

HB 2771 (Veto)

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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

ENROLLED FILED

COMMITTEE SUBSTITUTE 2009 MAY -6 PM 1:28

FOR

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## H. B. 2771

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

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[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.

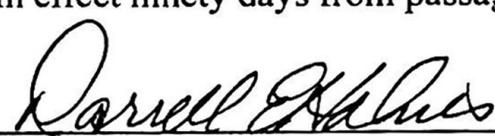
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

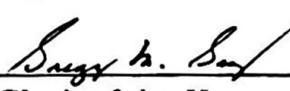
  
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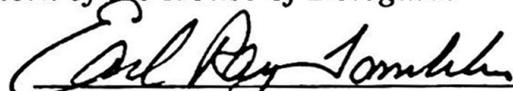
  
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Originating in the House.

In effect ninety days from passage.

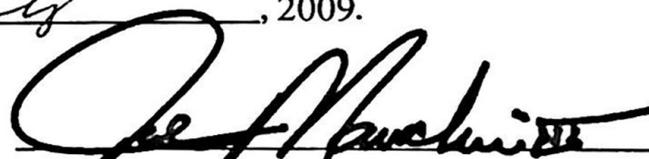
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is disappeared this the 6<sup>th</sup>  
day of May, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

APR 30 2009

Time 3:20 pm