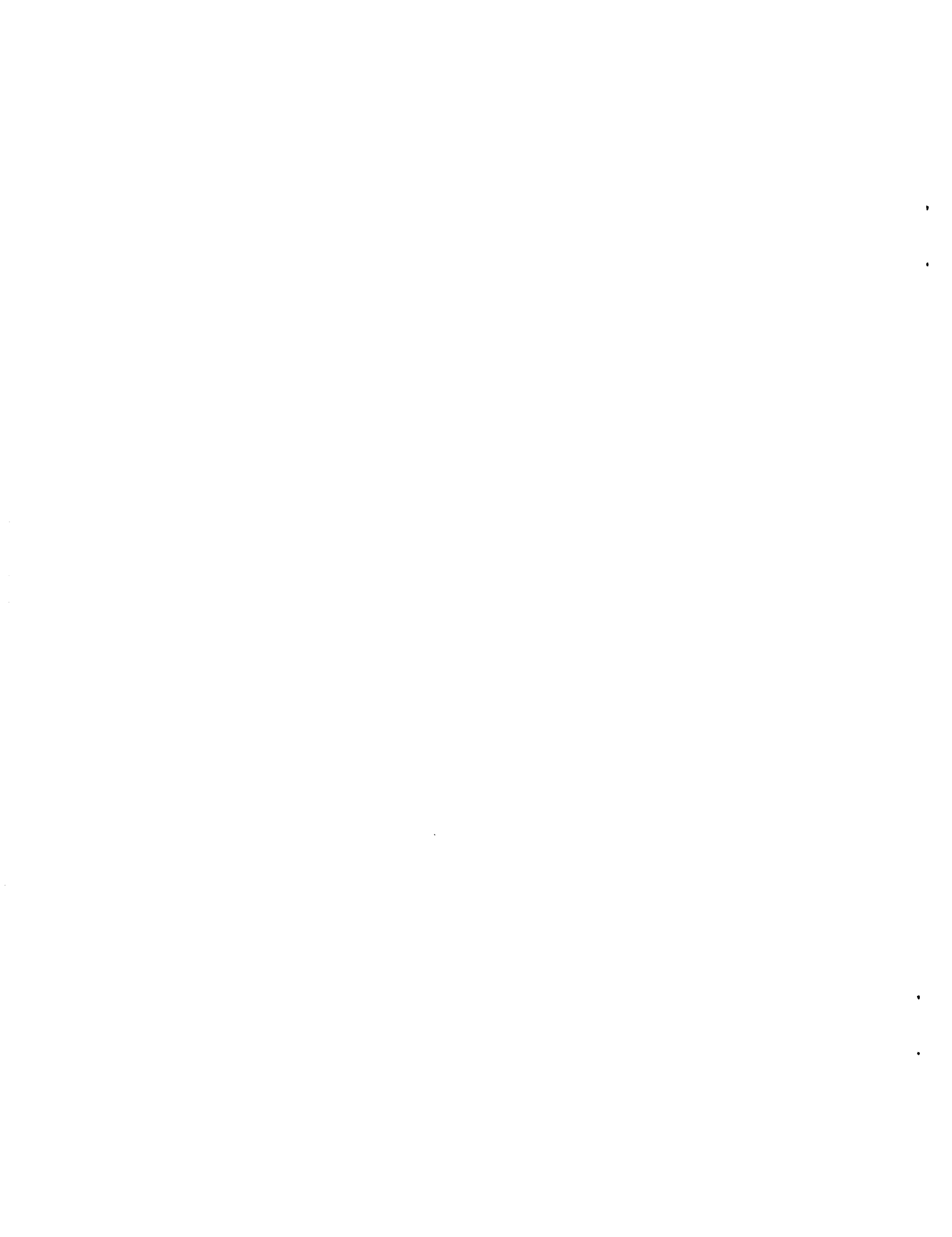


**KENTUCKY AND THE FEDERAL
DRUG—FREE WORKPLACE
ACT OF 1988**

RESEARCH MEMORANDUM NO. 446

LEGISLATIVE RESEARCH COMMISSION

October, 1991



RESEARCH MEMORANDUM 446

**KENTUCKY AND THE FEDERAL
DRUG—FREE WORKPLACE
ACT OF 1988**

**Prepared by the
Labor and Industry Committee**

**Legislative Research Commission
Frankfort, Kentucky
October, 1991**



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MEMORANDUM

TO: Representative Don Blandford
Senator John "Eck" Rose
Co-Chairs, Legislative Research Commission

FROM: Senator Tim Shaughnessy
Representative Ron Cyrus
Co-Chairs, Labor and Industry Committee

SUBJECT: Research Study Directed by Senate Bill 35

DATE: October 31, 1991

INTRODUCTION

Senate Bill 35 enacted by the 1990 General Assembly called for "a study of the impact of extending the policy established in the federal Drug-Free Workplace Act of 1988 to persons and businesses receiving contracts with or grants from Kentucky state and local governments." A report and recommendations were to be provided to the Legislative Research Commission by November 1, 1991.

