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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2706 Session of  
2018

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INTRODUCED BY GAINNEY, NELSON, J. HARRIS, DUNBAR, ENGLISH, HILL-  
EVANS, DEASY AND HAGGERTY, OCTOBER 12, 2018

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 12, 2018

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AN ACT

1 Amending Title 65 (Public Officers) of the Pennsylvania  
2 Consolidated Statutes, providing for ethics standards and  
3 controlled substance testing.

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

6 Section 1. Title 65 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 15

9 ETHICS STANDARDS AND CONTROLLED SUBSTANCE TESTING

10 Sec.

11 1501. Short title of chapter.

12 1502. Purpose.

13 1503. Definitions.

14 1504. Submission to controlled substance testing.

15 1505. Results of controlled substance testing.

16 1506. Ethics investigation.

17 1507. Challenge to results of controlled substance testing.

18 1508. Referral for services.

1 1509. Costs.

2 1510. Maintenance of records.

3 1511. Confidentiality.

4 § 1501. Short title of chapter.

5 This chapter shall be known and may be cited as the General  
6 Assembly Drug Testing and Accountability Act.

7 § 1502. Purpose.

8 (a) Declarations.--The General Assembly hereby declares the  
9 following:

10 (1) Public office, including service as a member of the  
11 General Assembly, is a public trust.

12 (2) A member of the General Assembly should be held  
13 accountable to the public if the member is using or has used  
14 an illegal controlled substance or a lawful controlled  
15 substance in a manner inconsistent with the normal use of  
16 that controlled substance.

17 (3) A member of the General Assembly cannot effectively  
18 or appropriately fulfill the public duties of office if the  
19 member is using or has used an illegal controlled substance  
20 or a lawful controlled substance in a manner inconsistent  
21 with the normal use of that controlled substance.

22 (4) Public confidence in a member of the General  
23 Assembly, and the General Assembly as a whole, can only be  
24 maintained when the member or members adhere to the laws of  
25 this Commonwealth.

26 (5) If a member of the General Assembly is using or has  
27 used an illegal controlled substance or a lawful controlled  
28 substance in a manner inconsistent with the normal use of  
29 that controlled substance, the member is best served by  
30 recognizing the controlled substance abuse problem, seeking

1 help and completing rehabilitation treatment services.

2 (b) Intent.--It is the intent of the General Assembly that  
3 this chapter promote the following public policy purposes and  
4 objectives:

5 (1) Promoting openness and transparency regarding the  
6 actions of members of the General Assembly.

7 (2) Maintaining public confidence in members of the  
8 General Assembly and knowledge that members of the General  
9 Assembly are following the laws of this Commonwealth.

10 (3) Encouraging members of the General Assembly to be  
11 held accountable for their actions and seek medical and other  
12 professional treatment for controlled substance abuse  
13 problems that impact on their official duties and the public  
14 trust.

15 § 1503. Definitions.

16 The following words and phrases when used in this chapter  
17 shall have the meanings given to them in this section unless the  
18 context clearly indicates otherwise:

19 "Controlled substance." A drug, substance or immediate  
20 precursor included in Schedules I through V of section 4 of the  
21 act of April 14, 1972 (P.L.233, No.64), known as The Controlled  
22 Substance, Drug, Device and Cosmetic Act, except that marijuana  
23 shall not be deemed a controlled substance for purposes of this  
24 chapter.

25 "Controlled substance testing." A urinalysis, blood test or  
26 other scientific study of an individual's body that has been  
27 conclusively found to detect the presence or prior use of an  
28 illegal drug or substance and for which the accuracy has been  
29 accepted in the scientific community.

30 "Ethics committee." Either of the following:

1           (1) The Committee on Ethics and Official Conduct of the  
2           Senate, in the case of a member elected to the Senate.

3           (2) The Committee on Ethics of the House of  
4           Representatives, in the case of a member elected to the House  
5           of Representatives.

6           "Industrial hemp." The plant of the genus cannabis and any  
7           part of such plant, whether growing or not, with a delta-9  
8           tetrahydrocannabinol concentration (THC) that does not exceed  
9           0.03% on a dry weight basis.

10          "Marijuana." The parts of the plant of the genus cannabis,  
11          whether growing or not, the seeds thereof, the resin extracted  
12          from any part of the plant and every compound, manufacture,  
13          salt, derivative, mixture or preparation of the plant, its seeds  
14          or resin, including marijuana concentrate. The term does not  
15          include industrial hemp or fiber produced from the stalks, oil  
16          or cake made from the seeds of the plant, sterilized seed of the  
17          plant that is incapable of germination or the weight of another  
18          ingredient combined with marijuana to prepare topical or oral  
19          administrations, food, drink or other product.

20          § 1504. Submission to controlled substance testing.

21          (a) Time period.--Each member of the General Assembly shall  
22          submit to controlled substance testing by a drug testing  
23          corporation or company under subsection (b):

24                (1) Within 60 days following election or reelection to  
25                the General Assembly.

