

By Representative Cosgrove

1 A bill to be entitled
2 An act relating to drug-free workplace program
3 requirements; amending s. 440.09, F.S.;
4 providing for rebutting a presumption under
5 certain circumstances; including alcohol
6 testing within a provision establishing a
7 presumption; amending s. 440.102, F.S.;
8 amending definitions; allowing employers to
9 conduct onsite initial drug testing of
10 employees; providing requirements and
11 procedures for conducting such tests and for
12 reporting and preserving the results; providing
13 an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Paragraphs (b) and (c) of subsection (7) of
18 section 440.09, Florida Statutes, are amended to read:

19 440.09 Coverage.--

20 (7)

21 (b) If the employee has, at the time of the injury, a
22 blood alcohol level equal to or greater than the level
23 specified in s. 316.193, or if the employee has a positive
24 confirmation of a drug as defined in this act, it is presumed
25 that the injury was occasioned primarily by the intoxication
26 of, or by the influence of the drug upon, the employee. In the
27 presence of a drug-free workplace program, this presumption
28 may be rebutted by the employee with evidence beyond a
29 reasonable doubt that the intoxication or influence of the
30 drug did not contribute to the injury.In the absence of a
31 drug-free workplace program, this presumption may be rebutted

1 by clear and convincing evidence that the intoxication or
2 influence of the drug did not contribute to the injury.
3 Percent by weight of alcohol in the blood must be based upon
4 grams of alcohol per 100 milliliters of blood. If the results
5 are positive, the testing facility must maintain the specimen
6 for a minimum of 90 days. Blood serum may be used for testing
7 purposes under this chapter; however, if this test is used,
8 the presumptions under this section do not arise unless the
9 blood alcohol level is proved to be medically and
10 scientifically equivalent to or greater than the comparable
11 blood alcohol level that would have been obtained if the test
12 were based on percent by weight of alcohol in the blood.
13 However, if, before the accident, the employer had actual
14 knowledge of and expressly acquiesced in the employee's
15 presence at the workplace while under the influence of such
16 alcohol or drug, the presumptions specified in this subsection
17 do not apply.

18 (c) If the injured worker refuses to submit to a drug
19 and alcohol test, it shall be presumed in the absence of clear
20 and convincing evidence to the contrary that the injury was
21 occasioned primarily by the influence of drugs or alcohol.

22 Section 2. Section 440.102, Florida Statutes, 1996
23 Supplement, is amended to read:

24 440.102 Drug-free workplace program requirements.--The
25 following provisions apply to a drug-free workplace program
26 implemented under the ~~pursuant to~~ law or under ~~to~~ rules
27 adopted by the Agency for Health Care Administration:

28 (1) DEFINITIONS.--~~Except where the context otherwise~~
29 ~~requires,~~As used in this section, the term act:

30 (a) "Chain of custody" refers to the methodology of
31 tracking specified materials or substances for the purpose of

1 maintaining control and accountability from initial collection
2 to final disposition for all such materials or substances and
3 providing for accountability at each stage in handling,
4 testing, and storing specimens and reporting test results.

5 (b) "Confirmation test," "confirmed test," or
6 "confirmed drug test" means a second analytical procedure used
7 to identify the presence of a specific drug or metabolite in a
8 specimen, which test must be different in scientific principle
9 from that of the initial test procedure and must be capable of
10 providing requisite specificity, sensitivity, and quantitative
11 accuracy.

12 (c) "Drug" means alcohol, including a distilled
13 spirit, wine, a malt beverage, or an intoxicating liquor; an
14 amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a
15 hallucinogen; methaqualone; an opiate; a barbiturate; a
16 benzodiazepine; a synthetic narcotic; a designer drug; a
17 controlled, dangerous substance; a controlled-substance
18 analog; or a volatile substance that produces the
19 psychological or physiological effect of a controlled,
20 dangerous substance through deliberate inhalation or
21 ingestion; or a metabolite of any of the substances listed in
22 this paragraph. An employer may test an individual for any or
23 all of such drugs.

24 (d) "Drug rehabilitation program" means a service
25 provider, established under ~~pursuant to~~ s. 397.311(28), that
26 provides confidential, timely, and expert identification,
27 assessment, and resolution of employee drug abuse.

