

2005 ASSEMBLY BILL 736

October 6, 2005 – Introduced by Representatives STONE, TOWNS, ALBERS, HINES, TOWNSEND, MUSSER, STRACHOTA, VOS, OTT, ZEPNICK, BIES and SINICKI, cosponsored by Senators DARLING, PLALE, BROWN, WIRCH and MILLER. Referred to Committee on Labor.

1 **AN ACT to create** 16.855 (9m), 66.0901 (10) and 103.503 of the statutes; **relating**
2 **to:** drug and alcohol testing of employees who are required to be paid the
3 prevailing wage rate for work performed on projects of public works, other than
4 state highway projects, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, all laborers, workers, mechanics, and truck drivers employed on a state or local public works project whose estimated cost of completion is \$38,000 or more for a single-trade public works project or \$186,000 or more for a multiple-trade public works project must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located (prevailing wage law).

This bill requires any person that bids for a contract to perform work on a public works project, other than a state highway project, that is subject to the prevailing wage law (project) to submit with the bid a statement that the person has in place, or will have in place before any work on the project commences, a drug and alcohol testing program that complies with the bill and a statement from each subcontractor or agent that will be performing work on the project that the subcontractor or agent has in place, or will have in place, such a drug and alcohol testing program. The bill permits a contractor, subcontractor, or agent (employer) to contract with a third-party administrator to administer the employer's drug and alcohol testing program.

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Under the bill, an employer may not permit a laborer, worker, mechanic, or truck driver who is covered under the prevailing wage law (employee) to work on a project unless the employee has tested negative for the presence of drugs or alcohol in the employee's system not more than 12 months preceding the date on which the employee commences work on the project or unless during those 12 months the employee has been participating in a random testing program. After an employee begins work on a project, the employer may require the employee to submit to reasonable-suspicion testing, which is testing conducted based on a reasonable belief of the employer that the employee is using or has used drugs or alcohol in violation of the employer's policy, and must require the employee to submit to random testing, which is testing conducted randomly on not less than 20 percent of the employees participating in the random testing program according to objective, neutral, and nondiscriminatory criteria and spread out so that on any given day any given employee has an equal chance of being tested. The bill, however, excludes from testing under the bill any employee who under any other state or federal law is required to submit to testing that is at least as strict as the testing under the bill.

The bill defines a "drug" as amphetamines, cocaine, marijuana, opiates, or phencyclidine, or any other controlled substance, controlled substance analog, prescription drug, or nonprescription drug that the employer determines is subject to testing under the bill; requires, at a minimum, that employees be tested for amphetamines, cocaine, marijuana, opiates, phencyclidine, and alcohol; and specifies the minimum detection levels that constitute a positive test result.

The bill requires an employer or third-party administrator, before testing an employee or a person who has been offered a position contingent on passing a test (applicant), to provide the employee or applicant with a written policy statement that is required under the bill to include certain information, including all of the following:

1. A general statement of the employer's policy concerning drug or alcohol use, which statement must include the circumstances under which an employee or applicant may be required to submit to testing and the consequences of a refusal to submit to testing or of a verified positive test result, which is defined in the bill as an initial positive test result that has been confirmed by a second test and that has been verified by a licensed physician who has knowledge of substance abuse disorders, laboratory testing procedures, and chain-of-custody procedures and who has the necessary medical training to interpret and evaluate a positive test result, a person's medical history, and any other relevant biomedical information (medical review officer).

2. A statement that the testing is required as a condition of performing work on a project.

3. A list of the drugs for which testing is required.

4. A description of the procedures under which the testing is conducted and the employee protections specified in the bill.

5. A list of the most common medications that may alter or affect a test.

6. A statement concerning the confidentiality of information relating to a test as provided in the bill. Specifically, the bill provides that information relating to a

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test result is confidential and may be disclosed only on the specific written consent of the employee or applicant or on the order of a court, hearing examiner, arbitrator, or other decision maker for purposes of a proceeding arising out of an adverse employment action taken as a result of the test. The bill further provides that information relating to a test result may not be used against an employee or applicant in any criminal or civil proceeding, except by the employer in a proceeding arising out of an adverse employment action taken as a result of the test.

