

Approved: 3/1/97  
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:05 a.m. on February 14, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused

Committee staff present: Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Wendy McFarland, ACLU  
Wayne Maichel, Kansas AFL/CIO  
A. J. Kotich, KDHR  
Rep. Phyllis Gilmore

Others attending: See attached list

A motion was made by Rep. Geringer to approve the minutes of January 22 and 23. It was seconded by Rep. Beggs. The motion carried and the minutes were approved as written.

Continued hearing: **HB 2124 - Failure of scheduled drug test disqualifies applicant for employment security benefits.**

Wendy McFarland, American Civil Liberties Union (ACLU), returned to answer questions from the committee. The ACLU's position is that if the employer has a reason to suspect drug use, or has probable cause, they have every reason to ask for a drug test. But not if the employee is doing the job and there is no probable cause for the test. (See Attachment 5, February 13, 1997)

Wayne Maichel, Kansas AFL/CIO, appeared before the committee in opposition to the bill. He was disturbed that the bill had not been brought before the Employment Security Advisory Council. (See Attachment 1) He concluded his testimony by answering questions from the committee.

A. J. Kotich, Chief Counsel, Legal Services, Kansas Department of Legal Services (KDHR), appeared before the committee to explain the federal drug-free workplace act. He has provided training to employers to teach the importance of having a policy that explains a company's reasons for drug testing, such as being late, taking time off from the job, or not getting the job done, etc. He pointed out the importance of not firing an employee for failing a drug test, but for not following the company's drug policy. The Kansas Department of Human Resources takes no stand on **HB 2124.**

He pointed out that the drug-free workplace act only applies to employers who have federal contracts. He read parts of the law, U.S.C 41 § 701. (See Attachment 2)

Chairman Lane asked if there were others who wanted to testify for or against **HB 2124.** No others were present and he closed the hearing on the bill.

Hearing on: **HB 2176 - Allowing social workers to form professional corporations.**

Rep. Phyllis Gilmore appeared to testify in support of the bill. The bill would allow social workers to form professional corporations. (See Attachment 3) She concluded by answering questions.

No others were present to testify on the bill, and Chairman Lane closed the hearing.

The meeting was adjourned at 9:45 a.m.

The next meeting is scheduled for February 18, 1997.

# HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE: February 14, 1997

NAME	REPRESENTING
R. Lippy	AP
A. J. Ketch	<u>DNR</u>
Don Doesken	KDHR
Linda Tierce	KDHR
PAUL BICKNELL	KDHR
Melissa Wangemann	SOS
TERRY LEATHERMAN	KCCI
JASON PRESBERGER	KGC
Scott A. Stone	KAPR
Wendy Bissette	Washburn Student
Darlene Arnold	Washburn Student
Wayne Mauer	K AFL-CIO
Jim McHaff	KS AFL-CIO
Rosemary E. Hais	OCT / CRC



President  
**Dale Moore**

Executive Secretary  
Treasurer  
**Jim DeHoff**

Executive Vice  
President  
**Wayne Maichel**

Executive Board  
*Richard Aldrich  
James Banks  
Mike Bellinger  
Bill Brynds  
Gary Buresh  
Eugene Burrell  
Ken Doud, Jr.  
Richard Durow  
David Han  
Jim Hastings  
Jerry Johnson  
Greg Jones  
Frank Mueller  
Dwayne Peaslee  
Craig Rider  
Wallace Scott  
Debbie Snow  
Betty Vines*

**TESTIMONY PRESENTED TO THE  
HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE ON  
H.B. 2124  
by the Kansas AFL-CIO**

The Kansas AFL-CIO appears before your committee, Mr. Chairman, in opposition to House Bill 2124.

Let me make it very clear. The Kansas AFL-CIO does not support the use of illegal drugs. As a matter of fact, some of the most effective alcohol and drug treatment programs are administered jointly by labor and management employee assistance programs.

