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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. For

HOUSE BILL No. 4579

(By Delegates *J. Martin and Honouras*)



Passed March 7, 1992

In Effect July 1, 1992 ~~Passage~~

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4579

(By DELEGATES J. MARTIN AND HOUVOURAS)

[Passed March 7, 1992; in effect July 1, 1992.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to establishing an on-site consultation program within the division of labor to assist employers in complying with federal, state, county and city environmental and hazardous waste requirements; legislative purpose; duties of division of labor and commissioner of labor; creating an environmental assistance resource board; and establishing procedures.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-b, to read as follows:

ARTICLE 3B. EMPLOYER ASSISTANCE FOR ENVIRONMENTAL PROTECTION.

§21-3B-1. Title and purpose.

1 This article shall be known and may be cited as the
2 "Employer Assistance For Environmental Protection
3 Act."

4 It is the purpose of this article to make available to
5 employers in this state assistance in identifying envir-

6 onmental and hazardous waste hazards common to the
7 workplace and to further assist such employers in
8 developing plans for compliance with all such concerns.
9 Such assistance will be provided using the available
10 personnel and resources of the various state agencies
11 involved in the regulation and control of environmental
12 and hazardous waste disciplines.

**§21-3B-2. Duties and responsibilities of division of labor
and the commissioner of labor.**

1 (a) The division of labor shall:

2 (1) Encourage employers and employees to reduce
3 existing environmental and hazardous waste hazards
4 and to implement new or improved existing safety and
5 health programs;

6 (2) Provide technical advice and information relating
7 to environmental hazards and waste hazards;

8 (3) Develop and implement training programs to
9 increase the employer and employee competence in
10 managing and correcting environmental hazards and
11 waste hazards;

12 (4) Develop and coordinate an information network
13 relating to applicable environmental and hazardous
14 waste law affecting the business community in West
15 Virginia;

16 (5) Offer a program of on-site consultation to assist
17 businesses in identifying environmental hazards and
18 waste hazards; and

19 (6) Offer to businesses an off-site program by tele-
20 phone or correspondence for information and assistance
21 in complying with environmental regulation.

22 (b) The commissioner of labor shall develop and
23 implement rules, regulations and administrative guide-
24 lines required to effectuate the purposes of this article.

25 (c) In carrying out the duties and responsibilities
26 imposed by the provisions of subsection (a) of this
27 section, or in developing and implementing rules,
28 regulations and administrative guidelines in accordance

29 with the provisions of subsection (b) of this section, the
30 division of labor and the commissioner shall not expend
31 any state funds or utilize any personnel of the division
32 for the training of any permanent replacement em-
33 ployee, unless and until such permanent replacement
34 employee has been determined by the commissioner to
35 have been legally employed.

§21-3B-3. Environmental assistance resource board.

1 There is hereby created within the division of labor
2 an environmental assistance resource board to advise
3 and assist the commissioner of labor in developing the
4 technical resources necessary to administer the provi-
5 sions of this article. The board is composed of the
6 commissioner of labor, who shall serve as chair; the
7 director of the air pollution control commission; the
8 chief of the division of water resources of the division
9 of natural resources; the chief of the division of waste
10 management of the division of natural resources; the
11 commissioner of the division of environmental protec-
12 tion; one member of the House of Delegates appointed
13 by the speaker of the House; and one member of the
14 Senate appointed by the president of the Senate. Terms
15 of legislative members of the board shall run concurrent
16 with the member's legislative term of office.

17 The board shall meet within thirty days of the
18 effective date of this article and thereafter at the call
19 of the chair. The board shall establish an information
20 network wherein the commissioner of labor and any
21 consultant advising employers, in order to provide
22 accurate information regarding compliance with environ-
23 mental and hazardous waste regulations, may access
24 written materials or staff having technical expertise
25 within the agencies represented on the board. At the
26 request of the board, the secretary of the department of
27 commerce, labor and environmental resources is auth-
28 orized to direct the assignment of staff, on a temporary
29 or permanent basis, from any agency represented on the
30 board to the division of labor to assist in the implemen-
31 tation of the employer assistance program set forth in
32 this article.

§21-3B-4. Procedures.

1 (a) Any employer within the state may request the
2 commissioner of labor in writing to provide advice and
3 assistance in identifying and eliminating environmental
4 hazards in compliance with applicable state, federal and
5 local law. The employer may specify a limited scope for
6 consultation by indicating hazards or situations on
7 which consultation will be focused. No consultation
8 services may be provided when an agency charged with
9 enforcing federal, state or local environmental or
10 hazardous waste regulations has issued a citation or
11 ordered that a condition be abated or corrected.

12 (b) The commissioner shall provide on-site consulta-
13 tion services in identifying and eliminating environmen-
14 tal hazards. However, since employee contact by a
15 consultant is needed for proper identification of enviro-
16 nmental hazards in the workplace, employers must
17 agree to such contact before a consultation may proceed.
18 Employers must agree to correct all hazards noted by
19 the consultant as a condition of the providing of
20 consultation services. Employers are encouraged to
21 permit employees to participate in the walk-around
22 portion of a consultation visit.

23 (c) Prior to visiting a worksite, the consultant may
24 request specific information concerning the worksite.
25 Requested information must be provided before a
26 consultation may proceed.

27 (d) If, in the course of an inspection, the consultant
28 observes environmental hazards violating federal, state
29 or local law which are outside the scope of a consultation
30 request, the consultant shall treat such hazards as if
31 they were within the scope of the consultation request.

32 (e) During the on-site consultation, the consultant
33 shall point out hazards and violations observed, suggest
34 approaches or options for corrective action, and provide
35 additional information related to complying with
36 applicable laws. The consultant shall prepare a written
37 report, which shall be furnished to the employer, of all
38 hazards observed and methods of abatement and may
39 suggest where additional assistance may be secured.

40 The consultant may follow through after the on-site
41 consultation to assist in implementing recommendations
42 and to assure that required corrective action is taken.

43 (f) Information obtained by a consultant related to
44 environmental hazards and violations may not be
45 disclosed to enforcement officials, except when an
46 employer fails or refuses to take corrective action to
47 eliminate imminent danger or serious hazards.

48 (g) No fees, penalties or costs may be assessed against
49 the employer.

50 (h) The use of the consultation services contemplated
51 by this article by any employer shall raise no presump-
52 tion, inference, or defense to any action, order, citation,
53 charge, rule to show cause, or any other enforcement
54 effort brought against such employer by any agency of
55 the state of West Virginia.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James Peck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

Barrett Adams

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Keith Burdette

President of the Senate

Robert C. Bell

Speaker of the House of Delegates

The within *is approved* this the *18*
day of *April*, 1992.

Yastin Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/92

Time 2:40