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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

MEMORANDUM

TO: All House Members and Legislative Assistants
FROM: Representative Angel Cruz
DATE: April 25, 2011
SUBJECT: Co-sponsorship Memo-Public Employee Drug Testing Act

In the near future, I intend to introduce legislation that would require drug testing of certain employees and provide penalties for positive drug tests.

My legislation would affect the following Commonwealth workers:

- Home care and older adult service worker
- Teacher
- Child-care worker
- Elected officials

Unless otherwise prohibited by Federal law or the laws of this Commonwealth, the results of a random drug test shall be available to the public under the Right-to-Know Law.

This is policy the public wants, and a protection the state should have. We need to ensure that these Commonwealth employees are capable, ready, willing, and able to perform their job.

Should you wish to co-sponsor this legislation, please contact Christina Consylman in my office at: 717-787-1407 or e-mail: cconsylm@pahouse.net.

AN ACT

1 Requiring the drug testing of certain employees and providing
2 penalties for positive drug tests.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Public
7 Employee Drug Testing Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Employee." A Commonwealth worker who falls into any of the
13 following categories and works for any employer:

- 14 (1) Home care and older adult services worker.
- 15 (2) Teacher.
- 16 (3) Child-care worker.
- 17 (4) Elected official.

1 "Employer." A Commonwealth agency that employs an employee.

2 Section 3. Drug testing.

3 (a) Requirements.--The Department of General Services shall
4 contract with a drug testing corporation or company to
5 administer the provisions of this act. Before selecting the
6 corporation or company, the Department of General Services shall
7 use a competitive bidding process and shall look at the quality
8 of the drug testing performed and training courses offered.

9 (b) Policies.--Each employer shall determine the frequency
10 and scope of the random and unannounced drug testing, with
11 assistance from the testing corporation or company selected
12 under subsection (a). The policy shall include a list of
13 prohibited drugs. The drug testing policies shall be explicitly
14 stated and given to the employees affected by this act. The
15 employer shall also determine what constitutes sufficient
16 documentation under the provisions of section 8.

17 (c) Refusal.--If an employee refuses to participate in the
18 random drug testing performed under this act, the employee shall
19 be suspended under section 5.

20 Section 4. Public record.

21 Unless otherwise prohibited by Federal law or the laws of
22 this Commonwealth, the results of a random drug test shall be
23 available to the public under the act of February 14, 2008
24 (P.L.6, No.3), known as the Right-to-Know Law.

25 Section 5. Suspension.

26 If an employee's drug test comes back positive, with any
27 indication of tampering or if the employee refused to take a
28 random drug test, the employee shall be suspended from all
29 employment activities that fall under the scope of this act. The
30 employee shall be offered a timely hearing. The employee shall

1 be informed of all rights and responsibilities, including the
2 ability to pay for a second drug test to rebut the employer's
3 random drug test.

4 Section 6. Administrative hearing.

5 (a) Hearing.--A hearing shall be conducted in accordance
6 with 2 Pa.C.S. (relating to administrative law and procedure) by
7 trained individuals.

8 (b) Training.--The training shall consist of information
9 necessary to understand the process of drug testing, the results
10 given by the company or corporation and any defenses that may
11 generally arise. The training shall be given by the drug testing
12 company or corporation.

13 (c) Determination.--

14 (1) If an employee is found to be in compliance with the
15 employer's drug testing policy, the employee shall be
16 immediately reinstated and shall be given pay for the days
17 missed while on suspension.

18 (2) If an employee is found not to be in compliance with
19 the employer's drug testing policy, the employee may be fired
20 with cause and any benefits terminated immediately. The
21 suspension shall not be paid unless the employee had earned
22 compensatory time, sick time or annual leave time.

23 (d) Refusal.--If an employee does not show up or refuses to
24 participate in a hearing, the employee may be regarded as having
25 been found not in compliance with the employer's drug policies.

26 (e) Appeal.--The employee shall have the right to appeal any
27 adverse finding under this section to the court of common pleas.

28 Section 7. Records.

29 The employer shall maintain a database of when the randomized
30 drug testing was done, the results and any action taken against

1 an employee. These records shall be accessible by the public in
2 accordance with section 4 and shall be accessible to law
3 enforcement officers upon request when in conjunction with an
4 investigation on drug use, unless otherwise prohibited by
5 Federal or State law. These records shall be maintained for at
6 least ten years for each employee.

7 Section 8. Applicability.

8 (a) Union members.--An employee who is a member of a union
9 on the effective date of this act shall be exempt from random
10 drug testing under this act until the next contract negotiation
11 by the union.

12 (b) Rehabilitation programs.--If an employee is in a drug
13 treatment program and provides sufficient documentation of
14 active participation in the treatment program, including
15 cooperation with any drug testing, the employer may temporarily
16 exempt the employee from any random drug testing. Any
17 information regarding the participation in a drug treatment
18 program shall not be designated a public record under the act of
19 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

20 (c) Exemption.--If an employee provides sufficient
21 documentation of a religious need to be exempted or a medical
22 reason why the employee cannot take a random drug test, the
23 employer shall exempt the employee from the provisions of this
24 act.

25 Section 9. Severability.

26 The provisions of this act are severable. If any provision of
27 this act or its application to any person or circumstance is
28 held invalid, the invalidity shall not affect other provisions
29 or applications of this act which can be given effect without
30 the invalid provision or application.

1 Section 10. Effective date.

2 This act shall take effect in 60 days.