7. The names, addresses, and telephone numbers of employee assistance programs and local drug and alcohol rehabilitation programs at which the employee may voluntarily seek treatment.

8. A statement that the employee or applicant may challenge or explain a confirmed positive test result to the medical review officer and may request a retest of a specimen that has tested positive by a laboratory chosen by the employee or applicant at the expense of the employee or applicant.

9. A statement that the employee or applicant, both before and after the test, may provide any information that is relevant to the test, including identification of any prescription or nonprescription drugs that the employee or applicant is currently using or has recently used and any other relevant medical information.

The bill affords certain protections to an employee or applicant who is required to be tested under the bill. Specifically, under the bill:

1. An employee or applicant must be given the opportunity to provide, both before and after a test, information that is relevant to the test, including identification of any prescription or nonprescription drugs that the employee or applicant is taking and any other relevant medical information.

2. The employer or third-party administrator must inform an employee or applicant of a verified positive test result, the consequences of the test result, and the options available to the employee or applicant, within one working day after the employer receives the test result; the employee or applicant may, within two working days after receiving that notice, request a retest of a specimen that tested positive by a laboratory chosen by the employee or applicant at the expense of the employee or applicant.

3. An employee or applicant may not be discharged, disciplined, or otherwise discriminated against based solely on an initial positive test result or a confirmed positive test result that has not been verified by a medical review officer.

4. In the case of reasonable-suspicion testing, the employer must provide the employee with documentation of the circumstances on which the reasonable suspicion is based.

5. A test must be conducted immediately before, during, or immediately after work and at the employer's expense, except that any retesting or additional testing requested by the employee or applicant, but not required by the employer, is at the expense of the employee or applicant, subject to reimbursement by the employer if the result of the retest or additional test is negative. The bill also provides that if the testing is conducted during an employee's regular work hours the employee shall be paid for the time lost from work at the employee's regular rate of pay, plus benefits, and if the testing is conducted outside of those hours the employee shall be paid for

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the time necessary to take the test at the employee's regular rate of pay, excluding benefits.

Similarly, the bill affords certain protections to an employer that is required to conduct drug or alcohol testing under the bill. Specifically, under the bill:

1. An employee or applicant who has a verified positive test result is not considered to be an individual with a disability for purposes of the law prohibiting discrimination in employment on the basis of disability.

2. An employer is not prohibited from establishing and enforcing reasonable work rules relating the use, possession, distribution, or delivery of drugs or alcohol in the workplace.

3. A physician-patient relationship is not created between an employee or applicant and the employer, a third-party administrator, a medical review officer, or any other person conducting or evaluating a test under the bill.

4. An employer that has in place a drug and alcohol testing program that complies with the bill is immune from civil liability for any action taken in good faith based on a verified positive test result; any failure to test an employee or applicant for the presence of drugs or alcohol, for the presence of a specific drug, for any medical condition, or for any mental, emotional, or psychological condition; any failure to detect the presence of alcohol or any specific drug, any medical condition, or any mental, emotional, or psychological condition; or any decision to suspend or terminate a drug or alcohol testing program.

Finally, the bill specifies that an employee or applicant who fails to submit to testing as required under the bill or who is the subject of a verified positive test result may not be permitted to work on a project until the employee or applicant tests negative for the presence of drugs or alcohol in his or her system and that an employee who is the subject of more than one verified positive test result during the life of a project of may not work on the project for the life of the project. An employer that knowingly permits an employee of the employer to work on a project in violation of the bill is subject to a fine of \$200 or imprisonment for not more than six months or both for each day of the violation and is subject to debarment from contracting with any state agency or local governmental unit for three years from the date of the violation.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1 16.855 **(9m)** The department shall require a bidder for a contract to perform
2 construction work on a project of public works that is subject to s. 103.49 to submit
3 with the bid all of the following:

4 (a) A statement on a form adopted by the department of workforce development
5 that the bidder has in place, before any work on the project commences, a drug and
6 alcohol testing program that complies with s. 103.503.

7 (b) A statement on a form adopted by the department of workforce development
8 from each subcontractor or agent that will be performing work on the project that the
9 subcontractor or agent has in place, or will have in place before any work on the
10 project commences, a drug and alcohol testing program that complies with s.
11 103.503.

