

DRUG-FREE WORKPLACE ACT OF 1998

—————
JUNE 18, 1998.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3853]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 3853) to promote drug-free workplace programs, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Drug-Free Workplace Act of 1998”.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

- (1) 74 percent of adults who use illegal drugs are employed;
- (2) small business concerns employ over 50 percent of the Nation’s workforce;
- (3) in over 88 percent of families with children under the age of 18, at least 1 parent is employed; and
- (4) employees who use and abuse addictive substances increase costs for businesses and risk the health and safety of all employees because—
 - (A) absenteeism is 66 percent higher among drug users than nondrug users;
 - (B) health benefit utilization is 300 percent higher among drug users than nondrug users;
 - (C) 47 percent of workplace accidents are drug-related;
 - (D) disciplinary actions are 90 percent higher among drug users than nondrug users; and

(E) employee turnover is significantly higher among drug users than nondrug users.

(b) PURPOSES.—The purposes of this Act are to—

- (1) educate small business concerns about the advantages of a drug-free workplace;
- (2) provide financial incentives and technical assistance to enable small business concerns to create a drug-free workplace; and
- (3) assist working parents in keeping their children drug-free.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

- (1) businesses should adopt drug-free workplace programs; and
- (2) States should consider incentives to encourage businesses to adopt drug-free workplace programs. Financial incentives may include—
 - (A) a reduction in workers' compensation premiums;
 - (B) a reduction in unemployment insurance premiums;
 - (C) tax deductions in an amount equal to the amount of expenditures for employee assistance programs, treatment, or drug testing.
 Other incentives may include adoption of liability limitation as recommended by the President's Commission on Model State Drug Laws.

SEC. 4. DRUG-FREE WORKPLACE DEMONSTRATION PROGRAM.

The Small Business Act (15 U.S.C. 636 et seq.) is amended by—

- (1) redesignating sections 31 and 32 as sections 32 and 33, respectively; and
- (2) inserting the following new section:

“SEC. 31. DRUG-FREE WORKPLACE DEMONSTRATION PROGRAM.

“(a) ESTABLISHMENT.—There is established a drug-free workplace demonstration program, under which the Administration may make grants, cooperative agreements, or contracts to eligible intermediaries for the purpose of providing financial and technical assistance to small business concerns seeking to start a drug-free workplace program.

“(b) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive a grant, cooperative agreement, or contract under subsection (a) if it meets the following criteria:

“(1) It is an organization described in section 501(c)(3) or 501(c)(6) of the Internal Revenue Code of 1986 that is exempt from tax under section 5(a) of such Act, a program of such organization, or provides services to such organization.

“(2) Its purpose is to develop comprehensive drug-free workplace programs or to supply drug-free workplace services, or provide other forms of assistance and services to small businesses.

“(3) It has at least 2 years of experience in drug-free workplace programs or in providing assistance and services to small business concerns.

“(4) It has a drug-free workplace policy in effect.

“(c) REQUIREMENTS FOR PROGRAM.—Any drug-free workplace program developed as a result of this section shall include—

“(1) a written policy, including a clear statement of expectations for workplace behavior, prohibitions against substances in the workplace, and the consequences of violating such expectations and prohibitions;

“(2) training for at least 2 hours for employees;

“(3) additional training for employees who are parents;

“(4) employee drug testing by a drug testing laboratory certified by the Substance Abuse and Mental Health Services Administration, or approved by the Department of Health and Human Services under the Clinical Laboratories Improvements Act of 1967 (42 U.S.C. 263a), or the College of American Pathologists, and each positive result shall be reviewed by a Licensed Medical Review Officer;

“(5) employee access to an employee assistance program, including assessment, referral, and short-term problem resolution; and

“(6) continuing alcohol and drug abuse prevention program.

“(d) EVALUATION AND COORDINATION.—The Small Business Administrator, in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of the Office of National Drug Control Policy, shall evaluate drug-free workplace programs established as a result of this section and shall submit a report of findings to the Congress not later than 1 year after the date of the enactment of this section.

“(e) ELIGIBLE INTERMEDIARY.—Any eligible intermediary shall be located in a state, the District of Columbia, or the territories.