The Legislative Research Commission assigned the study to the Labor and Industry Committee, which in turn assigned it to the Subcommittee on Employment Standards and Labor Relations.

Since the study was to determine the "impact of extending the policy established in the federal Drug-Free Workplace Act of 1988 to persons and businesses receiving contracts with or grants from Kentucky state and local governments," it is important to understand the workings of the federal Drug-Free Workplace Act.¹

THE FEDERAL DRUG-FREE WORKPLACE ACT OF 1988

For an entity, other than an individual, to be eligible to obtain any federal grant or a federal contract of \$25,000 or more, that entity must certify to the granting or contracting agency that the entity will carry out the grant or contract in a drug-free environment by fulfilling seven requirements.

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition;
2. Notify each employee, in the drug-free workplace statement, that as a condition of employment on the grant or contract, the employee must abide by the terms of the drug-free workplace statement and notify the entity of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
3. Provide each employee with a copy of the drug-free workplace statement;
4. Establish a drug-free awareness program to inform employees about:
(a) the dangers of drug abuse in the workplace; (b) the entity's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations;
5. Notify the granting or contracting agency within ten days after receiving notice from an employee of such a drug conviction or otherwise receiving actual notice of such conviction;

6. Within thirty days after receiving notice of such a drug conviction, take appropriate personnel action (up to and including termination) against, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by, the convicted employee;

7. Make a good faith effort to continue to maintain a drug-free workplace through implementation of the foregoing six requirements.

For an individual to be eligible to obtain any federal grant or any federal contract, that individual must certify to the granting or contracting agency that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the grant or contract.

A grantee or contractor who comes under the Act may be suspended, terminated, or debarred for:

1. Making a false certification;
2. Failing to carry out the seven requirements; or
3. Having such a number of employees convicted of drug crimes where the crimes occurred in the workplace that the grantee or contractor may be said to have failed to make a good faith effort to maintain a drug-free workplace.

A suspension, termination, or debarment may be waived if:

1. In the case of a contract, not granting the waiver would disrupt the operation of a federal agency to the detriment of the federal government or the general public; or
2. In the case of a grant, not allowing the waiver would not be in the public interest.

While the federal Drug-Free Workplace Act was passed in 1988, final administrative regulations implementing the law were not promulgated until May 25, 1990.² Therefore, the law has been in full operation for only a year and five months.

All individuals with a federal grant or contract and all entities, other than an individual, with any federal grant or a federal contract worth \$25,000 or more are subject to the Act. By covering all federal grantees, the Act reaches a broad diversity of entities. The Act applies to any state or local government, student, school district, institution of higher education, bank,³ artist,⁴ etc. holding a federal grant. A covered federal contractor or grantee need comply with the Act's provisions only so long as he is working on the contract or grant.⁵

The law applies to individuals who work directly or indirectly on certain federal contracts and all federal grants.⁶ However, an employer is not prevented from electing to cover employees in addition to those who are clearly subject to the law.⁷ For example, the law requires that only a

fraction of Kentucky state employees are subject to the law's provisions. However, through Executive Order 89-398, Governor Wallace Wilkinson has subjected all 40,865⁸ state employees to the Act. Other employers have taken the same step.⁹

The major provision of the Act requires an employer to establish a drug awareness program which shall last throughout the life of the federal grant or contract.¹⁰ However, the statute does not require a contractor or grantee to test job applicants or employees for drugs¹¹ or to establish an employee assistance program¹² to educate and assist employees in dealing with drug and alcohol abuse. The statute does not require drug counseling or rehabilitation of employees or special training for supervisors.¹³ The Act does not prohibit an employee from reporting to work or working under the influence of drugs. The Act does not address the issue of alcohol in the workplace.¹⁴ The administrative regulations do not set forth any mandates regarding what constitutes an acceptable awareness program.¹⁵

Enforcement of the Act is achieved through normal administration and auditing of federal grants and contracts.¹⁶ This type of enforcement relies in large measure on federal contractors and grantees reporting on themselves. A federal contractor or grantee certifies compliance and divulges all instances of an employee being convicted of a drug crime which occurs at work.¹⁷ If he files a false certification or divulges too many convictions, he is disciplined.¹⁸ However, the Act does not require that the federal government establish a centralized reporting and enforcement system.¹⁹ Rather, the Act authorizes each federal agency to oversee the Act's reporting

and enforcement provisions as they pertain to grants and contracts awarded by the agency. An agency may delegate this authority to a sub-agency. There is no requirement that agencies and sub-agencies coordinate their reporting and enforcement responsibilities when a grantee or contractor has multiple grants or contracts with multiple agencies or sub-agencies.²⁰

THE IMPACT OF THE FEDERAL DRUG-FREE WORKPLACE ACT OF 1988

At this point, it is difficult to determine the impact of the federal law. Since Congress passed the law in 1988 and final regulations were not promulgated until May 25, 1990, there has been too little experience with the law to determine conclusively its impact.

