

HB 2771 (Veto)

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2771

(By Delegates D. Poling, Hamilton, Ellem, Shook,
Klempa, Hatfield and Miley)



Passed April 11, 2009

In Effect Ninety Days from Passage

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H. B. 2771

(BY BY DELEGATES D. POLING, HAMILTON, ELLEM, SHOOK,
KLEMPA, HATFIELD AND MILEY)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §21-1D-2 and §21-1D-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §21-1D-5a and §21-1D-7b, all relating to West Virginia Alcohol and Drug-Free Workplace Act; defining that a contract under this section shall only include those whose value is over \$100,000; defining a pre-employment drug test; requiring the submission of a sworn statement regarding a drug-free workplace; providing that workers who comply with that United States Department of Transportation drug testing guidelines are not required to submit to additional tests; requiring a report to public authority who let the contract; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

§ 21-1D-2 That §21-1D-2 and §21-1D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §21-1D-5a and §21-1D-7b, all to read as follows:

ARTICLE 1D. WEST VIRGINIA ALCOHOL AND DRUG-FREE WORKPLACE ACT.

§21-1D-2. Definitions.

1 (a) The term “alcohol test” means a procedure conducted
2 to determine if an individual is under the influence of
3 alcohol.

4 (b) The term “construction”, as used in this article, means
5 any construction, reconstruction, improvement, enlargement,
6 painting, decorating or repair of any public improvement let
7 to contract the value of which contract is over \$100,000. The
8 term “construction” does not include temporary or
9 emergency repairs

10 (c) The term “contractor” means any employer working
11 on a public improvement without regard to whether they are
12 serving as the prime or subcontractor to another.

13 (d) The term “drug test” means a procedure using at least
14 a nine-panel drug screen in urine specimens that are collected
15 from individuals for the purpose of scientifically analyzing
16 the specimens to determine if the individual ingested, was
17 injected or otherwise exposed to a drug of abuse.

18 (e) The term “drug of abuse” means any substance listed
19 under subsection (h) of this section and any other substance
20 the employer chooses to test for.

21 (f) The term “employee” means a laborer, mechanic or
22 other worker. For the purposes of this article, employee does
23 not include those persons as are employed or hired directly
24 by a public authority on a regular or temporary basis engaged
25 exclusively in making temporary or emergency repairs.
26 Furthermore, employee does not include those persons
27 employed by a contractor who does not work in public
28 improvement construction.

29 (g) The term “medical review officer” means a physician
30 who holds a certificate authorizing them to practice medicine
31 and surgery or osteopathic medicine and surgery, has
32 knowledge of substance abuse disorders, has the appropriate
33 medical training to interpret and evaluate positive drug and
34 alcohol test results together with a person’s medical history
35 and other relevant biomedical information, has successfully
36 completed qualification training as outlined in the Code of
37 Federal Regulations at 49 C.F.R. Part 40 §121 (c) and has
38 passed an exam administered by a nationally recognized
39 medical review officer certification board or subspecialty
40 board for medical practitioners in the field of medical review
41 of federally mandated drug testing.

42 (h) The term “nine-panel drug screen” means a drug-
43 testing program that tests for marijuana, cocaine, opiates
44 including hydromorphone, oxycodone, hydrocodone,
45 phencyclidine, amphetamines, barbiturates, benzodiazepines,
46 methadone and propoxyphene at the substance screening and
47 confirmation limits where provided under federally mandated
48 drug and alcohol testing programs or otherwise accepted as
49 the industry standard.

50 (i) The term “preemployment drug test” means a drug test
51 taken within the preceding twelve months from employment
52 or seven days after hire.

53 (j) The term “public authority”, as used in this article,
54 means any officer, board or commission or other agency of
55 the State of West Virginia, its counties or municipalities or
56 any political subdivision thereof, authorized by law to enter
57 into a contract for the construction of a public improvement,
58 including any institution supported, in whole or in part, by
59 public funds of the State of West Virginia and this article
60 applies to expenditures of these institutions made, in whole
61 or in part, from public funds.

62 (k) The term “public improvement”, as used in this
63 article, includes all buildings, roads, highways, bridges,
64 streets, alleys, sewers, ditches, sewage disposal plants,
65 waterworks, airports and all other structures upon which
66 construction may be let to contract by the State of West
67 Virginia, its counties or municipalities or any political
68 subdivision thereof.

69 (l) The term “random drug testing” means a procedure in
70 which employees who perform safety-sensitive tasks are
71 selected to undergo a drug test by a statistically valid random
72 selection method without prearrangement or planning.

