



**DAWN CLARK NETSCH**

Comptroller  
State of Illinois

201 State House  
Springfield, Illinois 62706  
217/782-6000

State of Illinois Center  
100 West Randolph, Suite 15-500  
Chicago, Illinois 60601  
312/814-2451

TO: Chief Fiscal Officers of All State Agencies  
FROM: Joe DiRocco *JD* Manager, Contract/Voucher Division  
DATE: November 14, 1991  
SUBJECT: Drug Free Workplace Act

Public Act 86-1459, the Drug Free Workplace Act, contains provisions which affect the State's contracting process. These provisions take effect January 1, 1992. A copy of this Act is attached for your information.

Contracts or Grants with Corporations, Partnerships or Other Entities With 25 or More Employees

Section 3 of the Act generally prohibits a State agency from entering into a contract or grant agreement unless the State agency first obtains a certification from the contractor or grantee that it will provide a drug free workplace by taking certain steps prescribed in the Act. Attached is a sample Certification Form prepared by the Office of the Attorney General to be used by State agencies for this purpose. The certifications required by Section 3 must be retained by the contracting or granting agency and preserved in its internal files.

Section 2 of the Act defines the contractors and grantees that must make this certification. In general, this requirement applies to contracts and grants of \$5,000 or more with corporations, partnerships, or other entities with 25 or more employees at the time the contracts or grants are awarded. The lease or rental of real property and certain other contracts and grants are exempt from the certification requirement. Also exempt are subcontractors of contractors and grantees.

Contracts or Grants With Individuals

Section 4 of the Act requires that a contract or grant with an individual that exceeds \$5,000 must contain a prescribed certification in its content.

Pursuant to this requirement, any contract or grant exceeding \$5,000 with an individual, including an individual doing business in the form of a sole proprietorship, executed on or after January 1, 1992, must have the following statement, or words of similar meaning, as a provision of the contract or grant:

**The individual certifies that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.**

The above provision must be included in the text of the contract or grant. It may not be stamped or otherwise affixed to the contract or grant after execution.

#### Purchase Orders

Any purchase order exceeding \$5,000 issued to an individual, including an individual doing business in the form of a sole proprietorship, executed on or after January 1, 1992, must contain the following statement, or words of similar meaning, on the face of the purchase order:

**By acceptance of this purchase order, the individual certifies that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.**

The above certification will suffice only for those purchases where a two-party signed agreement is not required by CUSAS. This office will monitor for compliance with Section 4 of the Act. Contracts and grants not in compliance will be subject to return to the State agency. If you have any questions concerning this matter, please call me at (217) 782-3608.

JD:rrr

Attachments

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Job #23797

11/91 - 300 copies

STATE OF ILLINOIS  
DRUG FREE WORKPLACE CERTIFICATION

This certification is required by the Drug Free Workplace Act (Ill. Rev. Stat., ch. 127, par. 152.311). The Drug Free Workplace Act, effective January 1, 1992, requires that no grantee or contractor shall receive a grant or be considered for the purposes of being awarded a contract for the procurement of any property or services from the State unless that grantee or contractor has certified to the State that the grantee or contractor will provide a drug free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of the contract or grant and debarment of contracting or grant opportunities with the State for at least one (1) year but not more than five (5) years.

For the purpose of this certification, "grantee" or "contractor" means a corporation, partnership, or other entity with twenty-five (25) or more employees at the time of issuing the grant, or a department, division, or other unit thereof, directly responsible for the specific performance under a contract or grant of \$5,000 or more from the State.

The contractor/grantee certifies and agrees that it will provide a drug free workplace by:

- (a) Publishing a statement:
  - (1) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace.
  - (2) Specifying the actions that will be taken against employees for violations of such prohibition.
  - (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:
    - (A) abide by the terms of the statement; and
    - (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (b) Establishing a drug free awareness program to inform employees about:
  - (1) the dangers of drug abuse in the workplace;
  - (2) the grantee's or contractor's policy of maintaining a drug free workplace;

- (3) any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) the penalties that may be imposed upon an employee for drug violations.
- (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- (d) Notifying the contracting or granting agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.
- (e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5 of the Drug Free Workplace Act.
- (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
- (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PERJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATION ON BEHALF OF THE DESIGNATED ORGANIZATION.

