

1                   A bill to be entitled  
2           An act relating to the Drug-Free Workplace Act;  
3           amending s. 112.0455, F.S.; revising the definition of  
4           the term "job applicant"; defining the term "random  
5           testing"; removing the definition of the term "safety-  
6           sensitive position"; authorizing an agency within  
7           state government to conduct random drug testing every  
8           3 months; removing provisions prohibiting a state  
9           agency from discharging or disciplining an employee  
10          under certain circumstances based on the employee's  
11          first positive confirmed drug test; removing  
12          provisions limiting the circumstances under which an  
13          agency may discharge an employee in a special risk or  
14          safety-sensitive position; providing that an agency  
15          may discharge or discipline an employee following a  
16          first-time positive confirmed drug test result;  
17          authorizing an agency to refer an employee to an  
18          employee assistance program or an alcohol and drug  
19          rehabilitation program if the employee is not  
20          discharged; requiring participation in an employee  
21          assistance program or an alcohol and drug  
22          rehabilitation program at the employee's own expense;  
23          requiring the employer to determine if the employee is  
24          able to safely and effectively perform the job duties  
25          assigned to the employee while the employee is  
26          participating in the employee assistance program or  
27          alcohol and drug rehabilitation program; deeming that  
28          certain specified job activities cannot be performed

29 | safely and effectively while the employee is  
30 | participating in the employee assistance program or  
31 | alcohol and drug rehabilitation program; requiring the  
32 | employer to transfer the employee to a job assignment  
33 | that he or she can perform safely and effectively  
34 | while the employee participates in the employee  
35 | assistance program or alcohol and drug rehabilitation  
36 | program; requiring the employer to place the employee  
37 | on leave status while the employee is participating in  
38 | an employee assistance program or an alcohol and drug  
39 | rehabilitation program if such a position is  
40 | unavailable; authorizing the employee to use  
41 | accumulated leave credits before being placed on leave  
42 | without pay; amending s. 440.102, F.S.; revising the  
43 | definition of the term "job applicant" as it pertains  
44 | to a public employer; removing the definition of the  
45 | term "safety-sensitive position" and replacing it with  
46 | the definition for the term "mandatory-testing  
47 | position;" providing that an employer remains  
48 | qualified for an insurer rate plan that discounts  
49 | rates for workers' compensation and employer's  
50 | liability insurance policies if the employer maintains  
51 | a drug-free workplace program that is broader in scope  
52 | than that provided for by the standards and procedures  
53 | established in the act; authorizing a public employer,  
54 | using an unbiased selection procedure, to conduct  
55 | random drug tests of employees occupying mandatory-  
56 | testing or special-risk positions if the testing is

57 performed in accordance with drug-testing rules  
 58 adopted by the Agency for Health Care Administration;  
 59 requiring that a public sector employer assign a  
 60 public sector employee to a position other than a  
 61 mandatory-testing position if the employee enters an  
 62 employee assistance program or drug rehabilitation  
 63 program; removing provisions related to collective  
 64 bargaining rights for nonfederal public sector  
 65 employers; conforming cross-references; amending s.  
 66 944.474, F.S.; revising provisions governing employees  
 67 of the state correctional system, to conform to  
 68 changes made by the act; providing an effective date.

70 Be It Enacted by the Legislature of the State of Florida:

71  
 72 Section 1. Subsections (5), (7), and (8) and paragraphs  
 73 (h), (i), (j), and (k) of subsection (10) of section 112.0455,  
 74 Florida Statutes, are amended to read:

75 112.0455 Drug-Free Workplace Act.—

76 (5) DEFINITIONS.—Except where the context otherwise  
 77 requires, as used in this act:

78 (a) "Drug" means alcohol, including distilled spirits,  
 79 wine, malt beverages, and intoxicating liquors; amphetamines;  
 80 cannabinoids; cocaine; phencyclidine (PCP); hallucinogens;  
 81 methaqualone; opiates; barbiturates; benzodiazepines; synthetic  
 82 narcotics; designer drugs; or a metabolite of any of the  
 83 substances listed herein.

