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DRUG-FREE WORKPLACE ACT OF 1998

SEPTEMBER 25, 1998.—Ordered to be printed

Mr. BOND, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 3853]

The Committee on Small Business reported an act to promote drug-free workplace programs, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. INTRODUCTION

The Drug-Free Workplace Act is a bill to initiate a demonstration program designed to aid small business in the establishment of drug-free workplace programs through Fiscal Years 1999 and 2000 and to encourage states to offer other incentives for the same. On June 24, 1998, the Committee on Small Business received H.R. 3852 having passed the House of Representatives on a vote of 402–9. On September 15 1998, the Committee on Small Business conducted a mark up of this legislation. The Committee adopted a substitute amendment by unanimous consent and subsequently voted 18–0 for the amended bill.

The Committee has been aware that the abuse of drugs and alcohol in the workplace is a significant hazard to working Americans, and a serious drain on the economy in terms of lost productivity, increased health costs and wasted potential. Small businesses employ the vast majority of American workers.

In 1996, Substance Abuse and Mental Health Services Administration's (SAMHSA) reported in "An Analysis of Worker Drug Use and Workplace Policies and Programs" that 8.1% of employees in companies with 1–499 employees report illicit drug use, as compared to 5.4% of employees in businesses with 500 and more employees reported illicit drug use. The report states that in 1994,

82% of all employees work for companies having between 1–499 employees and 87% of the employees reporting illicit drug use work for such companies. The report also shows that 84% of employees reporting heavy alcohol use work for small businesses with less than 500 employees. Further, the Institute for Drug-Free workplace estimates that a majority of illicit drug users work for small businesses with less than 25 employees. Furthermore, the 1996 Conference Board Survey estimated the cost of the economy from absenteeism, injuries and diminished productivity to be $200 billion.

The Committee recognizes these statistics point to a problem in our society that goes beyond the economic costs. The costs to families and children due to problems associated with substance abuse can be difficult to quantify. H.R. 3853 will address both the conspicuous and hidden damage substance abuse causes through assuring that workplace-based programs include an avenue of employee intervention and assistance that could lead to life-changing treatment.

The bill would authorize awarding eligible intermediaries with experience in drug-free workplace programs' grants to establish drug-free workplace programs for use by small businesses. In addition, the bill provides sunsetted authorization for Small Business Development Centers to provide assistance and information on drug-free workplace programs. These programs will encourage employers to offer and use a variety of strategies of employee assistance, training and intervention to reduce abuse problems.

II. Description of Bill

Section 1 designates the bill as the "Drug-Free Workplace Act of 1998." Sections 2 and 3 contain congressional findings, purposes and a sense of Congress encouraging states to adopt drug-free workplace incentives.

Section 4 amends the Small Business Act to establish the Drug-Free Workplace Demonstration Program. Under new Section 27 (hereinafter "Section 27") of the Small Business Act, the Small Business Administration (SBA) is authorized to offer grants on a competitive basis to eligible intermediary organizations to provide technical and financial assistance to small businesses for the purpose of establishing drug-free workplace programs.

Section 27(a) defines an "eligible intermediary" as an organization located in the United States established to develop comprehensive drug-free workplace programs or to supply drug-free workplace services or to provide other assistance and services to small businesses. Eligible intermediaries must have a specific history of no less than two-years experience in establishing drug-free workplace programs and have an existing drug-free workplace program themselves. Nothing in this Section is intended to encourage competition between profit and not-for-profit organizations. Section 27(a) defines the term "employee" expansively, including employees and applicants for employment as well as supervisors, managers, and the owners and officers who are active in the management of the small business.

The Committee intends for the grants to be awarded to intermediaries to provide technical assistance to employers desiring to

implement such programs in their workplace and to reduce the costs to employers for establishing and maintaining such programs. It is the Committee's intention that SBA implement this program that it provides the intermediaries with the flexibility to determine how best to provide such financial and technical assistance. Intermediaries should provide employers with guidance, while allowing each employer to design the specifics of their drug-free workplace program. For instance, an intermediary may serve as the third-party administrator for an employer's drug-free workplace program and provide such service at a reduced fee. Another approach would be to provide services associated with maintaining such a program at no charge or with reimbursement for the costs incurred by the small business. The flexibility in the statute is intended to allow intermediaries knowledgeable in drug-testing to devise innovative ways to provide financial and technical assistance to small businesses desiring to implement drug-free workplace programs.

Section 27(a) sets forth the minimum requirements for any drug-free workplace program established under Section 27 of the Small Business Act. Under Section 27(a), a drug-free workplace program must include: (1) a clear written policy, (2) a minimum of two hours of alcohol and drug abuse prevention training for all employees, (3) voluntary additional training for working parents, (4) drug testing with analysis by a certified laboratory and each positive test being reviewed by a medical review officer, (5) access to qualified substance abuse professionals, including employee assistance programs that include assessment, referral and short-term problem resolution, and (6) continuing drug and alcohol prevention awareness education.