28 (e) "Drug test" or "test" means any chemical,
29 biological, or physical instrumental analysis or device
30 ~~administered, approved by a laboratory certified by the United~~
31 ~~States Food and Drug Administration Department of Health and~~

1 ~~Human Services~~ or ~~licensed by~~ the Agency for Health Care
2 Administration, which is administered for the purpose of
3 determining the presence or absence of a drug or its
4 metabolites.

5 (f) "Employee" means any person who works for salary,
6 wages, or other remuneration for an employer.

7 (g) "Employee assistance program" means an established
8 program capable of providing expert assessment of employee
9 personal concerns; confidential and timely identification
10 services with regard to employee drug abuse; referrals of
11 employees for appropriate diagnosis, treatment, and
12 assistance; and followup services for employees who
13 participate in the program or require monitoring after
14 returning to work. If, in addition to the above activities, an
15 employee assistance program provides diagnostic and treatment
16 services, these services shall in all cases be provided by
17 service providers pursuant to s. 397.311(28).

18 (h) "Employer" means a person or entity that employs a
19 person and that is covered by the Workers' Compensation Law.

20 (i) "Initial drug test" means a sensitive, rapid, and
21 reliable procedure to identify negative and presumptive
22 positive specimens, using an immunoassay procedure or an
23 equivalent, or a more accurate scientifically accepted method
24 approved by the United States Food and Drug Administration or
25 the Agency for Health Care Administration as such more
26 accurate technology becomes available in a cost-effective
27 form.

28 (j) "Job applicant" means a person who has applied for
29 a position with an employer and has been offered employment
30 conditioned upon successfully passing a drug test, and may
31 have begun work pending the results of the drug test. For a

1 public employer, "job applicant" means only a person who has
2 applied for a special-risk or safety-sensitive position.

3 (k) "Medical review officer" or "MRO" means a licensed
4 physician, employed with or contracted with an employer, who
5 has knowledge of substance abuse disorders, laboratory testing
6 procedures, and chain of custody collection procedures; who
7 verifies positive, confirmed test results; and who has the
8 necessary medical training to interpret and evaluate an
9 employee's positive test result in relation to the employee's
10 medical history or any other relevant biomedical information.

11 (l) "Prescription or nonprescription medication" means
12 a drug or medication obtained pursuant to a prescription as
13 defined by s. 893.02 or a medication that is authorized
14 pursuant to federal or state law for general distribution and
15 use without a prescription in the treatment of human diseases,
16 ailments, or injuries.

17 (m) "Public employer" means any agency within state,
18 county, or municipal government that employs individuals for a
19 salary, wages, or other remuneration.

20 (n) "Reasonable-suspicion drug testing" means drug
21 testing based on a belief that an employee is using or has
22 used drugs in violation of the employer's policy drawn from
23 specific objective and articulable facts and reasonable
24 inferences drawn from those facts in light of experience.
25 Among other things, such facts and inferences may be based
26 upon:

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

30 2. Abnormal conduct or erratic behavior while at work
31 or a significant deterioration in work performance.

1 3. A report of drug use, provided by a reliable and
2 credible source.

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

5 5. Information that an employee has caused,
6 contributed to, or been involved in an accident while at work.

7 6. Evidence that an employee has used, possessed,
8 sold, solicited, or transferred drugs while working or while
9 on the employer's premises or while operating the employer's
10 vehicle, machinery, or equipment.

11 (o) "Safety-sensitive position" means, with respect to
12 a public employer, a position in which a drug impairment
13 constitutes an immediate and direct threat to public health or
14 safety, such as a position that requires the employee to carry
15 a firearm, perform life-threatening procedures, work with
16 confidential information or documents pertaining to criminal
17 investigations, or work with controlled substances; a position
18 subject to s. 110.1127; or a position in which a momentary
19 lapse in attention could result in injury or death to another
20 person.

21 (p) "Special-risk position" means, with respect to a
22 public employer, a position that is required to be filled by a
23 person who is certified under chapter 633 or chapter 943.