A literature search has uncovered only one survey on the impact of the federal Drug-Free Workplace Act.²¹ The survey was conducted by Loyola University Professor Donald J. Petersen and Associate Professor Douglas Massengill. There are several problems which limit the usefulness of the survey. Only one hundred and eighty-one firms participated;²² most of the firms were large (i.e., 156 firms, or 86.2% of the respondents, employed more than 100 employees);²³ and the survey was conducted just prior to the promulgation of final administrative regulations to implement the Act.²⁴

The survey touched on three key aspects of the Act: 1. Publication of a drug policy; 2. Creation of a drug awareness program; and 3. Enforcement.

With regard to publication of a drug policy statement, 81% of the respondents had published such a statement.²⁵ Ninety percent of those who had published a statement indicated that they had given a copy to each employee.²⁶ Ninety-six percent of those who gave a copy to each employee stated that, pursuant to the Act, they had included in the statement action to be taken for policy violations.²⁷ Eighty-three percent of these respondents stated that termination would be the action taken for a policy violation.²⁸

Only one hundred and two (56.4% of the one hundred and eighty-one respondents) indicated that they had attempted to create a drug awareness program.²⁹

While some of the one hundred and two used such active methods as training sessions, meetings, staff or supervisory meetings, and counseling to create a drug awareness program,³⁰ the majority of them used more passive means.³¹ Indeed, according to the authors of the survey, "The overwhelming method of choice was brochures."³² Other passive techniques mentioned included newsletters, employee handbooks, posters, bulletin boards, and letters.³³ The authors stated that, "These...techniques assume that employees will read the information and then be motivated to refrain from using or distributing drugs in the workplace, a questionable assumption to say the least."³⁴

With regard to enforcement, the authors studied one aspect of the Act's self-enforcement provision. As the authors noted, the Act requires that a firm must report to the granting or contracting agency an employee's drug conviction for a violation occurring in the workplace.³⁵ However, if a firm

reports too many employee convictions, it may be disciplined.³⁶ The authors found that only two percent of the respondents had reported any employee drug convictions to federal agencies.³⁷ The authors stated that this low rate of reporting might be due to the small number of drug convictions for violations occurring in the workplace.³⁸ But they also explored the seemingly self-defeating nature of this aspect of the Act's self-enforcement provision. The survey cited a Forbes magazine's observation that if a firm reports drug problems, it may lose federal business; if it fails to report, it breaks the law.³⁹ One respondent commented, "If an employer reports [drug] problems, it can be barred from contracts--a rather perverse and backward 'incentive' system."⁴⁰

Despite the various problems with the effectiveness of the Act that the survey uncovered, 64% of the sample firms believed that the Act would help to diminish drug abuse.⁴¹ According to the authors, "While not a resounding note of approval, the data do indicate some enthusiasm that the law would be useful for combating drug abuse in the workplace."⁴²

While the survey reveals that there has been less than universal compliance with the Act, at least one expert on drug abuse has stated that large employers have taken the Act as a cue to crack down on drugs in ways not required by the Act.⁴³ News accounts report crackdowns by such employers as Texas Instruments, Motorola,⁴⁴ and Xerox.⁴⁵

The survey touched on difficulties with the Act's enforcement. Correspondence with federal officials indicates that they are unaware of any

federal contractor or grantee which has been disciplined under the Act.⁴⁶

STATE DRUG-FREE WORKPLACE ACTS

Eight states have adopted the state equivalent of the federal Drug-Free Workplace Act of 1988: Georgia, Illinois, Indiana, Louisiana, Maryland, Nebraska, Oklahoma, and South Carolina.⁴⁷ In half of the states (Indiana, Louisiana, Maryland, and Nebraska), the state program has come about through Executive Order rather than legislation.⁴⁸

The state programs generally follow the federal Act, although some states attempt to go beyond the federal requirements. For example, Louisiana and Maryland include alcohol as a drug and prohibit a covered employee from reporting to work or working while under the influence of drugs.⁴⁹ Georgia extends its program to subcontractors as well as contractors.⁵⁰

Despite the differences between the state programs and the federal Act, the impact of the state programs is similar to the impact of the federal Act. The state programs have been in place too short a time to determine conclusively their impact. The tentative conclusion is that the state programs, like the federal Act, are not enforced as punitive measures but rather serve some kind of "awareness" function.⁵¹ However, some covered employers voluntarily impose drug-free workplace requirements in excess of those required by the federal Act and the state programs.⁵²

The state administrators support the drug-free workplace programs they are

administering. Some of the administrators have suggested ways to strengthen their programs. Probably the most significant suggestions came from Ed Pierce, a Georgia administrator.

