

HB

283

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An act prohibiting certain BRU: Personnel
employers from testing employees for *
 Sponsor: Sund, Adams, Koponen, Wallis Components: Centralized Administrative Service
and Brown
 Requestor: _____

* drugs or other substances consumed by employees.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There will be no fiscal impact to the Division of Personnel

Prepared By: Diana DeSimone
 Division: Personnel

Phone: 465-4430
 Date: 1-21-88

Approved by Commissioner: John M. Andrews
 Agency: Department of Administration

Date: 1/25/88

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Date referred: 4/17/87

FURTHER REFERRALS: Judiciary

DATE: 5/13/87

The Labor & Commerce Committee has considered HB 283

"An Act prohibiting certain employers from testing employees for drugs or other substances consumed by employees."

RECOMMENDS:

- replace with CS HB283 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Ellis

David Dinsley

Nick Kepone

SIGNING OTHER RECOMMENDATIONS:

David Dinsley NO REC

David Dinsley NO REC

~~_____~~

David Dinsley

Chairman's signature

... substances
as a condition of employment. However, an employer may require a
specific employee to submit to blood



LONG ISLAND DEVELOPMENT, INC.

PO. Box 5960 • Ketchikan, Alaska 99901 • 907-225-2675

April 23, 1987

Representative John L. Sund
Box V
Juneau, AK 99811

Dear Mr. Sund:

As the President and General Manager of Long Island Development, an employer of 400 plus employees, I'm amazed and equally disappointed that someone with your excellent reputation would have his name attached to a piece of garbage Legislation such as House Bill No. 283.

As a father of two teenage children in attendance at Ketchikan High School, and another in the sixth grade at White Cliff Elementary School, I'm also equally concerned with your apparent encouragement of Drugs in society. Apparently my children's, and all the kids of Ketchikan's, welfare are much more important to me than to you.

It is hard for me to keep this letter to you strictly on a business standpoint, because kids are more important to me than my business. Any Legislation, that encourages Drugs in society, is misdirected.

Long Island Development became interested in Drugs, and their toll in the work force, due to our poor safety record in 1984. We read all the studies on the subject, and remained on the side lines as to forming any sort of a Drug Policy.

However, late in 1985 one of our employees overdosed on Cocaine at our Long Island Camp and just about died. The fact that we had a killer, like Cocaine in our camp, prompted us to research into our problem at Long Island.

We found out that we had employees threatening to kill other employees if they talked about the Drug problem. We became aware of nightly and weekly Drug parties, and that we had pushers of Drugs employed by us, and that they were being supplied by people from Ketchikan.

Letter to Representative John Sund
April 23, 1987
Page 2

It, also, was very evident that we had a small community of 150 people who were extremely frightened by the environment in which they were living.

We, also, connected poor attendance and safety with our drug problem. All studies state this connection as fact, and we wondered if we were yet another fact.

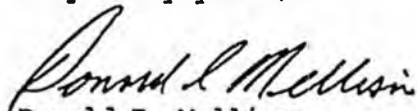
We implemented a Drug Policy to commence with the start of the 1986 work season. Since that Policy was implemented, we have reduced by 50% our Workers Compensation claims. We have eliminated those employees who were threatening others, and Long Island residents now live in a much better atmosphere.

As a side benefit, our productivity also increased significantly in 1986.

The logging industry is a very dangerous industry, and it is no coincidence that since the advent of Drugs into society that industrial accidents and fatalities have been on the rise. Long Island Development believes that the "rights" of our employees to work and live in a drug free environment, which then becomes a more safer environment, is a much larger issue. The rights of a drug user to continue his habit in the work force and subsequently jeopardize himself as well as those around him to possible injury or death is of no concern to us.

We strongly urge you, Mr. Sund, to withdraw your support from House Bill No. 283, and join forces with us to make Southeast Alaska a better and safer place to live and raise children.

Very truly yours,



Donald I. Mellison
President/General Manager
Long Island Development, Inc.

DIM/sf

child?"

The most reasonable course of action to take - and it must be taken immediately - is to ensure that these sea lions don't come flocking to the channel because it's a fine place to be for a soft and easy life. That means any deliberate feeding of the mammals must be prohibited, and the prohibition rigidly enforced - just like the "don't feed the bears" rules in national parks.

In addition, we must ensure that there is no non-deliberate feeding of the sea lions through poor dumping practices.

Kodiak is blessed with much of nature's bounty and beauty. And the magnificent, protected species of sea lions have their place in all of this. But that is not, definitely not, losing their fear of humans and living a lifestyle where they come to expect a free lunch from every two-legged creature they see.

- Kodiak Mirror

Washington today

A last que

By LAWRENCE L. KNUTSON
Associated Press Writer

WASHINGTON (AP) - Hundreds of questions had been asked and answered, and attorney Arthur L. Liman had just one more

To ask it he had to imply, perhaps even to declare, that as the secrecy of the Iran-Contra connection was evaporating last November, Robert C. McFarlane the former national security adviser, had violated his own principles, had participated in a lie

The ultimate question, posed before the House-Senate Iran-Contra investigating committees in the House Foreign Affairs Committee hearing room, was a simple one: "How did it happen? What's the lesson?"

