

HB

207

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 9, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/11/97

The JUDICIARY Committee considered:

HB 207

HOUSE BILL NO. 207

EMPLOYER DRUG TESTING PROGRAM

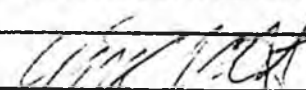
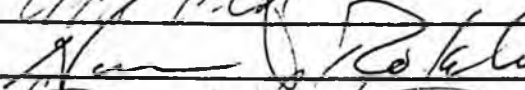
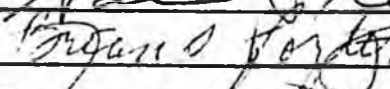

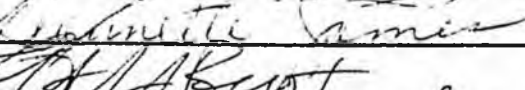
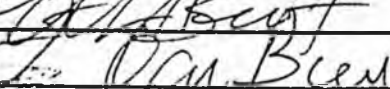
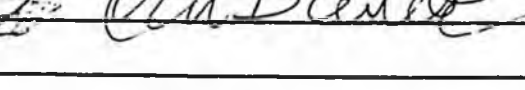
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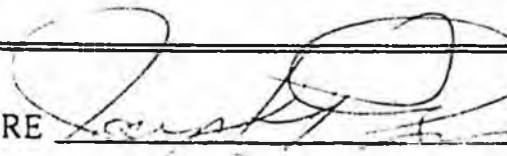
recommends it be replaced with the following committee substitute CSHB 207 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____
 zero fiscal note(s) LABOR zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
 CRAFT			✓	
 ROKEBERG	✓			
 PORTER	✓			
 GREEN	✓			
 JAMES			✓	
 BERKOWITZ			✓	
 BUNDE			✓	

CHAIR'S SIGNATURE 

CS FOR HOUSE BILL NO. 207(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to employer drug and alcohol testing programs."

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

3 * Section 1. AS 23.10 is amended by adding new sections to read:

4 Article 9. Drug and Alcohol Testing by Employers.

5 Sec. 23.10.600. Employer protection from litigation. (a) If an employer has
6 established a drug and alcohol testing policy and initiated a testing program under
7 AS 23.10.600 - 23.10.699, a person may not bring an action for damages against the
8 employer for

9 (1) actions in good faith based on the results of a positive drug test or
10 alcohol impairment test;

11 (2) failure to test for drugs or alcohol impairment or failure to test for
12 a specific drug or another controlled substance;

13 (3) failure to test or, if tested, failure to detect a specific drug or other
14 substance, a medical condition, or a mental, emotional, or psychological disorder or
15 condition; or

1 (4) termination or suspension of a drug or alcohol prevention or testing
2 program or policy.

3 (b) A person may not bring an action for damages based on test results against
4 an employer who has established and implemented a drug and alcohol testing program
5 under AS 23.10.600 - 23.10.699 unless the employer's action was based on a false
6 positive test result and the employer knew or clearly should have known that the result
7 was in error and ignored the true test result because of reckless or malicious disregard
8 for the truth or the wilful intent to deceive or be deceived.

9 (c) In a claim, including a claim under AS 23.10.600 - 23.10.699, if it is
10 alleged that an employer's action was based on a false positive test result,

11 (1) there is a rebuttable presumption that the test result was valid if the
12 employer complied with the provisions of AS 23.10.600 - 23.10.699; and

13 (2) the employer is not liable for monetary damages if the employer's
14 reliance on a false positive test result was reasonable and in good faith.

15 (d) A person may not bring an action for damages against an employer for an
16 action taken related to a false negative drug test or alcohol impairment test.

17 (e) A person may not bring an action against an employer based on failure
18 of the employer to establish a program or policy on substance abuse prevention or to
19 implement drug testing or alcohol impairment testing.

20 **Sec. 23.10.610. Limits on causes of action for disclosures.** A person may
21 not bring an action for defamation of character, libel, slander, or damage to reputation
22 against an employer who has established a program of drug testing or alcohol
23 impairment testing under AS 23.10.600 - 23.10.699 if the action is based on drug or
24 alcohol testing unless

25 (1) the results of the test were disclosed to a person other than the
26 employer, an authorized employee, agent or representative of the employer, the tested
27 employee, the tested prospective employee, or another person authorized or privileged
28 by law to receive the information;

29 (2) the information disclosed was a false positive test result;

30 (3) the false positive test result was disclosed negligently; and

31 (4) all elements of an action for defamation of character, libel, slander,

1 or damage to reputation as established by law are satisfied.

2 **Sec. 23.10.615. Employer's compliance voluntary.** Compliance with
3 AS 23.10.600 - 23.10.699 by employers is voluntary.

4 **Sec. 23.10.620. Employer policy.** (a) Under AS 23.10.600 - 23.10.699, an
5 employer may only carry out the testing or retesting for the presence or evidence of
6 use of drugs or alcohol after adopting a written policy for the testing and retesting and
7 informing employees of the policy. The employer may inform employees by
8 distributing a copy of the policy to each employee subject to testing or making the
9 policy available to employees in the same manner as the employer informs its
10 employees of other personnel practices, including inclusion in a personnel handbook
11 or manual or posting in a place accessible to employees. The employer shall inform
12 prospective employees that they must undergo drug testing.