12 **SECTION 2.** 66.0901 (10) of the statutes is created to read:

13 **66.0901 (10) DRUG AND ALCOHOL TESTING REQUIREMENTS.** A municipality shall
14 require a bidder for a public contract that is subject to s. 66.0903 to submit with the
15 bid all of the following:

16 (a) A statement on a form adopted by the department of workforce development
17 that the bidder has in place, or will have in place before any work under the public
18 contract commences, a drug and alcohol testing program that complies with s.
19 103.503.

20 (b) A statement on a form adopted by the department of workforce development
21 a form adopted by the department of workforce development from each subcontractor
22 or agent that will be performing work on the project that the subcontractor or agent
23 has in place, or will have in place before any work on the project commences, a drug
24 and alcohol testing program that complies with s. 103.503.

25 **SECTION 3.** 103.503 of the statutes is created to read:

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1 **103.503 Drug-free public works projects. (1) DEFINITIONS.** In this section:

2 (a) “Alcohol” has the meaning given in s. 340.01 (1q).

3 (b) “Applicant” means a person who has applied for and been offered a position
4 as an employee with an employer conditioned on successfully passing a test for the
5 presence of drugs or alcohol in the person’s system.

6 (c) “Certified laboratory” means a laboratory that is certified by the substance
7 abuse and mental health services administration of the federal department of health
8 and human services to engage in drug testing for federal agencies.

9 (d) “Confirmatory test” means a test by a gas chromatography/mass
10 spectrometry testing procedure of a urine specimen conducted after an initial
11 screening test.

12 (e) “Confirmed positive test result” means a finding by a confirmatory test of
13 the presence in the tested urine of any of the drugs or their metabolites specified in
14 sub. (6) (a) to (e) at or above the minimum detection level specified in sub. (6) (a) 2.,
15 (b) 2., (c) 2., (d) 2., or (e) 2.

16 (f) “Drug” means any of the drugs or their metabolites specified in sub. (6) (a)
17 to (e) or any other controlled substance, as defined in s. 961.01 (4), controlled
18 substance analog, as defined in s. 961.01 (4m), prescription drug, as defined in s.
19 450.01 (20), or drug, as defined in s. 450.01 (10), that may be dispensed without a
20 prescription, for which testing is required by an employer under its drug and alcohol
21 testing program under this section.

22 (g) “Employee” means a laborer, worker, mechanic, or truck driver who
23 performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project.

24 (h) “Employer” means a contractor, subcontractor, or agent of a contractor or
25 subcontractor that performs work on a project.

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1 (i) “Initial positive test result” means a finding by an initial screening test of
2 the presence in the tested urine of any of the drugs or their metabolites specified in
3 sub. (6) (a) to (e) at or above the minimum detection level specified in sub. (6) (a) 1.,
4 (b) 1., (c) 1., (d) 1., or (e) 1.

5 (j) “Initial screening test” means a test by an immunoassay procedure of a urine
6 specimen.

7 (k) “Medical review officer” means a licensed physician who has knowledge of
8 substance abuse disorders, laboratory testing procedures, and chain-of-custody
9 procedures and who has the necessary medical training to interpret and evaluate a
10 positive test result, a person’s medical history, and any other relevant biomedical
11 information.

12 (L) “Project” mean a project of public works that is subject to s. 66.0903 or
13 103.49.

14 (m) “Third-party administrator” means a person contracted by an employer,
15 either directly or in cooperation with other employers or organizations, to administer
16 the drug and alcohol testing program of the employer under this section.

17 (n) “Verified positive test result” means a confirmed positive test result that has
18 been verified by a medical review officer.

19 (o) “Working day” means each day except Saturday, Sunday, or a legal holiday
20 under s. 895.20.

21 **(2) TESTING REQUIRED.** (a) Any person that bids for a contract to perform work
22 on a project shall submit with the bid all of the following:

23 1. A statement on a form adopted by the department that the person has in
24 place, or will have in place before any work on the project commences, a drug and
25 alcohol testing program that complies with this section.

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1 2. A statement on a form adopted by the department from each subcontractor
2 or agent that will be performing work on the project that the subcontractor or agent
3 has in place, or will have in place before any work on the project commences, a drug
4 and alcohol testing program that complies with this section.

