

By: Creighton

S.B. No. 2428

A BILL TO BE ENTITLED

AN ACT

relating to the removal of a public school student from the classroom for the possession or use of an e-cigarette.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 37.006, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) subject to Subsections (a-1) and (a-2), commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) engages in conduct punishable as a felony;

(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

1 (i) marihuana or a controlled substance, as
2 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
3 Section 801 et seq.; or

4 (ii) a dangerous drug, as defined by
5 Chapter 483, Health and Safety Code;

6 (D) sells, gives, or delivers to another person
7 an alcoholic beverage, as defined by Section 1.04, Alcoholic
8 Beverage Code, commits a serious act or offense while under the
9 influence of alcohol, or possesses, uses, or is under the influence
10 of an alcoholic beverage;

11 (E) engages in conduct that contains the elements
12 of an offense relating to an abusable volatile chemical under
13 Sections 485.031 through 485.034, Health and Safety Code;

14 (F) engages in conduct that contains the elements
15 of the offense of public lewdness under Section 21.07, Penal Code,
16 or indecent exposure under Section 21.08, Penal Code; or

17 (G) engages in conduct that contains the elements
18 of the offense of harassment under Section 42.07(a)(1), (2), (3),
19 or (7), Penal Code, against an employee of the school district.

20 (a-1) If a disciplinary alternative education program is at
21 capacity at the time a student is required to be removed from class
22 and placed in the program under Subsection (a) for possession or use
23 of an e-cigarette, as defined by Section 161.081, Health and Safety
24 Code, and school personnel cannot readily determine that the
25 e-cigarette contains a substance described by Subsection
26 (a)(2)(C), the student shall be:

27 (1) placed in in-school suspension; and

1 (2) if a position becomes available in the program
2 before the expiration of the period of the placement, transferred
3 to the program for the remainder of the period.

4 (a-2) If a disciplinary alternative education program is at
5 capacity at the time a student is required to be removed from class
6 and placed in the program under Subsection (a) for engaging in
7 violent conduct, as defined by commissioner rule, a student who has
8 been removed to the program for possession or use of an e-cigarette,
9 as defined by Section 161.081, Health and Safety Code:

10 (1) may be removed from the program and placed in
11 in-school suspension to make a position in the program available
12 for the student who engaged in violent conduct; and

13 (2) if removed from the program under Subdivision (1)
14 and a position in the program becomes available before the
15 expiration of the period of the placement, shall be returned to the
16 program for the remainder of the period.

17 SECTION 2. Subchapter A, Chapter 37, Education Code, is
18 amended by adding Section 37.0065 to read as follows:

19 Sec. 37.0065. E-CIGARETTE EDUCATION REQUIREMENT. (a) In
20 this section, "e-cigarette" has the meaning assigned by Section
21 161.081, Health and Safety Code.

22 (b) The agency shall develop a program to educate students
23 required to be removed from class and placed in a disciplinary
24 alternative education program or in in-school suspension under
25 Section 37.006 for possession or use of an e-cigarette about the
26 risks of substance abuse and use of e-cigarettes. The program may
27 be provided in person or online and must include an end-of-course

1 assessment.

2 (c) A student described by Subsection (b) must complete the
3 program developed under that subsection and achieve a satisfactory
4 score on the end-of-course assessment before the student may return
5 to class.

6 SECTION 3. This Act applies beginning with the 2023-2024
7 school year.

8 SECTION 4. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2023.