

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 376**

5 (SENATORS YOST, FITZSIMMONS, KESSLER (MR. PRESIDENT) AND WELLS, *original*
6 *sponsors*)

7 _____
8 [Passed March 8, 2014; to take effect July 1, 2014.]
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11
12 AN ACT to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §21-3-22, relating to
14 safety and welfare of employees at certain public improvement
15 sites by public authorities; defining terms; requiring onsite
16 employees at certain public improvement sites to complete an
17 Occupational Safety and Health Administration-approved
18 ten-hour construction safety program; requiring the retention
19 of training records; providing for incremental implementation
20 period for mandate; providing the Commissioner of Labor to
21 issue cease-and-desist notices in certain situations;
22 providing civil penalties for violations; creating a
23 misdemeanor offense and providing criminal fines for
24 exhibiting false documents; exempting certain construction

1 activities and persons from application of this section; and
2 requiring a report from the Commissioner of Labor on
3 effectiveness of the safety training.

4 *Be it enacted by the Legislature of West Virginia:*

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new section, designated §21-3-22, to read as
7 follows:

8 **ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.**

9 **§21-3-22. OSHA construction safety program.**

10 (a) For the purposes of this section:

11 (1) "Business entity" means any firm, partnership,
12 association, company, corporation, limited partnership, limited
13 liability company or other entity.

14 (2) "Commissioner" means the Commissioner of Labor or his or
15 her designee.

16 (3) "Public authority" has the same meaning as in section two,
17 article one-d of this chapter.

18 (4) "Public improvement" has the same meaning as in section
19 two, article one-d of this chapter.

20 (b) No person or business entity providing services as a
21 contractor or subcontractor under a contract, entered on or after
22 July 1, 2014, for the construction, reconstruction, alteration,
23 remodeling or repairs of any public improvement, by or on behalf of
24 a public authority, where the total contract cost of all work to be

1 performed by all contractors and subcontractors is in excess of
2 \$50,000, may use, employ or assign any person to a public
3 improvement work site who has not successfully completed a ten-hour
4 construction safety program designed by OSHA, no later than twenty-
5 one calendar days after being employed at or assigned to the public
6 improvement work site.

7 (c) The training requirement contained in subsection (b) of
8 this section does not apply to a person used, employed or assigned
9 to a public improvement work site for less than twenty-one
10 consecutive calendar days following the person's first day of
11 employment or assignment at the public improvement work site.

12 (d) During the three hundred sixty-five days following the
13 effective date of this section, a person employed or assigned to a
14 public improvement work site shall have ninety days to complete the
15 training requirement of subsection (b) of this section.

16 (e) A contractor or subcontractor subject to this section
17 shall make and maintain a record of the persons he or she uses,
18 employs or assigns pursuant to the contract, including the date of
19 the completion of the safety training program required by
20 subsection (b) of this section and the identity of the provider of
21 the training. The records required by this subsection shall be
22 preserved pursuant to section five, article five-c of this chapter
23 and be maintained at the employer's business office.

24 (f) Upon a finding by the commissioner that a person has been

1 used, employed at or assigned to a public improvement work site in
2 violation of subsection (b) of this section, the commissioner may
3 issue a cease-and-desist order to the person who has not completed
4 the requisite training until the person presents the commissioner
5 with evidence that he or she has successfully completed the
6 training program required by subsection (b) of this section.

7 (g) The commissioner may assess a civil penalty of not less
8 than \$100 nor more than \$1,000 to any person or business entity for
9 each violation of this section.

10 (h) Any person with knowledge that a document or other record
11 falsely represents that a person has completed the training program
12 required by subsection (b) of this section and who provides or
13 exhibits the document or record to the commissioner or to an
14 employer shall be guilty of a misdemeanor and, upon conviction
15 thereof, shall be fined not less than \$250 nor more than \$2,500.

16 (i) The following persons are exempt from the training
17 requirements of subsection (b) of this section:

18 (1) Law-enforcement officers involved with traffic control or
19 job-site security;

20 (2) Federal, state and municipal government employees and
21 inspectors; and

22 (3) Suppliers of materials and persons whose sole
23 responsibility is to deliver materials to the work site.

24 (j) The Commissioner shall report to the Joint Committee on

1 Government and Finance by January 1, 2017, on accident and injury
2 rates at public improvement work sites during the two years prior
3 and following enactment of this section.