5 (b) An employer may contract with a 3rd-party administrator to administer the
6 employer's drug and alcohol testing program under this section.

7 **(3) NOTICE TO EMPLOYEES AND APPLICANTS.** (a) Before an employee or applicant
8 is tested for the presence of drugs or alcohol, an employer or 3rd-party administrator
9 shall provide the employee or applicant with a written policy statement that contains
10 all of the following:

11 1. A general statement of the employer's policy concerning employee drug or
12 alcohol use, which statement shall include the circumstances under sub. (4) under
13 which an employee or applicant may be required to submit to testing and the
14 consequences of a verified positive test result or of a refusal to submit to testing.

15 2. A statement that the employer is required under sub. (2) to have in place a
16 drug and alcohol testing program as a condition for performing work on a project.

17 3. A list of all drugs for which testing is required, by brand name or common
18 name as well as by chemical name.

19 4. A description of the procedures specified in sub. (6) under which the testing
20 is conducted and the employee protections specified in sub. (7).

21 5. A list of the most common medications, by brand name or common name as
22 well as by chemical name, that may alter or affect a test.

23 6. A statement concerning the confidentiality of information relating to a test
24 as provided in sub. (9).

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1 7. The names, addresses, and telephone numbers of employee assistance
2 programs and local drug and alcohol rehabilitation programs at which the employee
3 or applicant may voluntarily seek treatment.

4 8. A statement that an employee or applicant who receives a confirmed positive
5 test result may challenge or explain the result to the medical review officer within
6 2 working days after receiving notification of the test result; that, if the explanation
7 is unsatisfactory to the medical review officer, the medical review officer will report
8 the test result to the employer; and that the employee or applicant may, within 2
9 working days after receiving that notice, request a retest of the specimen that tested
10 positive by a certified laboratory chosen by the employee or applicant at the expense
11 of the employee or applicant.

12 9. A statement that the employee or applicant, both before and after testing,
13 shall be given the opportunity to provide any information that he or she considers
14 relevant to the test, including identification of any prescription drugs or
15 nonprescription drugs that he or she is currently using or has recently used or any
16 other relevant medical information.

17 (b) An employer that requires testing under this section shall include notice of
18 that requirement on all vacancy announcements for positions for which the testing
19 is required, shall post notice of the employer's testing policy in at least one
20 conspicuous and easily accessible place on the site of the project, and shall make
21 available a copy of the policy to any employee or applicant on request.

22 **(4) WHEN TESTING REQUIRED.** (a) An employer may not permit an employee to
23 work on a project unless the employee has tested negative for the presence of drugs
24 or alcohol in the employee's system not more than 12 months preceding the date on
25 which the employee commences work on the project or unless during those 12 months

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1 the employee has been participating in a random testing program under which not
2 less than 20 percent of the participants in the program are randomly tested without
3 warning during each 12-month period, participants are selected for testing
4 according to objective, neutral, and nondiscriminatory criteria, and testing is spread
5 out so that on any given day any given participant has an equal chance of being
6 tested.

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

13 1. Facts or events observed while the employee is at work, such as direct
14 observation of drug or alcohol use or of the physical symptoms or manifestations of
15 being under the influence of drugs or alcohol.

16 2. Abnormal conduct or erratic behavior of the employee while at work or a
17 significant deterioration in the employee's work performance.

18 3. A report of drug or alcohol use provided by a reliable and credible source.

19 4. Evidence that the employee has tampered with a drug test during his or her
20 employment with the employer or after receiving an offer of employment with the
21 employer.

22 5. Information that the employee has caused, contributed to, or been involved
23 in an accident while at work.

24 6. Evidence that the employee has used, possessed, attempted to possess,
25 distributed, or delivered drugs or alcohol while at work, while on the employer's

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1 premises or on the site of the project, or while operating the employer's vehicles,
2 machinery, or equipment.

3 7. Any other fact or event that provides a reasonable belief that the employee
4 is using or has used drugs or alcohol in violation of the employer's policy.