The objective is to provide treatment for employees, with the goal being, to return workers to a productive job, where they can provide for the basic needs of their families. If treatment is successful, I can assure you the employer will have a thankful and dedicated employee.

H.B. 2124 eliminates changes that have been agreed upon in the last three or four years on drug testing as it relates to the Employment Security Law. The language that is being stricken in H.B. 2124 was passed unanimously by the Kansas Legislature. It would deny unemployed workers compensation, whether the substance abuse problem was job related or not.

We ask the committee to report H.B. adversely.

*Business, Commerce  
& Labor Committee  
2/14/97  
Attachment 1*



CONTRACTS

to interest due to Payment Act; as the performance under interest, if any, on terminable exclusively es Act. Wilner v. 41.

to recover interest on nt of costs recovery- on claim. Servidone 1990, 19 Cl.Ct. 346,

lessee under month- pay rent after being ay would result in to cancel lease, les- that of tenant-at- from date of default ate contracting offi- Kelley v. U.S., Cl.

ntitled to award of ate of taking to date used on computation tes Act. Whitney 1989, 18 Cl.Ct. 394, . 324, affirmed 926 l, rehearing in banc 112 S.Ct. 406, 502

Environmental Pro- cess pesticide man- claim expeditiously ie's registration was contract for dispos- and, thus, manufac- prest on indemnifica- disputes Act. Cedar Ct.1989, 18 Cl.Ct. 25. time of making of could not recover Washington Metro- rity (WMATA) on ents under contract, provision authorizing st government, de- avoid unreasonable act was made before es Act, before which ribunals consistently against contractors. rea Transit Authori- .App.1992, 618 A.2d estion conformed to D.C. 405.

equipment taken by ndemned land owned to simple interest at n date of taking until y Contract Disputes uary 1, 1980. Paul t. 415, affirmed 937

ntitled to collect inter- dition claim at the verty as of date of Servidone Const. Cl.Ct. 346, affirmed

PUBLIC CONTRACTS

41 § 701

Under law in effect at time of making of contract, public contractor could not recover prejudgment interest from Washington Metro- politan Area Transit Authority (WMATA) on: claims for equitable adjustments under contract. absent specific contract provision authorizing prejudgment interest against government, de- spite any implied duty to avoid unreasonable

administrative delay; contract was made before passage of Contract Disputes Act, before which judicial and administrative tribunals consistently construed interest claims against contractors. Washington Metropolitan Area Transit Authori- ty v. Nello L. Teer Co., D.C.App.1992, 618 A.2d 128. answer to certified question conformed to 995 F.2d 305, 301 U.S.App.D.C. 405.

§ 612. Payment of claims

LIBRARY REFERENCES

Administrative Law

Damage actions against government, see Koch, Administrative Law and Practice § 8.25.

§ 613. Separability of provisions

LIBRARY REFERENCES

Administrative Law

Damage actions against government, see Koch, Administrative Law and Practice § 8.25.

CHAPTER 10—DRUG FREE WORKPLACE

Sec.	701. Drug-free workplace requirements for Federal contractors.	Sec.	702. Drug-free workplace requirements for Federal grant recipients.
	(a) Drug-free workplace requirement.		(b) Suspension, termination, or debarment of the grantee.
	(b) Suspension, termination, or debarment of the contractor.	703.	Employee sanctions and remedies.
702.	Drug-free workplace requirements for Federal grant recipients.	704.	Waiver.
	(a) Drug-free workplace requirement.		(a) In general.
			(b) Exclusive authority.
		705.	Regulations.
		706.	Definitions.
		707.	Construction of chapter.