24 (q) "Specimen" means tissue, hair, or a product of the
25 human body which is capable of revealing the presence of drugs
26 or their metabolites, ~~as approved by the United States Food~~
27 ~~and Drug Administration or the Agency for Health Care~~
28 ~~Administration.~~

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

1 program that ~~which~~ affords an employer the ability to qualify
2 for the discounts provided under s. 627.0915 and deny medical
3 and indemnity benefits, under this chapter all drug testing
4 conducted by employers must ~~shall~~ be in conformity with the
5 standards and procedures established in this section and all
6 applicable rules adopted under ~~pursuant to~~ this section.
7 However, an employer does not have a legal duty under this
8 section to request an employee or job applicant to undergo
9 drug testing. If an employer fails to maintain a drug-free
10 workplace program in accordance with the standards and
11 procedures established in this section and in applicable
12 rules, the employer is ineligible ~~shall not be eligible~~ for
13 discounts under s. 627.0915. All employers qualifying for and
14 receiving discounts provided under s. 627.0915 must be
15 reported annually by the insurer to the division.

16 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.--

17 (a) One time only, prior to testing, an employer shall
18 give all employees and job applicants for employment a written
19 policy statement that ~~which~~ contains:

20 1. A general statement of the employer's policy on
21 employee drug use, which must identify:

22 a. The types of drug testing an employee or job
23 applicant may be required to submit to, including
24 reasonable-suspicion drug testing or drug testing conducted on
25 any other basis.

26 b. The actions that the employer may take against an
27 employee or job applicant on the basis of a positive confirmed
28 drug test result.

29 2. A statement advising the employee or job applicant
30 of the existence of this section.

31 3. A general statement concerning confidentiality.

1 4. Procedures for employees and job applicants to
2 ~~confidentially~~ report confidentially to a medical review
3 officer, both before and after being tested, the use of
4 prescription or nonprescription medications ~~to a medical~~
5 ~~review officer both before and after being tested~~.

6 5. A list of the most common medications, by brand
7 name or common name, as applicable, as well as by chemical
8 name, which may alter or affect a drug test. A list of such
9 medications as developed by the Agency for Health Care
10 Administration must ~~shall~~ be available to employers through
11 the Division of Workers' Compensation of the Department of
12 Labor and Employment Security.

13 6. The consequences of refusing to submit to a drug
14 test.

15 7. A representative sampling of names, addresses, and
16 telephone numbers of employee assistance programs and local
17 drug rehabilitation programs.

18 8. A statement that an employee or job applicant who
19 receives a positive confirmed test result may contest or
20 explain the result to the medical review officer within 5
21 working days after receiving written notification of the test
22 result; that if an employee's or job applicant's explanation
23 or challenge is unsatisfactory to the medical review officer,
24 the medical review officer shall report a positive test result
25 back to the employer; and that a person may contest the drug
26 test result pursuant to law or to rules adopted by the Agency
27 for Health Care Administration.

28 9. A statement informing the employee or job applicant
29 of his responsibility to notify the laboratory of any
30 administrative or civil action brought under ~~pursuant to~~ this
31 section.

1 10. A list of all drugs for which the employer will
2 test, described by brand name or common name, as applicable,
3 as well as by chemical name.

4 11. A statement regarding any applicable collective
5 bargaining agreement or contract and the right to appeal to
6 the Public Employees Relations Commission or applicable court.

7 12. A statement notifying employees and job applicants
8 of their right to consult with a medical review officer for
9 technical information regarding prescription or
10 nonprescription medication.

11 (b) An employer that does not have ~~having~~ a
12 drug-testing program must ~~shall~~ ensure that at least 60 days
13 elapse between a general one-time notice to all employees that
14 a drug-testing program is being implemented and the beginning
15 of actual drug testing. An employer that has ~~having~~ a
16 drug-testing program in place before ~~prior to~~ July 1, 1990,
17 need is not ~~required to~~ provide a 60-day notice period.

18 (c) An employer shall include notice of drug testing
19 on vacancy announcements for positions for which drug testing
20 is required. A notice of the employer's drug-testing policy
21 must also be posted in an appropriate and conspicuous location
22 on the employer's premises, and copies of the policy must be
23 made available for inspection by the employees or job
24 applicants of the employer during regular business hours in
25 the employer's personnel office or other suitable locations.

26 (4) TYPES OF TESTING.--

27 (a) An employer is required to conduct the following
28 types of drug tests:

29 1. Job applicant drug testing.--An employer must
30 require job applicants to submit to a drug test and may use a
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1 refusal to submit to a drug test or a positive confirmed drug
2 test as a basis for refusing to hire a job applicant.

3 2. Reasonable-suspicion drug testing.--An employer
4 must require an employee to submit to reasonable-suspicion
5 drug testing.