\_\_\_\_\_  
Printed Name of Organization

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Requisition/Contract/  
Grant ID Number

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

1 AN ACT to promote drug free workplaces. 47

2 Be it enacted by the People of the State of Illinois, 50  
3 represented in the General Assembly: 51

4 Section 1. This Act shall be known and may be cited as 54  
5 the Drug Free Workplace Act.

6 Section 2. As used in this Act: 57

7 (a) "Drug free workplace" means a site for the 59  
8 performance of work done in connection with a specific grant 60  
9 or contract of an entity whose employees are prohibited from 61  
10 engaging in the unlawful manufacture, distribution, 62  
11 dispensation, possession, or use of a controlled substance in 63  
12 accordance with the requirements of this Act.

13 (b) "Employee" means an employee of a grantee or 65  
14 contractor directly engaged in the specific performance of 66  
15 work pursuant to the provisions of a grant or contract with 67  
16 the State, except that for the purpose of determining the 68  
17 number of employees of a grantee or a contractor under 69  
18 subsections (f) and (g) of this Section, an "employee" shall 70  
19 include any employee of the contractor or grantee. 71

20 (c) "Controlled substance" means a controlled substance 73  
21 as defined in the Illinois Controlled Substances Act or 74  
22 cannabis as defined in the Cannabis Control Act.

23 (d) "Conviction" means a finding of guilt, including a 76  
24 plea of nolo contendere, or imposition of sentence, or both, 77  
25 by any judicial body charged with determining violations of 78  
26 the Federal or State criminal drug statutes. 79

27 (e) "Criminal drug statute" means a criminal statute 81  
28 involving manufacture, distribution, dispensation, use, or 82  
29 possession of any controlled substance.

30 (f) "Grantee" means a corporation, partnership, or other 84  
31 entity with 25 or more employees at the time of issuing the 85  
32 grant, or a department, division, or other unit thereof, 87

Clerk of the House

*John Quinn*

Originated in the House of Representatives

PUBLIC ACT 86-1459

*[Signature]*

1 directly responsible for the specific performance under a 87  
2 grant of \$5,000 or more from the State. For purposes of this 88  
3 Act, "grantee" does not include corporations, partnerships, 89  
4 or other entities that receive public funds in connection 90  
5 with the WIC Vendor Management Act; medical assistance 91  
6 reimbursements to pharmacies for prescribed drugs and  
7 reimbursements for durable medical supplies covered under 92  
8 Article V of the Illinois Public Aid Code; the vendor's 93  
9 discount for collection of use and occupation taxes pursuant 94  
10 to the Use Tax Act, the Service Use Tax Act, the Service 95  
11 Occupation Tax Act, or the Retailers' Occupation Tax Act; the  
12 Superfund program contained in the Illinois Environmental 96  
13 Protection Act; the lease or rental of real property; or 97  
14 grants or loans made for the purpose of solid waste 98  
15 management or reduction. The term "grantee" does not include  
16 subcontractors of a grantee. The term "grantee" does not 99  
17 include a railroad that is subject to a federally mandated 100  
18 drug testing program.

19 (g) "Contractor" means a corporation, partnership, or 102  
20 other entity with 25 or more employees at the time of letting 103  
21 the contract, or a department, division, or unit thereof, 104  
22 directly responsible for the specific performance under a 105  
23 contract of \$5,000 or more. For purposes of this Act, 106  
24 "contractor" does not include corporations, partnerships, or 107  
25 other entities that receive public funds in connection with 108  
26 the WIC Vendor Management Act; medical assistance 109  
27 reimbursements to pharmacies for prescribed drugs and  
28 reimbursements for durable medical supplies covered under 111  
29 Article V of the Illinois Public Aid Code; the vendor's  
30 discount for collection of use and occupation taxes pursuant 112  
31 to the Use Tax Act, the Service Use Tax Act, the Service 113  
32 Occupation Tax Act, or the Retailers' Occupation Tax Act; the 114  
33 Superfund program contained in the Illinois Environmental 115  
34 Protection Act; the lease or rental of real property; or 116  
35 grants or loans made for the purpose of solid waste

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1 management or reduction. The term "contractor" does not  
 2 include subcontractors of a contractor. The term  
 3 "contractor" does not include a railroad that is subject to a  
 4 federally mandated drug testing program.

5 (h) "State" means all officers, boards, commissions, and  
 6 agencies created by the Constitution, whether in the  
 7 executive, legislative, or judicial branch; all officers,  
 8 departments, boards, commissions, agencies, institutions,  
 9 authorities, universities, bodies politic and corporate of  
 10 the State; or administrative units or corporate outgrowths of  
 11 the State government which are created by or pursuant to  
 12 statute.