§ 701. Drug-free workplace requirements for Federal contractors

(a) Drug-free workplace requirement

(1) Requirement for persons other than individuals

No person, other than an individual, shall be considered a responsible source, under the meaning of such term as defined in section 403(8) of this title, for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 403(11) of this title) by any Federal agency, other than a contract for the procurement of commercial items as defined in section 403 of this title, unless such person has certified to the contracting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

- (i) the dangers of drug abuse in the workplace;
- (ii) the person's policy of maintaining a drug-free workplace;
- (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) the penalties that may be imposed upon employees for drug abuse violations;

*Rep's Rules*

*APLAW  
Chairman*

*Policy  
confirmation  
Probable reason  
To Be late  
TRNG*

*employment  
employee*

*Violation  
of Policy*

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*Business, Commerce  
& Labor Committee  
2/4/97  
Attachment 2*



(C) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment on such contract, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

#### (2) Requirement for individuals

No Federal agency shall enter into a contract with an individual unless such contract includes a certification by the individual that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

#### (b) Suspension, termination, or debarment of the contractor

##### (1) Grounds for suspension, termination, or debarment

Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder or the individual who entered the contract with the Federal agency, as applicable, shall be subject to suspension or debarment in accordance with the requirements of this section if the head of the agency determines that—

(A) the contractor or individual has made a false certification under subsection (a) of this section;

(B) the contractor violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1) of this section; or

(C) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a) of this section.

##### (2) Conduct of suspension, termination, and debarment proceedings

(A) If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(B) The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and such other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual in such proceeding.

##### (3) Effect of debarment

Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any Federal agency, and for participation in any future

procurement by any F  
exceed 5 years.

(Pub.L. 100-690, Title V, § 515,  
Title VIII, § 8301(f), Oct. 13, 1

HIS

#### Revision Notes and Legislativ

1994 Acts. Senate Report N  
103-259, and House Conferen  
103-712, see 1994 U.S. Code C  
News, p. 2561.

#### Amendments

1994 Amendments. Subsec.  
103-355, § 4104(d), substituted  
the simplified acquisition thresh  
in section 403(11) of the title)  
agency" for "of \$25,000 or more  
al agency".

Pub.L. 103-355, § 8301(f) pro  
plicability of a drug-free workpl  
in awarding contracts for procu  
mercial items as defined in sec  
title.

#### Effective Dates

1994 Acts. Amendment by s  
and 8301(f) of Pub.L. 103-355 e  
1994, except as otherwise provi

#### Administrative Law

Due process adjudication, see  
rative Law and Practice § 7.1 e

#### American Digest System

Preferences, conditions and r  
bidders, see United States §64.1  
Regulations as to drugs and  
Drugs and Narcotics §41 to 50.

#### Encyclopedias

Proposals and bids, see C.J.S.  
§ 87.  
Regulations as to drugs and  
C.J.S. Drugs and Narcotics §§ 10.

WEST

Drugs and narcotics cases: 1  
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United States cases: 393k[add

Mandatory nature of drug testin  
Reinstatement of employee 2  
Scope of mandatory bargaining

#### 1. Mandatory nature of drug tes

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## PUBLIC CONTRACTS

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individual shall be ineligible for award  
and for participation in any future

## PUBLIC CONTRACTS

procurement by any Federal agency, for a period specified in the decision, not to  
exceed 5 years.

(Pub.L. 100-690, Title V, § 5152, Nov. 18, 1988, 102 Stat. 4304; Pub.L. 103-355, Title IV, § 4104(d),  
Title VIII, § 8301(f), Oct. 13, 1994, 108 Stat. 3342, 3397.)

### HISTORICAL AND STATUTORY NOTES

#### Revision Notes and Legislative Reports

1994 Acts. Senate Report Nos. 103-258 and  
103-259, and House Conference Report No.  
103-712, see 1994 U.S. Code Cong. and Adm.  
News, p. 2561.

#### Amendments

1994 Amendments. Subsec. (a)(1). Pub.L.  
103-355, § 4104(d), substituted "greater than  
the simplified acquisition threshold (as defined  
in section 403(11) of the title) by any Federal  
agency" for "of \$25,000 or more from any Feder-  
al agency".