5 (c) After an employee begins work on a project, the employer shall require the
6 employee to submit to random testing. During the life of the project, employees
7 employed on the project who are participants in a random testing program described
8 in par. (a) shall be tested as provided in par. (a). During the life of the project, not
9 less than 20 percent of the employees employed on the project who are not
10 participants in a random testing program described in par. (a) shall be randomly
11 tested as provided in this paragraph. Employees tested under this paragraph shall
12 be selected for random testing according to objective, neutral, and nondiscriminatory
13 criteria, and the testing shall be spread out throughout the life of the project so that
14 on any given day any given employee has an equal chance of being tested. Testing
15 under this paragraph shall be conducted without prior warning.

16 (5) NONAPPLICABILITY. An employee or applicant who under any other state or
17 federal law is required to submit to random drug and alcohol testing that is at least
18 as strict as the testing required under this section is not required to submit to testing
19 under this section.

20 (6) TESTING PROCEDURE. Testing under this section shall be performed by a
21 certified laboratory selected by the employer or 3rd-party administrator and shall
22 be conducted in accordance with scientific and technical guidelines established by
23 the substance abuse and mental health services administration of the federal
24 department of health and human services for those certified laboratories. At a
25 minimum, an employee or applicant shall be tested for all of the following:

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

3 1. A level of 1,000 nanograms per milliliter constituting an initial positive test
4 result.

5 2. A level of 500 nanograms per milliliter constituting a confirmed positive test
6 result.

7 (b) Cocaine metabolites, with the following minimum detection levels
8 constituting a positive test result:

9 1. A level of 300 nanograms per milliliter constituting an initial positive test
10 result.

11 2. A level of 150 nanograms per milliliter constituting a confirmed positive test
12 result.

13 (c) Marijuana metabolites, with the following minimum detection levels
14 constituting a positive test result:

15 1. A level of 50 nanograms per milliliter constituting an initial positive test
16 result.

17 2. A level of 15 nanograms per milliliter constituting a confirmed positive test
18 result.

19 (d) Opiates, with the following minimum detection levels constituting a
20 positive test result:

21 1. A level of 2,000 nanograms per milliliter constituting an initial positive test
22 result.

23 2. A level of 2,000 nanograms per milliliter constituting a confirmed positive
24 test result.

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1 (e) Phencyclidine, with the following minimum detection levels constituting a
2 positive test result:

3 1. A level of 25 nanograms per milliliter constituting an initial positive test
4 result.

5 2. A level of 25 nanograms per milliliter constituting a confirmed positive test
6 result.

7 (f) Alcohol, with an alcohol concentration of the amount specified in s. 885.235
8 (1g) (d) or more constituting a positive test result, as determined by an analysis of
9 a breath specimen provided by the employee or applicant.

10 **(7) EMPLOYEE PROTECTION.** (a) Both before and after testing, an employee or
11 applicant shall be given the opportunity to provide any information that he or she
12 considers relevant to the test, including identification of any prescription drugs or
13 nonprescription drugs that he or she is currently using or has recently used or any
14 other relevant medical information.

15 (b) Within one working day after receipt of a verified positive test result, the
16 employer or 3rd-party administrator shall inform the employee or applicant in
17 writing of the test result, the consequences of the test result, and the options
18 available to the employee or applicant. On request, the 3rd-party administrator or
19 medical review officer shall provide a copy of the test result to the employee or
20 applicant.

21 (c) Within 2 working days after receiving a verified positive test result, the
22 employee or applicant may request a retest of the specimen that tested positive by
23 a certified laboratory chosen by the employee or applicant. The employee or
24 applicant shall pay the cost of any retesting requested by the employee or applicant,

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1 but not required by the employer, subject to reimbursement by the employer if the
2 result of the retest is negative.

3 (d) An employer may not discharge, discipline, refuse to hire, or otherwise
4 discriminate against an employee or applicant based solely on an initial positive test
5 result or a confirmed positive test result that has not been verified by a medical
6 review officer.

7 (e) If testing is conducted based on reasonable suspicion under sub. (4) (b), the
8 employer shall document in writing the circumstances on which that reasonable
9 suspicion is based and, on request, shall provide a copy of that documentation to the
10 employee. The employer shall retain a copy of that documentation for not less than
11 one year.

