

SB 376

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 376**

(SENATORS YOST, FITZSIMMONS, KESSLER (MR. PRESIDENT)  
AND WELLS, *ORIGINAL SPONSORS*)

[PASSED MARCH 8, 2014; TO TAKE EFFECT JULY 1, 2014.]

**FILED**  
2014 MAR 26 A 10:06  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-3-22, relating to safety and welfare of employees at certain public improvement sites by public authorities; defining terms; requiring onsite employees at certain public improvement sites to complete an Occupational Safety and Health Administration-approved ten-hour construction safety program; requiring the retention of training records; providing for incremental implementation period for mandate; providing the Commissioner of Labor to issue cease-and-desist notices in certain situations; providing civil penalties for violations; creating a misdemeanor offense and providing criminal fines for exhibiting false documents; exempting certain construction activities and persons from application of this section; and requiring a report from the Commissioner of Labor on effectiveness of the safety training.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §21-3-22, to read as follows:

ARTICLE 3 SAFETY AND WELFARE OF EMPLOYEES.

**§21-3-22. OSHA construction safety program.**

1 (a) For the purposes of this section:

2 (1) "Business entity" means any firm, partnership,  
3 association, company, corporation, limited partnership,  
4 limited liability company or other entity.

5 (2) "Commissioner" means the Commissioner of Labor  
6 or his or her designee.

7 (3) "Public authority" has the same meaning as in section  
8 two, article one-d of this chapter.

9 (4) "Public improvement" has the same meaning as in  
10 section two, article one-d of this chapter.

11 (b) No person or business entity providing services as a  
12 contractor or subcontractor under a contract, entered on or  
13 after July 1, 2014, for the construction, reconstruction,  
14 alteration, remodeling or repairs of any public improvement,  
15 by or on behalf of a public authority, where the total contract  
16 cost of all work to be performed by all contractors and  
17 subcontractors is in excess of \$50,000, may use, employ or  
18 assign any person to a public improvement work site who has  
19 not successfully completed a ten-hour construction safety  
20 program designed by OSHA, no later than twenty-one  
21 calendar days after being employed at or assigned to the  
22 public improvement work site.

23 (c) The training requirement contained in subsection (b)  
24 of this section does not apply to a person used, employed or  
25 assigned to a public improvement work site for less than  
26 twenty-one consecutive calendar days following the person's  
27 first day of employment or assignment at the public  
28 improvement work site.

29 (d) During the three hundred sixty-five days following  
30 the effective date of this section, a person employed or  
31 assigned to a public improvement work site shall have ninety  
32 days to complete the training requirement of subsection (b)  
33 of this section.

34 (e) A contractor or subcontractor subject to this section  
35 shall make and maintain a record of the persons he or she  
36 uses, employs or assigns pursuant to the contract, including  
37 the date of the completion of the safety training program  
38 required by subsection (b) of this section and the identity of  
39 the provider of the training. The records required by this  
40 subsection shall be preserved pursuant to section five, article  
41 five-c of this chapter and be maintained at the employer's  
42 business office.

43 (f) Upon a finding by the commissioner that a person has  
44 been used, employed at or assigned to a public improvement  
45 work site in violation of subsection (b) of this section, the  
46 commissioner may issue a cease-and-desist order to the  
47 person who has not completed the requisite training until the  
48 person presents the commissioner with evidence that he or  
49 she has successfully completed the training program required  
50 by subsection (b) of this section.

51 (g) The commissioner may assess a civil penalty of not  
52 less than \$100 nor more than \$1,000 to any person or  
53 business entity for each violation of this section.

54       (h) Any person with knowledge that a document or other  
55 record falsely represents that a person has completed the  
56 training program required by subsection (b) of this section  
57 and who provides or exhibits the document or record to the  
58 commissioner or to an employer shall be guilty of a  
59 misdemeanor and, upon conviction thereof, shall be fined not  
60 less than \$250 nor more than \$2,500.

61       (i) The following persons are exempt from the training  
62 requirements of subsection (b) of this section:

63       (1) Law-enforcement officers involved with traffic  
64 control or job-site security;

65       (2) Federal, state and municipal government employees  
66 and inspectors; and

67       (3) Suppliers of materials and persons whose sole  
68 responsibility is to deliver materials to the work site.

69       (j) The commissioner shall report to the Joint Committee  
70 on Government and Finance by January 1, 2017, on accident  
71 and injury rates at public improvement work sites during the  
72 two years prior and following enactment of this section.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2014.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker of the House of Delegates

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SECRETARY OF STATE

The within *is approved* ..... this  
the *26th* Day of *March* ....., 2014.

*[Signature]*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2014

Time 1:20 pm