“(f) DEFINITION OF EMPLOYEE.—For purposes of this section, the term ‘employee’ includes—

- “(1) supervisors;
- “(2) managers;
- “(3) officers active in management of the business; and
- “(4) owners active in management of the business.

“(g) CONSTRUCTION.—Nothing in this section shall be construed to require an employer who attends a program offered by an intermediary to contract for any services offered as part of a drug-free workplace program.

“(h) AUTHORIZATION.—There are authorized to be appropriated to carry out the provisions of this section, \$10,000,000 for fiscal year 1999 and such sums may remain available until expended.”.

SEC. 5. SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

- (1) in subparagraph (R) by striking “and”;
- (2) in subparagraph (S) by striking the period and inserting “; and”;
- (3) by inserting after subparagraph (S) the following new subparagraph:
“(T) providing information and assistance to small business concerns with respect to developing drug-free workplace programs.”.

SEC. 6. CONTRACT AUTHORITY.

The Small Business Administrator may contract with and compensate government and private agencies or persons for services related to carrying out the provisions of this Act.

SEC. 7. COLLECTION OF DATA AND STUDY.

(a) COLLECTION AND STUDY.—The Small Business Administrator shall collect data and conduct a study on—

- (1) drug use in the workplace among employees of small business concerns;
- (2) costs to small business concerns associated with illegal drug use by employees; and
- (3) a need for assistance in the small business community to develop drug prevention programs.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Small Business Administrator shall submit a report containing findings and conclusions of the study to the chairmen and ranking members of the Small Business Committees of the House and Senate.

PURPOSE

H.R. 3853 will initiate a demonstration program designed to aid small businesses in the establishment of drug-free workplace programs. Under H.R. 3853, non-profit intermediaries will be awarded grants to establish drug-free workplace programs for use by small businesses. These programs will encourage employers to offer and use a variety of strategies of employee assistance, training and intervention to reduce substance abuse problems.

NEED FOR LEGISLATION

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. Yet the Institute for a Drug-Free Workplace estimates that a majority of illicit drug users work for organizations with less than 25 people—small businesses. Furthermore, the 1996 Conference Board Survey estimated the cost to the economy from absenteeism, injuries and diminished productivity to be \$200 billion.

These statistics point to a problem in our society that goes beyond the economic costs. Workplace injuries and lost productivity are often easily quantified. The costs to families and children due to the problem of substance abuse are harder to add up. H.R. 3853

will address both the obvious and hidden damage this problem causes through the encouragement of workplace-based programs of employee assistance and intervention.

COMMITTEE ACTION

On May 14, 1998, the Subcommittee on Empowerment of the Committee on Small Business held a hearing to discuss H.R. 3853, the Drug-Free Workplace Act of 1998, and to discuss the problem of substance abuse in the workplace generally. The first panel of witnesses consisted of: the Honorable Rob Portman, Representative from the Second Congressional District of Ohio; Mr. Thomas J. Donohue, President of the U.S. Chamber of Commerce; and Ms. Barbara Thomas, President of Warner-Lambert Consumer Health Care.

Representative Portman explained the components of H.R. 3853. He also expressed his hope that the bill would attract bipartisan support based on the bipartisan concerns over the problem of substance abuse in the workplace. Representative Portman discussed the fact that only three percent of small businesses have drug-free workplace policies despite the fact that they employ most of the workforce. Finally, Representative Portman stressed that the costs to society of substance abuse in the workplace amount to tens of billions of dollars and that small businesses are willing to work to reduce those costs and are willing to work with the intermediaries supported by H.R. 3853 to help eliminate substance abuse problems.

Mr. Thomas J. Donohue then testified that “[H]uman capital— is any ongoing organization’s most valuable asset,” and that absenteeism and diminished productivity accounted for nearly 50% of the \$200 billion that drug and alcohol dependency costs employers every year. He stated, “[a]nnual productivity losses from substance abuse amount to \$640 for every American worker, regardless of whether they are substance abusers.” Mr. Donohue then cited surveys that showed that workers in businesses with 25 or fewer employees admitted current illegal drug use at over twice the rate reported by employees in large firms. He concluded by stating, “the Drug-Free Workplace Act embodies precisely the type of guidance and leadership the business community can use effectively to do its part. It is good for employees, good for employers, good for their communities, and good for the country. It is the smart thing to do and the right thing to do.”