6 3. Routine fitness-for-duty drug testing.--An employer
7 must require an employee to submit to a drug test if the test
8 is conducted as part of a routinely scheduled employee
9 fitness-for-duty medical examination that is part of the
10 employer's established policy or that is scheduled routinely
11 for all members of an employment classification or group.

12 4. Followup drug testing.--If the employee in the
13 course of employment enters an employee assistance program for
14 drug-related problems, or a drug rehabilitation program, the
15 employer must require the employee to submit to a drug test as
16 a followup to such program, unless the employee voluntarily
17 entered the program. In those cases, the employer has the
18 option to not require followup testing. If followup testing is
19 required, it must be conducted at least once a year for a
20 2-year period after completion of the program. Advance notice
21 of a followup testing date must not be given to the employee
22 to be tested.

23 (b) This subsection does not preclude a private
24 employer from conducting random testing, or any other lawful
25 testing, of employees for drugs.

26 (c) Limited testing of applicants, only if it is based
27 on a reasonable classification basis, is permissible in
28 accordance with law or with rules adopted by the Agency for
29 Health Care Administration.

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1 (5) PROCEDURES AND EMPLOYEE PROTECTION.--All specimen
2 collection and testing for drugs under this section must ~~shall~~
3 be performed in accordance with the following procedures:
4 (a) A sample must ~~shall~~ be collected with due regard
5 to the privacy of the individual providing the sample, and in
6 a manner reasonably calculated to prevent substitution or
7 contamination of the sample.
8 (b) Specimen collection must be documented, and the
9 documentation procedures must ~~shall~~ include:
10 1. Labeling of specimen containers so as to reasonably
11 preclude the likelihood of erroneous identification of test
12 results.
13 2. A form for the employee or job applicant to provide
14 any information that he or she considers relevant to the test,
15 including identification of currently or recently used
16 prescription or nonprescription medication or other relevant
17 medical information. The form must provide notice of the most
18 common medications by brand name or common name, as
19 applicable, as well as by chemical name, which may alter or
20 affect a drug test. The fact that the employee or job
21 applicant provides this ~~providing of~~ information does ~~shall~~
22 not preclude the administration of the drug test, but must
23 ~~shall~~ be taken into account in interpreting any positive
24 confirmed test result.
25 (c) Specimen collection, storage, and transportation
26 to the testing site must ~~shall~~ be performed in a manner that
27 reasonably precludes contamination or adulteration of
28 specimens.
29 (d) Each initial drug test and confirmation test
30 conducted under this section, not including the taking or
31 collecting of a specimen to be tested, must ~~shall~~ be conducted

1 by a licensed or certified laboratory as described in
2 subsection (9) or on the employer's premises. If the initial
3 drug test is positive, a confirming test must be made at a
4 licensed or certified laboratory as described in subsection
5 (9) before any action can be taken against the employee or job
6 applicant.

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

9 1. A physician, a physician assistant, a registered
10 professional nurse, a licensed practical nurse, or a nurse
11 practitioner or a certified paramedic who is present at the
12 scene of an accident for the purpose of rendering emergency
13 medical service or treatment;—

14 2. A qualified person employed by a licensed or
15 certified laboratory as described in subsection (9); ~~or—~~

16 3. A person who is trained to administer an initial
17 drug test conducted on the employer's premises.

18 (f)1. An employer must utilize trained persons to
19 collect specimens and conduct drug tests on the employer's
20 premises. An employer may designate employees for this
21 training or may utilize any person who is so trained.

22 2. The employer's staff members who are responsible
23 for collecting and testing specimens on the employer's
24 premises must receive a minimum of 2 hours of training in the
25 preparation of the collection site, the collection of
26 specimens, the examination of specimens to detect any
27 tampering or adulteration, test administration, proper
28 labeling of specimens, and preservation of the chain of
29 custody of specimens. The employer must provide clear and
30 unambiguous written instructions on the collection and testing
31 of specimens.

1 3. An employer who performs specimen collection and
2 drug tests on the employer's premises must establish chain of
3 custody procedures to ensure proper recordkeeping, handling,
4 labeling, and identification of all specimens that are to be
5 tested.