13 (b) The written policy on drug and alcohol testing must include, at a minimum,

14 (1) a statement of the employer's policy respecting drug and alcohol
15 use by employees;

16 (2) a description of those employees or prospective employees who are
17 subject to testing;

18 (3) the circumstances under which testing may be required;

19 (4) the substances as to which testing may be required;

20 (5) a description of the testing methods and collection procedures to be
21 used, including an employee's right to a confirmatory drug test to be reviewed by a
22 licensed physician or doctor of osteopathy after an initial positive drug test result in
23 accordance with AS 23.10.640(d);

24 (6) the consequences of a refusal to participate in the testing;

25 (7) any adverse personnel action that may be taken based on the testing
26 procedure or results;

27 (8) the right of an employee, on the employee's request, to obtain the
28 written test results and the obligation of the employer to provide written test results
29 to the employee within five working days of a written request to do so, provided the
30 written request is made within six months of the date of the test;

31 (9) the right of an employee, on the employee's request, to explain in

1 a confidential setting, a positive test result; if the employee requests in writing an
2 opportunity to explain the positive test result within 10 working days after the
3 employee is notified of the test result, the employer must provide an opportunity, in
4 a confidential setting, within 72 hours of receiving the employee's written notice, or
5 before taking adverse employment action;

6 (10) a statement of the employer's policy regarding the confidentiality
7 of the test results.

8 (c) An employer may require the collection and testing of a sample of an
9 employee's or prospective employee's urine or breath for any job-related purpose
10 consistent with business necessity and the terms of the employer's policy, including

11 (1) investigation of possible individual employee impairment;

12 (2) investigation of accidents in the workplace; an employee may be
13 required to undergo drug testing or alcohol impairment testing for an accident if the
14 test is taken as soon as practicable after an accident and the test is administered to
15 employees who the employer reasonably believes may have contributed to the accident;

16 (3) maintenance of safety for employees, customers, clients, or the
17 public at large;

18 (4) maintenance of productivity, the quality of products or services, or
19 security of property or information;

20 (5) reasonable suspicion that an employee may be affected by the use
21 of drugs or alcohol and that the use may adversely affect the job performance or the
22 work environment.

23 (d) In addition to tests required under (c) of this section, an employer may
24 require employees or groups of employees to undergo drug testing on a random or
25 chance basis.

26 (e) If an employer institutes a policy of drug testing or alcohol impairment
27 testing under AS 23.10.600 - 23.10.699, the policy must identify which employees or
28 positions are subject to testing. An employer must test all or part of the work force
29 based on consideration of safety for employees, customers, clients, or the public at
30 large. An employer may not initiate a testing program under AS 23.10.600 - 23.10.699
31 until at least 30 days after the employer notifies employees of the employer's intent

1 to implement the program and makes written copies of the policy available as required
2 by (a) of this section. Each employer shall ensure that at least one designated person
3 receives at least 60 minutes of training on alcohol misuse and at least an additional 60
4 minutes of training on the use of controlled substances. The training will be used by
5 the designee to determine whether reasonable suspicion exists to require an employee
6 to undergo testing under AS 23.10.630.

7 (f) The provisions of AS 23.10.600 - 23.10.699 may not be construed to
8 encourage, discourage, restrict, limit, prohibit, or require on-site drug testing or alcohol
9 impairment testing.

10 **Sec. 23.10.630. Collection of samples.** (a) An employer may require an
11 employee to undergo a test for the presence of drugs or for alcohol impairment. An
12 employer may require a prospective employee to undergo a test for the presence of
13 drugs.

14 (b) In order to test reliably, an employer may require an employee or
15 prospective employee to provide a sample of the individual's urine or breath and to
16 present reliable individual identification to the person collecting the sample. Collection
17 of the sample must conform to the requirements of AS 23.10.600 - 23.10.699. The
18 employer may designate the type of sample to be used for testing.

19 (c) An employer shall normally schedule a drug test or an alcohol impairment
20 test of employees during, or immediately before or after, a regular work period.
21 Alcohol impairment or drug testing required by an employer is considered to be work
22 time for the purposes of compensation and benefits for current employees. Sample
23 collection shall be performed in a manner that guarantees the individual's privacy to
24 the maximum extent consistent with ensuring that the sample is not contaminated,
25 adulterated, or misidentified.

26 (d) An employer shall pay the entire actual costs for drug testing and alcohol
27 impairment testing required of employees and prospective employees. An employer
28 shall also pay reasonable transportation costs to an employee if the required test is
29 conducted at a location other than the employee's normal work site.

30 **Sec. 23.10.640. Testing procedures.** (a) Sample collection and testing for
31 alcohol impairment and drugs under AS 23.10.600 - 23.10.699 shall be performed

1 under reasonable and sanitary conditions. The person collecting samples shall
2 document the sample, including labeling the sample to preclude to the extent
3 reasonable the possibility of misidentification of the person tested in relation to the test
4 result provided, and shall provide the person to be tested with an opportunity to
5 provide medical information that may be relevant to the test, including identifying
6 current or recently used prescription and nonprescription drugs.

