

FIRST REGULAR SESSION

# HOUSE BILL NO. 1166

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COOPER (158) (Sponsor), AVERY,  
McGHEE AND LEMBKE (Co-sponsors).

Read 1st time March 27, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2693L.01I

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### AN ACT

To amend chapter 160, RSMo, by adding thereto six new sections relating to drug testing of construction company employees on school property, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 160, RSMo, is amended by adding thereto six new sections, to be known as sections 160.782, 160.785, 160.788, 160.791, 160.794, and 160.797, to read as follows:

**160.782. As used in sections 160.782 to 160.797, the following terms shall mean:**

- (1) "Certified laboratory", a laboratory that is certified by the Substance Abuse and Mental Health Services Administration of the federal Department of Health and Human Services to engage in drug testing for federal agencies;**
- (2) "Confirmatory drug test", a test by a gas chromatography/mass spectrometry testing procedure of a urine specimen conducted after an initial positive drug test result;**
- (3) "Confirmed breath alcohol test", a second breath alcohol specimen provided by the employee fifteen minutes after the initial positive breath alcohol screening test to confirm the alcohol concentration of the four hundreds of one percent or more by weight of alcohol in the blood;**
- (4) "Confirmed positive breath alcohol test", a confirmed alcohol concentration of the amount of four hundreds of one percent or more by weight of alcohol in the blood;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 13           (5) "Confirmed positive drug test result", a finding by a confirmatory test of the  
14 presence in the tested urine of any of the drugs or their metabolites at or above the  
15 minimum detection level specified in section 160.791;
- 16           (6) "Employee", a laborer, worker, mechanic, or truck driver who performs work  
17 on a project as described in section 160.785;
- 18           (7) "Employer", a contractor, subcontractor, or agent of a contractor or  
19 subcontractor that performs work on a project as described in section 160.785;
- 20           (8) "Initial breath alcohol screening test", an initial breath specimen provided by  
21 the employee to determine the weight of alcohol in the blood;
- 22           (9) "Initial drug screening test", a test by an immunoassay procedure of a urine  
23 specimen;
- 24           (10) "Initial positive breath alcohol screening test", an alcohol concentration of the  
25 amount of four hundredths of one percent or more by weight of alcohol in the blood;
- 26           (11) "Initial positive drug test result", a finding by an initial screening test of the  
27 presence in the tested urine of any of the drugs or their metabolites at or above the  
28 minimum detection level specified in section 160.791;
- 29           (12) "Medical review officer", a licensed physician who has knowledge of substance  
30 abuse disorders, laboratory testing procedures, and chain-of-custody procedures and who  
31 has the necessary medical training to interpret and evaluate a confirmed positive drug test  
32 result, a person's medical history, and any other relevant biomedical information;
- 33           (13) "Third-party administrator", a person contracted by an employer, either  
34 directly or in cooperation with other employers or organizations, to administer the drug  
35 and alcohol testing program of the employer under sections 160.782 to 160.797;
- 36           (14) "Verified positive drug test result", a confirmed positive drug test result that  
37 has been verified by a medical review officer for the presence in the tested urine of any of  
38 the drugs or their metabolites at or above the minimum detection level specified in section  
39 160.791.

160.785. 1. Any entity that provides construction services under contract on the  
2 property of a public or private elementary or secondary school, public vocational school,  
3 or public or private junior college, college, university, land grant university, or any state  
4 owned building shall have in place before any work on the project commences, a drug and  
5 alcohol testing program that complies with sections 160.782 to 160.797. An employer may  
6 contract with a third-party administrator to administer the employer's drug and alcohol  
7 testing program under this section.

8           2. A bidder for contracts as described in subsection 1 of this section shall submit  
9 with the bid all of the following:

10           (1) A statement that the bidder has in place, before any work on the project  
11 commences, a drug and alcohol testing program that complies with sections 160.782 to  
12 160.797;

13           (2) A statement from each subcontractor or agent that will be performing work on  
14 the project that the subcontractor or agent has in place, or will have in place before any  
15 work on the project commences, a drug and alcohol testing program that complies with  
16 sections 160.782 to 160.797.

17           3. An employer that is required under sections 160.782 to 160.797 to have, but that  
18 does not have, a drug and alcohol testing program in place on August 28, 2007 shall  
19 provide notice to all of its employees that a drug and alcohol testing program is being  
20 implemented and may not begin actual drug and alcohol testing until sixty days after the  
21 date of the notice.