Ms. Barbara Thomas was the final witness for the first panel and discussed “Stop the Silence” (Warner-Lambert’s program to help parents talk to their children about the dangers of drugs) and how it has led to an increase from 9 to 146 calls to their employee assistance program related to substance abuse. The “Stop the Silence” kit cost approximately \$5 per kit, and has helped numerous families deal better with substance abuse problems. Ms. Thomas stated, “[o]ur program relies heavily upon drug testing and rehabilitation programs. The goal of each is to help people stop destructive habits and ensure a safe workplace.” Warner-Lambert managers are included in the random drug-testing as part of the “highly-sensitive” category of employees. Warner-Lambert also requires

contractors who do business on their property to drug test their employees.

The second panel of witnesses consisted of Mr. Richard Manfredi, President of Manfredi Motor Company, representing the American Trucking Association; Mr. Ray Soldivan, Vice President of Phoenix House, representing the American Council on Drug Education; Ms. Beth Lindamood of the Great American Insurance Company; and Mr. Scott Sutton of the William Jordan Company, representing the Associated General Contractors.

Mr. Manfredi testified concerning the great success the trucking industry has enjoyed with its program of drug-free workplace initiatives. He testified in strong support of testing and cited Federal Highway Administration studies that showed that only 0.2 percent of truckers that were randomly tested tested positive. The FHWA has also found the trucking industry's drug use violation rate to be 2.2 percent, one-third of the rate for the general population.

Mr. Ray Soldivan then testified for the American Council on Drug Education, stating, "[a]t ACDE, we recognize the workplace as a key prevention site, a primary line of defense, where we can not only confront substance abuse in the workforce, but where we can prevent substance abuse throughout society. It is a venue as critical as home and school * * * We believe employers have much to gain by helping empower workers to deal thoughtfully and knowledgeably with drug use—and with the possibility of drug use—by their children, their friends and neighbors, and their co-workers. In this way, the workforce can become a positive force for demand reduction throughout the community."

Then Beth Lindamood, an analyst for the Great American Insurance Company, testified on the need for drug-testing as part of a drug-free workplace program. "[I]n order to offer assistance for a problem you must first detect the problem," Ms. Lindamood stated.

The last witness on the panel was Mr. Scott Sutton, representing the Associated General Contractors of America. Mr. Sutton cited a report in the Journal of Management estimating the overall cost to organizations. The report found the cost from applicant and employee drug testing to range from \$160 per employee in the first year of employment to \$800 per employee over an average tenure of 10 years. He also cited a report in The National Law Journal that only 10 percent of workers consider testing to be an invasion of privacy.

Mr. Sutton testified that small businesses, a major component of the Associated General Contractors, are at high risk and cited a report from The Institute for a Drug-Free Workplace estimating that a majority of illicit drug users work for organizations with less than 25 employees. Mr. Sutton then testified concerning a test used by a Newport News, Virginia company. The test costs only \$3.50 per substance tested for and takes just 6 or 7 minutes. Finally, Mr. Sutton praised the use of Small Business Development Centers in H.R. 3853 because, "[t]he Small Business Development Centers are known and trusted advisors for emerging businesses. They have been partners in small business development for years."

The third and final panel consisted of Mr. Rudy Guzman of L&R Guzman Corporation; Mr. Larry Bennett of the Coalition for a Drug-Free Greater Cincinnati; Mr. Tuck Krehbiel of the C.J.

Krehbiel Company; and Ms. Solange Bitol of the American Civil Liberties Union.

Mr. Guzman testified that, after starting a new truss-building business to supply an already successful business, he found the business failing. He discovered stolen inventory and low productivity were the result of employee drug abuse and he implemented a drug-free workplace policy. The policy did not just lead to success, it led to growth of the company to three times its planned size.

Mr. Larry Bennett of the Coalition for a Drug-Free Greater Cincinnati testified that after one year of a drug-free workplace program, OSHA recordable accidents were reduced by 50%. He testified that parent training approaches work. Mr. Bennett said, “[s]mall business owners appreciate this training approach. It not only helps employees improve their parenting skills, it also helps the owner dispel the “big brother” aspect of drug-free workplace programs.”