The Committee expects an employer's drug-free workplace policy to be written in a clear manner using plain language and must be made available to every employee subject to drug testing in a manner consistent with established company personnel practice including, but not limited to, inclusion in personnel manual, handbook or posting in a place accessible to all employees. In addition, prospective employees must be informed of the drug-testing requirement. It is the Committee's expectation that a drug-free workplace program will emphasize the confidentiality of test results and the importance of maintaining the privacy of those tested consistent with the Substance Abuse and Mental Health Services Administration's (SAMHSA) Mandatory Guidelines (Federal Register, vol. 59, June 9, 1994, page 29908).

Drug testing conducted pursuant to Section 27 must be limited to the testing for the illegal presence of drugs and illegal drug use and may test for abuse of alcohol. It is expected that drug testing practices and procedures instituted pursuant to this demonstration program would follow well-established procedures and standards which address questions on the collection of the specimen, the chain of custody, the security of the specimen, access of authorized personnel, privacy and confidentiality, integrity and identity of the specimens, and transportation to the laboratories.

Such programs should rely on laboratories certified under the SAMHSA Mandatory Guidelines with subsequent changes if any, or approved by the College of American Pathologists (CAP) for forensic drug testing. Lists of such laboratories are readily available.

The Committee understands there are over 100 such laboratories certified by SAMHSA and/or approved by CAP in the United States. While the laboratories certified by SAMHSA have been certified with respect to their ability to detect 5 drugs of abuse in urine, many of those labs are able to conduct testing on hair, sweat or saliva. Similarly, laboratories approved by CAP have been approved based on meeting standards in urine testing. Many of these labs also are able to conduct testing on hair, sweat, or saliva.

In discussing the use of laboratories, the Committee does not want to discount the use of on-site testing kits if chosen as part of the drug testing program if all initial positives are sent for confirmation and every attempt is made to ensure the privacy of the individuals whose samples were sent for confirmation.

The term "medical review officer" is defined in Section 27(a) as a licensed physician with knowledge of substance abuse disorders. The medical review officer (MRO) plays a critical role in any drug testing program. This individual is responsible for reviewing and interpreting positive test results obtained through the business' testing program. The MRO offers an employee whose specimen tested positive, in both the initial and confirmatory test, an opportunity to provide a medical explanation in confidence of why the specimen tested positive before the result is shared with the employer. The MRO must have appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information. It is imperative that such an individual have no financial interest in the business that is conducting the testing program or in the laboratory which performed the analysis, so there is no conflict of interest. By "financial in the business," the Committee does not mean to eliminate those physicians who contract with a business to act as an MRO as part of the drug testing program. In response to concerns about employee privacy, language was included in the definition to prohibit the MRO from being an employee of the lab or small business.

As part of the employer's drug-free workplace program, employees testing positive or coming forth for assistance must be provided a list of qualified professionals to assist in the evaluation, referral and resolution of their substance abuse problems. Such confidential consultation shall include provision of the names, address, and phone numbers for qualified providers of substance abuse evaluation, counseling and treatment. Similar to the Department of Transportation's drug testing regulations. SBA is not to require employers or intermediaries to cover the cost of intervention or treatment.

Section 27(b) provides the authority for the SBA to provide the grants under the demonstration program. Section 27 provides important privacy protections for employees participating in drug-free workplace programs established pursuant to Section 27. Consistent with the SAMHSA guidelines and responsible drug testing practices, employers establishing drug-free workplace programs under this Section are to incorporate procedures to ensure confidentiality of test results and of employee participation in employee assistance and other rehabilitation programs, including keeping such records separate from personnel records. Each program must include a pro-

hibition against disclosure of medical information, including identification of prescription drugs taken, unless in response to an inquiry by the MRO following a confirmed positive drug test. Employees may want to record such information for their own personal use, but under no circumstances should that information be provided to the company, the collection site personnel, or otherwise associated with the chain of custody because it can bias the test as well as violate the privacy of the employee. Section 27 also describes the information to be contained in the MRO's written report, which must be prepared in a manner designed to ensure confidentiality of the information. The report only deals with final results that are positive for illegal drug use and the report will only address the illegal use with the MRO not disclosing any other information acquired during their investigation.

Section 27(d) requires SBA, in conjunction with the Departments of Labor and Health and Human Services and the Office of National Drug Control Policy, to evaluate programs any drug-free workplace programs establish. Section 27(e) authorizes the SBA to contract with other government agencies or organizations or private organizations for the provision of services under this Act. This provision will allow the SBA to draw on the resources of other organizations in areas outside their technical competencies.