I would require employers to provide Employee Assistance Programs. I would provide funding for enforcement and require state agencies to establish enforcement procedures. But I would prefer to change the Act to require some drug testing, a specific amount of prevention activity through education, and I would establish incentives for employers through tax credits and/or a reduction of workmen's compensation insurance rates. This would further require the development of state standards for such a drug free workplace program.⁵³

Given the nature of the federal Act and the experience in other states, proponents of a Kentucky Drug-Free Workplace Act, in their arguments in favor of such a law, emphasize its benefit primarily as an educational tool. Gary Faulkner, Executive Director of the Governor's Office for a Drug-Free Kentucky, Tony Sholar, Executive Director, Kentucky Chamber of Commerce, and Mack Morgan, Executive Director, Kentucky Retail Federation, testified before the Subcommittee on Employment Standards and Labor Relations, speaking in favor of a Kentucky Drug-Free Workplace Act. They said that such a Kentucky law would serve as an "education" or "awareness" program.⁵⁴

EXISTING DRUG-FREE WORKPLACE REQUIREMENTS

In deciding whether to enact a Kentucky Drug-Free Workplace Act, the Kentucky General Assembly should examine whether there are already federal and Kentucky laws in place which are at least as effective as a Kentucky Drug-Free Workplace Act would be in keeping drugs out of the workplace.

Over the last ten years, Congress and the Kentucky General Assembly have enacted numerous civil and criminal anti-drug laws which do not target the workplace. It has been estimated that Congress, over the last six years alone, has enacted more than one thousand pages of anti-drug laws.⁵⁵ The Kentucky General Assembly has passed several anti-drug laws. For example, the 1991 Extraordinary Session of the Kentucky General Assembly toughened the Kentucky statutes pertaining to driving a motor vehicle while impaired by alcohol, another drug, or any combination of drugs. Moreover, the Kentucky General Assembly, through KRS 218A.405 to 218A.460, has provided for the forfeiture of all property connected with illegal drug activity. All of these anti-drug statutes, and the criminal anti-drug statutes in particular, should lessen the likelihood that there will be drugs in the workplace.

In addition to the numerous federal and Kentucky anti-drug laws which do not target the workplace and which have gone into effect over the last ten years, several federal anti-drug statutes and regulations have been specifically aimed at ridding the workplace of drugs. These federal statutes and regulations cover tens of millions of Americans.

The federal Drug-Free Workplace Act of 1988 is not the only federal anti-drug program which pertains to federal contracts. The Department of Defense has also issued regulations which require certain defense contractors to implement a drug-free workplace program which includes drug testing.⁵⁶ Two hundred twenty-five thousand companies, employing 28 million Americans, have contracts with the federal government.⁵⁷ While not every one of the 28 million employees is subject to either the federal Drug-Free Workplace Act of 1988, or the Department of Defense regulations, it is safe to assume that the vast majority of them are. The Act also applies to entities and individuals that have federal grants. There are three million students throughout the country with Pell Grants.⁵⁸ All of these students are covered by the Act.⁵⁹

In 1988, the Department of Transportation issued regulations⁶⁰ which impose drug-free workplace requirements on four million transportation workers⁶¹ in the United States. Today, various Department of Transportation regulations require the drug testing of transportation workers.⁶² Also transportation employers are required to establish employee assistance programs to educate and assist employees in dealing with drug and alcohol abuse.⁶³ A federal circuit court has recently upheld the constitutionality of the Department of Transportation regulations.⁶⁴ New legislation, which is expected to be approved by Congress, will impose even tougher drug-free workplace requirements on transportation workers and extend the reach of the requirements to over six million transportation workers.⁶⁵

The Drug-Free Schools and Communities Act Amendments of 1989 impose

several drug-free requirements on a substantial portion of the American population.⁶⁶ One significant example of the statute's operation is that if an institution of higher education hopes to receive any federal support, that institution must impose drug-free requirements on all students and all employees.⁶⁷

In some instances, a citizen may be subject to two or more of the federal provisions specifically aimed at ridding the workplace of drugs.

To the extent that these federal statutes and regulations have created drug-free requirements which meet or exceed those which would be imposed by a Kentucky Drug-Free Workplace Act, such a law might result in duplication and confusion.

Kentucky law establishes few limits on an employer imposing drug-free workplace requirements on his employees. With a few exceptions, an employer may fire or discipline any employee for no reason or any reason.⁶⁸ Therefore, there is little to prevent an employer from firing or disciplining an employee whom the employer suspects of using illegal drugs during or after work hours. Furthermore, a Kentucky anti-discrimination employment statute specifically excludes from protection alcoholics and drug addicts (KRS 207.140(2)(b)).

There are no Kentucky statutes which limit a private employer's capacity for testing individuals for drugs. The employer may test job applicants. Current employees may be tested randomly or for cause. A sophisticated

testing technique or a crude testing technique with a high risk of error may be used. All these options are at the employer's disposal.

At the same time that Kentucky law has established few limits on a private employer who is fighting drugs in the workplace, Kentucky law does little to assist in this endeavor. There are no state programs of consequence in place to provide Kentucky employers with technical or other assistance to deal with drug abuse in the workplace.

