

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 752

Short Title: Comprehensive Drug-Free Workplace Policy.

(Public)

Sponsors: Senators Shaw and Sands.

Referred to: State Personnel and State Government.

April 23, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A DRUG-FREE WORKPLACE FOR EMPLOYEES OF THE
3 STATE OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 126 of the General Statutes is amended by adding a new
6 Article to read:

7 **“ARTICLE 15.**
8 **"DRUG-FREE WORKPLACE ACT.**

9 **"§ 126-89. Title.**

10 This Article shall be known and may be cited as the ‘Drug-Free Workplace Act.’

11 **"§ 126-90. Definitions.**

12 As used in this Article or subsequent policies:

- 13 (1) ‘Agency’ shall mean institutions, State agencies, universities,
14 community colleges, public schools, the legislature, the executive and
15 the judicial system.
- 16 (2) ‘Certified personnel’ shall mean those persons who take employee
17 specimen samples, maintain chain of custody procedures, analyze
18 samples, and report findings to the employer. Personnel shall be
19 certified by either the American Board of Pathology or the National
20 Institute of Drug Abuse.
- 21 (3) ‘Collection site’ shall mean a place where applicants and employees
22 present themselves to provide, under controlled conditions, a urine or
23 breathalyzer test which will be analyzed for the presence of drugs or
24 alcohol.

- 1 for the purpose of determining the presence or absence of a drug, its
2 metabolites or alcohol.
- 3 (13) 'Drug Testing Fund' shall mean, if an agency decides to implement a
4 drug testing program, then the agency shall establish a line item within
5 its budget to pay for the reasonable cause drug and/or alcohol test
6 administered to its employees.
- 7 (14) 'Elected or appointed official' shall mean a person elected or appointed
8 to the legislative, executive, or judicial branches of government.
- 9 (15) 'Employee' shall mean all full-time and part-time permanent and
10 temporary employees of the State of North Carolina.
- 11 (16) 'Employee assistance program' shall mean an assessment service
12 which provides early identification, motivation, and referral for
13 individuals with poor job performance in any given work setting due to
14 a variety of personal situations including alcohol and drug related
15 problems, family and marital problems, and emotional and
16 psychological problems. The service is offered in partnership with
17 employers with whom the area program has a written agreement and
18 provides employee education, supervisory training, referral, follow-up
19 and program evaluation.
- 20 (17) 'Exempt positions' shall mean those positions not governed by the
21 State Personnel Act.
- 22 (18) 'Impaired' shall mean such performance and/or behavior which would
23 indicate to the observer that the employee's ability to handle job
24 assignments safely and efficiently may be compromised.
- 25 (19) 'Initial drug test' shall mean a sensitive, rapid, and reliable
26 immunoassay procedure to identify negative and presumptive positive
27 specimens. The breathalyzer shall be used for determining the
28 presence or absence of alcohol.
- 29 (20) 'Manager' shall mean any supervisor, division director, or department
30 head who manages other State employees in the executive, legislative,
31 or judicial branch; community college, institution, university, or public
32 school unit.
- 33 (21) 'Medical review officer' shall mean a licensed physician who reviews
34 and interprets positive results of confirmatory tests and evaluates those
35 results together with medical history or any other relevant biomedical
36 information to confirm positive results. This person shall have
37 knowledge of substance abuse and shall have the appropriate medical
38 or forensic training.
- 39 (22) 'Negative results' shall mean the absence of an illicit substance or its
40 metabolites in sufficient quantities to be identified by either an initial
41 test or confirmatory test or as determined by a Medical Review
42 Officer. Results shall be determined to be negative if the levels fall
43 below the following cutoff levels:
- 44 a. Cannabis: 100 ng/ml Initial Test

1 possession, or use of controlled substances, and the use of alcoholic beverages is
2 prohibited in the State workplace. Employees who work under the influence of illegal
3 drugs, alcohol, or misuse of legal drugs may exhibit poor work performance or have an
4 effect on the health or safety of fellow employees and/or the general public. A
5 preemployment drug testing program shall be implemented, in accordance with this act,
6 by each agency of the State by July 1, 1992. Agencies may choose to implement a
7 reasonable cause drug testing program. However, when implementing such a program,
8 agencies shall operate in strict compliance with this act. Agencies now testing
9 employees shall have one year from the date of ratification to bring existing drug testing
10 programs in compliance with this act.

