

Calendar No. 656

105TH CONGRESS
2^D SESSION**H.R. 3853****[Report No. 105-348]**

IN THE SENATE OF THE UNITED STATES

JUNE 24, 1998

Received; read twice and referred to the Committee on Small Business

SEPTEMBER 25, 1998

Reported by Mr. BOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To promote drug-free workplace programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~Drug-Free Workplace~~
5 ~~Act of 1998~~”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) ~~FINDINGS.~~—Congress finds that—

8 (1) ~~74 percent of adults who use illegal drugs~~
9 ~~are employed;~~

1 (2) small business concerns employ over 50 per-
2 cent of the Nation's workforce;

3 (3) in over 88 percent of families with children
4 under the age of 18, at least 1 parent is employed;
5 and

6 (4) employees who use and abuse addictive sub-
7 stances increase costs for businesses and risk the
8 health and safety of all employees because—

9 (A) absenteeism is 66 percent higher
10 among drug users than nondrug users;

11 (B) health benefit utilization is 300
12 percent higher among drug users than
13 nondrug users;

14 (C) 47 percent of workplace accidents
15 are drug-related;

16 (D) disciplinary actions are 90 per-
17 cent higher among drug users than
18 nondrug users; and

19 (E) employee turnover is significantly
20 higher among drug users than nondrug
21 users.

22 (b) PURPOSES.—The purposes of this Act are to—

23 (1) educate small business concerns about the
24 advantages of a drug-free workplace;

1 (2) provide financial incentives and technical
2 assistance to enable small business concerns to cre-
3 ate a drug-free workplace; and

4 (3) assist working parents in keeping their chil-
5 dren drug-free.

6 **SEC. 3. SENSE OF THE CONGRESS.**

7 It is the sense of the Congress that—

8 (1) businesses should adopt drug-free workplace
9 programs; and

10 (2) States should consider incentives to encour-
11 age businesses to adopt drug-free workplace pro-
12 grams. Financial incentives may include—

13 (A) a reduction in workers' compensation
14 premiums;

15 (B) a reduction in unemployment insur-
16 ance premiums; and

17 (C) tax deductions in an amount equal to
18 the amount of expenditures for employee assist-
19 ance programs, treatment, or drug testing.

20 Other incentives may include adoption of liability
21 limitation as recommended by the President's Com-
22 mission on Model State Drug Laws.

1 **SEC. 4. DRUG-FREE WORKPLACE DEMONSTRATION PRO-**
2 **GRAM.**

3 The Small Business Act (15 U.S.C. 636 et seq.) is
4 amended by—

5 (1) redesignating sections 31 and 32 as sections
6 32 and 33, respectively; and

7 (2) inserting the following new section:

8 **“SEC. 31. DRUG-FREE WORKPLACE DEMONSTRATION PRO-**
9 **GRAM.**

10 “(a) **ESTABLISHMENT.**—There is established a drug-
11 free workplace demonstration program, under which the
12 Administration may make grants, cooperative agreements,
13 or contracts to eligible intermediaries for the purpose of
14 providing financial and technical assistance to small busi-
15 ness concerns seeking to start a drug-free workplace pro-
16 gram.

17 “(b) **ELIGIBILITY FOR PARTICIPATION.**—An inter-
18 mediary shall be eligible to receive a grant, cooperative
19 agreement, or contract under subsection (a) if it meets
20 the following criteria:

21 “(1) It is an organization described in section
22 501(e)(3) or 501(e)(6) of the Internal Revenue Code
23 of 1986 that is exempt from tax under section 5(a)
24 of such Act, a program of such organization, or pro-
25 vides services to such organization.

1 “(2) Its purpose is to develop comprehensive
2 drug-free workplace programs or to supply drug-free
3 workplace services, or provide other forms of assist-
4 ance and services to small businesses.

5 “(3) It has at least 2 years of experience in
6 drug-free workplace programs or in providing assist-
7 ance and services to small business concerns.

8 “(4) It has a drug-free workplace policy in ef-
9 fect.