84 (b) "Drug test" or "test" means any chemical, biological,

85 or physical instrumental analysis administered for the purpose  
86 of determining the presence or absence of a drug or its  
87 metabolites.

88 (c) "Initial drug test" means a sensitive, rapid, and  
89 reliable procedure to identify negative and presumptive positive  
90 specimens. All initial tests must ~~shall~~ use an immunoassay  
91 procedure or an equivalent, or must ~~shall~~ use a more accurate  
92 scientifically accepted method approved by the Agency for Health  
93 Care Administration as ~~such~~ more accurate technology becomes  
94 available in a cost-effective form.

95 (d) "Confirmation test," "confirmed test," or "confirmed  
96 drug test" means a second analytical procedure used to identify  
97 the presence of a specific drug or metabolite in a specimen. The  
98 confirmation test must be different in scientific principle from  
99 that of the initial test procedure. This confirmation method  
100 must be capable of providing requisite specificity, sensitivity,  
101 and quantitative accuracy.

102 (e) "Chain of custody" refers to the methodology of  
103 tracking specified materials or substances for the purpose of  
104 maintaining control and accountability from initial collection  
105 to final disposition for all such materials or substances and  
106 providing for accountability at each stage in handling, testing,  
107 storing specimens, and reporting of test results.

108 (f) "Job applicant" means a person who has applied for a  
109 ~~special risk or safety-sensitive~~ position with an employer and  
110 has been offered employment conditioned upon successfully  
111 passing a drug test.

112 (g) "Employee" means a ~~any~~ person who works for salary,

113 wages, or other remuneration for an employer.

114 (h) "Employer" means an ~~any~~ agency within state government  
 115 that employs individuals for salary, wages, or other  
 116 remuneration.

117 (i) "Prescription or nonprescription medication" means a  
 118 drug or medication obtained pursuant to a prescription as  
 119 defined by s. 893.02 or a medication that is authorized pursuant  
 120 to federal or state law for general distribution and use without  
 121 a prescription in the treatment of human diseases, ailments, or  
 122 injuries.

123 (j) "Random testing" means a drug test conducted on  
 124 employees who are selected through the use of a computer-  
 125 generated random sample of an employer's employees.

126 (k) ~~(j)~~ "Reasonable suspicion drug testing" means drug  
 127 testing based on a belief that an employee is using or has used  
 128 drugs in violation of the employer's policy drawn from specific  
 129 objective and articulable facts and reasonable inferences drawn  
 130 from those facts in light of experience. Reasonable suspicion  
 131 drug testing may ~~shall~~ not be required except upon the  
 132 recommendation of a supervisor who is at least one level of  
 133 supervision higher than the immediate supervisor of the employee  
 134 in question. Among other things, such facts and inferences may  
 135 be based upon:

136 1. Observable phenomena while at work, such as direct  
 137 observation of drug use or of the physical symptoms or  
 138 manifestations of being under the influence of a drug.

139 2. Abnormal conduct or erratic behavior while at work or a  
 140 significant deterioration in work performance.

141 3. A report of drug use, provided by a reliable and  
 142 credible source, which has been independently corroborated.

143 4. Evidence that an individual has tampered with a drug  
 144 test during employment with the current employer.

145 5. Information that an employee has caused, or contributed  
 146 to, an accident while at work.

147 6. Evidence that an employee has used, possessed, sold,  
 148 solicited, or transferred drugs while working or while on the  
 149 employer's premises or while operating the employer's vehicle,  
 150 machinery, or equipment.

151 (l) ~~(k)~~ "Specimen" means a tissue, hair, or product of the  
 152 human body capable of revealing the presence of drugs or their  
 153 metabolites.

154 (m) ~~(l)~~ "Employee assistance program" means an established  
 155 program for employee assessment, counseling, and possible  
 156 referral to an alcohol and drug rehabilitation program.