11 **"§ 126-92. Preemployment drug testing.**

12 In an effort to ensure a drug-free workplace, each agency of State government shall
13 implement a preemployment drug testing program to be administered to each successful
14 job applicant and newly elected or newly appointed member of the legislative,
15 executive, or judicial branches. The Office of State Personnel shall develop the policies
16 and procedures, provide training, and shall maintain a central file of all applicants who
17 tested positive for a period of one year from the date of the receipt of test results, as
18 outlined in G.S. 126-97 of this act. Each agency shall notify the Office of State
19 Personnel with the name of the applicant and the title of the position of the applicant
20 who was refused employment. Testing shall be conducted to determine the use of
21 marijuana/cannabinoids (THC), alcohol, cocaine metabolites, opiates, phencyclidine
22 (PCP), and amphetamines/methamphetamines. Persons already employed by the State
23 and seeking a transfer, promotion, an elected official who has been reelected, or an
24 official who has been reappointed shall not be required to submit to preemployment
25 drug testing. In administering this test the following shall apply:

- 26 (1) Each preemployment drug test shall be conducted by a laboratory
27 certified by the National Institute of Drug Abuse (NIDA) and shall be
28 the lab contracted on behalf of the State by the Office of State
29 Personnel in accordance with the rules in G.S. 143-49 and G.S. 143-
30 53.
- 31 (2) The successful applicant and the newly elected or newly appointed
32 official may choose to pay for the test out-of-pocket, or be allowed to
33 have the cost of the preemployment drug test payroll deducted from
34 the first month's salary. An invoice from the selected NIDA approved
35 lab shall be submitted to the agency payroll office, which will
36 authorize payment to be made by the State on behalf of the prospective
37 employee.
- 38 (3) If a positive initial test result occurs, a confirmatory test using the
39 gas/chromatography/mass spectrometry (GC/MS) shall be performed.
40 If the second analytical test shows a confirmed positive result the
41 prospective employee shall not be hired, shall be barred from
42 employment with the State for a period of one year, and shall assume
43 direct responsibility for payment of the test.

- 1 (4) If an elected or appointed official receives a positive initial and a
2 positive confirmatory drug test, the results shall be sent to the
3 appropriate governing ethics body for disciplinary action and referral
4 to an employee assistance program.
- 5 (5) The following language shall be included in all vacancy
6 announcements for State employment:
7 "The applicant tentatively selected for this position will be required to
8 submit to a urinalysis test for illegal drug use prior to being
9 permanently hired. By submitting and signing this application for
10 employment the applicant acknowledges and consents to this
11 requirement.
- 12 (6) The following language shall appear on all applications used for
13 employment with the State:
14 'Have you been denied employment with the State during the past year
15 as a result of a positive confirmatory drug test? yes no.'

16 **"§ 126-93. State employee rights.**

17 Every effort shall be made by managers to protect the rights of employees.
18 Managers shall notify all employees of the following rights and shall observe these
19 rights:

- 20 (1) A manager shall not request a reasonable cause drug or alcohol test
21 based on unsupported rumors or innuendos.
- 22 (2) Disclosure of information concerning an employee being tested shall
23 be limited to the manager(s) (only those involved in the decision to
24 have an employee tested), the agency personnel director (if required),
25 the collection site personnel, and/or the medical review officer.
- 26 (3) Information concerning test results, referrals to rehabilitation
27 programs, or disciplinary actions shall remain confidential and limited
28 to only those managers involved in the decisions concerning the
29 employee in question.
- 30 (4) An employee's efforts to voluntarily obtain help, prior to the problem
31 being determined by management, shall not result in immediate
32 disciplinary action or dismissal.
- 33 (5) An employee, at his own expense, may request a second confirmatory
34 test be performed using the original sample by a lab from the approved
35 list of labs maintained in the Office of State Personnel. Management
36 shall withhold final disciplinary action until the results of the test are
37 submitted to the employee and management. The employee shall
38 agree to release the results of the second test or management may
39 proceed with disciplinary action up to and including dismissal. If the
40 original sample is lost or damaged and cannot be used to perform a
41 second test upon the employee's request, then the first test shall be
42 rendered invalid and no disciplinary action concerning the test shall be
43 permitted. If the second test produces a negative result, then the

1 agency shall pay for that test. The second test shall be conducted
2 under the same procedures outlined in this act.

3 **"§ 126-94. Disciplinary actions.**

4 It is the employee's responsibility to seek help for such problems before they must be
5 addressed at the work site or otherwise become apparent as unsatisfactory job
6 performance and/or work habits. Such voluntary action on the part of the employee
7 shall be viewed as responsible and shall be supported by management and the
8 supervisor. Employees determined by administrative or other investigation to be
9 involved in:

- 10 (1) The illegal manufacture, distribution, or sale of alcohol or drugs in
11 State workplaces or during work hours shall be subject to disciplinary
12 action up to and including dismissal.
13 (2) The illegal use of alcohol or drugs in State workplaces or during work
14 hours shall require the employee to meet with a counselor from the
15 employee assistance program to determine if appropriate, the proper
16 rehabilitation needed.
17 (3) A condition determined to exist under G.S. 126-94(2) above, which
18 refers an employee to an employee assistance program, may result in
19 the dismissal of that employee if:
20 a. There is a refusal to attend the scheduled employee assistance
21 program conference; or,
22 b. There is failure to successfully complete the employee
23 assistance program recommended course of action.

