

BILL ANALYSIS

C.S.H.B. 2452
By: Burnam
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Department of Aging and Disability Services manages the state schools that house patients with different types of disabilities. There are multiple cases in recent history of patient abuse by state school employees under the influence of illegal drugs. In order to protect the patients, the schools should be ordered to test their employees for illegal drug use at least once every year. This bill creates a policy on illegal drugs for state school employees.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

The bill amends the Health and Safety Code to require the executive commissioner (commissioner) of the Health and Human Services Commission (commission) to adopt a policy, by rule, to prohibit the illegal use of drugs by a state school employee, who has direct contact with residents. Likewise, the bill requires the superintendent of each state school to enforce the policy adopted by the use of mandatory random testing of every state school employee who has direct contact with residents at least once each year for use of controlled substances as defined.

The bill also sets forth requirements for the adapted policy. The policy may not terminate an employee solely on the basis of a single positive drug test. The policy must allow an employee, who tests positively for the first time, to be placed on a probationary status for a period of at least six months and not more than one year. Moreover, the policy must require that the employee be subject to additional random mandatory testing during that probationary period and further requires the termination of an employee who tests positively for illegal use of a controlled substance more than once.

Notwithstanding, the process adopted must establish an appeals process for an employee who tests positively for illegal drugs. The appeals process must allow the employee an opportunity to have testing performed through hair or blood samples to detect illegal drug use and the testing performed for purposes of an appeal must be paid for by the commission. If the employee by means of a negative drug test or is able to demonstrate to the satisfaction of the state school's administration that the appealed positive drug test does not violate the policy, the state school is required to rescind the employee's probationary status.

Furthermore, the bill requires the commissioner to adopt a policy by rule that requires an employee of a state school, who knows that another employee that has direct contact with residents, is illegally using a controlled substance as defined, to report that knowledge to the superintendent of the state school. In turn the bill requires the superintendent of each state school to test an employee of the state school, who has direct contact with residents and is twice reported for illegally using a controlled substance.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute requires the executive commissioner of the Health and Human Services; whereas the original bill requires the superintendent of each school, to adopt a policy on the use of illegal drugs.

The substitute requires the superintendent of each school to enforce the policy by randomly testing, at least once each year, every state school employee who has direct contact with residents for use of controlled substances as defined, whereas the original bill required the testing every state school employee.

The substitute requires the policy to allow one probationary period of at least six months but not more than one year and creates the provision that an employee may not be terminated solely on the basis of a single positive test for illegal use of a controlled substance; whereas the original bill requires the policy adopted to provide for the termination of an employee who tests positively for an illegal drug and allows for not more than two probationary periods of not more than six months each before an employee is terminated following a positive test for an illegal drug.

The substitute creates a requirement that an employee who is placed in probation be randomly tested during that probationary period; whereas the original bill does not.

The substitute creates the requirement to establish an appeals process that will allow an employee to be tested using the employee's hair or blood samples. This test must be paid by the commission; whereas the original bill does not.

The substitute indicates that if an employee is under an appeals process, the employee may not be allowed to be near a resident and be placed on paid leave; whereas the original bill does not.

The substitute indicates that if an employee, during an appeals process, proves a negative drug test result or demonstrates that the employee did not violate the policy adopted the employee's probationary period shall be rescinded. If an employee had a previous positive test, the employee shall be returned to a probationary status, if appropriate. The original bill does not.

The substitute requires the executive commissioner of the Health and Human Services Commission to adopt a policy to require a state school employee to report another employee, who he/she knows or has reason to believe is illegally using or under the influence of a controlled substance, to the superintendent of the state school. The original bill does not.

The substitute requires an employee who has received two reports within any 30-day period to be tested for the illegal use of a controlled substance; whereas, the original does not.