12 (f) Any test of an employee conducted under this section shall occur
13 immediately before, during, or immediately after the regular work period of the
14 employee. If the test is conducted during an employee's regular work period, the
15 employee shall be paid for the time lost from work at the employee's hourly basic rate
16 of pay, as defined in s. 103.49 (1) (b), plus the hourly contribution for health insurance
17 benefits, vacation benefits, pension benefits, and any other bona fide economic
18 benefits payable to the employee. If the test is conducted outside the employee's
19 regular work period, the employee shall be paid for the time necessary to take the
20 test, including reasonable travel time, at the employee's hourly basic rate of pay. The
21 employer shall pay the cost of all testing under this section required by the employer.
22 The employee or applicant shall pay the cost of any retesting or additional testing
23 requested by the employee or applicant, but not required by the employer, subject to
24 reimbursement by the employer if the result of the retest or additional test is
25 negative.

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1 **(8) EMPLOYER PROTECTION.** (a) An employee or applicant who has a verified
2 positive test result is not considered to be an individual with a disability, as defined
3 in s. 111.32 (8).

4 (b) This section does not prohibit an employer from establishing and enforcing
5 reasonable work rules relating to the use, possession, distribution, or delivery of
6 drugs or alcohol in the workplace.

7 (c) The establishment, implementation, or administration of a testing program
8 under this section does not create a physician–patient relationship between an
9 employee or applicant and the employer, a 3rd–party administrator, a medical
10 review officer, or any other person conducting or evaluating a test under this section.

11 (d) No cause of action of any nature may arise against and no civil liability may
12 be imposed upon an employer that has in place a drug and alcohol testing program
13 that complies with this section for any of the following:

14 1. Any action taken in good faith based on a verified positive test result.

15 2. Any failure to test an employee or applicant for the presence of drugs or
16 alcohol, for the presence of a specific drug, for any medical condition, or for any
17 mental, emotional, or psychological condition.

18 3. Any failure to detect the presence of alcohol or any specific drug, any medical
19 condition, or any mental, emotional, or psychological condition.

20 4. Any decision to suspend or terminate a drug or alcohol testing program.

21 **(9) CONFIDENTIALITY.** (a) Except as required or permitted under this section,
22 any information, written or otherwise, relating to the result of a test conducted under
23 this section shall remain confidential and may be disclosed only as follows:

24 1. On the specific written consent of the employee or applicant who is the
25 subject of the test. That consent shall state the name of the person who is authorized

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1 to obtain the information, the purpose of the disclosure, the precise information to
2 be disclosed, and the duration of the consent and shall be signed by the person
3 authorizing the disclosure.

4 2. On the order of a court, hearing examiner, arbitrator, or other decision maker
5 for purposes of a court proceeding, administrative proceeding, grievance proceeding,
6 or any other proceeding arising out of an adverse employment action taken as a
7 result of a test conducted under this section.

8 (b) Except as provided in pars. (a) 2. and (c), information relating to the results
9 of a test conducted under this section may not be used against an employee or
10 applicant in any criminal or civil proceeding.

11 (c) An employer may use any information, written or otherwise, relating to the
12 result of a test conducted under this section in a court proceeding, administrative
13 proceeding, grievance proceeding, or any other proceeding arising out of an adverse
14 employment action taken as a result of a test conducted under this section.

15 **(10) COMPLIANCE.** (a) When the department finds that an employer is not in
16 compliance with this section, the department shall notify the employer and the state
17 agency or local governmental unit authorizing the work of the noncompliance and
18 shall file the determination with the employer and the state agency or local
19 governmental unit within 30 days after the date of that notice.

20 (b) Upon completion of a project and before receiving final payment for his or
21 her work on the project, each agent or subcontractor shall furnish the contractor with
22 an affidavit stating that the agent or subcontractor has complied fully with the
23 requirements of this section. A contractor may not authorize final payment until the
24 affidavit is filed in proper form and order.

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1 (c) Upon completion of a project and before receiving final payment for his or
2 her work on the project, each contractor shall file with the state agency or local
3 governmental unit authorizing the work an affidavit stating that the contractor has
4 complied fully with the requirements of this section and that the contractor has
5 received an affidavit under par. (b) from each of the contractor's agents and
6 subcontractors. A state agency or local governmental unit may not authorize a final
7 payment until the affidavit is filed in proper form and order. An employer that
8 knowingly permits an employee of the employer to work on a project in violation of
9 this section is subject to the penalties specified in sub. (12) and to debarment under
10 sub. (13).