157 ~~(m) "Safety sensitive position" means any position,~~  
 158 ~~including a supervisory or management position, in which a drug~~  
 159 ~~impairment would constitute an immediate and direct threat to~~  
 160 ~~public health or safety.~~

161 (n) "Special risk" means employees who are required as a  
 162 condition of employment to be certified under chapter 633 or  
 163 chapter 943.

164 (7) TYPES OF TESTING.—An employer may conduct ~~is~~  
 165 ~~authorized,~~ but is not required, ~~to conduct,~~ the following types  
 166 of drug tests:

167 (a) Job applicant testing.—An employer may require job  
 168 applicants to submit to a drug test and may use a refusal to

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169 submit to a drug test or a positive confirmed drug test as a  
170 basis for refusal to hire the job applicant.

171 (b) Reasonable suspicion.—An employer may require an  
172 employee to submit to reasonable suspicion drug testing.

173 (c) Random testing.—An employer may conduct random testing  
174 once every 3 months.

175 (d)~~(e)~~ Routine fitness for duty.—An employer may require  
176 an employee to submit to a drug test if the test is conducted as  
177 part of a routinely scheduled employee fitness-for-duty medical  
178 examination that is part of the employer's established policy or  
179 that is scheduled routinely for all members of an employment  
180 classification or group.

181 (e)~~(d)~~ Followup testing.—If the employee in the course of  
182 employment enters an employee assistance program for drug-  
183 related problems, or an alcohol and drug rehabilitation program,  
184 the employer may require the ~~said~~ employee to submit to a drug  
185 test as a followup to such program, and on a quarterly,  
186 semiannual, or annual basis for up to 2 years thereafter.

187 (8) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen  
188 collection and testing for drugs under this section shall be  
189 performed in accordance with the following procedures:

190 (a) A sample shall be collected with due regard to the  
191 privacy of the individual providing the sample, and in a manner  
192 reasonably calculated to prevent substitution or contamination  
193 of the sample.

194 (b) Specimen collection shall be documented, and the  
195 documentation procedures shall include:

196 1. Labeling of specimen containers so as to reasonably

197 preclude the likelihood of erroneous identification of test  
 198 results.

199 2. A form for the employee or job applicant to provide any  
 200 information he or she considers relevant to the test, including  
 201 identification of currently or recently used prescription or  
 202 nonprescription medication, or other relevant medical  
 203 information. Such form shall provide notice of the most common  
 204 medications by brand name or common name, as applicable, as well  
 205 as by chemical name, which may alter or affect a drug test. The  
 206 providing of information does ~~shall~~ not preclude the  
 207 administration of the drug test, but shall be taken into account  
 208 in interpreting any positive confirmed results.

209 (c) Specimen collection, storage, and transportation to  
 210 the testing site shall be performed in a manner that ~~which~~ will  
 211 reasonably preclude specimen contamination or adulteration.

212 (d) Each initial and confirmation test conducted under  
 213 this section, not including the taking or collecting of a  
 214 specimen to be tested, shall be conducted by a licensed  
 215 laboratory as described in subsection (12).

216 (e) A specimen for a drug test may be taken or collected  
 217 by any of the following persons:

218 1. A physician, a physician's assistant, a registered  
 219 professional nurse, a licensed practical nurse, a nurse  
 220 practitioner, or a certified paramedic who is present at the  
 221 scene of an accident for the purpose of rendering emergency  
 222 medical service or treatment.

223 2. A qualified person employed by a licensed laboratory.

224 (f) A person who collects or takes a specimen for a drug

225 test conducted pursuant to this section shall collect an amount  
226 sufficient for two drug tests as determined by the Agency for  
227 Health Care Administration.

228 (g) Any drug test conducted or requested by an employer  
229 may occur before, during, or immediately after the regular work  
230 period of the employee, and shall be deemed to be performed  
231 during work time for the purposes of determining compensation  
232 and benefits for the employee.

