

HB 2771

FILED

2009 JUN -5 PM 4: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



SECOND
ENROLLMENT

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2771

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



Amended and again passed May 27, 2009,
as a result of the objections of the Governor

In Effect Ninety Days From Passage

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S E C O N D
E N R O L L M E N T

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FOR

H. B. 2771

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

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; 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; applying the provisions of the Act only to contracts valued in excess of \$100,000; clarifying the definitions of the phrases “drug test”, “drug of abuse” and “reasonable cause”; including a new definition for the phrase “preemployment drug test; requiring drug and alcohol testing for employees of contractors who perform work for counties, municipalities and political subdivisions; providing an exemption for workers covered by United States Department of Transportation drug testing guidelines; requiring contractors to

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provide an annual certified drug-free workplace report to public authorities; and limiting the application of the offense for a third or subsequent violation of the Act to violations occurring within the previous five years.

Be it enacted by the Legislature of West Virginia:

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,
5 means any construction, reconstruction, improvement,
6 enlargement, painting, decorating or repair of any public
7 improvement let to contract the value of which contract is
8 over \$100,000. The term “construction” does not include
9 temporary or 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
14 least a nine-panel drug screen in urine specimens that are
15 collected from individuals for the purpose of scientifically
16 analyzing the specimens to determine if the individual

17 ingested, was injected or otherwise exposed to a drug of
18 abuse.

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

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

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

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

49 drug and alcohol testing programs or otherwise accepted as
50 the industry standard.

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

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

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

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

74 (m) The term “reasonable cause” means a belief based
75 on facts and inferences based primarily upon, but not limited
76 to: (1) Observable phenomena, such as direct observation of
77 use, possession or distribution of alcohol or a drug of abuse,
78 or of the physical symptoms of being under the influence of
79 alcohol or a drug of abuse, such as, but not limited to, slurred

80 speech, dilated pupils, odor of an alcoholic beverage or a
81 drug of abuse, changes in affect or dynamic mood swings; (2)
82 a pattern of abnormal conduct, erratic or aberrant behavior or
83 deteriorating work performance such as frequent
84 absenteeism, excessive tardiness or recurrent accidents, that
85 appears to be related to the use of alcohol or a drug of abuse
86 and does not appear to be attributable to other factors; (3) the
87 identification of an employee as the focus of a criminal
88 investigation into unauthorized possession, use or trafficking
89 of a drug of abuse; (4) a report of use of alcohol or a drug of
90 abuse provided by a reliable and credible source; and (5)
91 repeated or flagrant violations of the safety or work rules of
92 the employee's employer, that are determined by the
93 employee's supervisor to pose a substantial risk of physical
94 injury or property damage and that appears to be related to
95 the use of alcohol or a drug of abuse and that does not appear
96 attributable to other factors.

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

101 (o) The term "under the influence of alcohol" means a
102 concentration of eight hundredths of one percent or more by
103 weight of alcohol in an individual's blood or a concentration
104 of eight hundredths of one gram or more by weight of alcohol
105 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
12 with 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.

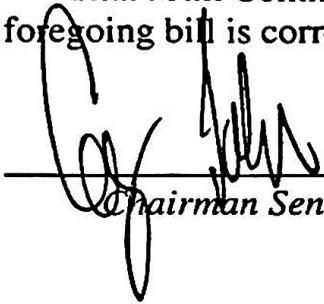
§21-1D-8. Penalties for violation of this article.

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.



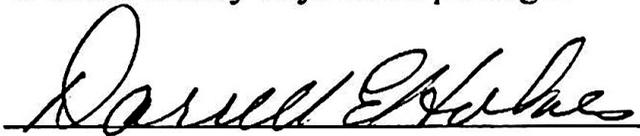
Chairman Senate Committee



Chairman House Committee

Originating in the House.

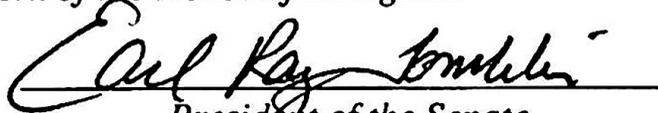
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

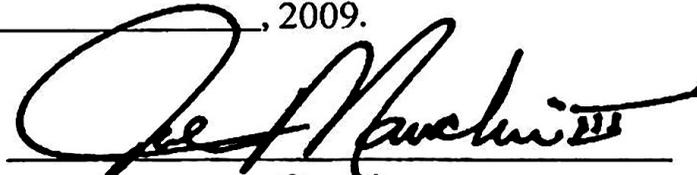


President of the Senate



Speaker of the House of Delegates

The within is approved this the 5th
day of June, 2009.



Governor

PRESENTED TO THE
GOVERNOR

JUN - 1 2009

Time 10:10 am