Pub.L. 103-355, § 8301(f) provided for inap-  
plicability of a drug-free workplace requirement  
in awarding contracts for procurement of com-  
mercial items as defined in section 403 of this  
title.

#### Effective Dates

1994 Acts. Amendment by sections 4104(d)  
and 8301(f) of Pub.L. 103-355 effective Oct. 13,  
1994, except as otherwise provided, see section

#### Administrative Law

Due process adjudication, see Koch, Adminis-  
trative Law and Practice § 7.1 et seq.

#### American Digest System

Preferences, conditions and restrictions on  
bidders, see United States ¶64.15.

Regulations as to drugs and narcotics, see  
Drugs and Narcotics ¶41 to 50.

#### Encyclopedias

Proposals and bids, see C.J.S. United States  
§ 87.

Regulations as to drugs and narcotics, see  
C.J.S. Drugs and Narcotics §§ 100, 101.

#### WESTLAW ELECTRONIC RESEARCH

Drugs and narcotics cases: 138k[add key  
number].

United States cases: 393k[add key number].

#### NOTES OF DECISIONS

Mandatory nature of drug testing 1  
Reinstatement of employee 2  
Scope of mandatory bargaining 3

##### 1. Mandatory nature of drug testing

Drug-Free Workplace Act did not require  
public utility to perform drug testing on its  
employees such that utility could be considered  
"state actor" for purposes of Fourth and Fifth  
Amendment claims asserted by former employ-  
ee who was fired following drug test, notwith-  
standing "requirements" set forth in Act to en-  
able federal contractors and grant recipients to

1001 of Pub.L. 103-355, set out as a note under  
section 251 of this title.

1988 Act. Section 5160 of Pub.L. 100-690 pro-  
vided that: "Sections 5152 [this section] and  
5153 [section 702 of this title] shall be effective  
120 days after the date of the enactment of this  
subtitle [Nov. 18, 1988]."

#### Short Title

1988 Act. Section 5151 of Pub.L. 100-690 pro-  
vided that: "This subtitle [Subtitle D of Title V,  
§§ 5151 to 5160, of Pub.L. 100-690, enacting this  
chapter and enacting a provision set out as a  
note under this section] may be cited as the  
'Drug-Free Workplace Act of 1988'."

#### Consistency of Regulations With International Obligations of United States; Extraterritorial Application

Pub.L. 100-690, Title IV, § 4804, Nov. 18,  
1988, 102 Stat. 4295, which required that regula-  
tions promulgated by agency heads be consis-  
tent with the international obligations of the  
United States, was repealed by Pub.L. 103-447,  
Title I, § 103(b), Nov. 2, 1994, 108 Stat. 4693.

#### LIBRARY REFERENCES

##### Law Reviews

Drug-free workplaces: The new requirements  
for federal grantees and contractors. James A.  
Kahl, 63 Fla.B.J. 38 (July/August 1989).

Drug testing: Is preemption the answer? 33  
Santa Clara L.Rev. 657 (1993).

Just say maybe: A watershed decision on  
drug testing by the California Supreme Court  
sets the stage for continued litigation of privacy  
rights in the workplace. Victor Schachter and  
Steven Blackburn, 17 L.A.Law. 26 (Nov. 1994).

Sister sovereign states: Preemption and the  
Second Twentieth Century Revolution in the law  
of the American workplace. Henry H. Drum-  
monds, 62 Fordham L.Rev. 469 (1993).