233 (h) Every specimen that produces a positive confirmed  
234 result shall be preserved by the licensed laboratory that  
235 conducts the confirmation test for a period of at least 210 days  
236 from the time the results of the positive confirmation test are  
237 mailed or otherwise delivered to the employer. However, if an  
238 employee or job applicant undertakes an administrative or legal  
239 challenge to the test result, the employee or job applicant  
240 shall notify the laboratory and the sample shall be retained by  
241 the laboratory until the case or administrative appeal is  
242 settled. During the 180-day period after written notification of  
243 a positive test result, the employee or job applicant who has  
244 provided the specimen shall be permitted by the employer to have  
245 a portion of the specimen retested, at the employee or job  
246 applicant's expense, at another laboratory, licensed and  
247 approved by the Agency for Health Care Administration, chosen by  
248 the employee or job applicant. The second laboratory must test  
249 at equal or greater sensitivity for the drug in question as the  
250 first laboratory. The first laboratory that ~~which~~ performed the  
251 test for the employer is ~~shall be~~ responsible for the transfer  
252 of the portion of the specimen to be retested, and for the

253 integrity of the chain of custody during such transfer.

254 (i) Within 5 working days after receipt of a positive  
255 confirmed test result from the testing laboratory, an employer  
256 shall inform an employee or job applicant in writing of such  
257 positive test result, the consequences of such results, and the  
258 options available to the employee or job applicant.

259 (j) The employer shall provide to the employee or job  
260 applicant, upon request, a copy of the test results.

261 (k) Within 5 working days after receiving notice of a  
262 positive confirmed test result, the employee or job applicant  
263 may submit information to an employer explaining or contesting  
264 the test results, and why the results do not constitute a  
265 violation of the employer's policy.

266 (l) If an employee or job applicant's explanation or  
267 challenge of the positive test results is unsatisfactory to the  
268 employer, a written explanation as to why the employee or job  
269 applicant's explanation is unsatisfactory, along with the report  
270 of positive results, shall be provided by the employer to the  
271 employee or job applicant. All such documentation shall be kept  
272 confidential and exempt from the provisions of s. 119.07(1) by  
273 the employer pursuant to subsection (11) and shall be retained  
274 by the employer for at least 1 year.

275 (m) An ~~No~~ employer may not discharge, discipline, refuse  
276 to hire, discriminate against, or request or require  
277 rehabilitation of an employee or job applicant on the sole basis  
278 of a positive test result that has not been verified by a  
279 confirmation test.

280 ~~(n) In addition to the limitation under paragraph (m):~~

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281           ~~1. Except as provided in subparagraph 3., no employer may~~  
282 ~~discharge, discipline, or discriminate against an employee on~~  
283 ~~the sole basis of the employee's first positive confirmed drug~~  
284 ~~test, unless the employer has first given the employee an~~  
285 ~~opportunity to participate in, at the employee's own expense or~~  
286 ~~pursuant to coverage under a health insurance plan, an employee~~  
287 ~~assistance program or an alcohol and drug rehabilitation~~  
288 ~~program, and:~~

289           ~~a. The employee has either refused to participate in the~~  
290 ~~employee assistance program or the alcohol and drug~~  
291 ~~rehabilitation program or has failed to successfully complete~~  
292 ~~such program, as evidenced by withdrawal from the program before~~  
293 ~~its completion or a report from the program indicating~~  
294 ~~unsatisfactory compliance, or by a positive test result on a~~  
295 ~~confirmation test after completion of the program; or~~

296           ~~b. The employee has failed or refused to sign a written~~  
297 ~~consent form allowing the employer to obtain information~~  
298 ~~regarding the progress and successful completion of an employee~~  
299 ~~assistance program or an alcohol and drug rehabilitation~~  
300 ~~program.~~

301           ~~2. An employee in a safety-sensitive position shall be~~  
302 ~~placed by the employer in a non-safety-sensitive position, or if~~  
303 ~~such position is unavailable, on leave status while~~  
304 ~~participating in an employee assistance program or an alcohol~~  
305 ~~and drug rehabilitation program. If placed on leave status~~  
306 ~~without pay, the employee shall be permitted to use any~~  
307 ~~accumulated leave credits prior to being placed on leave without~~  
308 ~~pay.~~