McFarlane didn't answer it, although he said he would if asked again.

Instead, he vented a anger, asserting that after more than five hours of questioning he had not been permitted to place in understandable context the secret arms sales to Iran and the diversion of some of the proceeds to Nicaragua's Contra rebels.

"I think Mr. Liman that's at the heart of the purpose that we share

here. Me the questi thorough missing fro today. I fe I'll be glad

"Today's sary has perspective events can I mustonist

Liman, II attorney w

Senate Iran ing he took had remin written by Vice Adm Navy office at the Natio

McFarlan Poindexter ant and ha

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Liman." McFarlan Liman:

that heri dedicated

Letters

Ketchikan Daily News 5-14-87

Disturbed

EDITOR, Daily News.

I have become aware of proposed House Bill No. 283 sponsored and authorized by Rep. John Sund of Ketchikan. If passed, this legislation will prohibit Alaskan employers the right of testing either present or prospective employees for the presence of drugs in their system.

I have two children presently enrolled at Ketchikan High School. My children, as well as all the children of Ketchikan, are exposed to drugs every day in the community and at school. Drugs are a problem in Ketchikan and society in general, and it greatly disturbs me that Rep. Sund clearly stands for drugs in Ketchikan by his very support of this legislation.

I have been in contact by letter with John Sund and asked him to withdraw his support of this legislation. To date I have had no response from Rep. Sund. Fortunately, Southeast's other representatives, Robin Taylor and Lloyd Jones, do understand the problems with drugs and have committed to work hard against House Bill No. 283.

I trust the voters of this district, when at the polls next time Rep. John Sund chooses to run for public office, will remember his support for drug legislation and elect someone else, with a little more concern for

the community we live in, and the youth of Ketchikan.

Very truly yours,
DONALDI MELLISON
Ketchikan

Get involved

EDITOR, Daily News.

To: Members of Bartenders Culinary Workers Union

I'm writing this letter regarding your lack of support of the pickets in front of the 108 Bar.

There are only a small number of union members who faithfully walk the picket line. Evidently, a larger number of union members have been lax in attending union meetings and are not fully aware, or are uninformed or misinformed as to why the 108 Bar is being picketed.

Come on, get into it! Attend the meetings! Support your fellow members. Get informed; find out what's going on! Face it, if this establishment is able to withdraw from the union and other businesses follow their path, what will happen to your wages and other benefits? How could anyone live on minimum wages, without health and welfare insurance benefits to help take care of your families?

Think about your future; get involved with your union. Your livelihood is at stake! Don't just pay your dues; get yourself to the meetings and support your Union!

W. GONZALES
Alaska Fishermen's Union

Washington briefs

WASHINGTON (AP) - The federal government has requested a quick appeal in the General Motors Corp. X-car case, saying evidence suggests brake systems on the 1980-model cars pose a danger to motorists while 848,000 of the vehicles remain on the road.

The government has been waging a three-year struggle to force recall of 1980 GM X-cars. The Justice

Department asking the set a sche an injuncti

U.S. District Judge Jack... governme design sa X-body e Citation, Skylark ar

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



May 15, 1987

Donald Mellison, President & General Manager
Long Island Development, Inc.
P.O. Box 5960
Ketchikan, Alaska 99901

Dear Mr. Mellison:

We are writing to express our dismay at your continued personal attacks on a member of our body for introducing a bill that would prohibit random drug tests on employees without probable cause.

HB 283, by Representative Sund, was heard by the House Labor and Commerce Committee last week. Like yourself and Representative Sund, we are all concerned about drug use in the workplace and the effects of drugs on our communities and our children.

However, we are also concerned about the negative aspects of random drug testing programs. To suggest that Representative Sund, by introducing HB 283, and our Committee, by having the audacity to hear it, are somehow condoning drug use in the workplace is patently ridiculous.

During our Committee hearing we heard compelling testimony that random drug tests without probable cause are a clear violation of basic constitutional rights.

Further, we learned that current drug testing programs in Alaska are dangerously inaccurate and too often result in "false positive" readings.

Drug testing itself is an embarrassing and traumatic experience for most Alaskans. A false positive can cost a worker their job, prevent them from finding another one, disgrace them in the eyes of their community and forever strip them of their good name.

It is entirely appropriate for the Legislature to consider measures to protect Alaskan workers in these circumstances. Public testimony on HB 283 was strongly in favor of the measure.