6 4. When drug testing is conducted on the employer's
7 premises, if possible, the specimen must be kept in sight of
8 the employee or applicant who is being tested, and the test
9 administrator must conduct the test in front of the employee
10 or applicant. The employer's test administrator must provide
11 the results to the employee or applicant. The test
12 administrator must complete a chain of custody form and a form
13 that records the test results. If a drug test that is
14 conducted on the employer's premises cannot be conducted in
15 sight of the employee or applicant who is being tested, the
16 specimen must be secured, in sight of the employee or
17 applicant, with a forensic tamperproof seal until the test is
18 conducted.

19 5. An employer must have records available to prove
20 that the employer is conducting these tests.

21 ~~(g)(f)~~ A person who collects or takes a specimen for a
22 drug test shall collect an amount sufficient for two drug
23 tests as determined by the Agency for Health Care
24 Administration.

25 ~~(h)(g)~~ Every specimen that produces a positive,
26 confirmed test result must ~~shall~~ be placed in frozen storage
27 ~~preserved~~ by the licensed or certified laboratory that
28 conducted the confirmation test for a period of at least 210
29 days after the result of the test is ~~was~~ mailed or otherwise
30 delivered to the medical review officer. However, if an
31 employee or job applicant undertakes an administrative or

1 legal challenge to the test result, the employee or job
2 applicant shall notify the laboratory and the sample must
3 ~~shall~~ be retained by the laboratory until the case or
4 administrative appeal is settled. During the 180-day period
5 after written notification of a positive test result, the
6 employee or job applicant who has provided the specimen must
7 ~~shall~~ be permitted by the employer to have a portion of the
8 specimen retested, at the employee's or job applicant's
9 expense, at another laboratory, licensed and approved by the
10 Agency for Health Care Administration, chosen by the employee
11 or job applicant. The second laboratory must test for the drug
12 at a sensitivity equal to or greater than that applied by
13 ~~sensitivity for the drug in question as~~ the first laboratory
14 or employer's test administrator. The first laboratory that
15 performed the test for the employer is responsible for the
16 transfer of the portion of the specimen to be retested, and
17 for the integrity of the chain of custody during the ~~such~~
18 transfer.

19 (i)~~(h)~~ Within 5 working days after receipt of a
20 positive confirmed test result from the medical review
21 officer, an employer shall inform an employee or job applicant
22 in writing of the ~~such~~ positive test result, the consequences
23 of the ~~such~~ results, and the options that are available to the
24 employee or job applicant. The employer shall provide to the
25 employee or job applicant, upon request, a copy of the test
26 results.

27 (j)~~(i)~~ Within 5 working days after receiving notice of
28 a positive confirmed test result, an employee or job applicant
29 may submit information to the employer explaining or
30 contesting the test result, and explaining why the result does
31 not constitute a violation of the employer's policy.

1 (k)(j) If the employee's or job applicant's
2 explanation or challenge of the positive test result is
3 unsatisfactory to the employer, a written explanation as to
4 why the employee's or job applicant's explanation is
5 unsatisfactory, along with the report of positive result, must
6 ~~shall~~ be provided by the employer to the employee or job
7 applicant; and all such documentation must ~~shall~~ be kept
8 confidential by the employer pursuant to subsection (8) and
9 must ~~shall~~ be retained by the employer for at least 1 year.

10 (l)(k) An employer may not discharge, discipline,
11 refuse to hire, discriminate against, or request or require
12 rehabilitation of an employee or job applicant on the sole
13 basis of a positive test result that has not been verified by
14 a confirmation test and by a medical review officer.

15 (m)(l) An employer that performs drug testing or
16 specimen collection shall use chain-of-custody procedures
17 established by the Agency for Health Care Administration to
18 ensure proper recordkeeping, handling, labeling, and
19 identification of all specimens tested.

20 (n)(m) An employer shall pay the cost of all drug
21 tests, initial and confirmation, which the employer requires
22 of employees. An employee or job applicant shall pay the
23 costs of any additional drug tests not required by the
24 employer.

25 (o)(n) An employer shall not discharge, discipline, or
26 discriminate against an employee solely upon the employee's
27 voluntarily seeking treatment, while under the employ of the
28 employer, for a drug-related problem if the employee has not
29 previously tested positive for drug use, entered an employee
30 assistance program for drug-related problems, or entered a
31 drug rehabilitation program. Unless otherwise provided by a

1 collective bargaining agreement, an employer may select the
2 employee assistance program or drug rehabilitation program if
3 the employer pays the cost of the employee's participation in
4 the program.