7 (b) Sample collection, storage, and transportation to the place of testing shall
8 be performed in a manner reasonably designed to preclude the possibility of sample
9 contamination, adulteration, or misidentification.

10 (c) Sample testing must comply with scientifically accepted analytical methods
11 and procedures. Drug testing shall be conducted at a laboratory approved or certified
12 by the Substance Abuse and Mental Health Services Administration or the College of
13 American Pathologists, American Association of Clinical Chemists.

14 (d) For employees, drug testing must include confirmation of a positive drug
15 test result. The confirmation must be by use of a different analytical process than was
16 used in the initial drug screen. The second or confirmatory drug test shall be a gas
17 chromatography mass spectrometry. An employer may not rely on a positive drug test
18 unless the confirmatory drug test results have been reviewed by a licensed physician
19 or doctor of osteopathy. The physician or osteopath shall

20 (1) contact the employee within 48 hours and offer an opportunity to
21 discuss the confirming test result;

22 (2) interpret and evaluate the positive drug test results for legal use; and

23 (3) report test results that have been caused by prescription medication
24 as negative.

25 (e) A drug test conducted under this section for a drug for which the United
26 States Department of Health and Human Services has established a cutoff level shall
27 be considered to have yielded a positive result if the test establishes the presence of
28 the drug at levels equal to or greater than that cutoff level. For a drug for which the
29 United States Department of Health and Human Services has not established a cutoff
30 level, the employer shall, in the written policy under AS 23.10.620, inform employees
31 of the cutoff level that the employer will use to establish the presence of the drug.

1 **Sec. 23.10.650. Disciplinary procedures.** (a) An employer may take adverse
2 employment action based on

3 (1) a positive drug test or alcohol impairment test result that indicates
4 a violation of the employer's written policy;

5 (2) the refusal of an employee or prospective employee to provide a
6 drug testing sample; or

7 (3) the refusal of an employee to provide an alcohol impairment testing
8 sample.

9 (b) Adverse employment action under (a) of this section may include

10 (1) a requirement that the employee enroll in an employer provided or
11 employer approved rehabilitation, treatment, or counseling program; the program may
12 include additional drug testing and alcohol impairment testing; the employer may
13 require participation in the program as a condition of employment; costs of
14 participating in the program may or may not be covered by the employer's health plan
15 or policies;

16 (2) suspension of the employee, with or without pay, for a designated
17 period of time;

18 (3) termination of employment;

19 (4) in case of drug testing, refusal to hire a prospective employee; and

20 (5) other adverse employment action.

21 **Sec. 23.10.660. Confidentiality of results; access to records.** A
22 communication received by an employer relevant to drug test or alcohol impairment
23 test results and received through the employer's testing program is a confidential and
24 privileged communication and may not be disclosed except

25 (1) to the tested employee or prospective employee or another person
26 designated in writing by the employee or prospective employee;

27 (2) to individuals designated by an employer to receive and evaluate
28 test results or hear the explanation of the employee or prospective employee; or

29 (3) as ordered by a court or governmental agency.

30 **Sec. 23.10.670. Effect of mandatory testing obligations.** An employer who
31 is obligated by state or federal requirements to have a drug testing or alcohol

1 impairment testing policy or program shall receive the full benefits of AS 23.10.600 -
2 23.10.699 even if the required policy or program is not consistent with AS 23.10.600 -
3 23.10.699, so long as the employer complies with the state or federal requirements
4 applicable to the employer's operations.

5 **Sec. 23.10.699. Definitions.** In AS 23.10.600 - 23.10.699,

6 (1) "alcohol" means ethanol, isopropanol, or methanol;

7 (2) "drugs" means a substance considered unlawful under AS 11.71 or
8 the metabolite of the substance;

9 (3) "drug testing" means testing for evidence of the use of a drug;

10 (4) "employee" means a person in the service of an employer;

11 (5) "employer" means a person who employs one or more full-time
12 employees under a contract of hire, express or implied, oral or written;

13 (6) "good faith" means reasonable reliance on fact, or that which is held
14 out to be factual, without the intent to deceive or be deceived and without reckless or
15 malicious disregard for the truth;

16 (7) "prospective employee" means a person who has made application
17 to an employer, whether written or oral, to become an employee;

18 (8) "random" means a scientifically valid method that ensures that all
19 covered employees have an equal chance of being selected;

20 (9) "sample" means urine or breath from the person being tested.

AMENDMENT

#1
Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE GREEN

TO: CSHB 207(JUD)

- 1 Page 2, line 23, following "23.10.699":
- 2 Insert "if the action is based on drug or alcohol testing"

DRAFT

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2 program or policy.

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- 19 (5) a description of the testing methods and collection procedures to be
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25 procedure or results;
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3 a confidential setting, within 72 hours of receiving the employee's written notice, or
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13 test is taken as soon as practicable after an accident and the test is administered to
14 employees who the employer reasonably believes may have contributed to the accident;

15 (3) maintenance of safety for employees, customers, clients, or the
16 public at large;

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18 security of property or information:

19 (5) reasonable suspicion that an employee may be affected by the use
20 of drugs or alcohol and that the use may adversely affect the job performance or the
21 work environment.