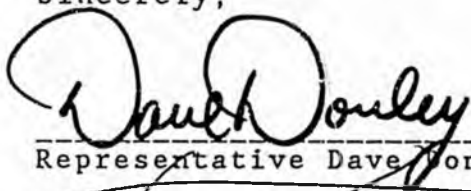
HB 283 does not prohibit testing of employees when there is any reason to believe they are actually under the influence of drugs or using drugs on the job. Nor does the measure prohibit routine and random testing of employees in positions

involving public safety such as firefighters, peace officers and pilots.

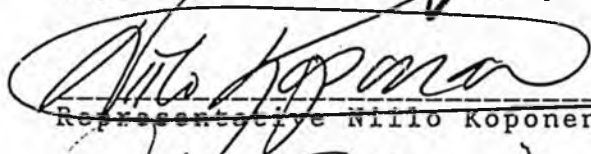
Your attempts to stifle public debate by threats and innuendo, and your insistence on vicious personal attacks on elected officials is unfortunate and unwarranted.

We suggest that you change your tactics so that reasoned debate by reasonable people can produce legislation that protects the inherent rights of all Alaskans without unduly interfering with an employers ability to eliminate drugs from the workplace.

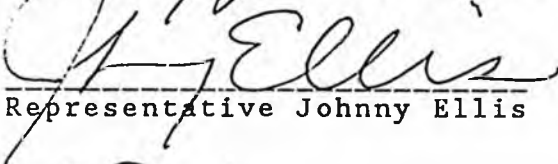
Sincerely,



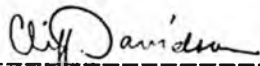
Representative Dave Donley, Chair



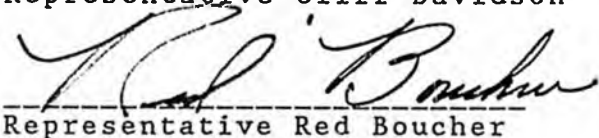
Representative Niilo Koponen, Vice-Chair



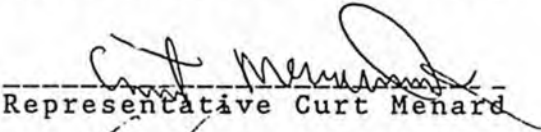
Representative Johnny Ellis



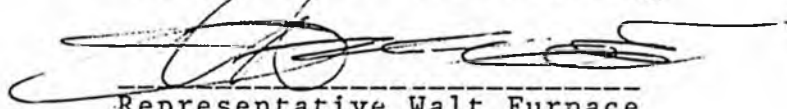
Representative Cliff Davidson



Representative Red Boucher



Representative Curt Menard



Representative Walt Furnace

cc: Ketchikan Daily News

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

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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. 1, 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 bloody
23 or 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. This section does not prevent an employer from conducting
25 medical screening or tests for toxic exposure to the extent required
26 by law.

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

1 influence of intoxicating substances during work hours.

2 (f) This section does not apply to

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

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

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

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

19 (1) In this section

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

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

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

1 laws of the state or the employing political subdivision.
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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. This section does not prevent an employer from conducting
25 medical screening or tests for toxic exposure to the extent required
26 by law.

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 283
Publish Date: _____

Revision Date: _____
Title: "An Act prohibiting certain employers
from testing employees for drugs..."
Sponsor: Representative Sund
Requestor: House Labor & Commerce

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: May 11, 1987
 Approved by Commissioner: Richard I. Pegues / GR Date: May 11, 1987
 Agency: Grace Berg Schaittle, Atty. Gen.
Department of Law

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 283

This bill amends AS 23.10 by adding a new section that prohibits certain employers from testing employees for drugs or other substances consumed by employees. This testing prohibition would also extend to applicants for employment. The bill would permit an employer to require a specific employee to submit to testing, if the employer had reasonable grounds to believe the employee's faculties are impaired by a drug or other consumed substance on the job. The new section does not apply to 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.

The bill provides that a person who violates the new section may be enjoined by a court of competent jurisdiction. And it further provides that a person who violates or assists in the violation of the section is liable to the aggrieved person for special and general damages, together with attorney's fees and costs. 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. It is not anticipated that the attorney general will often become involved in seeking injunctive relief, because of the private right of action that the bill provides to individuals, including an individual's right to seek damages against violators.



GREATER SITKA

Chamber of Commerce, Inc.

DATE: May 7, 1987

TO: ~~Chairman~~
House Labor & Commerce Committee
Alaska State Legislature

Committee Members:

Koponen
Boucher
Davidson
Ellis
Furnace
Menard

RE: HB 283 -- Employee Drug Testing

FROM: Roger L. Hames, President
Greater Sitka Chamber of Commerce

The Greater Sitka Chamber of Commerce Board of Directors opposes HB 283 and urges you to drop this bill from consideration. Due to the excessive costs to the employer from lost production (from physical and functional absenteeism and premature mortality from accidents at the workplace, particularly in industrial operations) and due to the skyrocketing costs of employee medical, we believe the employer has the right to exercise prehire physical testing which includes screening for alcohol and drug abuse. Many of the companies in business today have contractual or moral obligations to provide employees with rehabilitation for alcohol and drug abuse. Because of this significant cost, both in dollars for insurance fees and lost time, we believe the employer has the right to protect himself from these excessive costs by requiring prehire physical testing if he so desires.

