

Introduced: 4/17/87
 Referred: Labor & Commerce
 and Judiciary

1 IN THE HOUSE

BY SUND, ADAMS, KOPONEN,
 WALLIS AND BROWN

2 HOUSE BILL NO. 283

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting certain employers from testing
 7 employees for drugs or other substances consumed by
 8 employees."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. POLICY. (a) The legislature declares that it is the
 11 public policy of the state that all citizens enjoy the full benefits of the
 12 rights to privacy and due process of law, and the protection against unrea-
 13 sonable searches and seizures guaranteed by art. I, secs. 7, 14, and 22,
 14 Constitution of the State of Alaska.

15 (b) It is the purpose of this Act to protect employees against unrea-
 16 sonable inquiry and investigation into conduct and activities that happen
 17 outside of work and that are not directly related to the actual performance
 18 of job responsibilities.

19 * Sec. 2. AS 23.10 is amended by adding a new section to article 1 to
 20 read:

21 Sec. 23.10.038. TESTS FOR CONSUMED SUBSTANCES. (a) An employer
 22 may not request, require, or conduct random or company-wide blood,
 23 urine, or encephalographic testing. An employer may not suggest or
 24 require that an employee or an applicant for employment submit to a
 25 blood, urine, or encephalographic test that tests for the presence of
 26 drugs or other consumed substances as a condition of employment.
 27 However, an employer may require a specific employee to submit to
 28 blood or urine testing if

29 (1) the employer has reasonable grounds to believe that the

1 employee's faculties are impaired by a drug or other consumed sub-
2 stance on the job;

3 (2) the employee is in a position in which an impairment
4 would present a clear danger to the physical safety of the employee or
5 another person;

6 (3) the employer preserves an adequate sample or portion of
7 a sample so that the employee may conduct an independent test to
8 verify or refute the employer's results; and

9 (4) the employer provides the employee an opportunity to
10 rebut or explain the test results.

11 (b) In conducting tests permitted under this section, the em-
12 ployer shall limit the tests to the extent feasible so that only
13 information regarding chemical substances in the body that are likely
14 to affect the employee's ability to work safely is taken or recorded.

15 (c) In an action alleging that an employer violated this sec-
16 tion, the employer has the burden of proving that the requirements of
17 (a) of this section have been satisfied.

18 (d) This section does not prevent an employer from conducting
19 medical screening to monitor exposure to toxic or other unhealthy
20 substances found in the workplace or encountered in the performance of
21 the employees' job duties if the employer has the express written
22 consent of the employees. The screenings or tests must be limited to
23 the specific substances expressly identified in the employee consent
24 form.

25 (e) This section does not prohibit an employer from prohibiting
26 the use of intoxicating substances or tobacco during work hours or
27 from disciplining employees for using tobacco or being under the
28 influence of intoxicating substances during work hours.

29 (f) This section does not apply to

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(1) the state or a political subdivision of the state when dealing with peace officers or firefighters in its employ or persons applying to be employed as peace officers or firefighters; or

(2) an employer as to an employee operating emergency service vehicles for the state or a political subdivision of the state.

(g) A person who violates or assists in a violation of this section is liable to the person aggrieved for special and general damages, together with attorney's fees and the costs of the action as provided in the Alaska Rules of Court.

(h) A person who violates or proposes to violate this section may be enjoined by a court of competent jurisdiction. An aggrieved person, the attorney general, or a person or entity that will fairly and adequately represent the interest of the protected class may bring an action for injunctive relief.

(i) In this section

(1) "employer" means a person who retains by personal services contract or employs at least one other person and includes the state and a political subdivision of the state;

(2) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.