22 (d) In addition to tests required under (c) of this section, an employer may
23 require employees or groups of employees to undergo drug testing on a random or
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30 until at least 30 days after the employer notifies employees of the employer's intent
31 to implement the program and makes written copies of the policy available as required

1 by (a) of this section. Each employer shall ensure that at least one designated person
2 receives at least 60 minutes of training on alcohol misuse and at least an additional 60
3 minutes of training on the use of controlled substances. The training will be used by
4 the designee to determine whether reasonable suspicion exists to require an employee
5 to undergo testing under AS 23.10.630.

6 (f) The provisions of AS 23.10.600 - 23.10.699 may not be construed to
7 encourage, discourage, restrict, limit, prohibit, or require on-site drug testing or alcohol
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9 **Sec. 23.10.630. Collection of samples.** (a) An employer may require an
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15 (2) suspension of the employee, with or without pay, for a designated
16 period of time;

17 (3) termination of employment;

18 (4) in case of drug testing, refusal to hire a prospective employee; and

19 (5) other adverse employment action.

20 **Sec. 23.10.660. Confidentiality of results; access to records.** A
21 communication received by an employer relevant to drug test or alcohol impairment
22 test results and received through the employer's testing program is a confidential and
23 privileged communication and may not be disclosed except

24 (1) to the tested employee or prospective employee or another person
25 designated in writing by the employee or prospective employee;

26 (2) to individuals designated by an employer to receive and evaluate
27 test results or hear the explanation of the employee or prospective employee; or

28 (3) as ordered by a court or governmental agency.

29 **Sec. 23.10.670. Effect of mandatory testing obligations.** An employer who
30 is obligated by state or federal requirements to have a drug testing or alcohol
31 impairment testing policy or program shall receive the full benefits of AS 23.10.600 -

1 23.10.699 even if the required policy or program is not consistent with AS 23.10.600 -
2 23.10.699, so long as the employer complies with the state or federal requirements
3 applicable to the employer's operations.

4 **Sec. 23.10.699. Definitions.** In AS 23.10.600 - 23.10.699,

5 (1) "alcohol" means ethanol, isopropanol, or methanol;

6 (2) "drugs" means a substance considered unlawful under AS 11.71 or
7 the metabolite of the substance;

8 (3) "drug testing" means testing for evidence of the use of a drug;

9 (4) "employee" means a person in the service of an employer;

10 (5) "employer" means a person who employs one or more full-time
11 employees under a contract of hire, express or implied, oral or written;

12 (6) "good faith" means reasonable reliance on fact, or that which is held
13 out to be factual, without the intent to deceive or be deceived and without reckless or
14 malicious disregard for the truth;

15 (7) "prospective employee" means a person who has made application
16 to an employer, whether written or oral, to become an employee;

17 (8) "random" means a scientifically valid method that ensures that all
18 covered employees have an equal chance of being selected;

19 (9) "sample" means urine or breath from the person being tested.

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: April 9, 1997
To: Terry Cramer, Legislative Legal Services
Fax: 465-2029
From: Lisa Kirsch, House Judiciary Committee
Fax: 465-4316
Re: HB 207 amendments

Please prepare us a committee substitute amending 0-LS0760\B with your amendment 0-LS0760\B.1; 0-LS0760\B.2 and our amendment #3 (attached).

Thanks for your help.

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE GREEN

TO: CSHB 207(L&C)

- 1 Page 5, line 1, following "."
- 2
- 3 Insert "Each employer shall ensure that at least one designated person shall
- 4 receive at least 60 minutes of training on alcohol misuse and receive at least
- 5 an additional 60 minutes of training on ^{the use of} controlled substances ~~use~~. The
- 6 training will be used by the designee(s) to determine whether reasonable
- 7 suspicion exists to require an employee to undergo testing under 23.10.630."

to per draft revision

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 207

Revision Date: _____
 Title: Employer Drug Testing Program
 Sponsor: Representative Joseph Green
 Requestor: House L&C

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Wage & Hour Administration
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: \$ NONE

ANALYSIS: (Attach a separate page if necessary)

This legislation will have no effect on Wage and Hour programs, nor any fiscal impact, as we are not named in any oversight or enforcement capacity.

Prepared by: Alan W. Dwyer, Director *[Signature]* Phone: 465-4855
 Division: Labor Standards & Safety Date: 3/26/97

Approved by Commissioner: Tom Cashen, Commissioner *[Signature]*
 Agency: Department of Labor Date: 3/26/97

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AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE GREEN

TO: CSHB 207(L&C)

1 Page 5, line 1, following "."

2

3 Insert "Each employer shall ensure that all persons designated to supervise
4 employees receive at least 60 minutes of training on alcohol misuse and
5 receive at least an additional 60 minutes of training on controlled substances
6 use. The training will be used by the supervisors to determine whether
7 reasonable suspicion exists to require an employee to undergo testing under
8 23.10.630."

at least one

designee(s)

4/9/97

*passed
as
Amended.*

AMENDMENT #2 *Adopted*

OFFERED IN THE HOUSE

BY REPRESENTATIVE GREEN

TO: CSHB 207(L&C)

1 Page 6, following line 16:

2 Insert a new subsection to read:

3 "(e) A drug test conducted under this section for a drug for which the United
4 States Department of Health and Human Services has established a cutoff level shall
5 be considered to have yielded a positive result if the test establishes the presence of
6 the drug at levels equal to or greater than that cutoff level. For a drug for which the
7 United States Department of Health and Human Services has not established a cutoff
8 level, the employer shall, in the written policy under AS 23.10.620, inform employees
9 of the cutoff level that the employer will use to establish the presence of the drug."