          160.788. Before an employee is tested for the presence of drugs or alcohol, an  
2 employer or third-party administrator shall provide the employee with a written policy  
3 statement that contains the following:

4           (1) A statement that an employee who receives a verified positive drug test result  
5 may challenge or explain the result to the medical review officer within two working days  
6 after receiving notification of the test result; that, if the explanation is unsatisfactory to the  
7 medical review officer, the medical review officer will report the test result to the employer;  
8 and that the employee may, within two working days after receiving that notice, request  
9 a retest of the specimen that tested positive by a certified laboratory chosen by the  
10 employee at the expense of the employee;

11           (2) A statement that the employee shall be given the opportunity to provide any  
12 information that he or she considers relevant to the test, including identification of any  
13 prescription drugs or nonprescription drugs that he or she is currently using or has  
14 recently used or any other relevant medical information.

          160.791. 1. An employer may not permit an employee to work on a project unless  
2 the employee has tested negative for the presence of drugs or alcohol in the employee's  
3 system not more than twelve months preceding the date on which the employee commences  
4 work on the project.

5           2. After an employee begins work on a project, the employer may require the  
6 employee to submit to testing if the employer has a reasonable belief, based on specific,  
7 objective, and articulable facts and reasonable inferences drawn from those facts, that the  
8 employee is using or has used drugs or alcohol in violation of the employer's policy. Those  
9 facts and inferences may be based on any of the following:

10           (1) Facts or events observed while the employee is at work, such as direct  
11 observation of drug or alcohol use or of the physical symptoms or manifestations of being  
12 under the influence of drugs or alcohol;

13           (2) Abnormal conduct or erratic behavior of the employee while at work or a  
14 significant deterioration in the employee's work performance;

15           (3) A report of drug or alcohol use provided by a reliable and credible source;

16           (4) Evidence that the employee has tampered with a drug test during his or her  
17 employment with the employer or after receiving an offer of employment with the  
18 employer;

19           (5) Evidence that the employee has used, possessed, attempted to possess,  
20 distributed, or delivered drugs or alcohol while at work, while on the employer's premises  
21 or on the site of the project, or while operating the employer's vehicles, machinery, or  
22 equipment;

23           (6) Any other fact or event that provides a reasonable belief that the employee is  
24 using or has used drugs or alcohol in violation of the employer's policy.

25           3. After an employee begins work on a project, the employer shall require the  
26 employee to submit to random testing. Employees tested under this subsection shall be  
27 selected for random testing according to objective, neutral, and nondiscriminatory criteria,  
28 and the testing shall be spread out throughout the life of the project so that on any given  
29 day, any given employee has an equal chance of being tested. Testing under this subsection  
30 shall be conducted without prior warning.

31           4. An employee who under any other state or federal law is required to submit to  
32 random drug and alcohol testing that is at least as strict as the testing required under this  
33 section is not required to submit to testing under this section.

34           5. Testing under this section shall be performed by a certified laboratory selected  
35 by the employer or third-party administrator and shall be conducted in accordance with  
36 scientific and technical guidelines established by the Substance Abuse and Mental Health  
37 Services Administration of the federal Department of Health and Human Services for those  
38 certified laboratories. At a minimum, an employee shall be tested for all of the following:

39           (1) Amphetamines, with the following minimum detection levels constituting a  
40 positive drug test result:

41           (a) A level of one thousand nanograms per milliliter constituting an initial positive  
42 drug test result;

43           (b) A level of five hundred nanograms per milliliter constituting a confirmed  
44 positive drug test result;

45           (2) Barbiturates, with the following minimum detection levels constituting a  
46 positive drug test result:

47           (a) A level of three hundred nanograms per milliliter constituting an initial positive  
48 drug test result;

49           (b) A level of three hundred nanograms per milliliter constituting a confirmed  
50 positive drug test result;

51           (3) Benzodiazepines, with the following minimum detection levels constituting a  
52 positive drug test result:

53           (a) A level of three hundred nanograms per milliliter constituting an initial positive  
54 drug test result;

55           (b) A level of three hundred nanograms per milliliter constituting a confirmed  
56 positive drug test result;

57           (4) Cocaine metabolites, with the following minimum detection levels constituting  
58 a positive drug test result:

59           (a) A level of three hundred nanograms per milliliter constituting an initial positive  
60 drug test result;

61           (b) A level of one hundred fifty nanograms per milliliter constituting a confirmed  
62 positive drug test result;

63           (5) Marijuana metabolites, with the following minimum detection levels  
64 constituting a positive drug test result:

65           (a) A level of fifty nanograms per milliliter constituting an initial positive drug test  
66 result;

67           (b) A level of fifteen nanograms per milliliter constituting a confirmed positive drug  
68 test result;

69           (6) Methadone, with the following minimum detection levels constituting a  
70 confirmed positive drug test result:

71           (a) A level of three hundred nanograms per milliliter constituting an initial positive  
72 drug test result;