309           ~~3. A special risk employee may be discharged or~~  
310 ~~disciplined for the first positive confirmed drug test result~~  
311 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~  
312 ~~special risk employee shall be permitted to continue work in a~~  
313 ~~safety-sensitive position, but may be placed either in a non-~~  
314 ~~safety-sensitive position or on leave status while participating~~  
315 ~~in an employee assistance program or an alcohol and drug~~  
316 ~~rehabilitation program.~~

317           (n)~~(e)~~ Upon successful completion of an employee  
318 assistance program or an alcohol and drug rehabilitation  
319 program, the employee shall be reinstated to the same or  
320 equivalent position that was held prior to such rehabilitation.

321           (o)~~(p)~~ An ~~Ne~~ employer may not discharge, discipline, or  
322 discriminate against an employee, or refuse to hire a job  
323 applicant, on the basis of any prior medical history revealed to  
324 the employer pursuant to this section.

325           (p)~~(q)~~ An employer who performs drug testing or specimen  
326 collection shall use chain-of-custody procedures as established  
327 by the Agency for Health Care Administration to ensure proper  
328 recordkeeping, handling, labeling, and identification of all  
329 specimens to be tested.

330           (q)~~(r)~~ An employer shall pay the cost of all drug tests,  
331 initial and confirmation, which the employer requires of  
332 employees.

333           (r)~~(s)~~ An employee or job applicant shall pay the costs of  
334 any additional drug tests not required by the employer.

335           (s)~~(t)~~ An ~~Ne~~ employer may not ~~shall~~ discharge, discipline,  
336 or discriminate against an employee solely upon voluntarily

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337 seeking treatment, while under the employ of the employer, for a  
338 drug-related problem if the employee has not previously tested  
339 positive for drug use, entered an employee assistance program  
340 for drug-related problems, or entered an alcohol and drug  
341 rehabilitation program. However, special risk employees may be  
342 subject to discharge or disciplinary action when the presence of  
343 illicit drugs, pursuant to s. 893.13, is confirmed.

344 (t)~~(u)~~ If ~~Where~~ testing is conducted based on reasonable  
345 suspicion, each employer shall promptly detail in writing the  
346 circumstances which formed the basis of the determination that  
347 reasonable suspicion existed to warrant the testing. A copy of  
348 this documentation shall be given to the employee upon request  
349 and the original documentation shall be kept confidential and  
350 exempt from the provisions of s. 119.07(1) by the employer  
351 pursuant to subsection (11) and retained by the employer for at  
352 least 1 year.

353 (u)~~(v)~~ If an employee is unable to participate in  
354 outpatient rehabilitation, the employee may be placed on leave  
355 status while participating in an employee assistance program or  
356 an alcohol and drug rehabilitation program. If placed on leave-  
357 without-pay status, the employee shall be permitted to use any  
358 accumulated leave credits prior to being placed on leave without  
359 pay. Upon successful completion of an employee assistance  
360 program or an alcohol and drug rehabilitation program, the  
361 employee shall be reinstated to the same or equivalent position  
362 that was held prior to such rehabilitation.

363 (10) EMPLOYER PROTECTION.—

364 (h) An employer may discharge or discipline ~~shall refer~~ an

365 employee following ~~with~~ a first-time positive confirmed drug  
366 test result. If the employer does not discharge the employee,  
367 the employer may refer the employee to an employee assistance  
368 program or an alcohol and drug rehabilitation program in which  
369 the employee may participate at the expense of the employee or  
370 pursuant to a health insurance plan, ~~unless such employee is~~  
371 ~~discharged as provided in subparagraph (8)(n)3. If the results~~  
372 ~~of a subsequent confirmed drug test are positive, the employer~~  
373 ~~may discharge or discipline the employee.~~

374 1. If an employer refers an employee to an employee  
375 assistance program or an alcohol and drug rehabilitation  
376 program, the employer must determine whether the employee is  
377 able to safely and effectively perform the job duties assigned  
378 to the employee while the employee participates in the employee  
379 assistance program or the alcohol and drug rehabilitation  
380 program.