AMENDMENT #1 *Adopted*

OFFERED IN THE HOUSE

BY REPRESENTATIVE GREEN

TO: CSHB 207(L&C)

- 1 Page 5, line 17, following ".":
- 2 Insert "Sample collection shall be performed in a manner that guarantees the
- 3 individual's privacy to the maximum extent consistent with ensuring that the sample is not
- 4 contaminated, adulterated, or misidentified."

CS FOR HOUSE BILL NO. 207(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to employer drug and alcohol testing programs."

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

3 * Section 1. AS 23.10 is amended by adding new sections to read:

4 Article 9. Drug and Alcohol Testing by Employers.

5 Sec. 23.10.600. Employer protection from litigation. (a) If an employer has
6 established a drug and alcohol testing policy and initiated a testing program under
7 AS 23.10.600 - 23.10.699, a person may not bring an action for damages against the
8 employer for

9 (1) actions in good faith based on the results of a positive drug test or
10 alcohol impairment test;

11 (2) failure to test for drugs or alcohol impairment or failure to test for
12 a specific drug or another controlled substance;

13 (3) failure to test or, if tested, failure to detect a specific drug or other
14 substance, a medical condition, or a mental, emotional, or psychological disorder or
15 condition; or

1 (4) termination or suspension of a drug or alcohol prevention or testing
2 program or policy.

3 (b) A person may not bring an action for damages based on test results against
4 an employer who has established and implemented a drug and alcohol testing program
5 under AS 23.10.600 - 23.10.699 unless the employer's action was based on a false
6 positive test result and the employer knew or clearly should have known that the result
7 was in error and ignored the true test result because of reckless or malicious disregard
8 for the truth or the willful intent to deceive or be deceived.

9 (c) In a claim, including a claim under AS 23.10.600 - 23.10.699, if it is
10 alleged that an employer's action was based on a false positive test result,

11 (1) there is a rebuttable presumption that the test result was valid if the
12 employer complied with the provisions of AS 23.10.600 - 23.10.699; and

13 (2) the employer is not liable for monetary damages if the employer's
14 reliance on a false positive test result was reasonable and in good faith.

15 (d) A person may not bring an action for damages against an employer for an
16 action taken related to a false negative drug test or alcohol impairment test.

17 (e) A person may not bring an action against an employer based on failure
18 of the employer to establish a program or policy on substance abuse prevention or to
19 implement drug testing or alcohol impairment testing.

20 **Sec. 23.10.610. Limits on causes of action for disclosures.** A person may
21 not bring an action for defamation of character, libel, slander, or damage to reputation
22 against an employer who has established a program of drug testing or alcohol
23 impairment testing under AS 23.10.600 - 23.10.699 unless

24 (1) the results of the test were disclosed to a person other than the
25 employer, an authorized employee, agent or representative of the employer, the tested
26 employee, the tested prospective employee, or another person authorized or privileged
27 by law to receive the information;

28 (2) the information disclosed was a false positive test result;

29 (3) the false positive test result was disclosed negligently; and

30 (4) all elements of an action for defamation of character, libel, slander,
31 or damage to reputation as established by law are satisfied.

1 Sec. 23.10.615. **Employer's compliance voluntary.** Compliance with
2 AS 23.10.600 - 23.10.699 by employers is voluntary.

3 Sec. 23.10.620. **Employer policy.** (a) Under AS 23.10.600 - 23.10.699, an
4 employer may only carry out the testing or retesting for the presence or evidence of
5 use of drugs or alcohol after adopting a written policy for the testing and retesting and
6 informing employees of the policy. The employer may inform employees by
7 distributing a copy of the policy to each employee subject to testing or making the
8 policy available to employees in the same manner as the employer informs its
9 employees of other personnel practices, including inclusion in a personnel handbook
10 or manual or posting in a place accessible to employees. The employer shall inform
11 prospective employees that they must undergo drug testing.

12 (b) The written policy on drug and alcohol testing must include, at a minimum,

- 13 (1) a statement of the employer's policy respecting drug and alcohol
14 use by employees;
- 15 (2) a description of those employees or prospective employees who are
16 subject to testing;
- 17 (3) the circumstances under which testing may be required;
- 18 (4) the substances as to which testing may be required;
- 19 (5) a description of the testing methods and collection procedures to be
20 used, including an employee's right to a confirmatory drug test to be reviewed by a
21 licensed physician or doctor of osteopathy after an initial positive drug test result in
22 accordance with AS 23.10.640(d);
- 23 (6) the consequences of a refusal to participate in the testing;
- 24 (7) any adverse personnel action that may be taken based on the testing
25 procedure or results;
- 26 (8) the right of an employee, on the employee's request, to obtain the
27 written test results and the obligation of the employer to provide written test results
28 to the employee within five working days of a written request to do so, provided the
29 written request is made within six months of the date of the test;
- 30 (9) the right of an employee, on the employee's request, to explain in
31 a confidential setting, a positive test result; if the employee requests in writing an

1 opportunity to explain the positive test result within 10 working days after the
2 employee is notified of the test result, the employer must provide an opportunity, in
3 a confidential setting, within 72 hours of receiving the employee's written notice, or
4 before taking adverse employment action;

5 (10) a statement of the employer's policy regarding the confidentiality
6 of the test results.