24 Managers shall not allow any employee to remain on duty in a sensitive position
25 who is found to use illegal drugs, prior to successful completion of rehabilitation
26 through an employee assistance program. However, as part of a rehabilitation or
27 counseling program, the head of an agency may, at his discretion, allow an employee to
28 return to duty in a sensitive position, if it is determined that this action would not pose a
29 danger to public health or safety.

30 An employee convicted of any criminal drug statute violation must notify his
31 supervisor within five calendar days after such conviction. Failure to provide
32 notification shall result in disciplinary action or dismissal. Disciplinary actions
33 concerning an elected or appointed member of the judiciary or legislature shall be
34 handled by the appropriate governing ethics body.

35 **"§ 126-95. Abuse of authority.**

36 Any manager who is determined by administrative or other investigation to have
37 abused the authority granted under this act as a means of harassing an employee or
38 group of employees or to have required drug testing without reasonable cause shall be
39 subject to dismissal. Any manager who knowingly ignores an alcohol or drug problem
40 with an employee which impairs job performance, and fails to act in a responsible
41 manner in accordance with the authority granted under this act, shall be subject to
42 disciplinary action up to and including dismissal.

43 **"§ 126-96. Office of State Personnel responsibilities.**

44 The Office of State Personnel shall be responsible for the following:

- 1 (1) Developing procedures and guidelines for implementing the State's
2 Drug-Free Workplace Policy pursuant to this act which shall include
3 the chain of custody procedures for test samples. Security procedures
4 shall be sufficient to ensure the collection and test of a valid sample.
- 5 (2) Developing and conducting manager training programs for all agencies
6 governed by this act. Such training shall be conducted in cooperation
7 with agency managers and shall include all positions in a supervisory
8 capacity. Such training shall include at least the following
9 components:
- 10 a. A program to inform employees of the dangers of alcohol and
11 drug abuse in the workplace; and
- 12 b. The responsibilities of managers and employees as outlined in
13 this act. Each employee shall receive a copy of the State's
14 Drug-Free Workplace Policy; and
- 15 c. A list of all available NIDA certified labs and a list of
16 rehabilitation programs for employees seeking assistance with
17 an alcohol or drug abuse problem; and
- 18 d. Appropriate actions to be taken by managers concerning drug
19 testing of employees.
- 20 (3) Maintaining a central confidential file of applicants testing positive
21 who were denied employment for a period of one year from the date of
22 receipt of the positive confirmatory preemployment drug test. The
23 central files shall include applicants from all State agencies,
24 institutions, community colleges, universities, and public school units.
- 25 (4) Shall assist agencies in meeting certification requirements of federal
26 agencies.
- 27 (5) Shall work with the Superintendent of Public Instruction, the President
28 of the Department of Community Colleges, and the President of the
29 University of North Carolina General Administration to implement
30 this act.
- 31 (6) Shall establish the minimum acceptable standards which must be met
32 by an employee assistance program in order to be approved.
- 33 (7) Shall manage the Drug-Free Workplace Training Fund.
- 34 (8) Shall report annually to the General Assembly on the following:
- 35 a. The number of preemployment drug tests conducted on behalf
36 of each agency during the previous fiscal year, as conducted
37 under the conditions outlined in G.S. 126-93 of this act; and
- 38 b. The number of reasonable cause drug tests conducted on behalf
39 of each agency; and
- 40 c. A report outlining the effectiveness of the North Carolina Drug-
41 Free Workplace Policy.
- 42 (9) Shall maintain a list of sensitive positions in State government.
- 43 Resources appropriated for the implementation of this act shall be used for no other
44 purpose.

1 **"§ 126-97. Agency responsibilities.**

2 If an agency elects to implement a reasonable cause drug testing program, then that
3 agency must pay for the cost of the tests and the services of an approved employee
4 assistance program. In addition, each agency shall have the following responsibilities:

5 (1) To appoint a Drug-Free Workplace Coordinator who shall be
6 responsible for coordinating training with the Office of State
7 Personnel. The Drug-Free Workplace Coordinator shall certify to the
8 Office of State Personnel that all managers have completed the
9 training program.

10 (2) To ensure, as outlined in G.S. 126-92, that necessary steps have been
11 taken to implement a preemployment drug testing program.

12 (3) To provide the services of an employee assistance program designed to
13 provide rehabilitation for an employee who tests positive for alcohol or
14 drugs. (Services of the Employee Assistance Program within the
15 Office of State Personnel and the Division of Mental Health,
16 Developmental Disabilities, and Substance Abuse Services within the
17 Department of Human Resources shall be available for agencies to
18 contract with.)