73           (b) A level of three hundred nanograms per milliliter constituting a confirmed  
74 positive drug test result;

75           (7) Opiates, with the following minimum detection levels constituting a positive  
76 drug test result:

77           (a) A level of two thousand nanograms per milliliter constituting an initial positive  
78 drug test result;

79           (b) A level of two thousand nanograms per milliliter constituting a confirmed  
80 positive drug test result;

81           (8) Phencyclidine, with the following minimum detection levels constituting a  
82 positive drug test result:

83           (a) A level of twenty-five nanograms per milliliter constituting an initial positive  
84 drug test result;

85           (b) A level of twenty-five nanograms per milliliter constituting a confirmed positive  
86 drug test result;

87           (9) Propoxyphene, with the following minimum detection levels constituting a  
88 positive drug test result:

89           (a) A level of three hundred nanograms per milliliter constituting an initial positive  
90 drug test result;

91           (b) A level of three hundred nanograms per milliliter constituting a confirmed  
92 positive drug test result;

93           (10) Alcohol, with an alcohol concentration of the amount of four-hundredths of  
94 one percent or more by weight of alcohol in the blood constituting a confirmed positive  
95 alcohol test result as determined by an analysis of a breath specimen provided by the  
96 employee.

97           6. This section shall not be construed to prohibit an employer from establishing and  
98 enforcing reasonable work rules relating to the use, possession, distribution, or delivery of  
99 drugs or alcohol in the workplace.

          160.794. 1. An employee shall be given the opportunity to provide to the medical  
2 review officer any information that he or she considers relevant to the test, including  
3 identification of any prescription drugs or nonprescription drugs that he or she is currently  
4 using or has recently used or any other relevant medical information.

5           2. Within one working day after receipt of a verified positive test result, the  
6 employer or third-party administrator shall inform the employee of the test result, the  
7 consequences of the test result, and the options available to the employee. On request, the  
8 third-party administrator or medical review officer shall provide a copy of the test result  
9 to the employee.

10          3. Within two working days after receiving a verified positive test result, the  
11 employee may request a retest of the specimen that tested positive by a certified laboratory  
12 chosen by the employee. The employee shall pay the cost of any retesting requested by the  
13 employee but not required by the employer, subject to reimbursement by the employer if  
14 the result of the retest is negative.

15          4. If testing is conducted based on reasonable suspicion, the employer shall  
16 document in writing the circumstances upon which that reasonable suspicion is based and,  
17 upon request, shall provide a copy of that documentation to the employee. The employer  
18 shall retain a copy of that documentation for not less than one year.

19          5. Any test of an employee conducted under this section shall occur immediately  
20 before, during, or immediately after the regular work period of the employee. If the test

21 is conducted during an employee's regular work period, the employee shall be paid for the  
22 time lost from work at the employee's hourly basic rate of pay, plus the hourly contribution  
23 for health insurance benefits, vacation benefits, pension benefits, and any other bona fide  
24 economic benefits payable to the employee. If the test is conducted outside the employee's  
25 regular work period, the employee shall be paid for the time necessary to take the test,  
26 including reasonable travel time, at the employee's hourly basic rate of pay. The employer  
27 shall pay the cost of all testing required by the employer. The employee shall pay the cost  
28 of any retesting or additional testing requested by the employee, but not required by the  
29 employer, subject to reimbursement by the employer if the result of the retest or additional  
30 test is negative.

31 6. Except as required or permitted under this section, any information, written or  
32 otherwise, relating to the result of a test conducted under this section shall remain  
33 confidential and may be disclosed only as follows:

34 (1) On the specific written consent of the employee who is the subject of the test.  
35 That consent shall state the name of the person who is authorized to obtain the  
36 information, the purpose of the disclosure, the precise information to be disclosed, and the  
37 duration of the consent and shall be signed by the person authorizing the disclosure;

38 (2) On the order of a court, hearing examiner, arbitrator, or other decision maker  
39 for purposes of a court proceeding, administrative proceeding, grievance proceeding, or  
40 any other proceeding arising out of an adverse employment action taken as a result of a  
41 test conducted under this section.

160.797. 1. An employee who refuses to submit to testing as required under  
2 sections 160.782 to 160.797 or who is the subject of a verified positive test result may not  
3 be permitted to work on a project until the employee tests negative for the presence of  
4 drugs or alcohol in his or her system. An employee who is the subject of more than one  
5 verified positive test result during the life of a project may not work on the project for the  
6 life of the project.

7 2. Any employer that knowingly permits an employee of the employer to work on  
8 a project in violation of sections 160.782 to 160.797 may be fined not more than two  
9 hundred dollars or imprisoned for not more than six months, or both. Each day that a  
10 violation continues is a separate offense.

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