

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2771

By Delegate Foster

[Introduced January 18, 2023; Referred to the
Committee on Workforce Development then the
Judiciary]

1 A BILL to amend and reenact §21-1D-2 of the Code of West Virginia, 1931, as amended, relating
2 to removing marijuana as a tested substance from the screening requirements of the West
3 Virginia Alcohol and Drug-Free Workplace Act.

Be it enacted by the Legislature of West Virginia:

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

§21-1D-2. Definitions.

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

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

7 (c) The term "contractor" means any employer working on a public improvement without
8 regard to whether they are serving as the prime or subcontractor to another.

9 (d) The term "drug test" means a procedure using at least a nine-panel drug screen in urine
10 specimens that are collected from individuals for the purpose of scientifically analyzing the
11 specimens to determine if the individual ingested, was injected or otherwise exposed to a drug of
12 abuse.

13 (e) The term "drug of abuse" means any substance listed under subsection (h) of this
14 section and any other substance the employer chooses to test for.

15 (f) The term "employee" means a laborer, mechanic or other worker. For the purposes of
16 this article, employee does not include those persons as are employed or hired directly by a public
17 authority on a regular or temporary basis engaged exclusively in making temporary or emergency
18 repairs. Furthermore, employee does not include those persons employed by a contractor who
19 does not work in public improvement construction.

20 (g) The term "medical review officer" means a physician who holds a certificate authorizing

21 them to practice medicine and surgery or osteopathic medicine and surgery, has knowledge of
22 substance abuse disorders, has the appropriate medical training to interpret and evaluate positive
23 drug and alcohol test results together with a person's medical history and other relevant
24 biomedical information, has successfully completed qualification training as outlined in the Code
25 of Federal Regulations at 49 C.F.R. Part 40 §121 (c) and has passed an exam administered by a
26 nationally recognized medical review officer certification board or subspecialty board for medical
27 practitioners in the field of medical review of federally mandated drug testing.

28 (h) The term "nine-panel drug screen" means a drug-testing program that tests for
29 marijuana cocaine, opiates including hydromorphone, oxycodone, hydrocodone, phencyclidine,
30 amphetamines, barbiturates, benzodiazepines, methadone and propoxyphene at the substance
31 screening and confirmation limits where provided under federally mandated drug and alcohol
32 testing programs or otherwise accepted as the industry standard.

33 (i) The term "preemployment drug test" means a drug test taken within the preceding 12
34 months from employment or seven days after hire.

35 (j) The term "public authority", as used in this article, means any officer, board or
36 commission or other agency of the State of West Virginia, its counties or municipalities or any
37 political subdivision thereof, authorized by law to enter into a contract for the construction of a
38 public improvement, including any institution supported, in whole or in part, by public funds of the
39 State of West Virginia and this article applies to expenditures of these institutions made, in whole
40 or in part, from public funds.

41 (k) The term "public improvement", as used in this article, includes all buildings, roads,
42 highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports
43 and all other structures upon which construction may be let to contract by the State of West
44 Virginia, its counties or municipalities or any political subdivision thereof.

45 (l) The term "random drug testing" means a procedure in which employees who perform
46 safety-sensitive tasks are selected to undergo a drug test by a statistically valid random selection

47 method without prearrangement or planning.

48 (m) The term "reasonable cause" means a belief based on facts and inferences based
49 primarily upon, but not limited to: (1) Observable phenomena, such as direct observation of use,
50 possession or distribution of alcohol or a drug of abuse, or of the physical symptoms of being
51 under the influence of alcohol or a drug of abuse, such as, but not limited to, slurred speech,
52 dilated pupils, odor of an alcoholic beverage or a drug of abuse, changes in affect or dynamic
53 mood swings; (2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work
54 performance such as frequent absenteeism, excessive tardiness or recurrent accidents, that
55 appears to be related to the use of alcohol or a drug of abuse and does not appear to be
56 attributable to other factors; (3) the identification of an employee as the focus of a criminal
57 investigation into unauthorized possession, use or trafficking of a drug of abuse; (4) a report of use
58 of alcohol or a drug of abuse provided by a reliable and credible source; and (5) repeated or
59 flagrant violations of the safety or work rules of the employee's employer, that are determined by
60 the employee's supervisor to pose a substantial risk of physical injury or property damage and that
61 appears to be related to the use of alcohol or a drug of abuse and that does not appear attributable
62 to other factors.

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

66 (o) The term "under the influence of alcohol" means a concentration of eight hundredths of
67 one percent or more by weight of alcohol in an individual's blood or a concentration of eight
68 hundredths of one gram or more by weight of alcohol per 210 liters of an individual's breath.

NOTE: The purpose of this bill is to remove marijuana as a tested substance from the screening requirements of the West Virginia Alcohol and Drug-Free Workplace Act.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.