7 (c) An employer may require the collection and testing of a sample of an
8 employee's or prospective employee's urine or breath for any job-related purpose
9 consistent with business necessity and the terms of the employer's policy, including

10 (1) investigation of possible individual employee impairment;

11 (2) investigation of accidents in the workplace; an employee may be
12 required to undergo drug testing or alcohol impairment testing for an accident if the
13 test is taken as soon as practicable after an accident and the test is administered to
14 employees who the employer reasonably believes may have contributed to the accident;

15 (3) maintenance of safety for employees, customers, clients, or the
16 public at large;

17 (4) maintenance of productivity, the quality of products or services, or
18 security of property or information;

19 (5) reasonable suspicion that an employee may be affected by the use
20 of drugs or alcohol and that the use may adversely affect the job performance or the
21 work environment.

22 (d) In addition to tests required under (c) of this section, an employer may
23 require employees or groups of employees to undergo drug testing on a random or
24 chance basis.

25 (e) If an employer institutes a policy of drug testing or alcohol impairment
26 testing under AS 23.10.600 - 23.10.699, the policy must identify which employees or
27 positions are subject to testing. An employer must test all or part of the work force
28 based on consideration of safety for employees, customers, clients, or the public at
29 large. An employer may not initiate a testing program under AS 23.10.600 - 23.10.699
30 until at least 30 days after the employer notifies employees of the employer's intent
31 to implement the program and makes written copies of the policy available as required

1 by (a) of this section.

2 (f) The provisions of AS 23.10.600 - 23.10.699 may not be construed to
3 encourage, discourage, restrict, limit, prohibit, or require on-site drug testing or alcohol
4 impairment testing.

5 **Sec. 23.10.630. Collection of samples.** (a) An employer may require an
6 employee to undergo a test for the presence of drugs or for alcohol impairment. An
7 employer may require a prospective employee to undergo a test for the presence of
8 drugs.

9 (b) In order to test reliably, an employer may require an employee or
10 prospective employee to provide a sample of the individual's urine or breath and to
11 present reliable individual identification to the person collecting the sample. Collection
12 of the sample must conform to the requirements of AS 23.10.600 - 23.10.699. The
13 employer may designate the type of sample to be used for testing.

14 (c) An employer shall normally schedule a drug test or an alcohol impairment
15 test of employees during, or immediately before or after, a regular work period.
16 Alcohol impairment or drug testing required by an employer is considered to be work
17 time for the purposes of compensation and benefits for current employees.

18 (d) An employer shall pay the entire actual costs for drug testing and alcohol
19 impairment testing required of employees and prospective employees. An employer
20 shall also pay reasonable transportation costs to an employee if the required test is
21 conducted at a location other than the employee's normal work site.

22 **Sec. 23.10.640. Testing procedures.** (a) Sample collection and testing for
23 alcohol impairment and drugs under AS 23.10.600 - 23.10.699 shall be performed
24 under reasonable and sanitary conditions. The person collecting samples shall
25 document the sample, including labeling the sample to preclude to the extent
26 reasonable the possibility of misidentification of the person tested in relation to the test
27 result provided, and shall provide the person to be tested with an opportunity to
28 provide medical information that may be relevant to the test, including identifying
29 current or recently used prescription and nonprescription drugs.

30 (b) Sample collection, storage, and transportation to the place of testing shall
31 be performed in a manner reasonably designed to preclude the possibility of sample

1 contamination, adulteration, or misidentification.

2 (c) Sample testing must comply with scientifically accepted analytical methods
3 and procedures. Drug testing shall be conducted at a laboratory approved or certified
4 by the Substance Abuse and Mental Health Services Administration, ^{OR} the College of
5 American Pathologists, ~~or the~~ American Association of Clinical Chemists.

6 (d) For employees, drug testing must include confirmation of a positive drug
7 test result. The confirmation must be by use of a different analytical process than was
8 used in the initial drug screen. The second or confirmatory drug test shall be a gas
9 chromatography mass spectrometry. An employer may not rely on a positive drug test
10 unless the confirmatory drug test results have been reviewed by a licensed physician
11 or doctor of osteopathy. The physician or osteopath shall

12 (1) contact the employee within 48 hours and offer an opportunity to
13 discuss the confirming test result;

14 (2) interpret and evaluate the positive drug test results for legal use; and

15 (3) report test results that have been caused by prescription medication
16 as negative.

17 **Sec. 23.10.650. Disciplinary procedures.** (a) An employer may take adverse
18 employment action based on

19 (1) a positive drug test or alcohol impairment test result that indicates
20 a violation of the employer's written policy;

21 (2) the refusal of an employee or prospective employee to provide a
22 drug testing sample; or

23 (3) the refusal of an employee to provide an alcohol impairment testing
24 sample.

