

State of Wisconsin



2013 Assembly Bill 803

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2013 WISCONSIN ACT 291

AN ACT *to renumber and amend* 346.072 (1); *to amend* 103.503 (title), 103.503 (1) (a), 103.503 (1) (c), 103.503 (1) (e), 103.503 (1) (f), 103.503 (1) (g), 103.503 (2), 103.503 (3) (a) (intro.), 103.503 (3) (a) 2., 103.503 (3) (a) 3., 103.503 (4) (a) (intro.), 103.503 (4) (b) 2. and 346.072 (title); and *to create* 103.503 (1) (h), 103.503 (1) (i), 103.503 (4m) and 346.072 (1g) of the statutes; **relating to:** substance abuse by employees performing work on public utility projects located in public rights-of-way and passing emergency or roadside service vehicles stopped on or near the highway.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 103.503 (title) of the statutes is amended to read:

103.503 (title) Substance abuse prevention on public works and public utility projects.

SECTION 2. 103.503 (1) (a) of the statutes is amended to read:

103.503 (1) (a) "Accident" means an incident caused, contributed to, or otherwise involving an employee that resulted or could have resulted in death, personal injury, or property damage and that occurred while the employee was performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public works or while the employee was performing work on a public utility project.

SECTION 3. 103.503 (1) (c) of the statutes is amended to read:

103.503 (1) (c) "Contracting agency" means a local governmental unit, as defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has contracted for the performance of work on a project of public

works or a public utility that has contracted for the performance of work on a public utility project.

SECTION 4. 103.503 (1) (e) of the statutes is amended to read:

103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver who performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public works or on a public utility project.

SECTION 5. 103.503 (1) (f) of the statutes is amended to read:

103.503 (1) (f) "Employer" means a contractor, sub-contractor, or agent of a contractor or subcontractor that performs work on a project of public works or on a public utility project.

SECTION 6. 103.503 (1) (g) of the statutes is amended to read:

103.503 (1) (g) "Project" "Project of public works" means a project of public works that is subject to s. 66.0903 or 103.49.

SECTION 7. 103.503 (1) (h) of the statutes is created to read:

103.503 (1) (h) "Public utility" has the meaning given in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m), an alternative tele-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

communications utility, as defined in s. 196.01 (1d), or, for purposes of subs. (2) and (4), a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members only.

SECTION 8. 103.503 (1) (i) of the statutes is created to read:

103.503 (1) (i) "Public utility project" means a project erected, constructed, repaired, remodeled, or demolished for a public utility on a public right-of-way. For purposes of sub. (3), "public utility project" does not include a project erected, constructed, repaired, remodeled, or demolished for a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members only.

SECTION 9. 103.503 (2) of the statutes is amended to read:

103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess, attempt to possess, distribute, deliver, or be under the influence of a drug, or use or be under the influence of alcohol, while performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public works or while performing work on a public utility project. An employee is considered to be under the influence of alcohol for purposes of this subsection if he or she has an alcohol concentration that is equal to or greater than the amount specified in s. 885.235 (1g) (d).

SECTION 10. 103.503 (3) (a) (intro.) of the statutes is amended to read:

103.503 (3) (a) (intro.) Before an employer may commence work on a project of public works or a public utility project, the employer shall have in place a written program for the prevention of substance abuse among its employees. At a minimum, the program shall include all of the following:

SECTION 11. 103.503 (3) (a) 2. of the statutes is amended to read:

103.503 (3) (a) 2. A requirement that employees performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public works or performing work on a public utility project submit to random, reasonable suspicion, and post-accident drug and alcohol testing and to drug and alcohol testing before commencing work on a the project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the project.

SECTION 12. 103.503 (3) (a) 3. of the statutes is amended to read:

103.503 (3) (a) 3. A procedure for notifying an employee who violates sub. (2), who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing as required under the program that the employee may not perform work on a project of public works or a public utility project until he

or she meets the conditions specified in sub. (4) (b) 1. and 2.

SECTION 13. 103.503 (4) (a) (intro.) of the statutes is amended to read:

103.503 (4) (a) (intro.) No employer may permit an employee who violates sub. (2), who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing as required under the employer's substance abuse prevention program under sub. (3) to perform work on a project of public works or a public utility project until he or she meets the conditions specified in par. (b) 1. and 2. An employer shall immediately remove an employee from work on such a project if any of the following occurs:

SECTION 13m. 103.503 (4) (b) 2. of the statutes is amended to read:

103.503 (4) (b) 2. That the employee has been approved to commence or return to work on the project. If the employer is required to have in place a substance abuse prevention program under sub. (3), that approval shall be granted in accordance with the employer's substance abuse prevention program under sub. (3).

SECTION 14. 103.503 (4m) of the statutes is created to read:

103.503 (4m) PUBLIC UTILITY PROJECTS; NONAPPLICABILITY. (a) This section does not apply to an employee performing work on a public utility project who is subject to drug or alcohol testing under 49 CFR Parts 40, 199, or 382.

(b) Subsection (3) does not apply to an employer that performs work on a public utility project for a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members only.

SECTION 15. 346.072 (title) of the statutes is amended to read:

346.072 (title) ~~Passing stopped emergency or roadside service vehicles, tow trucks and highway machinery equipment.~~

SECTION 16. 346.072 (1) of the statutes is renumbered 346.072 (1m) and amended to read:

346.072 (1m) If an ~~authorized emergency vehicle giving visual signal, a tow truck flashing red lamps, as required by s. 347.26 (6) (b), or any road machinery or motor vehicle used in highway construction or maintenance displaying the lights specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the lights specified in s. 347.26 (7), emergency or roadside service vehicle~~ is parked or standing on or within 12 feet of a roadway, the operator of a motor vehicle approaching ~~such vehicle or machinery~~ the emergency or roadside service vehicle shall proceed with due regard for all other traffic and shall do either of the following:

(a) Move the motor vehicle into a lane that is not the lane nearest the parked or standing ~~vehicle or machinery~~ emergency or roadside service vehicle and continue trav-

eling in that lane until safely clear of the ~~vehicle or machinery~~ emergency or roadside service vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching motor vehicle and if the approaching motor vehicle may change lanes safely and without interfering with any vehicular traffic.

(b) Slow the motor vehicle, maintaining a safe speed for traffic conditions, and operate the motor vehicle at a reduced speed until completely past the ~~vehicle or machinery~~ emergency or roadside service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching motor vehicle or if the approaching motor vehicle may not change lanes safely and without interfering with any vehicular traffic.

SECTION 17. 346.072 (1g) of the statutes is created to read:

346.072 (1g) In this section, "emergency or roadside service vehicle" means any of the following:

(a) An authorized emergency vehicle giving visual signal.

(b) A tow truck flashing red lamps, as required by s. 347.26 (6) (b).

(c) Any road machinery or motor vehicle used in highway construction or maintenance displaying the lights specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the lights specified in s. 347.26 (7).

(d) Any vehicle of a public utility, telecommunications carrier, or cooperative association described in s. 347.26 (9) displaying one or more flashing amber lamps as provided in s. 347.26 (9).

SECTION 18. Initial applicability.

(1) SUBSTANCE ABUSE PREVENTION ON PUBLIC UTILITY PROJECTS. This act first applies, with respect to a public utility project, as defined in section 103.503 (1) (i) of the statutes, as created by this act, that is subject to bidding, to a project for which the request for bids is issued on the effective date of this subsection and, with respect to a public utility project, as so defined, that is not subject to bidding, to a project the contract for which is entered into on the effective date of this subsection, except that this act first applies to an employee who is affected by a collective bargaining agreement that contains provisions that are inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.