## 41 § 701

### Note 1

bargaining; DFWA gave board discretion in implementing policy, and implementation would necessarily involve topics of mandatory bargaining, such as what mandatory drug treatment program would entail, where employees would go for treatment, how treatment programs would be funded, and what disciplinary action would be imposed for violation of policy. *University of Hawai'i Professional Assembly v. Tomasu, Hawai'i 1995, 900 P.2d 161.*

### 2. Reinstatement of employee

Arbitration award in favor of refinery's unionized process technician violated public policy against reinstating employee in safety-sensitive position after testing positive for cocaine and

breaching employer's drug abuse policy on two occasions—breaking pledge of abstinence and failing to disclose relapse—even though nothing indicated that technician possessed or used cocaine on the premises. *Gulf Coast Indus. Workers Union v. Exxon Co., U.S.A., C.A.5 (Tex.) 1993, 991 F.2d 244, certiorari denied 114 S.Ct. 441, 126 L.Ed.2d 375.*

### 3. Scope of mandatory bargaining

To extent that state university board of regents' antidrug policy statement constituted compliance with Drug-Free Workplace Act (DFWA) it was not bargainable. *University of Hawai'i Professional Assembly v. Tomasu, Hawai'i 1995, 900 P.2d 161.*

## § 702. Drug-free workplace requirements for Federal grant recipients

### (a) Drug-free workplace requirement

#### (1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person has certified to the granting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

#### (2) Individuals

No Federal agency shall make a grant to any individual unless such individual certifies to the agency as a condition of such grant that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting any activity with such grant.

## PUBLIC CONTRACTS

## PUBLIC CONTRACTS

### (b) Suspension, termination

#### (1) Grounds for suspension

Each grant award payments under the thereunder shall be requirements of this designee determines.

(A) the grant section;

(B) the grant requirements of (a)(1) of this section;

(C) such a notice of violations of criminal law to indicate that drug-free workplace.

#### (2) Conduct of suspension

A suspension of performance subject to this subsection including Executive regulations promulgated.

#### (3) Effect of debarment

Upon issuance of a grantee, such grantee agency and for part of the period specified in the

(Pub.L. 100-690, Title V, § 515)

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### References in Text

Executive Order 12549, referred to in (b)(2), is Ex. Ord. No. 12549, F.R. 6370, which is set out in section 6101 of Title 31, Missouri.

### Administrative Law

Due process adjudication, see Administrative Law and Practice § 7.2.

### Mandatory nature of drug testing

#### 1. Mandatory nature of drug testing

Drug-Free Workplace Act public utility to perform drug testing of employees such that utility could be considered a "state actor" for purposes of Federal Tort Claims Act Amendment claims asserted by employee who was fired following drug testing.

## § 703. Employee sanctions

A grantee or contractor shall be subject to a conviction pursuant to this section.

(1) take appropriate termination; or

(2) require such employee or rehabilitation program health, law enforcement.

(Pub.L. 100-690, Title V, § 515)

PUBLIC CONTRACTS

PUBLIC CONTRACTS

41 § 7

gave board discretion in and implementation would... of mandatory bargain-... mandatory drug treatment... where employees would... low treatment programs... what disciplinary action... violation of policy. Uni-... Professional Assembly v. To-... 0 P.2d 161.

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y shall make a grant to any individual unless such individual... cy as a condition of such grant that the individual will not... al manufacture, distribution, dispensation, possession, or use of... e in conducting any activity with such grant.

(b) Suspension, termination, or debarment of the grantee

(1) Grounds for suspension, termination, or debarment

Each grant awarded by a Federal agency shall be subject to suspension payments under the grant or termination of the grant, or both, and the grant thereunder shall be subject to suspension or debarment, in accordance with requirements of this section if the agency head of the granting agency or his office designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a) of t... section;

(B) the grantee violates such certification by failing to carry out t... requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsecti... (a)(1) of this section; or

(C) such a number of employees of such grantee have been convicted... violations of criminal drug statutes for violations occurring in the workplace... to indicate that the grantee has failed to make a good faith effort to provide... drug-free workplace as required by subsection (a)(1) of this section.

(2) Conduct of suspension, termination, and debarment proceedings

A suspension of payments, termination, or suspension or debarment proceedi... subject to this subsection shall be conducted in accordance with applicable law... including Executive Order 12549 or any superseding Executive order and an... regulations promulgated to implement such law or Executive order.