The Governor's Commission for a Drug-Free Kentucky has recommended twenty-two ways to provide technical and other assistance to Kentucky employers. Those recommendations are attached as Appendix A.

CONCLUSION

The Labor and Industry Committee has been charged with determining the impact of extending the policy established in the federal Drug-Free Workplace Act of 1988 to persons and businesses receiving contracts with or grants from Kentucky state and local governments.

Since the federal law would serve as a model for the Kentucky law, it is important to understand the federal Act.

The federal Drug-Free Workplace Act of 1988 imposes minimal drug-free workplace requirements on all individuals with a federal grant or contract and all entities, other than an individual, with any federal grant or a federal

contract worth \$25,000 or more.

Since Congress enacted the federal Act in 1988, and regulations implementing the Act were not published until May 25, 1990, there has been too little experience with the Act to determine conclusively its impact. Apparently, not a single federal contractor or grantee has been disciplined for a violation of the Act.

Eight states have adopted the state equivalent of the federal Drug-Free Workplace Act of 1988: Georgia, Illinois, Indiana, Louisiana, Maryland, Nebraska, Oklahoma, and South Carolina.

In three ways, current law discourages the illegal use of drugs in the Kentucky workplace. First, Congress and the Kentucky General Assembly have passed numerous substantial anti-drug statutes which do not target the workplace but which should be at least as effective in the workplace as elsewhere. Second, several federal statutes and regulations are specifically aimed at ridding the workplace of drugs. Those statutes and regulations include the federal Drug-Free Workplace Act of 1988, the Drug Free Schools and Communities Act Amendments of 1989, Department of Transportation regulations, and Department of Defense regulations. Third, Kentucky law establishes few limits on an employer imposing meaningful drug-free workplace requirements on employees.

While federal and Kentucky law discourage the illegal use of drugs in the workplace, Kentucky law does little to provide technical or other assistance

to Kentucky employers to help them achieve this goal.

The Governor's Commission for a Drug-Free Kentucky has recommended twenty-two ways to provide technical and other assistance to Kentucky employers. Those recommendations are attached as Appendix A.

APPENDIX A
RECOMMENDATIONS FROM
IN PURSUIT OF A DRUG-FREE KENTUCKY: A PLAN
OF ACTION FOR 1991 AND BEYOND

LEAD AGENCY: Governor's Office For A Drug-Free Kentucky

PARTICIPATING AGENCIES: Cabinet for Human Resources

Council for Higher Education
Department of Personnel
Economic Development Cabinet
Governmental Services Center
Institutions of Higher Education
Kentucky Chamber of Commerce
Labor Cabinet

° Provide information and education regarding alcohol and other drug abuse in workplaces.

° Encourage employers to establish employee assistance programs.

° Encourage employers to provide training for supervisors on how to recognize and handle alcohol and other drug abuse problems in the workplace.

° Encourage institutions of higher education to address the issue of alcohol and other drug abuse in the workplace in the management curriculum.

- ° Encourage existing networks to develop small business consortiums which would then contract for prevention, intervention, and treatment services.

- ° Encourage labor and management to work together cooperatively to develop alcohol and other drug programs, ensuring a safe working environment.

- ° Encourage the distribution of information concerning employee assistance programs.

- ° Assist small business consortiums with technical assistance in applying for grants.

- ° Develop a media campaign which encourages employers to recognize and deal with the problems of alcohol and other drug abuse in the workplace.

- ° Develop regional seminars which utilize speakers to present facts to employers regarding the extent of the problem, impact on the workplace, and the cost of alcohol and other drug abuse to the employer, as well as how to address those problems.

- ° The annual Governor's Conference on Alcohol and Other Drug Abuse should expand to include training sessions utilized by employers and supervisors across the state.

° Utilize the Drug Information Service for Kentucky to disseminate information to workplaces.

° Provide sample policies to employers, emphasizing the fact that the development of any policy requires input from all levels within the workplace.

° Provide employee education programs that include videos, written materials, and visual aids.

° Make available guidelines to employers and employees for the creation of an employee assistance program.

° Develop a packet of information detailing drug testing options for employers.

° Expand state government's drug-free workplace program.

° Establish an amnesty program for employees who are willing to step forward and acknowledge an alcohol or other drug problem so that treatment can be provided.

° Place the Kentucky Employee Assistance Program (KEAP) under the direct supervision of the Commissioner and have each of the Cabinets provide support.

° Create an awareness program to inform employees on alcohol and other drug abuse problems and the services available.

- ° Provide orientation for new employees.

- ° Pursue drug testing for state government employees in safety sensitive positions.

- ° Study the benefits of having regional employee assistance program offices for state employees.

- ° The Governmental Services Center's Kentucky Career Manager Program should include supervisor training to deal with alcohol and other drug abuse.

