

SECOND REGULAR SESSION

HOUSE BILL NO. 2397

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FUNDERBURK (Sponsor), STORCH, BROWN (50), LOEHNER,
WOOD, WETER, SMITH (14) AND RUZICKA (Co-sponsors).

Read 1st time March 11, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5238L.01I

AN ACT

To amend chapter 160, RSMo, by adding thereto seven new sections relating to school construction contracts, with penalty provisions.

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

Section A. Chapter 160, RSMo, is amended by adding thereto seven new sections, to be
2 known as sections 160.782, 160.785, 160.788, 160.791, 160.794, 160.797, and 160.798, to read
3 as follows:

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

- 2 **(1) "Certified laboratory", a laboratory that is certified by the Substance Abuse**
3 **and Mental Health Services Administration of the federal Department of Health and**
4 **Human Services to engage in drug testing for federal agencies;**
5 **(2) "Confirmatory drug test", a test by a gas chromatography/mass spectrometry**
6 **testing procedure of a urine specimen conducted after an initial positive drug test result;**
7 **(3) "Confirmed breath alcohol test", a second breath alcohol specimen provided**
8 **by the employee fifteen minutes after the initial positive breath alcohol screening test to**
9 **confirm the alcohol concentration of the four hundredths of one percent or more by weight**
10 **of alcohol in the blood;**
11 **(4) "Confirmed positive breath alcohol test", a confirmed alcohol concentration of**
12 **the amount of four hundredths 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 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 anywork 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; the frequency of random testing shall be at an
27 annualized rate of fifty percent of the total employees on a job site. Employees tested
28 under this subsection shall be selected for random testing according to objective, neutral,
29 and nondiscriminatory criteria, and the testing shall be spread out throughout the life of
30 the project so that on any given day, any given employee has an equal chance of being
31 tested. Testing under this subsection shall be conducted without prior warning.

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

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

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

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

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

- 46 (2) Barbiturates, with the following minimum detection levels constituting a
47 positive drug test result:
- 48 (a) A level of three hundred nanograms per milliliter constituting an initial positive
49 drug test result;
- 50 (b) A level of three hundred nanograms per milliliter constituting a confirmed
51 positive drug test result;
- 52 (3) Benzodiazepines, with the following minimum detection levels constituting a
53 positive drug test result:
- 54 (a) A level of three hundred nanograms per milliliter constituting an initial positive
55 drug test result;
- 56 (b) A level of three hundred nanograms per milliliter constituting a confirmed
57 positive drug test result;
- 58 (4) Cocaine metabolites, with the following minimum detection levels constituting
59 a positive drug test result:
- 60 (a) A level of three hundred nanograms per milliliter constituting an initial positive
61 drug test result;
- 62 (b) A level of one hundred fifty nanograms per milliliter constituting a confirmed
63 positive drug test result;
- 64 (5) Marijuana metabolites, with the following minimum detection levels
65 constituting a positive drug test result:
- 66 (a) A level of fifty nanograms per milliliter constituting an initial positive drug test
67 result;
- 68 (b) A level of fifteen nanograms per milliliter constituting a confirmed positive drug
69 test result;
- 70 (6) Methadone, with the following minimum detection levels constituting a
71 confirmed positive drug test result:
- 72 (a) A level of three hundred nanograms per milliliter constituting an initial positive
73 drug test result;
- 74 (b) A level of three hundred nanograms per milliliter constituting a confirmed
75 positive drug test result;
- 76 (7) Opiates, with the following minimum detection levels constituting a positive
77 drug test result:
- 78 (a) A level of two thousand nanograms per milliliter constituting an initial positive
79 drug test result;
- 80 (b) A level of two thousand nanograms per milliliter constituting a confirmed
81 positive drug test result;

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

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

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

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

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

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

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

98 6. This section shall not be construed to prohibit an employer from establishing and
99 enforcing reasonable work rules relating to the use, possession, distribution, or delivery of
100 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.

2 **160.798. The requirements of sections 160.782 to 160.797 shall not apply to**
3 **employers who are party to a program for drug and alcohol testing, which program has**
4 **been in existence since at least January 1, 2005, provided that such program:**

5 **(1) Requires the testing of substances which include those substances set forth in**
6 **subsection 5 of section 160.791;**

7 **(2) Utilizes detection levels which are at least as stringent as those set forth in**
8 **subsection 5 of section 160.791;**

9 **(3) Provides for random testing and reasonable suspicion testing;**

10 **(4) Provides for review of test results by a medical review officer;**

11 **(5) Allows the employee to have a positive test specimen retested, at the employee's**
12 **expense;**

13 **(6) Provides that an employee who tests positive or refuses to submit to a test shall**
14 **not be permitted to resume employment until he or she tests negative for the presence of**
15 **drugs or alcohol.**

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