We also believe that it is an employee's right to be assured that individuals working alongside of him are in good health and of clear mind.

cc: Senator Dick Eliason
Representative Ben Grussendorf

Proposed Amendment
to House Bill 283
by the Department of Labor

Amend lines 21-24 on page 2 to read:

the employees' job duties. The screenings or tests must be limited
to the specific substances to which the employee may be exposed.



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

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ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

Jean Krause, President

Judy Selo
Vice-President
4510 Kenaitze Court
Kenai, Alaska 99611

May 12, 1987

Susan Siltham
NEA Director
P.O. Box 80913, College Station
Fairbanks, Alaska 99708

To: Rep. Dave Donley, Chair
Members, House Labor & Commerce Committee

Alan Dill
Region I Director
P.O. Box 423
Sitka, Alaska 99835

Phil Myerchin
Region I Director
717 Canyon Road
Ketchikan, Alaska 99901

Re: House Bill No. 283; "An Act prohibiting certain employers from testing employees for drugs or other substances consumed by employees."

Teresa Benolkin
Region II Director
P.O. Box 874335
Wasilla, Alaska 99687

NEA-Alaska supports and encourages the Committee to act favorably on HB 283.

Beverly Goad
Region II Director
Box 343
Copper Center, Alaska 99573

Protection of basic constitutional rights is essential. This legislation does so while providing employees the opportunity to deal with specific circumstances under a test of reasonableness while safe-guarding the rights of employees.

Don Oberg
Region III Director
Box 1084
Kenai, Alaska 99611

The Committee may want to consider the construction of the title of this legislation since it could be read to imply that "drugs or other substances are in fact consumed by employees," rather than possibly consumed by employees.

Phil Brady
Region IV Director
Scammon Bay Schools
Scammon Bay, Alaska 99662

Thank you for your consideration of our support.

Myra Poage
Region IV Director
Box 973
Nome, Alaska 99762

Respectfully submitted,

Joann Walker
Region IV Director
Box 570
Kotzebue, Alaska 99752

Robert Manners
Executive Secretary

Mary Lou Brent
Region V Director
Box 80074
Fairbanks, Alaska 99708

BM69/dl

Carol Merritt
Region V Director
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Loretta Christie
Region VI Director
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Anchorage, Alaska 99504

Pam McCarl
Region VI Director
2115 Sorbus Way
Anchorage, Alaska 99508

Pam Reynolds
Region VI Director
8031 Evans Circle
Anchorage, Alaska 99507

Dave Schwantes
Region VI Director
8148 E. 4th Avenue
Anchorage, Alaska 99504

Peg Stout
Region VI Director
6208 E. 34th Avenue
Anchorage, Alaska 99504

POSITION PAPER

HB 283

House Bill 283 insures that Alaska employers, including the State of Alaska, cannot conduct random testing for the use of drugs or other substances. Policy guidelines are outlined in Section 1 of the legislation. It also stipulates in Section 2 that testing can only be conducted for cause and lists those various circumstances.

The issue of drug testing in the workplace has gained national attention. There is little question of the serious nature of substance abuse in this country. The problems of the health and safety of the public, decreased productivity, and increased medical costs resulting from that abuse are real, both in the workplace and in society as a whole. Balancing out these concerns is the concern that employers, both public and private, conduct themselves in a business-like manner in relationship to their employees, with full regard for the individual and constitutional rights of those individuals. For many employers, the process of finding an approach that is both effective and legally defensible has been difficult without clear guidelines. Employers who have instituted drug testing programs without considering both aspects of the issue have frequently found themselves the object of lawsuits filed by employees who believe that their constitutional rights to privacy had been violated.

During the past year, the courts have been providing some guidance as more employers have been sued by employee groups subjected to drug testing procedures. It is becoming clear that an acceptable basis for a drug testing plan is that it be "job related" or "for cause." Recent court decisions have favored individual rights over employers' rights to institute drug testing carte blanche. In the case of Murray v. Brooklyn Gas Co., 122LRRM 2057 (N.Y. Sup Ct, 1986), the company's decision to implement a urinalysis testing program for all of its employees was successfully challenged. In its decision the court stated, ". . . to arbitrarily test without reason whatsoever; . . . is an impingement on the rights of individuals." However, the court further held that its ruling did not preclude testing for cause.

In the case of Amalgamated Transit Union v. Suscy (538 Fed Rprt 2d 1264), the Seventh Court of Appeals supported the Chicago Transit Authority's drug and alcohol testing plan for bus drivers who were involved in a serious accident or who exhibited suspicious behavior. The court held that such testing does not invade the privacy or violate the rights of these types of employees. Furthermore, the court held that even without specific situations that indicate a reasonable suspicion, a public employer may require its employees to undergo medical tests to determine fitness for work, and to discipline employees based upon the results of the test. In this situation, "bus drivers" can be seen to be directly responsible for the safety of others.