381 2. An employee whose assigned duties require the employee  
382 to carry a firearm, work closely with an employee who carries a  
383 firearm, perform life-threatening procedures, work with heavy or  
384 dangerous machinery, work as a safety inspector, work with  
385 children, work with detainees in the correctional system, work  
386 with confidential information or documents pertaining to  
387 criminal investigations, work with controlled substances, hold a  
388 position subject to s. 110.1127, or hold a position in which a  
389 momentary lapse in attention could result in injury or death to  
390 another person, is deemed unable to safely and effectively  
391 perform the job duties assigned to the employee while the  
392 employee participates in the employee assistance program or the

393 alcohol and drug rehabilitation program.

394 3. If an employer refers an employee to an employee  
 395 assistance program or an alcohol and drug rehabilitation program  
 396 and the employer determines that the employee is unable, or the  
 397 employee is deemed unable, to safely and effectively perform the  
 398 job duties assigned to the employee before he or she completes  
 399 the employee assistance program or the alcohol and drug  
 400 rehabilitation program, the employer shall place the employee in  
 401 a job assignment that the employer determines the employee can  
 402 safely and effectively perform while participating in the  
 403 employee assistance program or the alcohol and drug  
 404 rehabilitation program.

405 4. If a job assignment in which the employee may safely  
 406 and effectively perform is unavailable, the employer shall place  
 407 the employee on leave status while the employee is participating  
 408 in an employee assistance program or an alcohol and drug  
 409 rehabilitation program. If placed on leave status without pay,  
 410 the employee may use accumulated leave credits before being  
 411 placed on leave without pay.

412 (i) Nothing in This section does not shall be construed to  
 413 prohibit an employer from conducting medical screening or other  
 414 tests required by any statute, rule, or regulation for the  
 415 purpose of monitoring exposure of employees to toxic or other  
 416 unhealthy substances in the workplace or in the performance of  
 417 job responsibilities. Such screening or tests shall be limited  
 418 to the specific substances expressly identified in the  
 419 applicable statute, rule, or regulation, unless prior written  
 420 consent of the employee is obtained for other tests.

421 ~~(j) An employer shall place a safety-sensitive position~~  
422 ~~employee whose drug test result is confirmed positive in a non-~~  
423 ~~safety-sensitive position, or if such a position is unavailable,~~  
424 ~~on leave status while the employee participates in an employee~~  
425 ~~assistance program or an alcohol and drug rehabilitation~~  
426 ~~program. If placed on leave status without pay, the employee~~  
427 ~~shall be permitted to use any accumulated leave credits prior to~~  
428 ~~being placed on leave without pay.~~

429 ~~(k) A special risk employee may be discharged or~~  
430 ~~disciplined on the first positive confirmed drug test result~~  
431 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~  
432 ~~special risk employee shall be permitted to continue work in a~~  
433 ~~safety-sensitive position, but may be placed either in a non-~~  
434 ~~safety-sensitive position or on leave status while participating~~  
435 ~~in an employee assistance program or an alcohol and drug~~  
436 ~~rehabilitation program.~~

437 Section 2. Paragraphs (j) and (o) of subsection (1),  
438 subsection (2), paragraph (g) of subsection (7), and subsections  
439 (11), (13), (14), and (15) of section 440.102, Florida Statutes,  
440 are amended to read:

441 440.102 Drug-free workplace program requirements.—The  
442 following provisions apply to a drug-free workplace program  
443 implemented pursuant to law or to rules adopted by the Agency  
444 for Health Care Administration:

445 (1) DEFINITIONS.—Except where the context otherwise  
446 requires, as used in this act:

447 (j) "Job applicant" means a person who has applied for a  
448 position with an employer and has been offered employment

449 conditioned upon successfully passing a drug test, and may have  
450 begun work pending the results of the drug test. For a public  
451 employer, "job applicant" means only a person who has applied  
452 for a special-risk or mandatory-testing ~~safety-sensitive~~  
453 position.