(3) Effect of debarment

Upon issuance of any final decision under this subsection requiring debarment o... a grantee, such grantee shall be ineligible for award of any grant from any Feder... agency and for participation in any future grant from any Federal agency for... period specified in the decision, not to exceed 5 years.

(Pub.L. 100-690, Title V, § 5153, Nov. 18, 1988, 102 Stat. 4306.)

HISTORICAL AND STATUTORY NOTES

References in Text

Executive Order 12549, referred to in subsec. (b)(2), is Ex. Ord. No. 12549, Feb. 19, 1986, 51 F.R. 6370, which is set out as a note under section 6101 of Title 31, Money and Finance.

Effective Dates

Section effective 120 days after Nov. 18, 1988. See section 5160 of Pub.L. 100-690, set out as a note under section 701 of this title.

LIBRARY REFERENCES

Administrative Law

Due process adjudication, see Koch, Adminis- trative Law and Practice § 7.1 et seq.

NOTES OF DECISIONS

Mandatory nature of drug testing 1

1. Mandatory nature of drug testing

Drug-Free Workplace Act did not require public utility to perform drug testing on its employees such that utility could be considered "state actor" for purposes of Fourth and Fifth Amendment claims asserted by former employ- ee who was fired following drug test, notwith-

standing "requirements" set forth in Act to en- able federal contractors and grant recipients to remain eligible for federal funds and notwith- standing former employee's reference to certain federal regulations purportedly mandating test- ing; regulations relied by employee were pro- mulgated under different statutes. Act did not mandate drug tests, and employee identified no regulations implementing act that did so. Parker v. Atlanta Gas Light Co., S.D.Ga.1993. SIS F.Supp. 345.

§ 703. Employee sanctions and remedies

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 701(a)(1)(D)(ii) or 702(a)(1)(D)(ii) of this title—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(Pub.L. 100-690, Title V, § 5154, Nov. 18, 1988, 102 Stat. 4307.)

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#### Administrative Law

Due process adjudication, see Koch, Administrative Law and Practice § 7.1 et seq.

#### § 704. Waiver

##### (a) In general

A termination, suspension of payments, or suspension or debarment under this chapter may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines under section 701(b)(1) of this title, after the issuance of a final determination under such section, that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

##### (b) Exclusive authority

The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

(Pub.L. 100-690, Title V, § 5155, Nov. 18, 1988, 102 Stat. 4307.)

#### § 705. Regulations

Not later than 90 days after November 18, 1988, the governmentwide regulations governing actions under this chapter shall be issued pursuant to the Office of Federal Procurement Policy Act. (41 U.S.C. 401 et seq.)

(Pub.L. 100-690, Title V, § 5156, Nov. 18, 1988, 102 Stat. 4308.)

### HISTORICAL AND STATUTORY NOTES

#### References in Text

The Office of Federal Procurement Policy Act, referred to in text, is Pub.L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classi-

fied principally to chapter 7 (section 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

#### § 706. Definitions

For purposes of this chapter—

(1) the term “drug-free workplace” means a site for the performance of work done in connection with a specific grant or contract described in section 701 or 702 of this title of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;

(2) the term “employee” means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 701 or 702 of this title;

(3) the term “controlled substance” means a controlled substance in schedules I through V of section 812 of Title 21;

(4) the term “conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term “criminal drug statute” means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

(6) the term “grantee” means the department, division, or other unit of a person responsible for the performance under the grant;

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(7) the term “contractor” means the department person responsible for the performance under the

(8) the term “Federal agency” means an agency: 552(f) of Title 5.

(Pub.L. 100-690, Title V, § 5157, Nov. 18, 1988, 102 Stat. 4308.)