11 **(11) RECORDS; INSPECTION; ENFORCEMENT.** (a) Each employer shall keep full and
12 accurate records documenting the employer's compliance with this section. The
13 department or a contracting local governmental unit under s. 66.0903 may demand
14 and examine, and every employer shall keep, and furnish upon request by the
15 department or local governmental unit, copies of all records and information relating
16 to the employer's compliance with this section. The department may inspect records
17 in the manner provided in this chapter, and every employer is subject to the
18 requirements of this chapter relating to the examination of records.

19 (b) If requested by any employee or representative of an employee, the
20 department shall inspect the records of any employer to ensure compliance with this
21 section. A request under this paragraph shall specify the types of records requested.
22 If the employer subject to the inspection is found to be in compliance and if the person
23 making the request is an employee, the department shall charge the person making
24 the request the actual cost of the inspection. If the employer subject to the inspection
25 is found to be in compliance and if the person making the request is a representative

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1 of an employee, the department shall charge the person making the request \$250 or
2 the actual cost of the inspection, whichever is greater.

3 **(12) NONCOMPLIANCE; PENALTIES.** (a) An employee or applicant who refuses to
4 submit to testing as required under this section or who is the subject of a verified
5 positive test result may not be permitted to work on a project until the employee or
6 applicant tests negative for the presence of drugs or alcohol in his or her system. An
7 employee who is the subject of more than one verified positive test result during the
8 life of a project may not work on the project for the life of the project.

9 (b) Any employer that knowingly permits an employee of the employer to work
10 on a project in violation of this section may be fined not more than \$200 or imprisoned
11 for not more than 6 months or both. Each day that a violation continues is a separate
12 offense.

13 **(13) DEBARMENT.** (a) Except as provided under pars. (b) and (c), the department
14 shall distribute to all state agencies a list of all persons whom the department has
15 found to have knowingly permitted an employee of the person to work on a project
16 in violation of this section at any time in the preceding 3 years and shall notify any
17 local governmental unit applying for a determination under s. 66.0903 (3) or
18 exempted under s. 66.0903 (6) of the names of those persons. The department shall
19 include with any name the address of the person and shall specify the date of the
20 violation. A state agency or local governmental unit may not award any contract to
21 the person unless otherwise recommended by the department or unless 3 years have
22 elapsed from the date on which the department issued its findings or date of final
23 determination by a court of competent jurisdiction, whichever is later.

24 (b) The department may not include in a notification under par. (a) the name
25 of any person on the basis of having let work to a person whom the department has

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1 found to have knowingly permitted an employee of the person to work on a project
2 in violation of this section.

3 (c) This subsection does not apply to any employer that in good faith commits
4 a minor violation of this section, as determined on a case-by-case basis through
5 administrative hearings with all rights to due process afforded to all parties, or that
6 has not exhausted or waived all appeals.

7 (d) Any person submitting a bid on a project shall, on the date on which the
8 person submits the bid, identify any construction business in which the person, or
9 a shareholder, officer, or partner of the person, if the person is a business, owns, or
10 has owned, at least a 25 percent interest on the date on which the person submits the
11 bid or at any other time within 3 years preceding the date on which the person
12 submits the bid, if the business has been found to have knowingly permitted an
13 employee of the business to work on a project in violation of this section.

14 **(14)** LOCAL ORDINANCES; STRICT CONFORMITY REQUIRED. A local governmental
15 unit may enact an ordinance requiring an employee or applicant to submit to drug
16 and alcohol testing only if the ordinance strictly conforms to this section.

17 **SECTION 4. Nonstatutory provisions.**

18 (1) TRANSITIONAL PROVISIONS. An employer that is required under section
19 103.503 (2) of the statutes, as created by this act, to have, but that does not have, a
20 drug and alcohol testing program in place on the effective date of this subsection shall
21 provide notice to all of its employees that a drug and alcohol testing program is being
22 implemented and may not begin actual drug and alcohol testing until 60 days after
23 the date of the notice. An employer that has a drug and alcohol testing program in
24 place on the effective date of this subsection is not required to provide notice under
25 this subsection.