The legislature may wish to clarify the definition of "peace officer" in Sec 23.10.038(i)(2). As currently written it may exclude positions in such classes as Correctional Officer, Court Services Officer, and Fish and Wildlife Enforcement Officer.

POSITION PAPER
HB 283

It is clear that drug and alcohol abuse can negatively affect an employee's work performance and behavior. Work and performance problems that are related to substance abuse must be confronted and combated in the work place, but it must be done in such a way that individual rights are protected. Again, it appears this legislation meets these concerns and is consistent with recent court rulings on this matter. The Department of Administration supports HB 283.

Diana DeSimone

Diana DeSimone, Director
Division of Personnel

5/5/87

Date

Garrey Peska

Commissioner Garrey Peska
Department of Administration

5/8/87

Date

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 283
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: An act prohibiting certain employers
from testing employees for drugs or other
other substances consumed by employees.
Sponsor: Sund, Adams, Koponen, Wallis
Requestor: and Brown

Agency Affected: All
BRU: All
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:	0	0	0	0	0	0
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

There will be no fiscal impact to the Division of Personnel

Prepared By: Diana DeSimone *DD*
Division: Personnel *AS*
Approved by Commissioner: Garrey Peska *GP*
Agency: Department of Administration

Phone: 465-4430
Date: 5/5/87
Date: 5/8/87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

BILL NO: HB 283

DATE: May 6, 1987

TITLE: "An Act prohibiting certain employers from testing employees for drugs or other substances..."

CONTACT: *WJ Gilmour*
Maj. Walter J. Gilmour
Acting Director
Alaska State Troopers

DEPARTMENT OF
PUBLIC SAFETY

POSTED BY PAPER /

To protect the right of privacy and unreasonable search and seizure of employees by employers.

This proposed legislation would protect employees from random or company-wide testing for drugs, or other substances consumed, without just cause. The legislation excepts peace officers, firefighters, or applicants thereof, or persons who operate emergency services vehicles.

Perhaps consideration should be given to include aircraft pilots who fall under the jurisdiction of the state.

The Department of Public Safety is neutral on this legislation.



ARTHUR ENGLISH
Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 283

Publish Date: _____

REQUEST

Revision Date: _____

Agency Affected: Public Safety

Title: "An Act prohibiting certain employers from testing employees..."

BRU: Alaska State Troopers

Sponsor: Judicial Committee

Components: Detachments & CIB

Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *G.C.A.*

Phone: 269-5691

Division: Alaska State Troopers

Date: 5/6/87

Approved by Commissioner: Arthur English *unsp/pc*

Date: 5/8/87

Agency: Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

JML
5/8/87

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : HB 283

Publish Date : _____

REQUEST: _____

Revision Date: _____

Title: "An Act prohibiting...testing employees for drugs..."

Sponsor: Sund, et al

Requestor: House Labor and Commerce

Agency Affected: Labor

BRU: Labor Standards and Safety

Components: Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director
Division: Labor Standards and Safety

Phone: 465-4870
Date: 5/11/87

Approved by Commissioner: Jim Sampson
Agency: Labor

Date: 5/11/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary



KLUKWAN, INC.

P.O. Box 2077, Juneau, Alaska 99803 (907) 789-7361



May 11, 1987

Representative, Dave Donley, Chairman
Labor & Commerce Committee
P.O. Box V
Juneau, Alaska 99811

RE: HB-283 An Act Prohibiting Drug Testing

Dear Chairman Donley and Members of the Committee:

During the past twelve months, Klukwan, Inc. and its subsidiaries have instituted a drug and alcohol policy that we feel has been very successful. The spirit of the policy is set forth in the following two paragraphs, an excerpt from our Employee Handbook.

"To help insure a safe, healthy and productive work environment for the employees of Klukwan, Inc. and its subsidiaries, (hereinafter refer to collectively as "Company") and others on Company property, to protect Company property and assets, and to assure efficient operations, the Company has adopted a Policy on drugs and alcohol."

"It is the Policy of the Company to maintain its property and provide a working environment that is both safe for our employees, including others having business with the Company or on Company property, and is conducive to high and productive work standards. This policy restricts certain items and substances from being brought on or being present on Company property, and prohibits Company employees from having in there systems detectable levels or identifiable traces of certain drug or other substances."

Part of our policy is to require a drug screen urinalysis as part of the pre-employment procedure. If an applicant should fail the test a second test may be taken after thirty days.

Another area that requires a drug screen test and a blood alcohol test is if an employee is injured on the job to the extent that medical attention is required or

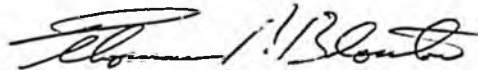
Representative, Dave Donley, Chairman
Labor & Commerce Committee
May 11, 1987
Page 2

in the event that an accident results in the
destruction or loss of company property.

