-5, Hawaii Revised Statutes, is amended to read as follows:

“[~~§329B-5~~] **Substance abuse testing procedures and interpretation of [laboratory] test results.** (a) Prior to the collection of any sample for substance abuse testing, the individual to be tested shall receive a written statement of the specific substances to be tested for and a statement that over-the-counter medications or prescribed drugs may result in a positive test result. The individual, prior to the collection of any sample for substance abuse testing, shall receive a medication disclosure form, approved by the director, to permit the individual to disclose any over-the-counter medication or prescribed drug that the individual has taken within the previous thirty days.

(b) In accordance with this section, the director shall [create in administrative] adopt rules[, regulations] pertaining to:

- (1) [the] The qualifications, responsibilities, and licensing of the medical review officer;
- (2) [the] The use of medication disclosure forms;

- (3) [the] The method of transmittal of laboratory test results and any interpretations of test results to the third party and the tested individual; and
- (4) [the] The obtaining, disclosure, and confidentiality of substance abuse testing information.

(c) No laboratory, including a substance abuse on-site screening location, may test for any substance not included on the written statement containing the specific substances to be tested for.

(d) As used in this section, "test results" means laboratory test results or the results of substance abuse on-site screening tests."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Note

- 1. Edited pursuant to HRS §23G-16.5.