13 Section 3. Contracts and grants. No grantee or  
 14 contractor shall receive a grant or be considered for the  
 15 purposes of being awarded a contract for the procurement of  
 16 any property or services from the State unless that grantee  
 17 or contractor has certified to the granting or contracting  
 18 agency that it will provide a drug free workplace by:

19 (a) Publishing a statement:

20 (1) Notifying employees that the unlawful  
 21 manufacture, distribution, dispensation, possession, or  
 22 use of a controlled substance, including cannabis, is  
 23 prohibited in the grantee's or contractor's workplace.

24 (2) Specifying the actions that will be taken  
 25 against employees for violations of such prohibition.

26 (3) Notifying the employee that, as a condition of  
 27 employment on such contract or grant, the employee will:

28 (A) abide by the terms of the statement; and

29 (B) notify the employer of any criminal drug  
 30 statute conviction for a violation occurring in the  
 31 workplace no later than 5 days after such  
 32 conviction.

33 (b) Establishing a drug free awareness program to inform  
 34 employees about:

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1 (1) the dangers of drug abuse in the workplace; 155

2 (2) the grantee's or contractor's policy of 157

3 maintaining a drug free workplace;

4 (3) any available drug counseling, rehabilitation, 159

5 and employee assistance programs; and 160

6 (4) the penalties that may be imposed upon 162

7 employees for drug violations.

8 (c) Making it a requirement to give a copy of the 164

9 statement required by subsection (a) to each employee engaged 165

10 in the performance of the contract or grant and to post the 166

11 statement in a prominent place in the workplace. 167

12 (d) Notifying the contracting or granting agency within 169

13 10 days after receiving notice under part (B) of paragraph 170

14 (3) of subsection (a) from an employee or otherwise receiving 171

15 actual notice of such conviction.

16 (e) Imposing a sanction on, or requiring the 173

17 satisfactory participation in a drug abuse assistance or 174

18 rehabilitation program by, any employee who is so convicted, 175

19 as required by Section 5.

20 (f) Assisting employees in selecting a course of action 178

21 in the event drug counseling, treatment, and rehabilitation 179

22 is required and indicating that a trained referral team is in 180

23 place.

24 (g) Making a good faith effort to continue to maintain a 182

25 drug free workplace through implementation of this Section. 183

26 Section 4. Requirement for individuals. The State shall 186

27 not enter into a contract for more than \$5,000 or make a 187

28 grant of more than \$5,000 with any individual unless the 188

29 contract or grant includes a certification by the individual 189

30 that the individual will not engage in the unlawful 190

31 manufacture, distribution, dispensation, possession, or use 191

32 of a controlled substance in the performance of the contract.

33 Section 5. Employee sanctions and remedies. A grantee 194

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1 or contractor shall, within 30 days after receiving notice 195  
 2 from an employee of a conviction of a violation of a criminal 196  
 3 drug statute occurring in the workplace:

4 (a) Take appropriate personnel action against such 198  
 5 employee up to and including termination; or 199

6 (b) Require the employee to satisfactorily participate 201  
 7 in a drug abuse assistance or rehabilitation program approved 202  
 8 for such purposes by a federal, State, or local health, law 203  
 9 enforcement, or other appropriate agency.

10 Section 6. Suspension, termination or debarment of the 206  
 11 contractor or grantee. Each contract or grant awarded by the 207  
 12 State shall be subject to suspension of payments or 208  
 13 termination, or both, and the contractor or grantee 209  
 14 thereunder or the individual who entered the contract with or  
 15 received the grant from the State shall be subject to 211  
 16 suspension or debarment in accordance with the requirements  
 17 of this Section if the head of the agency determines that: 212

18 (a) the contractor, grantee, or individual has made a 214  
 19 false certification under Section (3) or (4); 215

20 (b) the contractor or grantee violates such 217  
 21 certification by failing to carry out the requirements of 218  
 22 Section (3);

23 (c) The contractor or grantee does not take appropriate 220  
 24 remedial action against employees convicted on drug offenses 221  
 25 as specified in Section (5); or

26 (d) Such a number of employees of the contractor or 223  
 27 grantee have been convicted of violations of criminal drug 224  
 28 statutes for violations occurring in the workplace as to 225  
 29 indicate that the contractor or grant recipient has failed to 226  
 30 make a good faith effort to provide a drug free workplace as  
 31 required by this Act. 227

32 Section 7. Suspension, termination or debarment 231  
 33 proceedings. Any determination proceedings for suspension of

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1 payments, termination, or debarment pursuant to this Act 232  
 2 shall be conducted in accordance with The Illinois 233  
 3 Administrative Procedure Act.