Klukwan, Inc. and its subsidiaries has nearly five
hundred employees in Southeast Alaska. Our employees
have accepted the drug and alcohol Policy. The work
they perform can be hazardous and each employee is
entitled to the safest working conditions that can be
provided.

For over a year industry has made significant progress
to eradicate drugs from the work place. House Bill-283
is a substantial step backwards. Legislation that
prohibits drug testing will significantly impair
industries fight against illegal drugs, and makes it
more difficult to provide our employees with safe
working conditions. We ask that this proposed
legislation not be approved.

Very truly yours,



Thomas P. Blanton
Vice President,
General Counsel

TPB:skl

ACLU SPEAKS OUT!

DRUG TESTING IN THE WORKPLACE

On September 15, 1986, President Reagan issued his much anticipated executive order on the "Drug Free Federal Workplace." The order calls for the testing of approximately 1.2 million federal employees, the vast majority of whom are not even suspected of using illegal drugs. Although the order has been widely criticized, it symbolizes a trend toward forcing employees to submit to urine tests or else lose their jobs. Indeed, one-third of major American companies have now instituted such programs, presumably to remedy impaired job performance that results from drug abuse.

The American Civil Liberties Union opposes indiscriminate urine testing because we believe it is unfair and unreasonable to force millions of American workers who are not even suspected of using drugs, and whose job performance is satisfactory, to submit to degrading and intrusive urine tests on a regular basis. It is unfair to treat the innocent and the guilty alike.

Here are some frequent questions posed by members of the public about our stand on drug testing:

? *Don't employers have the right to expect their employees not to be high on drugs on the job?*

! Of course they do. Employers have the right to expect their employees not to be high, or stoned, or drunk, or sound asleep. Job performance is the bottom line; if you can't do the work, you get fired. But urine tests don't measure job performance. Nor do they measure current impairment or intoxication. The only thing such tests are capable of detecting are the metabolites of various substances ingested some time in the past.

? *Can urine tests determine when a particular drug was used?*

! No. Urinalysis can not determine when a particular drug was ingested, and the metabolites of some drugs will show up in urine weeks after ingestion. An

in the evening? What has that to do with their fitness to work? While employers do have the right to regulate their employees' activities during the workday, they do not and should not have the right to regulate their employees' off-the-job recreational activities. Millions of executives regularly have a drink or two at lunch, and it has never been deemed necessary to test them. Why test workers for their activities on weekends or on vacation?

? *If you don't use drugs, you have nothing to hide. Why object to testing?*

! Innocent people do have something to hide: their privacy. This "right to be left alone" is, in the words of the eminent Supreme Court Justice Louis Brandeis, "the most comprehensive of rights and the right most valued by civilized men." Urine tests are an unprecedented invasion of privacy. In order to guard against specimen tampering, it is standard practice to require employees to urinate in the presence of a witness, which, in the words of one judge, is "an experience which even if courteously supervised can be humiliating and degrading."

Analysis of one's urine can disclose many details about one's private life other than drug use. It can tell a company whether an employee or job applicant is being treated for a heart condition, depression, epilepsy, diabetes or schizophrenia. It can also reveal whether an employee is pregnant.

Innocent people also have reason to be concerned because the method of urinalysis most commonly used in drug testing (the "EMIT kit") is inherently unreliable. The EMIT kit gives a false positive result at least 10 percent and possibly as much as 30 percent of the time. Experts understand the test's unreliability. At a recent conference, 120 forensic scientists were asked, "Is there anybody who would submit urine for cannabinoid [marijuana] testing if his career, reputation, freedom or livelihood depended on it?" Not a single hand went up.

The EMIT test confuses substances. For example, over-the-counter cough medicines can show up as heroin. Certain antibiotics show up as cocaine; as many as eleven different legal substances may show up as marijuana. It is universally advised

sophisticated confirmatory tests. But such confirmatory tests are expensive, and in practice many employers do not use them. Millions of people across the country risk not being hired or losing their jobs and their reputations based on one unconfirmed, unreliable test.

? *Still, isn't indiscriminate testing the best way to catch the users?*

! It may be the easiest way to identify drug users, but it is also by far the most un-American. There is a long tradition in the United States that general searches of innocent people are unfair. This tradition began in colonial America, when King George's soldiers searched everyone indiscriminately in order to uncover those few who were committing offenses against the Crown. These general searches were deeply hated by the early Americans, and were a leading cause of the Revolution. After the Revolution, and fresh from the experience of the unfairness of indiscriminate searches, the Fourth Amendment was passed. It says that you cannot search everyone, innocent and guilty alike, to find the few who are guilty. You must have good reason to suspect a particular person before subjecting him or her to intrusive and degrading body searches.