Mr. Tuck Krehbiel testified that at their company owners test themselves in the same program to build confidence and set the example. With a workplace program that follows up with EAP, employees understand that management is not judging people, but that it supports recovery.

The final witness was Ms. Solange Bitol of the American Civil Liberties Union. Ms. Bitol testified concerning her organization’s concerns over the privacy rights of employees. She testified that the ACLU believes that indiscriminate drug testing is unfair; however, she also testified that Federal courts are upholding random drug testing programs in occupations involving safety.

Questioning by Members of the subcommittee focused on several key areas. Mr. Jackson expressed concern that employers must be encouraged to use intervention and assistance as often as possible rather than resorting to firing. Mr. Jackson also expressed concern over drug testing as a confidentiality issue. Several of the employer witnesses testified that they do not and would not test beyond drugs and alcohol. Such testing is expensive and unnecessary. Ms. Millender-McDonald questioned the panel regarding training and stressed the view that training and education are of paramount importance. Lastly, Chairman Souder questioned Ms. Bitol regarding the constitutionality of testing and discussed the balance that must be struck between privacy and safety.

On Thursday June 11, 1998, the Committee on Small Business met to consider H.R. 3853. By unanimous consent, an amendment in the nature of a substitute was offered by Chairman Talent and accepted as original text for the purpose of amendment. The substitute was then opened for amendment by section. No amendments were offered to section one.

Mr. Hinojosa offered an amendment to section two that would have required funding for the demonstration program to come from any tobacco settlement bill passed by Congress. A point of order was raised against the amendment based on germaneness. The Chairman heard arguments regarding the point of order and sustained the point of order. The amendment was ruled out of order, and Ms. Velázquez appealed the ruling of the Chair. A recorded vote was requested and the ruling of the Chair was sustained by

a vote of 13–6. There were no further amendments offered to section two, and no amendments were offered to section three.

In section four, the first amendment was offered by Mr. Pascrell. The amendment expanded the eligibility of intermediaries to include 501(c)(6) non-profit organizations such as Chambers of Commerce or trade associations. Mr. Souder questioned whether the amendment would apply to political organizations and Mr. Pascrell assured him it would not. The amendment was agreed to by unanimous voice vote.

Ms. Christian-Green offered an amendment requiring all intermediaries to be State-certified as drug education providers. The Chairman asked Ms. Christian-Green if all States required such certification and Ms. Christian-Green replied that she was uncertain. The Chairman then suggested that the amendment be withdrawn in favor of report language directing the Administration to draft regulations requiring certification where applicable. Ms. Christian-Green agreed and the amendment was withdrawn.

Mrs. McCarthy offered an amendment that would require training for employees to be expanded to four hours. Mrs. McCarthy explained that she believed more training time was necessary to ensure effective drug abuse prevention. Mr. Souder expressed concern that four hours would be more burdensome than necessary and pointed out that the trucking industry, a model for the demonstration program, only requires two hours of training. Mr. Bartlett and Mrs. Kelly also expressed concern over the four hour requirement. Mrs. McCarthy asked unanimous consent to change her amendment from four hours to two hours; consent was granted and the amendment, as modified, was passed by unanimous voice vote.

Ms. Velázquez offered an amendment changing the nature of any drug-testing program offered to “for cause.” Mr. Jackson expressed a question regarding the voluntary nature of small business participation in the testing aspect of the bill. Mr. Bartlett expressed concern that “for cause” testing, as opposed to random testing, might open small businesses to more claims of discrimination. Ms. Millender-McDonald expressed concern over the definition of “for cause,” and Ms. Velázquez expressed belief that such definition was best left to the intermediaries and the Administration. Mrs. Kelly then questioned whether the amendment would preclude random testing. The Chairman explained that the bill would only establish a base of requirements and would not preclude any intermediary from offering assistance with random testing as well as “for cause” testing. Further debate was heard concerning the merits of the amendment, and Ms. Velázquez withdrew the amendment by unanimous consent.

Mr. Jackson offered an amendment to include supervisors, owners and officers under the drug testing provision. The Chairman asked to clarify that the amendment apply to those in active control of their businesses, Mr. Jackson asked unanimous consent to change the amendment to reflect that clarification. The amendment was agreed to by unanimous voice vote.