- ° Establish clear standards within state government regarding what constitutes acceptable behavior and what constitutes grounds for dismissal in terms of alcohol and other drug abuse either on or off the job.

APPENDIX B

THE NATURE OF THE DRUG PROBLEM TODAY

During the 1980's, according to federal data, there has been a dramatic reduction in the number of Americans who use illegal drugs. Periodically since 1972 the National Institute on Drug Abuse, a federal agency, has conducted the National Household Survey, to determine the percentage of Americans who use legal and illegal drugs. The following table summarizes the surveys as they pertain to the use of illegal drugs.⁶⁹

Table 1.
Current (Past Month) Drug Use: 1972 - 1990

	Youth age 12 - 17								
	1972	1974	1976	1977	1979	1982	1985	1988	1990
Marijuana	7.0%	12.0%	12.3%	16.6%	16.7%	11.5%	12.0%	6.4%	5.2%
Hallucinogens	1.4%	1.3%	0.9%	1.6%	2.2%	1.4%	1.2%	0.8%	0.9%
Cocaine	0.6%	1.0%	1.0%	0.8%	1.4%	1.6%	1.5%	1.1%	0.6%
Heroin	*	*	*	*	*	*	*	*	*
Nonmedical Use of									
Stimulants	-	1.0%	1.2%	1.3%	1.2%	2.6%	1.6%	1.2%	1.0%
Sedatives	-	1.0%	*	0.8%	1.1%	1.3%	1.0%	0.6%	0.9%
Tranquilizers	-	1.0%	1.1%	0.7%	0.6%	0.9%	0.6%	0.2%	0.5%
Analgesics	-	-	-	-	0.6%	0.7%	1.6%	0.9%	1.4%

	Young Adults age 18 - 25								
	1972	1974	1976	1977	1979	1982	1985	1988	1990
Marijuana	27.8%	25.2%	25.0%	27.4%	35.4%	27.4%	21.8%	15.5%	12.7%
Hallucinogens	-	2.5%	1.1%	2.0%	4.4%	1.7%	1.9%	1.9%	0.8%
Cocaine	-	3.1%	2.0%	3.7%	9.3%	6.8%	7.6%	4.5%	2.2%
Heroin	-	*	*	*	*	*	*	*	*
Nonmedical Use of									
Stimulants	-	3.7%	4.7%	2.5%	3.5%	4.7%	3.7%	2.4%	1.2%
Sedatives	-	1.6%	2.3%	2.8%	2.8%	2.6%	1.6%	0.9%	0.7%
Tranquilizers	-	1.2%	2.6%	2.4%	2.1%	1.6%	1.6%	1.0%	0.5%
Analgesics	-	-	-	-	1.0%	1.0%	1.8%	1.5%	1.2%

	Older Adults age 26+								
	1972	1974	1976	1977	1979	1982	1985	1988	1990
Marijuana	2.5%	2.0%	3.5%	3.3%	6.0%	6.6%	6.1%	3.9%	3.6%
Hallucinogens	-	*	*	*	*	*	*	*	0.1%
Cocaine	-	*	*	*	0.9%	1.2%	2.0%	0.9%	0.6%
Heroin	-	*	*	*	*	*	*	*	*
Nonmedical Use of									
Stimulants	-	*	*	0.6%	0.5%	0.6%	0.7%	0.5%	0.3%
Sedatives	-	*	0.5%	*	*	*	0.6%	0.3%	0.1%
Tranquilizers	-	*	*	*	*	*	1.0%	0.6%	0.2%
Analgesics	-	-	-	-	*	*	0.9%	0.4%	0.6%

- Estimate Not Available
* Low precision - no estimate shown

The table shows that the percentage of Americans using illegal drugs is at its lowest point in ten years (it is probably at its lowest point in twenty years). Furthermore, use of illegal drugs is largely confined to Americans between the ages of 12 and 25. The percentage of these individuals who use illegal drugs is two to three times the percentage of Americans 26 and older who use illegal drugs.

The National Institute on Drug Abuse has extrapolated from the National Household Survey the total number of Americans who use illicit drugs at least once a month. The number of such illicit drug users has declined from 23 million in 1985 to 14.5 million in 1988 to 13 million in 1990.⁷⁰

Since 1975, the National Institute on Drug Abuse has also conducted an annual survey of drug taking by American high school seniors. These surveys have revealed a dramatic decline in the use of legal and illegal drugs by American high school seniors.⁷¹

In addition to counting drug users, the high school senior survey has measured attitudes. The annual surveys reveal that anti-drug sentiment among high school seniors is stronger now than at any time since the survey began in 1975. The following table is illustrative of the anti-drug sentiment, which reached its peak in the 1990 survey.⁷²

Table 2.
Trends in Proportions of Seniors Disapproving of Drug Use

Percentage "disapproving"