454 (o) "Mandatory-testing position" means, with respect to a  
455 public employer, a job assignment that requires the employee to  
456 carry a firearm, work closely with an employee who carries a  
457 firearm, perform life-threatening procedures, work with heavy or  
458 dangerous machinery, work as a safety inspector, work with  
459 children, work with detainees in the correctional system, work  
460 with confidential information or documents pertaining to  
461 criminal investigations, work with controlled substances, or a  
462 job assignment that requires an employee security background  
463 check, pursuant to s. 110.1127, or a job assignment in which a  
464 momentary lapse in attention could result in injury or death to  
465 another person. "Safety-sensitive position" means, with respect  
466 ~~to a public employer, a position in which a drug impairment~~  
467 ~~constitutes an immediate and direct threat to public health or~~  
468 ~~safety, such as a position that requires the employee to carry a~~  
469 ~~firearm, perform life-threatening procedures, work with~~  
470 ~~confidential information or documents pertaining to criminal~~  
471 ~~investigations, or work with controlled substances; a position~~  
472 ~~subject to s. 110.1127; or a position in which a momentary lapse~~  
473 ~~in attention could result in injury or death to another person.~~

474 (2) DRUG TESTING.—An employer may test an employee or job  
475 applicant for any drug described in paragraph (1) (c). In order  
476 to qualify as having established a drug-free workplace program

477 | under this section and to qualify for the discounts provided  
 478 | under s. 627.0915 and deny medical and indemnity benefits under  
 479 | this chapter, an employer must, at a minimum, implement drug  
 480 | testing that conforms to the standards and procedures  
 481 | established in this section and all applicable rules adopted  
 482 | pursuant to this section as required in subsection (4). However,  
 483 | an employer does not have a legal duty under this section to  
 484 | request an employee or job applicant to undergo drug testing. If  
 485 | an employer fails to maintain a drug-free workplace program in  
 486 | accordance with the standards and procedures established in this  
 487 | section and in applicable rules, the employer is ineligible for  
 488 | discounts under s. 627.0915. However, an employer qualifies for  
 489 | discounts under s. 627.0915 if the employer maintains a drug-  
 490 | free workplace program that is broader in scope than that  
 491 | provided for by the standards and procedures established in this  
 492 | section. An employer who qualifies ~~All employers qualifying~~ for  
 493 | and receives ~~receiving~~ discounts provided under s. 627.0915 must  
 494 | be reported annually by the insurer to the department.

495 | (7) EMPLOYER PROTECTION.—

496 | (g) This section does not prohibit an employer from  
 497 | conducting medical screening or other tests required, permitted,  
 498 | or not disallowed by any statute, rule, or regulation for the  
 499 | purpose of monitoring exposure of employees to toxic or other  
 500 | unhealthy substances in the workplace or in the performance of  
 501 | job responsibilities. Such screening or testing is limited to  
 502 | the specific substances expressly identified in the applicable  
 503 | statute, rule, or regulation, unless prior written consent of  
 504 | the employee is obtained for other tests. Such screening or

505 testing need not be in compliance with the rules adopted by the  
 506 Agency for Health Care Administration under this chapter or  
 507 under s. 112.0455. A public employer may, through the use of an  
 508 unbiased selection procedure, conduct random drug tests of  
 509 employees occupying mandatory-testing ~~safety-sensitive~~ or  
 510 special-risk positions if the testing is performed in accordance  
 511 with drug-testing rules adopted by the Agency for Health Care  
 512 Administration and the department. ~~If applicable, random drug~~  
 513 ~~testing must be specified in a collective bargaining agreement~~  
 514 ~~as negotiated by the appropriate certified bargaining agent~~  
 515 ~~before such testing is implemented.~~

516 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-~~  
 517 ~~SENSITIVE~~ OR SPECIAL-RISK POSITIONS.-

518 (a) If an employee who is employed by a public employer in  
 519 a mandatory-testing ~~safety-sensitive~~ position enters an employee  
 520 assistance program or drug rehabilitation program, the employer  
 521 must assign the employee to a position other than a mandatory-  
 522 testing ~~safety-sensitive~~ position or, if such position is not  
 523 available, place the employee on leave while the employee is  
 524 participating in the program. However, the employee shall be  
 525 permitted to use any accumulated annual leave credits before  
 526 leave may be ordered without pay.