25 (b) Adverse employment action under (a) of this section may include

26 (1) a requirement that the employee enroll in an employer provided or
27 employer approved rehabilitation, treatment, or counseling program; the program may
28 include additional drug testing and alcohol impairment testing; the employer may
29 require participation in the program as a condition of employment; costs of
30 participating in the program may or may not be covered by the employer's health plan
31 or policies;

1 (2) suspension of the employee, with or without pay, for a designated
2 period of time;

3 (3) termination of employment;

4 (4) in case of drug testing, refusal to hire a prospective employee; and

5 (5) other adverse employment action.

6 **Sec. 23.10.660. Confidentiality of results; access to records.** A
7 communication received by an employer relevant to drug test or alcohol impairment
8 test results and received through the employer's testing program is a confidential and
9 privileged communication and may not be disclosed except

10 (1) to the tested employee or prospective employee or another person
11 designated in writing by the employee or prospective employee;

12 (2) to individuals designated by an employer to receive and evaluate
13 test results or hear the explanation of the employee or prospective employee; or

14 (3) as ordered by a court or governmental agency.

15 **Sec. 23.10.670. Effect of mandatory testing obligations.** An employer who
16 is obligated by state or federal requirements to have a drug testing or alcohol
17 impairment testing policy or program shall receive the full benefits of AS 23.10.600 -
18 23.10.699 even if the required policy or program is not consistent with AS 23.10.600 -
19 23.10.699, so long as the employer complies with the state or federal requirements
20 applicable to the employer's operations.

21 **Sec. 23.10.699. Definitions.** In AS 23.10.600 - 23.10.699,

22 (1) "alcohol" means ethanol, isopropanol, or methanol;

23 (2) "drugs" means a substance considered unlawful under AS 11.71 or
24 the metabolite of the substance;

25 (3) "drug testing" means testing for evidence of the use of a drug;

26 (4) "employee" means a person in the service of an employer;

27 (5) "employer" means a person who employs one or more full-time
28 employees under a contract of hire, express or implied, oral or written;

29 (6) "good faith" means reasonable reliance on fact, or that which is held
30 out to be factual, without the intent to deceive or be deceived and without reckless or
31 malicious disregard for the truth;

1
2
3
4
5

(7) "prospective employee" means a person who has made application to an employer, whether written or oral, to become an employee;

(8) "random" means a scientifically valid method that ensures that all covered employees have an equal chance of being selected;

(9) "sample" means urine or breath from the person being tested.

Alaska State Legislature



Representative Joe Green
District 11

Sorry
10 minutes and
running

What is
his last
name?

Fagnano

Sponsor Statement

HB 207 - Drug and Alcohol Testing Programs

Problem: The use of psychoactive drugs--including alcohol, prescription and over-the-counter drugs--may affect safety and productivity in the workplace. To address these concerns, many employers have instituted alcohol and drug use testing programs. Though more than 53,000 Alaskans are being tested, there is no state policy establishing test guidelines for employers or employees.

Solution: HB 207 establishes guidelines for employers to voluntarily test employees and prospective employees for drug or alcohol use. HB 207 does not mandate drug or alcohol testing. Instead it provides employers who comply with the provisions of the bill limited immunity from litigation. Specifically, a civil action could not be filed against an employer who complies with the new law for: a) actions taken in good faith as a result of a positive drug or alcohol test; b) failure to test for drugs or alcohol, or failure to test for a specific drug; c) failure to detect a specific drug; or, d) terminating or suspending a drug or alcohol prevention program or policy.

HB 207 establishes a policy stating that prevention programs should be implemented in a fair, consistent, and equitable manner with due consideration of the rights, responsibilities, and privacy interest of all concerned parties.

The benefits that could accrue from this legislation are: a) early identification of drug or alcohol abuse, which could reduce the tragic consequences of injury to the user, co-workers, and/or family of the user; b) a more profitable and safer business environment by reducing the mistakes, poor performance, and accidents associated with drug and alcohol abuse; and c) fewer legal actions filed against employers who may terminate drug and alcohol abusers.

I would appreciate your support of HB 207.



April 2, 1997

Representative Joe Green
State Capitol Building
Room 118
Juneau, AK 99801

ALASKA COUNCIL ON
PREVENTION OF
ALCOHOL AND DRUG
ABUSE, INC.

3333 DENALI STREET
SUITE 201

ANCHORAGE, ALASKA
99503

PHONE
907-258-6021

STATEWIDE
800-478-7738

FAX
907-258-6052

E-MAIL
prevent@alaska.net

Dear Rep. Green:

Greetings! This letter concerns HB 207--*an Act relating to employer drug and alcohol testing programs*. On behalf of the Alaska Council on PREVENTION of Alcohol and Drug Abuse, I would like to provide some information which hopefully will assist in the decision-making process.

- Alcohol and other drug use costs American businesses an estimated \$102 billion every year in lost productivity, accidents, employee turnover, and related problems.
- Drug users at a minimum consume almost twice the medical benefits as non users, are absent 1.5 times as often, and make more than twice as many workers' compensation claims.

A drug-free workplace reduces employee absenteeism, tardiness, discipline problems, and workers' compensation costs. Improvements include customer satisfaction, productivity, employee morale and motivation.

This bill's passage would greatly reduce the employer's liability from positive drug and alcohol tests. Therefore, more companies may chose to drug test their employees. Through the procedures outlined in HB 207, an employer can establish a clear drug testing standard while promoting a safe and drug-free working environment .