5 (p)~~(o)~~ If an employer conducts drug testing that is
6 ~~conducted~~ based on reasonable suspicion, the employer must
7 ~~shall~~ promptly detail in writing the circumstances that ~~which~~
8 formed the basis of the determination that reasonable
9 suspicion existed to warrant the testing. A copy of this
10 documentation must ~~shall~~ be given to the employee upon
11 request, and the original documentation must ~~shall~~ be kept
12 confidential by the employer pursuant to subsection (8) and
13 must ~~shall~~ be retained by the employer for at least 1 year.

14 (q)~~(p)~~ All authorized remedial treatment, care, and
15 attendance provided by a health care provider to an injured
16 employee before medical and indemnity benefits are denied
17 under this section must be paid for by the carrier or
18 self-insurer. However, the carrier or self-insurer must have
19 given reasonable notice to all affected health care providers
20 that payment for treatment, care, and attendance provided to
21 the employee after a future date certain will be denied. A
22 health care provider, as defined in s. 440.13(1)(i), that
23 refuses, without good cause, to continue treatment, care, and
24 attendance before the provider receives notice of benefit
25 denial commits a misdemeanor of the second degree, punishable
26 as provided in s. 775.082 or s. 775.083.

27 (6) CONFIRMATION TESTING.--

28 (a) If an initial drug test is negative, the employer
29 may in its sole discretion seek a confirmation test.

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1 (b) Only licensed or certified laboratories as
2 described in subsection (9) may conduct confirmation drug
3 tests.

4 (c) All positive initial tests must ~~shall~~ be confirmed
5 using gas chromatography/mass spectrometry (GC/MS) or an
6 equivalent or more accurate scientifically accepted method
7 approved by the Agency for Health Care Administration or the
8 United States Food and Drug Administration as such technology
9 becomes available in a cost-effective form.

10 (d) If an initial drug test of an employee or job
11 applicant is confirmed as positive, the employer's medical
12 review officer shall provide technical assistance to the
13 employer and to the employee or job applicant for the purpose
14 of interpreting the test result to determine whether the
15 result could have been caused by prescription or
16 nonprescription medication taken by the employee or job
17 applicant.

18 (7) EMPLOYER PROTECTION.--

19 (a) An employee or job applicant whose drug test
20 result is confirmed as positive in accordance with this
21 section is ~~shall~~ not, by virtue of the result alone,
22 considered ~~be deemed~~ to have a "handicap" or "disability" as
23 defined under federal, state, or local handicap and disability
24 discrimination laws.

25 (b) An employer who discharges or disciplines an
26 employee or refuses to hire a job applicant in compliance with
27 this section is considered to have discharged, disciplined, or
28 refused to hire for cause.

29 (c) A ~~No~~ physician-patient relationship is not created
30 between an employee or job applicant and an employer or any
31 person performing or evaluating a drug test, solely by the

1 establishment, implementation, or administration of a
2 drug-testing program.

3 (d) ~~Nothing in~~ This section does not ~~shall be~~
4 ~~construed to~~ prevent an employer from establishing reasonable
5 work rules related to employee possession, use, sale, or
6 solicitation of drugs, including convictions for drug-related
7 offenses, and taking action based upon a violation of any of
8 those rules.

9 (e) This section does not operate retroactively, and
10 does not abrogate the right of an employer under state law to
11 conduct drug tests, ~~or~~ to implement employee drug-testing
12 programs; however, only those programs that meet the criteria
13 outlined in this section qualify for reduced rates under s.
14 627.0915.

15 (f) If an employee or a job applicant refuses to
16 submit to a drug test, the employer is not barred from
17 discharging or disciplining the employee or from refusing to
18 hire the job applicant. However, this paragraph does not
19 abrogate the rights and remedies of the employee or job
20 applicant as otherwise provided in this section.