But mandatory, general drug testing programs threaten to turn these traditional principles upside down. Compulsory blood and urine tests are bodily searches, according to the U.S. Supreme Court. The lower courts have already struck down mandatory testing programs in several government workplaces as violative of the Fourth Amendment because they were not based on particularized suspicion. And although the Fourth Amendment doesn't legally limit the power of private employers, the same principles of fairness ought to apply. Tests should be limited to those workers who are reasonably suspected of using drugs (including alcohol) in a way that impairs job performance.

? *Aren't there exceptions to the rule? Shouldn't workers such as airline pilots, who can endanger the lives of others if they aren't functioning properly, be subject to drug testing?*

Drug-testing bandwagon rolling over workers' rights

by DON CLOCKSIN

A single mother working in sales is forced to urinate in front of her employer or be fired. . . . A school bus driver is fired for failing a urine drug test — even though he passed tests taken the day before and the day after. . . . An oil field worker is fired because he refused to submit to a urinalysis to test whether he smoked marijuana during his two weeks off work. . . . A white collar criminal released from prison has his parole revoked after a urine test shows a "false positive" because he took Sudafed. . . . A group of workers on a remote job site are locked in a room until they sign a waiver of their rights and urinate in a bottle. . . . A woman must tell her employer she's taking birth control pills or be fired for refusing to cooperate in a testing program. . . . A construction worker with a perfect safety record is fired for refusing to urinate in front of witnesses.

These situations are based on actual cases that come before the Alaska Chapter of the American Civil Liberties Union. These people are the casualties in the national war on drugs. They're people like you and me but whose jobs are lost and careers snuffed out, all because their employers decided to get on the "drug war" bandwagon.

In September 1986, President Reagan issued his executive order requiring a "drug-free" federal workplace. While the order only applies to certain "sensitive" federal workers, thousands of private employers have also instituted urine testing to their employees.



Urine drug testing requires that a worker urinate in a bottle — often in front of witnesses. The urine is then sent to a laboratory for testing. If the results are "positive," the employee is fired or suspended, often without an opportunity for appeal.

It is true that employers have a right not to have employees high on drugs while they work. But the urine tests do not measure job performance or current impairment. They only reveal the existence of certain substances ingested at some unknown time in the past — up to 30 days before, in the case of marijuana. Employers should not have the right to regulate their employees' off-the-job recreational activities.

Further, few testing programs test for alcohol, which is acknowledged to be Alaska's most serious health problem — on and off the job. Both alcohol and cigarette smoking have greater economic costs to industry than drug use, yet we don't see tests for them.

Many people believe only drug abusers have something to lose from urine testing, but that's not true. The Alaska Constitution provides that "the right of people to privacy is recognized and shall not be infringed." Innocent people lose their privacy rights.

Analysis of urine can disclose many details

about one's private life. It can reveal pregnancy, depression, epilepsy, or diabetes. The preliminary urine test used for drugs will often register a "false positive" because of the ingestion of Sudafed, Advil, decongestants, poppyseed bagels, birth control pills etc.

A basic tenet of our system of law is the presumption of innocence. An employee who must prove the absence of drugs is presumed guilty and must prove his/her innocence. Thus, his right to the presumption of innocence is violated. Further, indiscriminate searches without a reasonable suspicion that the victims use drugs on the jobs violate the constitutional prohibition of unreasonable searches of citizens.

Urine testing is expanding rapidly in Alaska. The Alaska Railroad, school district contractors, the federal government, oil field companies, moving firms, construction companies — they're all caught up in it. Almost all these employers have two things in common. First, there is no major on-the-job drug problem. Time after time these companies have admitted they have little or no evidence of drug use affecting job performance. Second, all these companies apparently believe that workers without contracts have no rights. Employers — and their lawyers — say that most workers are employed "at will" and can be fired at any time for almost any reason. Thus, they conclude, workers can be fired for refusing to submit to a urine test, or for failing the test.

I disagree. Workers have rights, including the right to be left alone if they are per-

forming their jobs well.

There are alternatives to indiscriminate urine testing. "Reasonable suspicion" testing and voluntary testing will increase workplace safety. An extensive public education campaign will work as well. Cigarette smoking has dropped substantially, primarily as a result of non-mandatory workplace education efforts. Finally, effective on-the-job alcohol abuse will increase workplace safety. Urine testing will never accomplish.

The ACLU and others have fought to get this bill back. A bill has been drafted by the ACLU to prohibit the use of urine drug tests as a condition of employment, absent reasonable suspicion of on-the-job drug use.

The ACLU has obtained volunteer lawyers to help with two cases — the oil field worker and the bus driver. A national test case on Reagan's "drug-free federal workplace" has been filed in federal court in Alaska.

Indiscriminate urine testing should stop. It is unfair and unnecessary to force thousands of Alaskans who are not using drugs and whose jobs are not affected to submit to arbitrary, expensive and inaccurate drug tests, or to lose their jobs.