19 (4) To report annually to the Office of State Personnel the following:

20 a. The number of preemployment drug tests conducted by
21 each agency during the fiscal year; and

22 b. The number of reasonable cause drug tests conducted by
23 each agency.

24 **"§ 126-98. Scope of reasonable cause drug testing programs.**

25 When implementing a reasonable cause drug testing program, employees covered by
26 this act shall include the following:

27 (1) All positions employed and subject to the State Personnel Act; and

28 (2) All exempt and nonexempt positions employed by the Executive,
29 Legislative, and Judicial Branches of government; and

30 (3) All State elected positions; and

31 (4) All positions employed by a State institution, agency, university,
32 community college, and public school system; and

33 (5) All other positions employed by the State, except for positions of
34 appointments not receiving a salary.

35 **"§ 126-99. Reasonable cause drug testing.**

36 Drug testing of State employees shall be limited to reasonable cause drug testing as
37 defined in this act. If an agency decides to implement a reasonable cause drug testing
38 program, then every effort shall be made to protect the rights of employees; therefore,
39 reasonable cause drug testing shall occur only when conditions outlined in this act or
40 included in procedures and/or guidelines established by the Office of State Personnel
41 pursuant to this act exist. Reasonable cause drug testing shall be administered under the
42 following conditions:

43 (1) That each reasonable cause drug test shall be conducted by a
44 laboratory certified by the National Institute of Drug Abuse (NIDA)

1 and shall be the lab contracted on behalf of the State by the Office of
2 State Personnel in accordance with the rules in G.S. 143-49 and G.S.
3 143-53; and

4 (2) That the cost of the reasonable cause drug test shall be paid by the
5 agency; and

6 (3) The belief that an employee is using or has used alcohol or illicit drugs
7 based on specific objective and articulative facts and reasonable
8 inferences drawn from those facts in light of experience. Such facts
9 and inferences shall be limited to one of the following:

10 a. Direct observations of abnormal conduct or erratic behavior by
11 the employee which render the employee unable to perform
12 his/her duties or which pose a threat to others safety or health;
13 or

14 b. A report of observed alcohol or drug use provided by a reliable
15 and credible source; or

16 c. An on-the-job accident or occurrence where there is evidence to
17 indicate the accident or occurrence, in whole or in part, may
18 have been the result of the employee's use of drugs or alcohol.

19 (4) The immediate supervisor, after consultation with and approval from
20 the division director, may request from the department head
21 permission to drug test an employee, if conditions outlined in G.S.
22 126-99(3) exist. In the case of an elected or appointed member of the
23 General Assembly, the request for a reasonable cause drug test may be
24 initiated by any member of the House or Senate through the Speaker of
25 the House or the President of the Senate, respectively. Documentation
26 of the events leading to the request for drug testing shall be maintained
27 in the office of the Speaker of the House or the President of the Senate,
28 and shall remain confidential. In the case of an elected or appointed
29 official of the judiciary, the request for a reasonable cause drug test
30 may be initiated by a credible source to the Judicial Standards
31 Commission.

32 (5) If all security procedures and guidelines developed by the Office of
33 State Personnel for the collection of urine specimens, or in the case of
34 alcohol abuse the administering of the breathalyzer test, have been
35 followed.

36 (6) If the initial reasonable cause drug test results are positive, a
37 confirmatory test using the gas/chromatography/mass spectrometry
38 (GC/MS) shall be performed. If the second analytical test shows a
39 confirmed positive result the employee shall be required to report for a
40 scheduled appointment with a counselor from an employee assistance
41 program for enrollment in an appropriate rehabilitation program.

42 **§ 126-100. Reported criminal drug statute violations.**

1 When required by the Federal Drug-Free Workplace Act of 1988, department
2 management shall notify the appropriate federal contracting agency that an employee
3 has been convicted of a criminal drug statute.

4 **"§ 126-101. Other drug testing laws.**

5 Nothing in this statute shall be construed to interfere with federal law or the
6 Criminal Justice Standards Commission to regulate drug testing. However, where
7 otherwise not prohibited by law, when a State employee has tested positive under
8 federal law or Criminal Justice Standards Commission regulations, that employee shall
9 be suspended from his duties and required to enroll in an appropriate rehabilitation
10 program, to be determined by a counselor in an employee assistance program. Upon
11 successful completion of the appropriate rehabilitation program, a counselor from an
12 employee assistance program, with cooperation from the Employment Security
13 Commission, shall make a good faith effort to locate other suitable employment with the
14 State for that employee. If other suitable employment cannot be found or if the
15 employee fails to successfully complete the prescribed rehabilitation program, he may
16 be dismissed."

17 Sec. 2. This act shall be fully funded and is effective upon ratification.