Mr. Jackson then offered another amendment prohibiting the use of any grant funds authorized under H.R. 3853 to conduct religious services, build or maintain facilities used primarily for religious purposes, or offer religious instruction as part of a program. Mr.

Souder expressed concern that the amendment could have a chilling effect on the participation of faith-based organizations. Such organizations have an excellent record in rehabilitation but might be deterred from participation if regulations required intrusive inspection and reporting requirements. The Chairman expressed a desire to work with Mr. Jackson to craft a less detailed amendment that would nevertheless prohibit use of funds in a manner that would violate the "Establishment Clause." Mr. Jackson then withdrew his amendment by unanimous consent, subject to his right to offer it later in an amended form.

Ms. Velázquez offered an amendment requiring that drug testing programs recommended under the legislation be administered by certified laboratories and reviewed by medical review officers. Mr. Souder offered clarifying language to specify the certification required. The clarification was agreed to by unanimous consent. The amendment was then approved by unanimous voice vote.

Ms. Christian-Green offered an amendment to require that any training offered be "culturally sensitive". Mr. Souder expressed concerns over what the phrase "culturally sensitive" meant. Ms. Christian-Green expressed her concern that persons not be targeted due to their backgrounds and that all employees be fully informed of the reasons for a drug-free workplace program. Ms. Velázquez expressed her support for the amendment as did Ms. Millender-McDonald. Mr. Bartlett expressed his belief that the need for appropriate training was essential but was concerned that the word "culturally" could lead to confusion. The amendment was defeated by a voice vote and a recorded vote was requested. By unanimous consent the recorded vote was delayed to the end of the mark-up. Ms. Millender-McDonald offered an amendment requiring that any drug testing program be recommended by an "employee assistance professional" and voluntary. The Chairman expressed his concern that the amendment would remove the permissive nature of programs and options offered by intermediaries. Mr. Souder also expressed concern about the amendment. The amendment was defeated by voice vote.

Ms. Millender-McDonald then offered another amendment to add the offering of "continuing alcohol and drug abuse prevention programs" to the drug-free workplace programs. The amendment was adopted by a unanimous voice vote. This amendment made clear that the programs established by this legislation must focus on both drug and alcohol abuse problems.

Mr. Manzullo offered an amendment to clarify that the small businesses would not be mandated to be financially responsible for implementing any portion of the drug-free workplace programs established by this bill. Mr. Manzullo was concerned that small businesses would be obliged to provide all services offered if they were to participate with an intermediary on a drug-free workplace plan. Mr. Souder expressed concern that the amendment would, in fact, confuse issues. His reading of the bill was that small businesses were not obligated to use any programs offered, and that programs offered were voluntary. Mr. Manzullo stated that he believed the language of the bill was not clear and that such ambiguity created the possibility for litigation. Mrs. Smith and Mr. Bartlett expressed the opinion that the bill was unclear and supported Mr. Manzullo's

amendment to make the situation explicit. At the request of the Chairman, and by unanimous consent, Mr. Manzullo withdrew his amendment temporarily.

Ms. Velázquez offered an amendment to require the Small Business Administration to perform a study on the costs of substance abuse in the workplace and the needs of small business to combat substance abuse. The amendment was approved by a unanimous voice vote.

Ms. Christian-Green then offered an amendment to clarify that organizations in the States, the District of Columbia, and the territories are eligible for grants under the demonstration program. The amendment was approved by a unanimous voice vote.

The Committee then returned to the amendment by Mr. Manzullo. Debate continued centering on the issue of whether small businesses would be obligated to provide all services offered by an intermediary. Mr. Pascrell expressed his concern that the amendment would deter employers from offering a full range of services to their employees. Mr. Manzullo reiterated his concern that small businesses have the choice of what services they could afford to offer employees. The Chairman suggested compromise language that no small business involved in a program offered by an intermediary be obligated to contract for any services offered as a part of a drug-free workplace program. The proposal was accepted by unanimous consent and the amendment was accepted by unanimous voice vote.

The Committee then returned to the pending amendment by Ms. Christian-Green and the roll was called. The amendment was defeated by a vote of 10 against and 5 in favor.