Former state Rep. Don Clocksin is a lawyer and a board member of the Alaska Chapter of the American Civil Liberties Union.

ment or intoxication. It would be far more meaningful to require all airline pilots to undergo a brief neurological exam for impaired visual acuity or motor coordination before stepping into the cockpit. No one could object to that. But urine testing is simply irrelevant to the issue of job impairment, and people in high risk occupations should be subjected to urinalysis on the same basis as anyone else—only to confirm a reasonable suspicion, based on observation, that a particular individual is job impaired because of drug abuse.

more inhibiting drug use under control than the most massive program of testing. Such efforts work. Since 1965, the proportion of Americans who habitually smoke cigarettes has gone down from 49 percent to 32 percent. Those who have studied this decline attribute it to public education. Certainly, it cannot be attributed to forced testing or employer sanctions.

In a number of schools, drug education courses have succeeded in teaching teenagers that it is all right to say "no" to drugs. We cannot stop everyone from using drugs, but we can encourage people to be more intelligent and prudent in their attitudes and behavior toward drugs, just as we do with alcohol and cigarettes.



But if the Constitution doesn't apply to private employees, how can the privacy rights of private employees be protected?



Only by special federal or state laws or by union contracts. At this time employees of private companies have virtually no protection against the mandatory

drug testing programs that have now been adopted by one-third of the Fortune 500 companies. The ACLU believes it is grossly unfair that government workers are protected in their right to privacy while their counterparts in private industry are not. In a number of states, including California and Washington, the ACLU is attempting to remedy this disparity by using state privacy statutes—in many cases more far-reaching than the Fourth Amendment—to challenge drug testing programs in the private sector. The ACLU also urges labor unions to push for the inclusion of a ban on blanket testing in collective bargaining agreements.

The rights of non-union employees are best protected by pressing for the passage of federal, state or local legislation. Because of the efforts of the ACLU and other concerned organizations, the city of San Francisco, for example, has enacted a model law that protects workers in private industry from indiscriminate drug testing. The new law says that no employer doing business in San Francisco may demand, require, or request employees to submit to, or to take or to undergo any blood, urine, or saliva sample, test or analysis as a condition of continued employment, unless three conditions are met:

1. the employer has reason to believe the employee's faculties are impaired on the job;
2. the employee's impairment presents a clear and present danger to his own safety or the safety of others;
3. the employer gives the employee the opportunity, at the employer's expense, to have the sample tested by an independent laboratory and gives the employee an opportunity to rebut or explain the results.

This law strikes the delicate balance between an employee's fundamental right to privacy and the legitimate business needs of the employer.



What about the high economic costs to industry of drug use? Shouldn't employers be permitted to institute drug testing as a way to protect their investments?

The economic costs to industry of drug use are cited to justify mass drug testing in the workplace. Billions of dollars, we are told, are lost through low productivity and absenteeism. Some experts question these estimates as extrapolations and projections that have no convincing data base. Moreover, the economic costs of alcoholism and heavy cigarette smoking are without doubt higher, since so many more people use alcohol and smoke. But no one has yet suggested tests to discover the extent to which workers are drinking or smoking in the evenings or on weekends.

The people who most often cite the high economic costs to industry caused by drug use are the same people who are reaping huge profits from urine testing—manufacturers of the urine test, chemical laboratories and professional drug abuse consultants. Their pronouncements ought to be viewed with skepticism.



If urine testing is out, is there anything left that can be done about the drug "epidemic"?

Urine testing doesn't prevent drug use, or cure addiction. Punishment and voluntary rehabilitation are the only approaches that do. A well-funded, well-coordinated public education effort, such as the anti-smoking campaign, would do



Have any courts ruled that mandatory urine testing of government employees is a violation of the Constitution?



Yes, the majority of state and federal courts have ruled that testing programs in public workplaces are unconstitutional if they are not based on some kind of individualized suspicion. For example, state courts in New York have struck down programs that tested teachers and police officers on a random basis. A federal court in Iowa ruled against drug tests for all state prison guards.

In New Jersey, a federal judge rejected a program under which all municipal firefighters and police employees were tested without notice, standards or probable cause. "In order to win the war on drugs, we must not sacrifice the life of the Constitution in the battle," the judge said, labeling drug testing "George Orwell's 'Big Brother' society or '1984'." The ACLU participated in all of these legal victories.

In New Orleans, a federal judge ruled that mandatory urine testing of Customs Service agents violated the Fourth Amendment's provision against unreasonable search and seizure and ordered Customs to discontinue the procedure. The judge characterized the urinalysis procedure as more intrusive than a search of the home. An attorney for the National Treasury Employees Union, which brought the lawsuit, said the decision was a significant obstacle to the President's order for mandatory drug testing of federal employees.

The American Civil Liberties Union, founded in 1920, is the nation's only organization working full-time to defend the entire Bill of Rights. For information on how to join the ACLU, or to learn more about the ACLU's positions on other issues, contact the national ACLU or your local affiliate.

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