I am enclosing "Making Your Workplace Drug-Free: A Kit for Employers" for your review. Please don't hesitate to call me with your feedback or comments. I can be reached at (800) 478-7738.

Thank you for your time and attention to this important inatter.

Respectfully,

Joseph DiMatteo
Executive Director

enc: Making Your Workplace Drug-Free: A Kit for Employers, SAMHSA

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SeaLand

Sea-Land Service, Inc.
1717 Tidewater Road, P.O. Box 101939
Anchorage, Alaska 99510
(907) 274-2671

April 7, 1997

Representative Norm Rokeberg, Chairman
Labor & Commerce Committee
State Capital
Juneau, Alaska 99801

Subject: House Bill 207

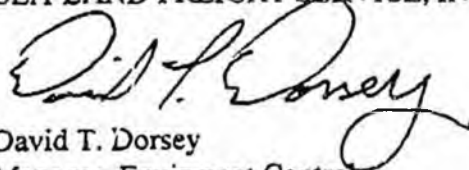
Please consider this as a letter of support for House Bill 207.

Our experience has been that employers need the protection afforded by this legislation .
The bill as currently drafted also gives employees access to an established company
policy.

Thank you for considering this innovative approach to drug and alcohol testing.

Sincerely,

SEA-LAND FREIGHT SERVICE, INC.



David T. Dorsey
Manager, Equipment Control

DTD\jpy

cc: Representative John Cowdery, VC
Representative Bill Hudson
Representative Jerry Sanders
Representative Joe Ryan
Representative Tom Brice
Representative Gene Kubina
Representative Joe Green

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Karen Cowart
General Manager



THE ALLIANCE

4220 'B' Street, Suite 200 • Anchorage, Alaska 99503-5911
Phone (907) 563-2226 • Fax (907) 561-8870

April 4, 1997

Representative Norm Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: Alliance Supports House Bill 207

Dear Representative Rokeberg,

The Alaska Support Industry Alliance (The Alliance) is a non-profit trade association whose 300+ member companies provide the majority of support services for oil and gas exploration, production, transportation, refining and marketing. Our mission is to foster and promote the safe and environmentally sound development of natural resources and to enhance and stimulate the business climate for our membership.

The Alaska Support Industry Alliance Board of Directors *strongly supports* House Bill 207, "An Act relating to employer drug and alcohol testing programs".

This legislation will greatly reduce an employer's liabilities from drug and alcohol testing, resulting from a positive test. Further, this legislation protects employees by establishing company policy and standardized procedures for testing. This bill, while not mandatory, allows an employer the protection of the statute when specific steps outlined are followed.

We encourage support and passage of this important legislation.

Sincerely,

John Wheatley
Vice President - Policy

cc: Members, House Labor and Commerce:
Representatives Cowdery, Hudson, Sanders, Ryan, Brice, Kubina

cc:Mail for: Representative Joe Green

Subject: HB207

From: rbailey@Alaska.NET at CC2MHS1 4/2/97 3:51 PM

To: Representative Norman Rokeberg at LAA_TRANS

cc: Representative Joe Green at LAA_TRANS

Norm,

I wanted to drop you a note in support of HB207. As an employer of drivers with CDL's, Alaska Distributors Co. is very concerned about the liability involved with mandatory drug testing. HB207 will do a great deal to protect the responsible employer. Please support this bill.

Bob Bailey
Operations Manager
Alaska Distributors Co.



Allvest Laboratories, Inc.

341 West Tudor Road, Suite 106 Anchorage, Alaska 99503

Phone (907) 563-8378

Fax (907) 563-8380

April 7, 1997

Labor and Commerce Committee
Representative Norm Rokeberg, Chairman
State Capital
Juneau, Alaska 99801

Dear Representative Rokeberg:

Thank you for allowing me the opportunity to speak before the Labor and Commerce committee last Friday April 4. As I indicated then, your continued support is needed in passing House Bill 207 " An Act relating to employer drug and alcohol testing programs". As you are aware on March 21, 1997, Representative Joe Green introduced House Bill (HB) 207. This Bill, when it becomes law, will establish guidelines for employer policies and limit an employer's liability from litigation resulting from a positive test result.

This is great news for Alaskan employers and employees! This legislation will greatly reduce an employer's liabilities from drug and alcohol testing, resulting from a positive test result. For the employee, this legislation helps protect them by establishing company policy and standardized procedures for testing. **This bill is not a mandatory statute.** however, if an employer wants the protection of the statute, then the steps to follow are easy.

- Have a written policy
- Use a U. S. Department of Health and Human Services, College of American Pathologist certified laboratory
- Use established collection procedures that protect against misidentification of the donor's sample
- Establish means for confidentiality of test results
- Use a physician for review of positive test results

"Enhancing employee safety, productivity, and efficiency through drug testing."

I urge you and the other Labor and Commerce members to move quickly and refer HB 207 to Judiciary. Then your assistance is needed again to follow this legislation through to make sure this important legislation is passed into law this session.

Thank you for your assistance. If you have additional questions do not hesitate to contact me.

Sincerely,

ALLVEST LABORATORIES, INC.



Matthew T. Fagnan
President

CC/ Rep. Joe Green