### HISTORICAL AND STATUTORY

#### References in Text

This Act, referred to in par. (1), is Pub.L. 100-690, Nov. 18, 1988, 102 Stat. 4181, known as

the Anti-Dr: plete classif Short Title Title 21, Fo

### LIBRARY REFERENCES

#### American Digest System

Place for work, see Labor Relations ⇨10 to 15.

Regulations as to drugs and narcotics, see Drugs and Narcotics ⇨41 to 50.

United States aid to state and local agencies, see United States ⇨82(2).

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#### § 707. Construction of chapter

Nothing in this chapter shall be construed to require the head of the agency determines it would be inappropriate to undercover operations, to comply with the provisions of

(Pub.L. 100-690, Title V, § 5158, Nov. 18, 1988, 102 Stat. 4308.)

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(7) the term "contractor" means the department, division, or other unit of a person responsible for the performance under the contract; and  
(8) the term "Federal agency" means an agency as that term is defined in section 552(f) of Title 5.

(Pub.L. 100-690, Title V, § 5157, Nov. 18, 1988, 102 Stat. 4308.)

**HISTORICAL AND STATUTORY NOTES**

**References in Text**

This Act, referred to in par. (1), is Pub.L. 100-690, Nov. 18, 1988, 102 Stat. 4181, known as

the Anti-Drug Abuse Act of 1988. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 21, Food and Drugs, and Tables.

**LIBRARY REFERENCES**

**American Digest System**

Place for work, see Labor Relations ⇨10 to 15.

Regulations as to drugs and narcotics, see Drugs and Narcotics ⇨41 to 50.

United States aid to state and local agencies, see United States ⇨82(2).

**Encyclopedias**

Disbursement of United States funds, see C.J.S. United States § 122.

Place for work, see C.J.S. Labor Relations § 12.

Regulations as to drugs and narcotics, see C.J.S. Drugs and Narcotics §§ 100, 101.

**WESTLAW ELECTRONIC RESEARCH**

Drugs and narcotics cases: 133k[add key number].

Labor relations cases: 232k[add key number].

United States cases: 393k[add key number].

**§ 707. Construction of chapter**

Nothing in this chapter shall be construed to require law enforcement agencies, if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations, to comply with the provisions of this chapter.

(Pub.L. 100-690, Title V, § 5158, Nov. 18, 1988, 102 Stat. 4308.)

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PHYLLIS GILMORE  
Representative, Twenty-Seventh District

COMMITTEE ASSIGNMENTS  
CHAIRMAN: JOINT COMMITTEE ON CHILDREN  
& FAMILIES  
MEMBER: BUSINESS COMMERCE & LABOR  
HEALTH & HUMAN SERVICES  
JUDICIARY

February 14, 1997

TESTIMONY IN SUPPORT OF HOUSE BILL 2176

Chairman Lane and members of the Business, Commerce, and Labor Committee:

HB 2176 was introduced at the request of the Kansas Chapter of the National Association of Social Workers.

This bill, if enacted, would simply allow social workers to form professional corporations.

It appears that the omission of the number (15) in Section I of K.S.A. 17-2710 was simply an oversight.

For the purpose of disclosure, I am licensed as a clinical social worker in the State of Kansas. I have a private practice that is limited to the area of adoptions. However, because of the possible appearance of a conflict of interest, I will be abstaining from any committee or floor votes pertaining to this matter.

I appreciate Chairman Lane scheduling this hearing on HB 2176. Thank you and I would be pleased to stand for questions.

*Business, Commerce  
& Labor Committee  
2/14/97  
Attachment 3*

3. 17-2708 held not to authorize general corporation to engage in medical practice nor provide services under supervision of practitioner. *Early Detection Center, Inc. v. Wilson*, 248 K. 869, 877, 811 P.2d 860 (1991).

**17-2707. Same; definitions.** As used in this act, unless the context clearly indicates that a different meaning is intended, the following words mean:

(a) "Professional corporation," a corporation organized under this act.