527 (b) An employee who is employed by a public employer in a  
 528 special-risk position may be discharged or disciplined by a  
 529 public employer for the first positive confirmed test result if  
 530 the drug confirmed is an illicit drug under s. 893.03. A  
 531 special-risk employee who is participating in an employee  
 532 assistance program or drug rehabilitation program may not be

533 allowed to continue to work in any special-risk or mandatory-  
534 testing ~~safety-sensitive~~ position of the public employer, but  
535 may be assigned to a position other than a mandatory-testing  
536 ~~safety-sensitive~~ position or placed on leave while the employee  
537 is participating in the program. However, the employee shall be  
538 permitted to use any accumulated annual leave credits before  
539 leave may be ordered without pay.

540 ~~(13) COLLECTIVE BARGAINING RIGHTS.—~~

541 ~~(a) This section does not eliminate the bargainable rights~~  
542 ~~as provided in the collective bargaining process if applicable.~~

543 ~~(b) Drug-free workplace program requirements pursuant to~~  
544 ~~this section shall be a mandatory topic of negotiations with any~~  
545 ~~certified collective bargaining agent for nonfederal public~~  
546 ~~sector employers that operate under a collective bargaining~~  
547 ~~agreement.~~

548 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure  
549 adopted by an employer pursuant to this chapter shall be applied  
550 equally to all employee classifications where the employee is  
551 subject to workers' compensation coverage.

552 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction  
553 contractor regulated under part I of chapter 489, and each  
554 electrical contractor and alarm system contractor regulated  
555 under part II of chapter 489, who contracts to perform  
556 construction work under a state contract for educational  
557 facilities governed by chapter 1013, for public property or  
558 publicly owned buildings governed by chapter 255, or for state  
559 correctional facilities governed by chapter 944 shall implement  
560 a drug-free workplace program under this section.

561 Section 3. Section 944.474, Florida Statutes, is amended  
 562 to read:

563 944.474 Legislative intent; employee wellness program;  
 564 drug and alcohol testing.—

565 (1) It is the intent of the Legislature that the state  
 566 correctional system provide a safe and secure environment for  
 567 both inmates and staff. A healthy workforce is a productive  
 568 workforce, and security of the state correctional system can  
 569 best be provided by strong and healthy employees. The Department  
 570 of Corrections may develop and implement an employee wellness  
 571 program. The program may include, but is not limited to,  
 572 wellness education, smoking cessation, nutritional education,  
 573 and overall health-risk reduction, including the effects of  
 574 using drugs and alcohol.

575 (2) An employee ~~Under no circumstances shall employees of~~  
 576 the department may not test positive for illegal use of  
 577 controlled substances. An employee of the department may not be  
 578 under the influence of alcohol while on duty. In order to ensure  
 579 that these prohibitions are adhered to by all employees of the  
 580 department and notwithstanding s. 112.0455, the department may  
 581 develop a program for the drug testing of all job applicants and  
 582 for the random drug testing of all employees. The department may  
 583 randomly evaluate employees for the contemporaneous use or  
 584 influence of alcohol through the use of alcohol tests and  
 585 observation methods. Notwithstanding s. 112.0455, the department  
 586 may develop a program for the reasonable suspicion drug testing  
 587 of employees who are in ~~safety-sensitive or~~ special risk  
 588 positions, as defined in s. 112.0455(5), for the controlled

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589 substances listed in s. 893.03(3)(d). The reasonable suspicion  
590 drug testing authorized by this subsection shall be conducted in  
591 accordance with s. 112.0455, but may also include testing upon  
592 reasonable suspicion based on violent acts or violent behavior  
593 of an employee who is on or off duty. The department shall adopt  
594 rules pursuant to ss. 120.536(1) and 120.54 that are necessary  
595 to administer this subsection.

596 Section 4. This act shall take effect July 1, 2012.