10 “(c) REQUIREMENTS FOR PROGRAM.—Any drug-free
11 workplace program developed as a result of this section
12 shall include—

13 “(1) a written policy, including a clear state-
14 ment of expectations for workplace behavior, prohibi-
15 tions against substances in the workplace, and the
16 consequences of violating such expectations and pro-
17 hibitions;

18 “(2) training for at least 2 hours for employees;

19 “(3) additional training for employees who are
20 parents;

21 “(4) employee drug testing by a drug testing
22 laboratory certified by the Substance Abuse and
23 Mental Health Services Administration, or approved
24 by the Department of Health and Human Services
25 under the Clinical Laboratories Improvements Act of

1 1967 (42 U.S.C. 263a), or the College of American
2 Pathologists, and each positive result shall be re-
3 viewed by a Licensed Medical Review Officer;

4 “(5) employee access to an employee assistance
5 program, including assessment, referral, and short-
6 term problem resolution; and

7 “(6) continuing alcohol and drug abuse preven-
8 tion program.

9 “(d) EVALUATION AND COORDINATION.—The Small
10 Business Administrator, in coordination with the Sec-
11 retary of Labor, the Secretary of Health and Human Serv-
12 ices, and the Director of the Office of National Drug Con-
13 trol Policy, shall evaluate drug-free workplace programs
14 established as a result of this section and shall submit a
15 report of findings to the Congress not later than 1 year
16 after the date of the enactment of this section.

17 “(e) ELIGIBLE INTERMEDIARY.—Any eligible inter-
18 mediary shall be located in a state, the District of Colum-
19 bia, or the territories.

20 “(f) DEFINITION OF EMPLOYEE.—For purposes of
21 this section, the term ‘employee’ includes—

22 “(1) supervisors;

23 “(2) managers;

24 “(3) officers active in management of the busi-
25 ness; and

1 “(4) owners active in management of the busi-
2 ness:

3 “(g) CONSTRUCTION.—Nothing in this section shall
4 be construed to require an employer who attends a pro-
5 gram offered by an intermediary to contract for any serv-
6 ices offered as part of a drug-free workplace program.

7 “(h) AUTHORIZATION.—There are authorized to be
8 appropriated to carry out the provisions of this section,
9 \$10,000,000 for fiscal year 1999 and such sums may re-
10 main available until expended.”.

11 **SEC. 5. SMALL BUSINESS DEVELOPMENT CENTERS.**

12 Section 21(c)(3) of the Small Business Act (15
13 U.S.C. 648(c)(3)) is amended—

14 (1) in subparagraph (R) by striking “and”;

15 (2) in subparagraph (S) by striking the period
16 and inserting “; and”; and

17 (3) by inserting after subparagraph (S) the fol-
18 lowing new subparagraph:

19 “(T) providing information and assistance to
20 small business concerns with respect to developing
21 drug-free workplace programs.”.

22 **SEC. 6. CONTRACT AUTHORITY.**

23 The Small Business Administrator may contract with
24 and compensate government and private agencies or per-

1 sons for services related to carrying out the provisions of
2 this Act.

3 **SEC. 7. COLLECTION OF DATA AND STUDY.**

4 (a) **COLLECTION AND STUDY.**—The Small Business
5 Administrator shall collect data and conduct a study on—

6 (1) drug use in the workplace among employees
7 of small business concerns;

8 (2) costs to small business concerns associated
9 with illegal drug use by employees; and

10 (3) a need for assistance in the small business
11 community to develop drug prevention programs.

12 (b) **REPORT.**—Not later than 6 months after the date
13 of the enactment of this Act, the Small Business Adminis-
14 trator shall submit a report containing findings and con-
15 elusions of the study to the chairmen and ranking mem-
16 bers of the Small Business Committees of the House and
17 Senate.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Drug-Free Workplace*
20 *Act of 1998”.*

21 **SEC. 2. FINDINGS; PURPOSES.**

22 (a) **FINDINGS.**—*Congress finds that—*

23 (1) *74 percent of adults who use illegal drugs are*
24 *employed;*

1 (2) *small business concerns employ over 50 per-*
2 *cent of the Nation's workforce;*

3 (3) *in more than 88 percent of families with*
4 *children under the age of 18, at least 1 parent is em-*
5 *ployed; and*

6 (4) *employees who use and abuse addictive ille-*
7 *gal drugs and alcohol increase costs for businesses and*
8 *risk the health and safety of all employees because—*

9 (A) *absenteeism is 66 percent higher among*
10 *drug users than individuals who do not use*
11 *drugs;*