(b) "Professional service," the type of personal service rendered by a person duly licensed by this state as a member of any of the following professions, each paragraph constituting one type:

- (1) A certified public accountant;
- (2) An architect;
- (3) An attorney-at-law;
- (4) A chiropractor;
- (5) A dentist;
- (6) An engineer;
- (7) An optometrist;
- (8) An osteopathic physician or surgeon;
- (9) A physician, surgeon or doctor of medicine;
- (10) A veterinarian;
- (11) A podiatrist;
- (12) A pharmacist;
- (13) A land surveyor;
- (14) A licensed psychologist;
- (15) A specialist in clinical social work;
- (16) A registered physical therapist;
- (17) A landscape architect;
- (18) A registered professional nurse.

(c) "Regulating board," the board or state agency which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render.

(d) "Qualified person":

- (1) Any natural person licensed to practice the same type of profession which any professional corporation is authorized to practice;
- (2) the trustee of a trust which is a qualified trust under subsection (a) of section 401 of the internal revenue code of 1954, as amended, or of a contribution plan which is a qualified employee stock ownership plan under subsection (a) of section 409A of the internal revenue code of 1954, as amended; or
- (3) the trustee of a revocable living trust established by a natural person who is licensed to practice the type of profession which any professional corporation is authorized to practice, if the

terms of such trust provide that such natural person is the principal beneficiary and sole trustee of such trust and such trust does not continue to hold title to professional corporation stock following such natural person's death for more than a reasonable period of time necessary to dispose of such stock.

**History:** L. 1965, ch. 157, § 2; L. 1972, ch. 63, § 1; L. 1976, ch. 109, § 1; L. 1980, ch. 242, § 27; L. 1981, ch. 104, § 1; L. 1986, ch. 299, § 1; L. 1991, ch. 79, § 1; July 1.

**Research and Practice Aids:**

Corporations — 14(2).

C.J.S. Corporations § 47.

**Law Review and Bar Journal References:**

"Revocable Trusts," Alson R. Martin and Nancy Schmidt Roush, 51 J.K.B.A. 8, 14 (1982).

**Attorney General's Opinions:**

State board of technical professions; provision of professional services by nonprofessional corporations; use of word engineer in connection with name of a person. 79-111.

Real estate brokers and salesmen; qualification of licensees. 79-139.

Professional corporations; shares, who may hold. 79-302.

Doctors of chiropractic cannot use the term "chiropractic physician." 87-42.

Limited liability companies; formation; certified public accountants. 92-23.

**CASE ANNOTATIONS**

1. Cited in holding health care provider act (40-3401 et seq.) did not change rule of respondeat superior. *McGuire v. Sifers*, 235 K. 368, 375, 681 P.2d 1025 (1984).

2. Cited; ambulance services as professional services and exempt from bidding requirements in home rule statute (19-214) examined. *Curtis Ambulance v. Shawnee Cty. Bd. of Cty. Com'rs*, 811 F.2d 1371, 1380 (1987).

3. Cited; voluntary transfer of professional corporation stock to one not "qualified" held null and void under 17-2712. *Central State Bank v. Albright*, 12 K.A.2d 175, 180, 737 P.2d 65 (1987).

4. 17-2708 held not to authorize general corporation to engage in medical practice nor provide services under supervision of practitioner. *Early Detection Center, Inc. v. Wilson*, 248 K. 869, 874, 811 P.2d 860 (1991).

**17-2708. Same; general corporation law applicable; exceptions.** Except as otherwise provided, the Kansas general corporation code contained in K.S.A. 17-6001 *et seq.*, and amendments thereto, shall apply to a professional corporation organized pursuant to this chapter. Any provisions of the professional corporation law of Kansas shall take precedence over any provision of the Kansas general corporation code which conflicts with it. The provisions of the professional corporation law of Kansas shall take precedence over any law which prohibits a corporation from rendering any type of professional service. Any