Q. Do you disapprove of people (who are 18 or older) doing each of the following?	Class of 1975	Class of 1976	Class of 1977	Class of 1978	Class of 1979	Class of 1980	Class of 1981	Class of 1982	Class of 1983	Class of 1984	Class of 1985	Class of 1986	Class of 1987	Class of 1988	Class of 1989	Class of 1990	'89-'90 change
Try marijuana once or twice	47.0%	38.4%	33.4%	33.4%	34.2%	39.0%	40.0%	45.5%	46.3%	49.3%	51.4%	54.6%	56.6%	60.8%	64.6%	67.8%	+3.2%
Smoke marijuana occasionally	54.8%	47.8%	44.3%	43.5%	45.3%	49.7%	52.6%	59.1%	60.7%	63.5%	65.8%	69.0%	71.6%	74.0%	77.2%	80.5%	+3.3%
Smoke marijuana regularly	71.9%	69.5%	65.5%	67.5%	69.2%	74.6%	77.4%	80.6%	82.5%	84.7%	85.5%	86.6%	89.2%	89.3%	89.8%	91.0%	+1.2%

In addition to conducting drug use surveys, the federal government has also tracked emergency room visits involving drugs. In the recent past, such emergency room visits have sharply declined. In 1989 there were 426,000 such emergency room visits. In 1990, there were 365,708.⁷³ This amounts to a one year decline of 14.15%. The following table traces emergency room visits involving cocaine.⁷⁴

Table 3

5 YEAR TRENDS FOR COCAINE
EMERGENCY ROOM MENTIONS - CONSISTENTLY REPORTING
FACILITIES IN DRUG ABUSE WORKING NETWORK

<u>QUARTER</u>	<u>MENTIONS (COCAINE)</u>
Quarter 3 1985	2,597
Quarter 4 1985	2,781
Quarter 1 1986	3,113
Quarter 2 1986	4,147
Quarter 3 1986	5,315
Quarter 4 1986	5,206
Quarter 1 1987	6,037
Quarter 2 1987	7,055
Quarter 3 1987	8,383
Quarter 4 1987	9,161
Quarter 1 1988	9,770
Quarter 2 1988	10,147
Quarter 3 1988	10,994
Quarter 1 1989	11,058
Quarter 2 1989	11,236
Quarter 3 1989	10,826
Quarter 4 1989	8,433
Quarter 1 1990	8,323
Quarter 2 1990	7,532

Reporting to Congress on the decline in number of drug-related emergency room visits, Bob Martinez, director of the Office of National Drug Control Policy, testified that the trend indicates that the nation is getting close

to the "bedrock" of addicted drug abusers.⁷⁵

While the drug problem is becoming one increasingly of addiction rather than casual use, the number of drug addicts has stayed the same or may be increasing.⁷⁶ According to the National Household Surveys, in 1985 246,000 Americans used cocaine daily. In 1990, 336,000 Americans used cocaine daily.⁷⁷

One commentator has made the following statement on the decline in the number of Americans who use illegal drugs:

The successes in the war [on drugs] so far, confirmed by recent surveys showing dramatic drops in drug use nationwide, have been won largely among the casual drug users in white, middle-class suburbs, experts and public officials agree. The focus now is shifting to poor, inner-city minority neighborhoods where it will be more difficult to attack, they warn.⁷⁸

In sum, during the 1980's, there has been a dramatic decline in the number of Americans who use illegal drugs. However, the drug problem remains, in the form of the drug addict population, which has not declined, as well as levels of drug use among youth and inner-city minorities, which exceed the level of drug use among the citizenry at large.

FOOTNOTES

1. 41 USCS § 701 et seq.
2. Federal Register, May 25, 1990, p. 21677 et seq.
3. Ibid., p. 21684.
4. Ibid., p. 21687.
5. Ibid., p. 21683.
6. Ibid., p. 21685.
7. Ibid.
8. Employee Status Summary as of 10/01/91, Department of Personnel.
9. Donald J. Petersen and Douglas Massengill, "Employer Response to the Drug-Free Workplace Act of 1988: A Preliminary Look," Labor Law Journal, March, 1991, pps. 145-146.
10. 41 USCS 701(a)(1)(A).
11. Federal Register, p. 21679.
12. Ibid.
13. Ibid., p. 21685.
14. Ibid., pps. 21684-21685.
15. Ibid., p. 21689.
16. Ibid., p. 21680.
17. 41 USCS § 701.
18. 41 USCS § 701(b)(1)(A) and (C).
19. Federal Register, p. 21686.
20. Ibid.
21. Petersen and Massengill, pps. 144-151.
22. Ibid., p. 145.
23. Ibid., p. 150.
24. Ibid., p. 148.