21 (g) This section does not prohibit an employer from
22 conducting medical screening or other tests required,
23 permitted, or not disallowed by any statute, rule, or
24 regulation for the purpose of monitoring exposure of employees
25 to toxic or other unhealthful ~~unhealthy~~ substances in the
26 workplace or in the performance of job responsibilities. Such
27 screening or testing is limited to the specific substances
28 expressly identified in the applicable statute, rule, or
29 regulation, unless prior written consent of the employee is
30 obtained for other tests. Such screening or testing need not
31 be in compliance with the rules adopted by the Agency for

1 Health Care Administration under this chapter or under s.
2 112.0455. A public employer may, through the use of an
3 unbiased selection procedure, conduct random drug tests of
4 employees occupying safety-sensitive or special-risk positions
5 if the testing is performed in accordance with drug-testing
6 rules adopted by the Agency for Health Care Administration and
7 the Department of Labor and Employment Security. If
8 applicable, random drug testing must be specified in a
9 collective bargaining agreement as negotiated by the
10 appropriate certified bargaining agent before such testing is
11 implemented.

12 (h) A ~~No~~ cause of action does not ~~shall~~ arise in favor
13 of any person based upon the failure of an employer to
14 establish a program or policy for drug testing.

15 (8) CONFIDENTIALITY.--

16 (a) Except as otherwise provided in this subsection,
17 all information, interviews, reports, statements, memoranda,
18 and drug test results, written or otherwise, which are
19 received or produced as a result of a drug-testing program are
20 confidential and exempt from the provisions of s. 119.07(1)
21 and s. 24(a), Art. I of the State Constitution, and may not be
22 used or received in evidence, obtained in discovery, or
23 disclosed in any public or private proceedings, except in
24 accordance with this section or in determining compensability
25 under this chapter.

26 (b) Employers, laboratories, medical review officers,
27 employee assistance programs, drug rehabilitation programs,
28 and their agents may not release any information concerning
29 drug test results obtained under ~~pursuant to~~ this section
30 without a written consent form signed voluntarily by the
31 person tested, unless such release is compelled by an

1 administrative law judge, a hearing officer, or a court of
2 competent jurisdiction pursuant to an appeal taken under this
3 section or is considered ~~deemed~~ appropriate by a professional
4 or occupational licensing board in a related disciplinary
5 proceeding. The consent form must contain, at a minimum:
6 1. The name of the person who is authorized to obtain
7 the information.
8 2. The purpose of the disclosure.
9 3. The precise information to be disclosed.
10 4. The duration of the consent.
11 5. The signature of the person authorizing release of
12 the information.
13 (c) Information on drug test results may ~~shall~~ not be
14 used in any criminal proceeding against the employee or job
15 applicant. Information released contrary to this section is
16 inadmissible as evidence in any such criminal proceeding.
17 (d) This subsection does not prohibit an employer,
18 agent of an employer, or laboratory conducting a drug test
19 from having access to employee drug test information or using
20 such information when consulting with legal counsel in
21 connection with actions brought under or related to this
22 section or when the information is relevant to its defense in
23 a civil or administrative matter.
24 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.--
25 (a) A laboratory may analyze initial or confirmation
26 test specimens only if:
27 1. The laboratory is licensed and approved by the
28 Agency for Health Care Administration using criteria
29 established by the United States Department of Health and
30 Human Services as general guidelines for modeling the state
31 drug-testing program under ~~pursuant to~~ this section or the

1 laboratory is certified by the United States Department of
2 Health and Human Services.

3 2. The laboratory has written procedures to ensure the
4 chain of custody.

5 3. The laboratory follows proper quality control
6 procedures, including, but not limited to:

7 a. The use of internal quality controls, including the
8 use of samples of known concentrations which are used to check
9 the performance and calibration of testing equipment, and
10 periodic use of blind samples for overall accuracy.

11 b. An internal review and certification process for
12 drug test results, conducted by a person qualified to perform
13 that function in the testing laboratory.

14 c. Security measures implemented by the testing
15 laboratory to preclude adulteration of specimens and drug test
16 results.

17 d. Other necessary and proper actions taken to ensure
18 reliable and accurate drug test results.

19 (b) A laboratory shall disclose to the medical review
20 officer a written positive confirmed test result report within
21 7 working days after receipt of the sample. All laboratory
22 reports of a drug test result must, at a minimum, state:

23 1. The name and address of the laboratory that
24 performed the test and the positive identification of the
25 person tested.

26 2. Positive results on confirmation tests only, or
27 negative results, as applicable.

28 3. A list of the drugs for which the drug analyses
29 were conducted.

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1 4. The type of tests conducted for both initial tests
2 and confirmation tests and the minimum cutoff levels of the
3 tests.