73 (m) The term “reasonable cause” means a belief based on
74 facts and inferences based primarily upon, but not limited to:
75 (1) Observable phenomena, such as direct observation of use,
76 possession or distribution of alcohol or a drug of abuse, or of
77 the physical symptoms of being under the influence of
78 alcohol or a drug of abuse, such as, but not limited to, slurred
79 speech, dilated pupils, odor of an alcoholic beverage or a
80 drug of abuse, changes in affect or dynamic mood swings; (2)
81 a pattern of abnormal conduct, erratic or aberrant behavior or
82 deteriorating work performance such as frequent
83 absenteeism, excessive tardiness or recurrent accidents, that
84 appears to be related to the use of alcohol or a drug of abuse
85 and does not appear to be attributable to other factors; (3) the

86 identification of an employee as the focus of a criminal
87 investigation into unauthorized possession, use or trafficking
88 of a drug of abuse; (4) a report of use of alcohol or a drug of
89 abuse provided by a reliable and credible source; and (5)
90 repeated or flagrant violations of the safety or work rules of
91 the employee's employer, that are determined by the
92 employee's supervisor to pose a substantial risk of physical
93 injury or property damage and that appears to be related to
94 the use of alcohol or a drug of abuse and that does not appear
95 attributable to other factors.

96 (n) The term "safety-sensitive duty" means any task or
97 duty fraught with such risks of injury to the employee or
98 others that even a momentary lapse of attention or judgment,
99 or both, can lead to serious bodily harm or death.

100 (o) The term "under the influence of alcohol" means a
101 concentration of eight hundredths of one percent or more by
102 weight of alcohol in an individual's blood or a concentration
103 of eight hundredths of one gram or more by weight of alcohol
104 per two hundred ten liters of an individual's breath.

**§21-1D-5a. Drug-free workplace policy not applicable to
workers required to follow federal Department
of Transportation drug testing guidelines.**

1 In instances where a worker is required by law to follow
2 United States Department of Transportation drug testing
3 guidelines, no additional drug tests are required under this
4 article.

**§21-1D-7b. Contractor to provide certified drug-free workplace
report.**

1 No less than once per year, or upon completion of the
2 project, every contractor shall provide a certified report to the

3 public authority which let the contract. The report shall
4 include:

5 (1) Information to show that the education and training
6 service to the requirements of section five of this article was
7 provided;

8 (2) The name of the laboratory certified by the United
9 States Department of Health and Human Services or its
10 successor that performs the drug tests pursuant to this article;

11 (3) The average number of employees in connection with
12 the construction on the public improvement;

13 (4) Drug test results for the following categories
14 including the number of positive tests and the number of
15 negative tests:

16 (A) Preemployment and new hires;

17 (B) Reasonable suspicion;

18 (C) Post-accident;

19 (D) Random.

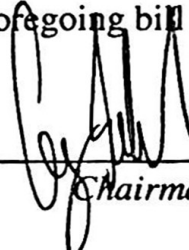
§21-1D-8. Penalties for violation of this article.

1 (a) Any contractor who violates any provision of this
2 article is, for the first offense, guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not more than \$1,000;
4 for the second offense, the person is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not less than
6 \$1,000 nor more than \$5,000; for the third or any subsequent
7 offense within the preceding five years, the person is guilty
8 of a misdemeanor and, upon conviction thereof, shall be

9 fined not less than \$5,000 nor more than \$25,000 and the
10 contractor shall be excluded from bidding any additional new
11 public improvement projects for a period of one year.

12 (b) Any person who directly or indirectly aids, requests
13 or authorizes any other person to violate any of the provisions
14 of this article is guilty of a misdemeanor and, upon
15 conviction thereof, shall be fined not less than \$50 nor more
16 than \$250.

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




Chairman Senate Committee



Chairman House Committee

Originating in the House.

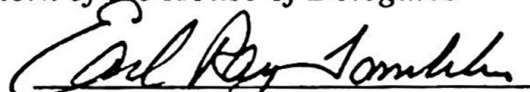
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

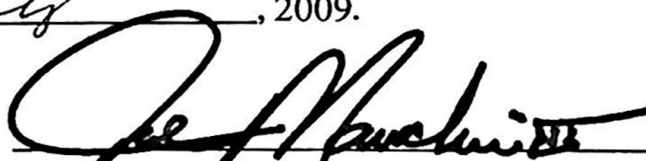


President of the Senate



Speaker of the House of Delegates

The within is disappeared this the 6th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

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