Finally, Section 27(f) makes clear that mere participation in drug-free workplace training sessions or other informational programs does not require any employer to contract for any services offered as part of a drug-free workplace program, and Section 27(g) authorizes $10,000,000 to carry out this program. These funds are authorized over a two-year period, such that the total authorized for two years in $10,000,000, of which a total of no more than $1,000,000 may be used to implement assistance provided by the Small Business Development Centers under Section 21(c)(3)(T) of the Small Business Act.

Section 5 amends Section 21(c)(3) of the Small Business Act to include among the various duties and responsibility of small business development centers providing information and assistance to small businesses seeking to implement drug-free workplace programs on or before October 1, 2000. Small businesses seeking assistance authorized under Section 5 are not mandated to implement drug-free workplace programs which meet the requirement of Section 27, but must have the option of implementing a drug-free workplace program without drug testing of employees. Employers seeking assistance from the small business development centers have greater discretion in selecting the components to include in their drug-free workplace program than those participating under Section 27, who must implement a program consistent with the definitions in Section 27(a).

III. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following vote was recorded on September 15, 1998.

A motion by Senator Coverdell to adopt the substitute amendment to H.R. 3853, the Drug-Free Workplace Act, to promote drug-free workplace programs passed by unanimous voice vote.

A motion to by Senator Coverdell to adopt H.R. 3853 as amended, the Drug-Free Workplace Act, was approved by a unanimous 18–0 recorded vote, with the following Senators voting in the affirmative: Bond, Kerry, Burns, Coverdell, Kempthorne, Bennett, Warner, Frist, Snowe, Faircloth, Enzi, Bumpers, Levin, Harkin, Lieberman, Wellstone, Cleland, and Landrieu.

IV. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts discussed below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 1998.

Hon. CHRISTOPHER S. BOND,
Chairman, Committee on Small Business,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3853, the Drug-Free Workplace Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs, and Marc Nicole (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3853—Drug-Free Workplace Act of 1998

Summary: H.R. 3853 would establish a drug-free workplace demonstration program and require that Small Business Development Centers (SBDCs) provide small businesses with information regarding drug-free workplace programs. The act would authorize the appropriation of $10 million to SBA for grants or contracts with not-for-profit organizations to provide small businesses with drug-free workplace programs. Assuming appropriation of the authorized amount, CBO estimates that implementing this legislation would cost $10 million over the 1999–2001 period.

H.R. 3853 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 3853 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs to state and local governments from enactment of the legislation would be incurred voluntarily.

Estimated cost to the Federal Government: For the purposes of this estimate, CBO assumes H.R. 3853 will be enacted near the start of fiscal year 1999 and that the authorized amount will be appropriated for fiscal years 1999 and 2000. The estimated budgetary impact of H.R. 3853 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal years, in millions of dollars—				
	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	5	5	0	0	0
Estimated Outlays	3	6	1	0	0

Basis of estimate: H.R. 3853 would authorize appropriations totaling $10 million over fiscal years 1999 and 2000 for the drug-free workplace demonstration program and for SBA to provide information and assistance (through SBDCs) to help small businesses develop drug-free workplace programs. Based on information from SBA, CBO estimates that implementing H.R. 3853 would cost $10 million over the 1999–2001 period.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 3853 contains no intergovernmental or private-sector mandates as defined in UMRA. The legislation would expand the services that Small Business Development Centers are required to provide. SBDCs are operated solely or jointly by state and local governments and institutions of higher education. SBDCs are funded by the federal government, and requirements imposed on them are conditions of receiving federal assistance.

Previous CBO estimate: On June 17, 1998, CBO transmitted an estimate for H.R. 3853, as ordered reported by the House Committee on Small Business on June 11, 1998. The House version also would authorize the appropriation of $10 million for the drug-free workplace demonstration program. In addition, it would direct SBA to study the effects of drug use in the workplace and require that SBDCs provide small businesses with information regarding drug-free workplace programs. As a result, CBO estimated that implementing the House version of H.R. 3853 would cost about $12 million over the 1999–2003 period.

V. Evaluation of Regulatory Impact

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation.

IV. Section-by-Section Analysis

Section 1

Designates the bill as "the Drug-Free Workplace Act of 1998."

Section 2

Details Congressional findings regarding the serious cost in health, safety and productivity that abuse of alcohol and drugs imposes on the economy and particularly, small business. This section also lays out the fundamental purpose of this bill—to aid working parents and the small businesses that employ them in combating the threat of substance abuse.

Section 3

Expresses the sense of Congress that businesses should adopt drug-free workplace policies and that the States should encourage them in their efforts through tax and insurance incentives.

Section 4

Amends current law to authorize the Drug-Free Workplace Demonstration Program. The Administrator is authorized to offer grants on a competitive basis to eligible intermediary organizations to provide technical and financial assistance to small businesses for the purpose of establishing drug-free workplace programs.

Section 5

Amends current law to include among the various duties and responsibility of small business development centers the provision of information and assistance to small businesses seeking to implement drug-free workplace programs on or before October 1, 2000.

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