4 Section 8. Effect of debarment. Upon issuance of any 236  
 5 final decision under this Act requiring debarment of a 237  
 6 contractor, grantee or individual, such contractor, grantee 238  
 7 or individual shall be ineligible for award of any contract 239  
 8 or grant by the State for at least one year but not more than 240  
 9 5 years, as specified in the decision.

10 Section 9. Waiver. A termination, suspension of 243  
 11 payments, or suspension or debarment under this Act may be 244  
 12 waived by the head of an agency with respect to a particular 245  
 13 contract or grant if the head of the agency determines that 246  
 14 suspension of payments, termination of the contract or grant, 247  
 15 or suspension or debarment of the contractor, grantee, or 248  
 16 individual, as the case may be, would severely disrupt the 249  
 17 operation of such agency to the detriment of the general 249  
 18 public or would not be in the public interest.

19 Section 10. At the time of entering into a contract or 252  
 20 issuing a grant that results in the application of this Act, 253  
 21 the State agency letting the contract or issuing the grant 255  
 22 must notify the corporation, partnership, or other entity 256  
 23 with 25 or more employees or the department, division, or 257  
 24 unit of the corporation, partnership, or other entity of the 257  
 25 application of this Act and of the necessity of compliance. 258

26 Section 11. Any actions undertaken by a contractor or 261  
 27 grantee in compliance with this Act and in establishing a 262  
 28 drug-free workplace shall create a rebuttable presumption of 263  
 29 good faith compliance with this Act and shall not be 264  
 30 considered a violation of the Illinois Human Rights Act.

1 Section 12. The Criminal Code of 1961 is amended by 267  
 2 adding Section 12-4.6 and changing Section 29B-1 as follows: 268  
 3 (Ch. 38, new par. 12-4.6) 271  
 4 Sec. 12-4.6. Drug induced infliction of great bodily 273  
 5 harm.  
 6 (a) Any person who violates subsection (a) or subsection 275  
 7 (b) of Section 401 of the Illinois Controlled Substances Act 276  
 8 by unlawfully delivering a controlled substance to another 277  
 9 and any person experiences great bodily harm or permanent 278  
 10 disability as a result of the injection, inhalation or 279  
 11 ingestion of any amount of that controlled substance commits 280  
 12 the offense of drug induced infliction of great bodily harm. 280  
 13 (b) Drug induced infliction of great bodily harm is a 282  
 14 Class 1 felony.  
 15 (Ch. 38, par. 29B-1) 285  
 16 Sec. 29B-1. (a) A person commits the offense of money 287  
 17 laundering when he knowingly engages or attempts to engage in 288  
 18 a financial transaction in criminally derived property with 289  
 19 either the intent to promote the carrying on of the unlawful 290  
 20 activity from which the criminally derived property was 291  
 21 obtained or where he knows that the financial transaction is 292  
 22 designed in whole or in part to conceal or disguise the 293  
 23 nature, the location, the source, the ownership or the 293  
 24 control of the criminally derived property.  
 25 (b) As used in this Section: 295  
 26 (1) "Financial transaction" means the deposit, 297  
 27 withdrawal, transfer or exchange of funds or a monetary 298  
 28 instrument by, through or to a financial institution. The 299  
 29 receipt by an attorney of bona fide fees for the purpose of 300  
 30 legal representation is not a financial transaction for 300  
 31 purposes of this Section.  
 32 (2) "Financial institution" means any bank; saving and 302  
 33 loan association; trust company; agency or branch of a 303

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1 foreign bank in the United States; currency exchange; credit 304  
 2 union, mortgage banking institution; pawnbroker; loan or 305  
 3 finance company; operator of a credit card system; issuer, 306  
 4 redeemer or cashier of travelers checks, checks or money 307  
 5 orders; dealer in precious metals, stones or jewels; broker  
 6 or dealer in securities or commodities; investment banker; or 308  
 7 investment company.

8 (3) "Monetary instrument" means United States coins and 310  
 9 currency; coins and currency of a foreign country; travelers 311  
 10 checks; bearer negotiable instruments; bearer investment 312  
 11 securities; or bearer securities and certificates of stock. 313

12 (4) "Criminally derived property" means any property 315  
 13 constituting or derived from proceeds obtained, directly or 316  
 14 indirectly, pursuant to a violation of the Criminal Code of 317  
 15 1961, the Illinois Controlled Substances Act or the Cannabis 318  
 16 Control Act.