The Chairman then moved for final passage of H.R. 3853, as amended, and that the Committee report the bill with technical and conforming amendments. The motion was approved and the Committee, with a quorum present, reported the bill by unanimous voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

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

Section 2. Findings, purposes

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

Section 3. Sense of Congress

This section 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. Drug-free workplace demonstration program

This section establishes the demonstration program permitting the Small Business Administration to offer grants to intermediary organizations who would provide assistance to small businesses in setting up drug-free workplace programs. The intermediaries must be 501(c)(3) or (6) non-profit organizations with a background in assisting small businesses and a specific history of at least two years experience in establishing drug-free workplace programs.

This section, under paragraph (c), also establishes de minimis components for any drug-free workplace program. These components are (1) a clear written policy, (2) a minimum of two hours of training for all employees, (3) additional training for working parents, (4) drug testing by a certified institution, (5) access to an employee assistance program, and (6) a continuing drug and alcohol abuse prevention program.

Paragraph (d) requires the Small Business Administration, in conjunction with the Departments of Labor and Health and Human Services and the "Drug Czar," to evaluate programs any drug-free workplace programs establish. Paragraphs (e) and (f), respectively, define eligible intermediaries to include organizations in the District of Columbia and the territories, and define "employees" as including supervisors, managers and certain owners and officers.

Finally, paragraph (g) makes clear that participation in drug-free workplace training sessions or other program does not require any employer to contract for any services offered as part of a drug-free workplace program, and paragraph (h) authorizes the program for fiscal 1999 at \$10,000,000.

While the Committee did not accept an amendment offered by Ms. Christian-Green regarding the certification of intermediary organizations it does wish to encourage the Administration, when drafting regulations for this program, to use certified intermediaries whenever possible. The Committee recognizes that certification may not be required in all jurisdictions, and does not wish to make it a statutory requirement. However, when required in a jurisdiction, it should also be required for this program. In jurisdictions where certification is not required, the Administration should draft regulations that require intermediaries to have some demonstrated skills and experience. The certification or experience should not necessarily be intrinsic to the intermediary itself, it may be acquired through subcontracting or referral.

Section 5. Small business development centers

Section 5 adds providing drug-free workplace assistance and information to the various duties and responsibilities of small business development centers.

Section 6. Contract authority

Authorizes the Small Business Administration to contract with other government agencies or organizations or private organizations for the provision of services under this Act. This provision will allow the Small Business Administration to draw on the resources of other organizations in areas outside their technical competencies.

Section 7. Collection of data and study

Directs the Small Business Administration to collect data and perform a study on the abuse of drugs in the workplace and its costs to small business.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 1998.

Hon. JAMES M. TALENT,
*Chairman, Committee on Small Business,
House of Representatives, 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.

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

Summary: H.R. 3853 would establish a drug-free workplace demonstration program, require that Small Business Development Centers (SBDCs) provide small businesses with information regarding drug-free workplace programs, and direct the Small Business Administration (SBA) to study the effects of drug use in the workplace. The bill 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. In addition, CBO estimates that implementing the other provisions of the bill would require expenditures of about \$2 million over the 1999–2003 period. Assuming appropriation of the authorized and estimated amounts, CBO estimates that implementing the bill would cost \$12 million over the 1999–2003 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) and would impose no costs on state, local, or tribal governments except as conditions of federal assistance.

Estimated cost to the Federal Government: For the purposes of this estimate, CBO assumes H.R. 3853 will be enacted by the end of fiscal year 1998, and that the authorized and estimated amounts will be appropriated by the start of each fiscal year. 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 year in millions of dollars)

	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION					
Estimated authorization level	11	1	1	1	1
Estimated outlays	3	6	2	1	1

¹ Less than \$500,000.

Basis of estimate: Based on information from SBA, CBO estimates that implementing H.R. 3853 would result in total costs to the government of about \$12 million over the 1999–2003 period. Of that amount, \$10 million is specifically authorized in the bill for the drug-free workplace demonstration program. In addition, we estimate that SBA would spend about \$1 million in 1999 to conduct the required study of drug use and less than \$500,000 a year (through SBDCs) to provide information and assistance to help small businesses develop drug-free workplace programs.