25. Ibid., p. 145.
26. Ibid.
27. Ibid., pps. 146-147.
28. Ibid., p. 147.
29. Ibid.
30. Ibid., p. 151.
31. Ibid.
32. Ibid., p. 147.
33. Ibid., p. 148.
34. Ibid.
35. Ibid.
36. Ibid.
37. Ibid.
38. Ibid.
39. Ibid. quoting Deirdre Fanning, "Just Say Nothing?" Forbes, November 27, 1989, p. 220.
40. Ibid., p. 149.
41. Ibid., p. 148.
42. Ibid.
43. Eric Greenberg, Editor, 1991 American Management Association Survey on Workplace Testing, May, 1991, p. 1.
44. Lawrence Person, "Firms Answer Drug Concerns with Testing," Austin Business Journal, October 15, 1990, p. 14.
45. Phil Ebersole, "Xerox to require drug tests for job applicants in area," Democrat and Chronicle, March 11, 1989, p. 1A.
46. Letters from Barbara F. Kahlow, Executive Office of the President, September 20, 1990; Juliette Bethea, United States Department of Agriculture, September 9, 1991; Don F. Manns, United States Department of Agriculture, September 26, 1991; and Keith W. Anderson, United States Department of Agriculture, October 15, 1991.

47. State Drug Control States Report, Office of National Drug Control Policy, November, 1990, Appendix; and letter from Laura Lewis, Narcotics Program Specialist, Utah Commission on Criminal and Juvenile Justice, July 22, 1991.
48. Letters from Joseph Mills, Executive Director, Governor's Commission for a Drug-Free Indiana, July 8, 1991; Rosemary P. Hannie, Division of Administration, Louisiana, August 9, 1991; Floyd O. Pond, Executive Director, Maryland Governor's Drug and Alcohol Abuse Commission, July 18, 1991, and Romeo Guerra, Nebraska Department of Public Institutions, July 23, 1991.
49. Letters from Hannie, August 9, 1991, and Pond, July 18, 1991.
50. Letter from Ed Pierce, Georgia Department of Human Resources, July 16, 1991.
51. Letters from Pierce, July 16, 1991; Ronald J. Vlasaty, Illinois Department of Alcoholism and Substance Abuse, July 17, 1991; Mills, July 8, 1991; Hannie, August 9, 1991, Pond, July 18, 1991, and Guerra, July 23, 1991.
52. Ibid.
53. Letter from Pierce, July 16, 1991.
54. Gary Faulkner, Testimony before the Subcommittee on Employment Standards and Labor Relations of the Interim Joint Committee on Labor and Industry, April 9, 1991; Tony Sholar and Mack Morgan, Testimony before the Subcommittee on Employment Standards and Labor Relations of the Interim Joint Committee on Labor and Industry, June 11, 1991.
55. Ken Cummins, "Despite early successes, major drug battles remain," Lexington Herald-Leader, July 8, 1991, p. A1.
56. 48 C.F.R. § 223.7501 and 48 C.F.R. § 252.223-7500(c)(4).
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58. Diane Curtis, "Education Secretary Ties Drug Restrictions to Grants," The San Francisco Chronicle, April 10, 1989, p. A9.
59. Federal Register, May 25, 1990, p. 21684.
60. Federal Register, November 21, 1988, p. 47002.
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62. Scott H. Dunham, "Federal Regulations Governing Drug Testing In The Workplace", Drug Testing 1991 Program Manual, (Larkspur, California, 1991), pps. 42 - 76.
63. Ibid, pp. 76 - 78.
64. International Brotherhood of Teamsters v. Department of Transportation, CA9, No. 89-70165, 4/26/91.
65. "Transportation Workers Face Required Drug Tests", The Courier-Journal, October 10, 1991, p. A4.
66. 20 USCS §§ 3181, 3182, 3191 - 3197, 3201, 3211, 3212, 3216, 3217, 3221, 3223, 3224a, 3224b, and 3227.
67. 20 USCS § 3224a and Federal Register, August 16, 1990, p. 33580 et. seq.
68. David A. Catheart and Mark S. Dichter, Editors, Employment-At-Will: A 1989 State-By-State Survey, (Larkspur, California, 1989), pps. 235 - 237.
69. "Overview of the 1990 National Household Survey on Drug Abuse", NIDA Capsules, (Rockville, Maryland, 1990), p. 4.
70. "Summary of Findings from the 1990 National Household Survey on Drug Abuse", NIDA Capsules, (Rockville, Maryland, 1990), p. 1.
71. Lloyd D. Johnston, Jerald G. Bachman, and Patrick M. O'Malley, "Monitoring the Future: A Continuing Study of the Lifestyles and Values of Youth", (Ann Arbor, Michigan, 1991).
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73. "Hospital Drug Visits Charted", The Courier-Journal, July 3, 1991, p. A9.
74. "Drug Abuse Warning Network", National Institute on Drug Abuse, (September, 1990 Files).
75. "Hospital Drug Visits Charted", The Courier-Journal, July 3, 1991, p. A9.
76. "Drug Use in America: Casual Use Down, Chronic Use Up," Research Alert, (Minnesota, 1989), pps. 4-5.
77. "Summary of Findings from the 1990 National Household Survey on Drug Abuse", NIDA Capsules, (Rockville, Maryland, 1990), p. 2.
78. Cummins, p. A1.