17 (c) Sentence. 320

18 (1) Laundering of criminally derived property of a value 322  
 19 not exceeding \$10,000 is a Class 3 felony; 323

20 (2) Laundering of criminally derived property of a value 325  
 21 exceeding \$10,000 but not exceeding \$100,000 is a Class 2 326  
 22 felony;

23 (3) Laundering of criminally derived property of a value 328  
 24 exceeding \$100,000 is a Class 1 felony. 329

25 ~~(c)--Money-laundering-is-a-Class-3-felony-~~ 331

26 (Source: P.A. 85-675.) 333

27 Section 13. The Illinois Controlled Substances Act is 336  
 28 amended by adding Section 407.2 as follows: 337

29 (Ch. 56 1/2, new par. 1407.2) 340

30 Sec. 407.2. Delivery of a controlled substance to a 342  
 31 pregnant woman.

32 (a) Any person who violates subsection (a) of Section 344

33 402 of this Act by delivering a controlled substance to a 345

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1 woman he knows to be pregnant may be sentenced to 346  
 2 imprisonment for a term twice the maximum amount authorized  
 3 by Section 401 of this Act. 347

4 (b) Any person who delivers an amount of a controlled 349  
 5 substance set forth in subsections (c) and (d) of Section 401 350  
 6 of this Act to a woman he knows to be pregnant commits a 351  
 7 Class 1 felony. The fine for a violation of this subsection 352  
 8 (b) shall not be more than \$250,000.

9 Section 14. The Drug Paraphernalia Control Act is 355  
 10 amended by changing Section 3 as follows: 356

11 (Ch. 56 1/2, par. 2103) 359

12 Sec. 3. (a) Any person who keeps for sale, offers for 361  
 13 sale, sells, or delivers for any commercial consideration any 362  
 14 item of drug paraphernalia, commits a business offense for 363  
 15 which a fine of \$1,000.00 shall be imposed for each such 364  
 16 item. Any person 18 years of age or older who sells or 365  
 17 delivers for any commercial consideration any item of drug 366  
 18 paraphernalia, to a person under 18 years of age is guilty of 367  
 19 a Class 4 felony for a first offense and a Class 3 felony for 368  
 20 a subsequent offense.

21 (b) Any person who sells or delivers for a commercial 370  
 22 consideration any item of drug paraphernalia to a woman he 371  
 23 knows to be pregnant is guilty of a Class 2 felony. 372

24 (c) ~~(b)~~ Any store, place, or premises from which or in 374  
 25 which any item of drug paraphernalia is kept for sale, 375  
 26 offered for sale, sold, or delivered for any commercial 376  
 27 consideration is declared to be a public nuisance.

28 The State's Attorney of the county in which such nuisance 378  
 29 is located may commence an action in the circuit court, in 379  
 30 the name of the People of the State of Illinois, to abate a 380  
 31 public nuisance as described in this subsection (b).

32 Upon being satisfied by affidavits or other sworn 382  
 33. evidence that an alleged public nuisance exists the court 383

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1 may, without bond, enter a temporary restraining order to 384  
 2 enjoin any defendant from maintaining such nuisance and may, 385  
 3 without bond enter a preliminary injunction restraining any 386  
 4 defendant from removing or interfering with any property used 387  
 5 in connection with the public nuisance.

6 If during the proceedings and hearings upon the merits 389  
 7 the existence of the nuisance is established, and it is 390  
 8 established that such nuisance was maintained with the 391  
 9 intentional, knowing or reckless permission of the owner, or 392  
 10 an agent of the owner managing the premises, the court shall  
 11 enter an order restraining all persons from maintaining or 393  
 12 permitting such nuisance and from using the premises for a 394  
 13 period of one year thereafter. However an owner, lessee, or 395  
 14 other occupant thereof may use such premises if the owner 396  
 15 gives bond with sufficient security or surety, in an amount 397  
 16 between \$5,000.00 and \$10,000.00 approved by the court,  
 17 payable to the People of the State of Illinois. Such bond 398  
 18 shall include a condition that no offense specified in this 399  
 19 Act shall be committed at, in, or upon the property 400  
 20 described, and a condition that the principal obligor and  
 21 surety assume responsibility for any fine, costs, or damages 401  
 22 incurred by any person resulting from such an offense. 402

23 (Source: P.A. 86-271.) 404

24 Section 15. Sections 12 through 15 of this Act take 407  
 25 effect January 1, 1991; Sections 1 through 11 take effect 408  
 26 January 1, 1992.

27 \_\_\_\_\_ 412  
 28 *Mia G. Malin*  
 Speaker, House of Representatives 413

29 \_\_\_\_\_ 415  
 30 *Philip J. Cook*  
 President of the Senate 416

**CERTIFIED**

this 12th day of December, 1991 A.D.  
 that the acceptance of the General Assembly con-  
 forms to my specific recommendations for change.

*James Thompson*  
 GOVERNOR