12 (B) *health benefit utilization is 300 percent*
13 *higher among drug users than individuals who*
14 *do not use drugs;*

15 (C) *47 percent of workplace accidents are*
16 *drug-related;*

17 (D) *disciplinary actions are 90 percent*
18 *higher among drug users than among individ-*
19 *uals who do not use drugs; and*

20 (E) *employee turnover is significantly high-*
21 *er among drug users than among individuals*
22 *who do not use drugs.*

23 (b) *PURPOSES.—The purposes of this Act are to—*

24 (1) *educate small business concerns about the ad-*
25 *vantages of a drug-free workplace;*

1 (2) *provide grants and technical assistance in*
2 *addition to financial incentives to enable small busi-*
3 *ness concerns to create a drug-free workplace;*

4 (3) *assist working parents in keeping their chil-*
5 *dren drug-free; and*

6 (4) *encourage small business employers and em-*
7 *ployees alike to participate in drug-free workplace*
8 *programs.*

9 **SEC. 3. SENSE OF CONGRESS.**

10 *It is the sense of Congress that—*

11 (1) *businesses should adopt drug-free workplace*
12 *programs;*

13 (2) *States should consider incentives to encour-*
14 *age businesses to adopt drug-free workplace programs;*
15 *and*

16 (3) *such incentives may include—*

17 (A) *financial incentives, including—*

18 (i) *a reduction in workers' compensa-*
19 *tion premiums;*

20 (ii) *a reduction in unemployment in-*
21 *surance premiums; and*

22 (iii) *tax deductions in an amount*
23 *equal to the amount of expenditures for em-*
24 *ployee assistance programs, treatment, or il-*
25 *legal drug testing; and*

1 (B) other incentives, such as the adoption of
2 liability limitations, as recommended by the
3 President’s Commission on Model State Drug
4 Laws.

5 **SEC. 4. DRUG-FREE WORKPLACE DEMONSTRATION PRO-**
6 **GRAM.**

7 Section 27 of the Small Business Act (15 U.S.C. 654)
8 is amended to read as follows:

9 **“SEC. 27. DRUG-FREE WORKPLACE DEMONSTRATION PRO-**
10 **GRAM.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) DRUG-FREE WORKPLACE PROGRAM.—The
13 term ‘drug-free workplace program’ means a program
14 that includes—

15 “(A) a written policy, including a clear
16 statement of expectations for workplace behavior,
17 prohibitions against reporting to work or work-
18 ing under the influence of illegal drugs or alco-
19 hol, prohibitions against the use or possession of
20 illegal drugs in the workplace, and the con-
21 sequences of violating those expectations and pro-
22 hibitions;

23 “(B) drug and alcohol abuse prevention
24 training for a total of not less than 2 hours for
25 each employee, and additional voluntary drug

1 *and alcohol abuse prevention training for em-*
2 *ployees who are parents;*

3 “(C) *employee illegal drug testing, with*
4 *analysis conducted by a drug testing laboratory*
5 *certified by the Substance Abuse and Mental*
6 *Health Services Administration, or approved by*
7 *the College of American Pathologists for forensic*
8 *drug testing, and a review of each positive test*
9 *result by a medical review officer;*

10 “(D) *employee access to an employee assist-*
11 *ance program, including confidential assessment,*
12 *referral, and short-term problem resolution; and*

13 “(E) *continuing alcohol and drug abuse*
14 *prevention education.*

15 “(2) *ELIGIBLE INTERMEDIARY.—The term ‘eligi-*
16 *ble intermediary’ means an organization—*

17 “(A) *that has not less than 2 years of expe-*
18 *rience in carrying out drug-free workplace pro-*
19 *grams;*

20 “(B) *that has a drug-free workplace policy*
21 *in effect;*

22 “(C) *that is located in a State, the District*
23 *of Columbia, or a territory of the United States;*
24 *and*

25 “(D) *the purpose of which is—*

1 “(i) to develop comprehensive drug-free
2 workplace programs or to supply drug-free
3 workplace services; or

4 “(ii) to provide other forms of assist-
5 ance and services to small business con-
6 cerns.

7 “(3) *EMPLOYEE*.—The term ‘employee’ includes
8 any—

9 “(A) applicant for employment;

10 “(B) employee;

11 “(C) supervisor;

12 “(D) manager;

13 “(E) officer of a small business concern who
14 is active in management of the concern; and

15 “(F) owner of a small business concern who
16 is active in management of the concern.

