

Original sponsors: Sund, Adams,  
Koponen, et al.

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 283 (L&C)

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 or  
23 urine testing. An employer may not suggest or require that an  
24 employee or an applicant for employment submit to a blood or urine  
25 test that tests for the presence of drugs or other consumed substances  
26 as a condition of employment. However, an employer may require a  
27 specific employee to submit to blood or urine testing if

28 (1) the employer has reasonable grounds to believe that the  
29 employee's faculties are impaired by a drug or other consumed

1 substance on the job;

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

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

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

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

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

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

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

1 (f) This section does not apply to

2 (1) the state or a political subdivision of the state when  
3 dealing with aircraft pilots, peace officers, or firefighters in its  
4 employ or persons applying to be employed as aircraft pilots, peace  
5 officers, or firefighters; or

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

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

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

18 (i) In this section

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

22 (2) "firefighter" means a person who is a regular employee  
23 of a fire agency or organization of the state or a political subdivi-  
24 sion of the state and who is authorized to act under AS 18.70;

25 (3) "peace officer" means a person who is a regular em-  
26 ployee of the state or a political subdivision of the state and who  
27 has primary responsibility for the prevention and detection of crime  
28 and the enforcement of the fish and game, penal, traffic, or highway  
29 laws of the state or the employing political subdivision.