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 and would impose no costs on state, local, or tribal governments except as conditions of federal assistance. The bill would expand the services that Small Business Development Centers are required to provide. SBDCs are operated solely or jointly by state and local government and institutions of higher education. SBDCs are funded by the federal government, and requirements imposed on them are conditions of receiving federal assistance.

Estimate prepared by: Federal Costs: Mark Hadley; Impact on State, Local, and Tribal Governments; Marc Nicole.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18 of the Constitution of the United States.

OVERSIGHT FINDINGS

In accordance with clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform and Oversight with respect to the subject matter contained in H.R. 3853.

In accordance with clause (2)(1)(3)(A) of rule XI of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 3853 are incorporated into the descriptive portions of this report.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *
 SEC. 21. (a) * * *

* * * * *
 (c)(1) * * *

* * * * *
 (3) Services provided by a small business development center shall include, but shall not be limited to—

(A) * * *

* * * * *
 (R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996; **[and]**

(S) providing small business owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development centers and an international trade data information network with ties to the Export Assistance Center program**[.]**; and

(T) *providing information and assistance to small business concerns with respect to developing drug-free workplace programs.*

* * * * *

SEC. 31. DRUG-FREE WORKPLACE DEMONSTRATION PROGRAM.

(a) *ESTABLISHMENT.*—*There is established a drug-free workplace demonstration program, under which the Administration may make grants, cooperative agreements, or contracts to eligible intermediaries for the purpose of providing financial and technical assistance to small business concerns seeking to start a drug-free workplace program.*

(b) *ELIGIBILITY FOR PARTICIPATION.*—*An intermediary shall be eligible to receive a grant, cooperative agreement, or contract under subsection (a) if it meets the following criteria:*

(1) *It is an organization described in section 501(c)(3) or 501(c)(6) of the Internal Revenue Code of 1986 that is exempt from tax under section 5(a) of such Act, a program of such organization, or provides services to such organization.*

(2) *Its purpose is to develop comprehensive drug-free workplace programs or to supply drug-free workplace services, or provide other forms of assistance and services to small businesses.*

(3) *It has at least 2 years of experience in drug-free workplace programs or in providing assistance and services to small business concerns.*

(4) *It has a drug-free workplace policy in effect.*

(c) *REQUIREMENTS FOR PROGRAM.*—*Any drug-free workplace program developed as a result of this section shall include—*

(1) a written policy, including a clear statement of expectations for workplace behavior, prohibitions against substances in the workplace, and the consequences of violating such expectations and prohibitions;

(2) training for at least 2 hours for employees;

(3) additional training for employees who are parents;

(4) employee drug testing by a drug testing laboratory certified by the Substance Abuse and Mental Health Services Administration, or approved by the Department of Health and Human Services under the Clinical Laboratories Improvements Act of 1967 (42 U.S.C. 263a), or the College of American Pathologists, and each positive result shall be reviewed by a Licensed Medical Review Officer;

(5) employee access to an employee assistance program, including assessment, referral, and short-term problem resolution; and

(6) continuing alcohol and drug abuse prevention program.

(d) **EVALUATION AND COORDINATION.**—The Small Business Administrator, in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of the Office of National Drug Control Policy, shall evaluate drug-free workplace programs established as a result of this section and shall submit a report of findings to the Congress not later than 1 year after the date of the enactment of this section.

(e) **ELIGIBLE INTERMEDIARY.**—Any eligible intermediary shall be located in a state, the District of Columbia, or the territories.

(f) **DEFINITION OF EMPLOYEE.**—For purposes of this section, the term “employee” includes—

(1) supervisors;

(2) managers;

(3) officers active in management of the business; and

(4) owners active in management of the business.

(g) **CONSTRUCTION.**—Nothing in this section shall be construed to require an employer who attends a program offered by an intermediary to contract for any services offered as part of a drug-free workplace program.

(h) **AUTHORIZATION.**—There are authorized to be appropriated to carry out the provisions of this section, \$10,000,000 for fiscal year 1999 and such sums may remain available until expended.

SEC. [31.] 32. HUBZONE PROGRAM.

(a) **IN GENERAL.**—There is established within the Administration a program to be carried out by the Administrator to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this section.