4 5. Any correlation between medication reported by the
5 employee or job applicant pursuant to subparagraph (5)(b)2.
6 and a positive confirmed drug test result.

7
8 A report must not disclose the presence or absence of any drug
9 other than a specific drug and its metabolites listed in
10 ~~pursuant to~~ this section.

11 (c) The laboratory shall submit to the Agency for
12 Health Care Administration a monthly report with statistical
13 information regarding the testing of employees and job
14 applicants. The report must include information on the methods
15 of analysis conducted, the drugs tested for, the number of
16 positive and negative results for both initial tests and
17 confirmation tests, and any other information that ~~deemed~~
18 ~~appropriate by~~ the Agency for Health Care Administration
19 considers appropriate. A monthly report must not identify
20 specific employees or job applicants.

21 (10) RULES.--The Agency for Health Care Administration
22 shall adopt rules under ~~pursuant to~~ s. 112.0455 and criteria
23 established by the United States Department of Health and
24 Human Services as general guidelines for modeling the state
25 drug-testing program, concerning, but not limited to:

26 (a) Standards for licensing drug-testing laboratories
27 and suspension and revocation of such licenses.

28 (b) Urine, hair, blood, and other body specimens and
29 minimum specimen amounts that are appropriate for drug
30 testing.

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1 (c) Methods of analysis and procedures to ensure
2 reliable drug-testing results, including standards for initial
3 tests and confirmation tests.

4 (d) Minimum cutoff detection levels for each drug or
5 metabolites of such drug for the purposes of determining a
6 positive test result.

7 (e) Chain-of-custody procedures to ensure proper
8 identification, labeling, and handling of specimens tested.

9 (f) Retention, storage, and transportation procedures
10 to ensure reliable results on confirmation tests and retests.

11 (11) PUBLIC EMPLOYEES IN SAFETY-SENSITIVE OR
12 SPECIAL-RISK POSITIONS.--

13 (a) If an employee who is employed by a public
14 employer in a safety-sensitive position enters an employee
15 assistance program or drug rehabilitation program, the
16 employer must assign the employee to a position other than a
17 safety-sensitive position or, if such a position is not
18 available, must place the employee on leave while the employee
19 is participating in the program. However, the employee is
20 entitled ~~shall be permitted~~ to use any accumulated annual
21 leave credits before the employer may order the employee to
22 take leave ~~may be ordered~~ without pay.

23 (b) An employee who is employed by a public employer
24 in a special-risk position may be discharged or disciplined by
25 a public employer for the first positive confirmed test result
26 if the drug confirmed is an illicit drug under s. 893.03. A
27 special-risk employee who is participating in an employee
28 assistance program or drug rehabilitation program may not be
29 allowed to continue to work in any special-risk or
30 safety-sensitive position of the public employer, but may be
31 assigned to a position other than a safety-sensitive position

1 or placed on leave while the employee is participating in the
2 program. However, the employee is entitled ~~shall be permitted~~
3 to use any accumulated annual leave credits before the public
4 employer may order the employee to take leave ~~may be ordered~~
5 without pay.

6 (12) DENIAL OF BENEFITS.--An employer shall deny an
7 employee medical or indemnity benefits under this chapter,
8 pursuant to this section.

9 (13) COLLECTIVE BARGAINING RIGHTS.--

10 (a) This section does not eliminate the bargainable
11 rights as provided in the collective bargaining process if
12 applicable.

13 (b) Drug-free workplace program requirements under
14 ~~pursuant to~~ this section are ~~shall be~~ a mandatory topic of
15 negotiations with any certified collective bargaining agent
16 for nonfederal public sector employers that operate under a
17 collective bargaining agreement.

18 (14) APPLICABILITY.--A drug testing policy or
19 procedure adopted by an employer under ~~pursuant to~~ this
20 chapter must ~~shall~~ be applied equally to all employee
21 classifications where the employee is subject to workers'
22 compensation coverage.

23 Section 3. This act shall take effect July 1, 1997.

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LEGISLATIVE SUMMARY

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Provides for rebutting a presumption that intoxication or
drugs did not contribute to an injury under a drug-free
workplace program and includes alcohol testing within
presumption provisions. Amends definitions relating to
the drug-free workplace program requirements. Allows
employers to conduct initial drug testing of employees
onsite or at a suitable alternative location. Provides
requirements and procedures for conducting such tests and
for reporting and preserving the results.