17 “(4) *MEDICAL REVIEW OFFICER*.—The term
18 ‘medical review officer’—

19 “(A) means a licensed physician with
20 knowledge of substance abuse disorders; and

21 “(B) does not include any—

22 “(i) employee of the small business con-
23 cern; or

24 “(ii) employee or agent of, or any per-
25 son having an financial interest in, the lab-

1 oratory for which the illegal drug test re-
2 sults are being reviewed.

3 “(b) *ESTABLISHMENT.*—*There is established a drug-*
4 *free workplace demonstration program, under which the*
5 *Administrator may make grants to, or enter into coopera-*
6 *tive agreements or contracts with, eligible intermediaries for*
7 *the purpose of providing financial and technical assistance*
8 *to small business concerns seeking to establish a drug-free*
9 *workplace program.*

10 “(c) *PRIVACY PROTECTION FOR EMPLOYEES PARTICI-*
11 *PATING IN A DRUG-FREE WORKPLACE PROGRAM.*—*Each*
12 *drug-free workplace program established with assistance*
13 *made available under this section shall—*

14 “(1) *include, as reasonably necessary and appro-*
15 *priate, practices and procedures to ensure the con-*
16 *fidentiality of illegal drug test results and of any par-*
17 *ticipation by an employee in a rehabilitation pro-*
18 *gram;*

19 “(2) *prohibit the mandatory disclosure of medi-*
20 *cal information by an employee prior to a confirmed*
21 *positive illegal drug test; and*

22 “(3) *require that a medical review officer review-*
23 *ing illegal drug test results shall report only the final*
24 *results, limited to those drugs for which the employee*

1 *tests positive, in writing and in a manner designed*
2 *to ensure the confidentiality of the results.*

3 “(d) *EVALUATION AND COORDINATION.*—*Not later*
4 *than 18 months after the date of enactment of the Drug-*
5 *Free Workplace Act of 1998, the Administrator, in coordi-*
6 *nation with the Secretary of Labor, the Secretary of Health*
7 *and Human Services, and the Director of the Office of Na-*
8 *tional Drug Control Policy, shall—*

9 “(1) *evaluate the drug-free workplace programs*
10 *established with assistance made available under this*
11 *section; and*

12 “(2) *submit to Congress a report describing the*
13 *results of the evaluation under paragraph (1).*

14 “(e) *CONTRACT AUTHORITY.*—*In carrying out this sec-*
15 *tion, the Administrator may—*

16 “(1) *contract with public and private entities to*
17 *provide assistance related to carrying out the pro-*
18 *gram under this section; and*

19 “(2) *compensate those entities for provision of*
20 *that assistance.*

21 “(f) *CONSTRUCTION.*—*Nothing in this section may be*
22 *construed to require an employer who attends a program*
23 *offered by an intermediary to contract for any service of-*
24 *fered by the intermediary.*

25 “(g) *AUTHORIZATION.*—

1 “(1) *IN GENERAL.*—*There is authorized to be ap-*
2 *propriated to carry out this section, \$10,000,000 for*
3 *fiscal years 1999 and 2000. Amounts made available*
4 *under this subsection shall remain available until ex-*
5 *pended.*”

6 “(2) *SMALL BUSINESS DEVELOPMENT CEN-*
7 *TERS.*—*Of the total amount made available under*
8 *this subsection, not more than the greater of 10 per-*
9 *cent or \$1,000,000 may be used to carry out section*
10 *21(c)(3)(T).”.*”

11 **SEC. 5. SMALL BUSINESS DEVELOPMENT CENTERS.**

12 *Section 21(c)(3) of the Small Business Act (15 U.S.C.*
13 *648(c)(3)) is amended—*

14 (1) *in subparagraph (R), by striking “and” at*
15 *the end;*

16 (2) *in subparagraph (S), by striking the period*
17 *at the end and inserting “; and”; and*

18 (3) *by adding at the end the following:*

19 “(T) *providing information and assistance to*
20 *small business concerns with respect to establishing*
21 *drug-free workplace programs on or before October 1,*
22 *2000.”.*”

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105TH CONGRESS
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[Report No. 105-348]

AN ACT

To promote drug-free workplace programs.

SEPTEMBER 25, 1998

Reported with an amendment