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SEC. [32.] 33. All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

MINORITY VIEWS

Committee Democrats support the goal of a drug free work place. Unfortunately, H.R. 3853 falls short of this objective. Although the legislation reported out of Committee is an improvement over the original bill, H.R. 3853 still remains deficient in a number of ways.

Thanks to amendments offered by Committee Members, such critical issues as participation by local business groups, supervisor training and accurate testing by labs were addressed. These were important first steps to ensuring that H.R. 3853 adequately addresses the issue of a drug free work place.

One of the biggest concerns many Democrats on the Committee had was over the Small Business Administration's level of expertise in this area. The adoption of H.R. 3853 represents a venture into a new arena of social policy for the Small Business Administration. In an attempt to address the lack of expertise, the managers' amendment included language directing the SBA to study the effectiveness of this new program. Democrats were successful in expanding the study to include examining the extent of the problem of drug use in small business and the need for assistance from the Small Business Administration. Nonetheless, further work still needs to be done to make sure that the Small Business Administration is prepared to effectively administer this program.

Another major concern was the lack of participation by local chambers of commerce and trade associations. This issue was corrected by Mr. Pascrell, who successfully offered an amendment to include 501(c)6 and other organizations that provide services to small business. It made no sense for every other federal program that focuses on drugs in the work place to include these organizations and for H.R. 3853 to bar them from participating.

The need for sufficient training was also problematic to Democrats on the Committee. The Committee mark allowed for only 60 minutes of training. This was clearly an insufficient amount of time to seriously provide employees and supervisors instruction on such a sensitive and critical issue as substance abuse in the work place. The issue was improved when the Committee adopted Ms. McCarthy's modified amendment to increase the training requirements under the bill to 2 hours. Committee Democrats still remain concerned that more instruction is needed and would have preferred Ms. McCarthy's original amendment that required 4 hours of training.

Mr. Davis' concern that drug testing be conducted by an accredited lab is important in order to insure that tests are done in a manner that is both quick and accurate. This issue was addressed by ensuring that all tests be performed at accredited labs. Democrats on the Committee also want to encourage the Department of Health and Human Services to implement an out-reach program to make sure that more minority owned labs are included.

An important milestone in abuse prevention was the approval of Ms. Millender-McDonald's amendment that would include alcohol in any continuing drug abuse prevention program. If the goal of this legislation is to eliminate drugs that impair faculties and cause danger in the work place, then it makes sense to include alcohol as part of this program.

While many problem areas were addressed, the one size fits all approach that H.R. 3853 takes severely limits the ability of small businesses to tailor a program that meets their needs. This approach leaves many unresolved questions which must be addressed before the legislation guarantees that our work places are truly drug free environments.

Democrats still remain concerned over the cost of the program. With the Small Business Administration already under fire, we are concerned that funds for this new program will be siphoned from already established and critical programs, such as the 7(j) management and technical assistance program, the SBIC program and the Women Business Centers program.

Furthermore, the legislation still sorely lacks employee protections. While Mr. Jackson was able to make the legislation fairer by extending testing to supervisors and owners, this is clearly not sufficient. In order for a drug free work place to be successful, it is important that a commitment be made to employees that they will be treated fairly. Under H.R. 3853 employees have little or no recourse. The bill reported out of Committee contains no clear guidelines of what happens to employees who tests positive or voluntarily come forward. This issue must be resolved if we are to have a successful drug free work place program.

An attempt by Ms. Christian-Green to ensure that all training conducted take into account language and cultural barriers was defeated by the Majority. It is critical that low-skilled workers with a limited-English-proficiency clearly understand the drug free workplace policy and its ramifications.

The testing provisions of the legislation still remain extremely vague, as well. For example, as currently drafted, the legislation would allow for such controversial methods of testing as hair samples, which has been questioned as ethnically biased. These types of inconsistencies will not foster a drug free work place, but create an environment filled with tension and uncertainty between employees and supervisors.

As stated earlier, Democrats join in supporting efforts to create a drug free work place. H.R. 3853, although improved from the version considered by the Committee, still requires substantial work in the areas of cost, drug testing, and employee protections before it will truly create a work environment that is drug free. Democrats look forward to the continued process of refining this legislation during consideration by the full House.

NYDIA M. VELÁZQUEZ.