

By: Burnam, Madden, Cook of Navarro

H.B. No. 2452

Substitute the following for H.B. No. 2452:

By: Berman

C.S.H.B. No. 2452

A BILL TO BE ENTITLED

AN ACT

relating to testing for illegal use of controlled substances by employees of state schools.

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

SECTION 1. Subchapter A, Chapter 553, Health and Safety Code, is amended by adding Sections 553.002 and 553.003 to read as follows:

Sec. 553.002. TESTING STATE SCHOOL EMPLOYEES FOR ILLEGAL DRUG USE. (a) The executive commissioner of the Health and Human Services Commission by rule shall adopt a policy to prohibit the illegal use of drugs by a state school employee who has direct contact with residents.

(b) The superintendent of each state school shall enforce the policy adopted under Subsection (a) by mandatory random testing of every state school employee who has direct contact with residents at least once each year for use of controlled substances listed in Sections 481.102-481.105.

(c) The policy adopted under Subsection (a) must:

(1) provide that an employee may not be terminated solely on the basis of a single positive test under this section for illegal use of a controlled substance;

(2) provide that the first time an employee tests positively under this section for illegal use of a controlled substance, the employee shall be placed on a probationary status

1 for a period of at least six months and not more than one year and  
2 that the employee will be subject to additional random mandatory  
3 testing during that probationary period; and

4 (3) require the termination of an employee who tests  
5 positively under this section for illegal use of a controlled  
6 substance more than one time.

7 (d) The process adopted under Subsection (a) must establish  
8 an appeals process for an employee who tests positively for illegal  
9 drug use under this section. The appeals process must allow the  
10 employee an opportunity to have testing performed on the employee's  
11 hair or blood samples to detect illegal drug use. Testing performed  
12 for purposes of an appeal under this section must be paid for by the  
13 commission.

14 (e) While an appeal is pending under this section, the state  
15 school may not allow the employee to be near a resident and the  
16 state school shall place the employee on paid leave.

17 (f) If an employee, by means of a negative drug test result  
18 under Subsection (d) or otherwise, demonstrates to the satisfaction  
19 of the state school's administration that the appealed positive  
20 drug test does not demonstrate that the employee violated the  
21 policy adopted under Subsection (a):

22 (1) for an employee who is on probationary status for  
23 that positive test under this section, the administration of the  
24 state school shall rescind the employee's probationary status; and

25 (2) for an employee who had a previous positive drug  
26 test result, the administration of the state school shall return  
27 the employee to probationary status, if appropriate.

1       Sec. 553.003. POLICY FOR REPORTING ILLEGAL DRUG USE BY  
2 STATE SCHOOL EMPLOYEES. (a) The executive commissioner of the  
3 Health and Human Services Commission by rule shall adopt a policy to  
4 require that an employee of a state school who knows or has reason  
5 to believe that another employee of the state school who has direct  
6 contact with residents is illegally using or under the influence of  
7 a controlled substance listed in Sections 481.102-481.105 to report  
8 that knowledge or reason to believe to the superintendent of the  
9 state school.

10       (b) The superintendent of each state school shall require an  
11 employee of the state school who has direct contact with residents  
12 and who in any 30-day period is twice reported under Subsection (a)  
13 to be tested for the illegal use of a controlled substance described  
14 by that subsection. Notwithstanding Section 553.002, the  
15 superintendent may terminate an employee who tests positively for  
16 an illegal use of a controlled substance under this subsection.

17       SECTION 2. This Act takes effect September 1, 2007.