26                (2) On a random basis at least once during the calendar  
27                year, regardless of whether a reasonable likelihood exists  
28                that the member is using or has used an illegal controlled  
29                substance or a lawful controlled substance in a manner  
30                inconsistent with the normal use of that controlled

1 substance, but the controlled substance testing for the  
2 member shall not occur more frequently than once every three  
3 months.

4 (b) Administration of testing.--The Office of the Chief  
5 Clerk of the Senate and the Office of the Chief Clerk of the  
6 House of Representatives shall use a competitive bid process to  
7 contract with a drug testing corporation or company to  
8 administer the provisions of this chapter. The drug testing  
9 policy adopted shall be consistent with acceptable Federal and  
10 State drug testing standards.

11 (c) Failure or refusal.--If a member of the General Assembly  
12 refuses or fails to submit to controlled substance testing, the  
13 member may not take the oath of office, enter or continue duties  
14 as a member of the General Assembly or receive compensation as a  
15 member until the member submits to controlled substance testing  
16 as required by this chapter.

17 § 1505. Results of controlled substance testing.

18 The drug testing corporation or company that performed the  
19 controlled substance testing under this chapter shall:

20 (1) Determine whether a member has tested positive for  
21 the presence of a controlled substance in the member's  
22 system.

23 (2) Forward the results to the member and to the ethics  
24 committee.

25 § 1506. Ethics investigation.

26 A member shall be subject to an investigation by the ethics  
27 committee if:

28 (1) The drug test comes back positive for the use of an  
29 illegal controlled substance or the use of a lawful  
30 controlled substance in a manner inconsistent with the normal

1 use of that controlled substance.

2 (2) There is any indication that the member tampered  
3 with any aspect of the controlled substance testing.

4 (3) The member refused to take a drug test.

5 § 1507. Challenge to results of controlled substance testing.

6 Within five business days after receiving notice of failing  
7 the controlled substance testing, a member of the General  
8 Assembly may submit information to the ethics committee,  
9 explaining or challenging the results. If the member's  
10 explanation or challenge of the results is deemed satisfactory  
11 to the ethics committee, the ethics committee shall record that  
12 the member passed the controlled substance testing.

13 § 1508. Referral for services.

14 If a member of the General Assembly fails the substance abuse  
15 testing and has not satisfactorily explained or challenged the  
16 failed testing results, the ethics committee shall assist in  
17 referring the member to the State Employee Assistance Program,  
18 or its successor, to determine whether the member should be  
19 evaluated for treatment options and could benefit from  
20 counseling, outpatient treatment or other substance abuse  
21 rehabilitation services. Unless otherwise covered by the  
22 member's health insurance plan, the member shall bear any  
23 expenses related to referral or treatment services.

24 § 1509. Costs.

25 (a) When member passes testing.--If a member of the General  
26 Assembly passes the controlled substance testing and has tested  
27 negative for the presence of a controlled substance in the  
28 member's system, the member shall not be financially responsible  
29 for the costs related to the testing. If any costs are incurred  
30 and paid by the member, the member shall be reimbursed for those

1 costs.

2 (b) When member fails testing.--The following shall apply:

3 (1) Subject to paragraph (2), if a member of the General  
4 Assembly fails the controlled substance testing and has  
5 tested positive for the presence of a controlled substance in  
6 the member's system, the member shall bear the costs related  
7 to the testing. Campaign funds shall not be used for the  
8 payment of the testing.

9 (2) If a member of the General Assembly has  
10 satisfactorily explained or challenged the failed testing  
11 results, paragraph (1) shall not apply and subsection (a)  
12 shall govern as though the member initially passed the  
13 controlled substance testing.

14 § 1510. Maintenance of records.

15 The ethics committee shall maintain controlled substance  
16 testing results and all information regarding explanations and  
17 challenges of failed testing results for at least two years.

18 § 1511. Confidentiality.

19 (a) General rule.--Except as otherwise provided in this  
20 section, all information regarding controlled substance testing,  
21 controlled substance testing results, reports, explanations,  
22 challenges, referrals and treatment services shall remain  
23 confidential and shall not be subject to public inspection.

24 (b) Release of information by member.--A member of the  
25 General Assembly may release to the public any information under  
26 subsection (a) regarding the member.

27 (c) Specific circumstances.--The following shall apply:

28 (1) The first refusal or failure to submit to controlled  
29 substance testing by a member of the General Assembly may not  
30 be disclosed and shall remain confidential.

1           (2) The second and each subsequent refusal or failure to  
2 submit to controlled substance testing by a member of the  
3 General Assembly shall not be considered confidential  
4 information.

5           (3) The first failed controlled substance testing by a  
6 member of the General Assembly may not be disclosed and shall  
7 remain confidential.

8           (4) The second and each subsequent failed controlled  
9 substance testing by a member of the General Assembly shall  
10 not be considered confidential information.

11          (d) Penalties.--A person violating the confidentiality  
12 provisions of this section commits a misdemeanor and shall, upon  
13 conviction, be sentenced to pay a fine of not more than \$1,000  
14 or to imprisonment for not more than one year, or both.

15          Section 2. This act shall take effect in 60 days.