

By Representative Lynn

1 A bill to be entitled
 2 An act relating to drug-free workplaces;
 3 amending s. 112.0455, F.S.; authorizing certain
 4 persons to take or collect specimens for drug
 5 tests; authorizing employers to use certain
 6 federal drug-free program test results and
 7 forms instead of certain drug testing;
 8 providing criteria; amending s. 440.09, F.S.;
 9 providing for rebutting a presumption under
 10 certain circumstances; including alcohol
 11 testing within a provision establishing a
 12 presumption; amending s. 440.102, F.S.;
 13 clarifying a definition; deleting a requirement
 14 for subjecting job applicants to limited drug
 15 testing; authorizing certain persons to take or
 16 collect specimens for drug tests; prescribing
 17 certain causes of action relating to certain
 18 activities or actions of employers; providing
 19 criteria; providing limitations; providing an
 20 effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Paragraph (e) of subsection (8) and
 25 subsection (16) of section 112.0455, Florida Statutes, are
 26 amended to read:

27 112.0455 Drug-Free Workplace Act.--

28 (8) PROCEDURES AND EMPLOYEE PROTECTION.--All specimen
 29 collection and testing for drugs under this section shall be
 30 performed in accordance with the following procedures:
 31

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

3 1. A physician, a physician's assistant, a registered
4 professional nurse, a licensed practical nurse, a nurse
5 practitioner, or a certified paramedic who is present at the
6 scene of an accident for the purpose of rendering emergency
7 medical service or treatment.

8 2. A ~~qualified~~ person trained and knowledgeable in
9 collecting drug or alcohol specimens ~~employed by a licensed~~
10 ~~laboratory.~~

11 (16) FEDERAL COMPLIANCE.--

12 (a) An employer may use federal Drug-Free Workplace
13 Program test results and forms in lieu of performing testing
14 required under this section, provided:

15 1. The employer's drug-free workplace policy indicates
16 that all drug specimen collections, testing, and reporting for
17 the types of testing specified in this section are performed
18 in conformance with federal Drug-Free Workplace Program
19 requirements.

20 2. The drugs tested for and specimens used for testing
21 do not exceed those authorized by the federal Drug-Free
22 Workplace Program.

23 3. The collection and testing of specimens and the
24 reporting of the results of such drug tests are performed in a
25 drug-free workplace laboratory licensed pursuant to subsection
26 (12).

27 4. The medical review officer reviewing the test
28 results is qualified as a medical review officer pursuant to
29 rules adopted by the Agency for Health Care Administration.

30 (b) The drug-testing procedures provided in this
31 section do not apply where the specific work performed

1 requires employees or job applicants to be subject to drug
2 testing pursuant to:

3 1.(a) Federal regulations that specifically preempt
4 state and local regulation of drug testing with respect to
5 such employees and job applicants;

6 2.(b) Federal regulations or requirements enacted or
7 implemented in connection with the operation of federally
8 regulated facilities;

9 3.(c) Federal contracts where the drug testing is
10 conducted for safety, or protection of sensitive or
11 proprietary data or national security; or

12 4.(d) State agency rules that adopt federal
13 regulations applicable to the interstate component of a
14 federally regulated activity.

15 Section 2. Paragraphs (b) and (c) of subsection (7) of
16 section 440.09, Florida Statutes, are amended to read:

17 440.09 Coverage.--

18 (7)

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

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

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

20 Section 3. Paragraph (j) of subsection (1), paragraph
21 (c) of subsection (4), and paragraph (e) of subsection (5) of
22 section 440.102, Florida Statutes, are amended, and subsection
23 (15) is added to said section, to read:

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

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

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

1 conditioned upon successfully passing a drug test, and may
2 have begun work pending the results of the drug test. For a
3 public employer, "job applicant" may be limited to ~~means only~~
4 a person who has applied for a special-risk or
5 safety-sensitive position.

6 (4) TYPES OF TESTING.--

7 ~~(c) Limited testing of applicants, only if it is based~~
8 ~~on a reasonable classification basis, is permissible in~~
9 ~~accordance with law or with rules adopted by the Agency for~~
10 ~~Health Care Administration.~~

11 (5) PROCEDURES AND EMPLOYEE PROTECTION.--All specimen
12 collection and testing for drugs under this section shall be
13 performed in accordance with the following procedures:

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

16 1. A physician, a physician assistant, a registered
17 professional nurse, a licensed practical nurse, or a nurse
18 practitioner or a certified paramedic who is present at the
19 scene of an accident for the purpose of rendering emergency
20 medical service or treatment.

21 2. A qualified person employed by a licensed or
22 certified laboratory as described in subsection (9).

23 3. A person trained and knowledgeable in collecting
24 drug or alcohol specimens.

25 (15) EMPLOYER PROTECTIONS.--

26 (a) No cause of action exists, or may be established,
27 in favor of any person against an employer who has established
28 a policy and initiated a testing program in accordance with
29 this section for:

30 1. Actions taken in good faith based on the results of
31 a positive drug or alcohol test.

1 2. Failure to test for drugs or alcohol or failure to
2 test for a specific drug or any other controlled substance.

3 3. Failure to test for the presence of or, if tested,
4 failure to detect any specific drug or other substance, any
5 medical condition, or any mental, emotional, or psychological
6 disorder or condition.

7 4. Termination or suspension of any substance abuse
8 prevention or testing program or policy.

9 (b)1. No cause of action exists, or may be
10 established, in favor of any person against an employer who
11 has established a program of drug or alcohol testing in
12 accordance with this section, unless the employer's action was
13 based on a false positive test result and the employer knew or
14 clearly should have known that the result was in error and
15 ignored the true test result due to reckless or malicious
16 disregard for the truth or a willful intent to deceive or be
17 deceived.

18 2. In any claim, including a claim under this section,
19 if it is alleged that an employer's action was based on a
20 false positive test result:

21 a. There is a rebuttable presumption the test result
22 was valid if the employer complied with the provisions of this
23 section.

24 b. The employer is not liable for monetary damages if
25 the employer's reliance on a false positive test result was
26 reasonable and in good faith.

27 3. There is no employer liability for any action taken
28 related to a false negative drug or alcohol test.

29 (c)1. No cause of action for defamation of character,
30 libel, slander, or damage to reputation exists, or may be
31 established, in favor of any person against an employer who

1 has established a program of drug or alcohol testing in
2 accordance with this section unless all of the following
3 apply:
4 a. The results of the test were disclosed to a person
5 other than the employer, an authorized employee, agent, or
6 representative of the employer, the tested employee, the
7 tested prospective employee, or any other person authorized or
8 privileged by law to receive the information.
9 b. The information disclosed was a false positive test
10 result.
11 c. The false positive test result was disclosed
12 negligently.
13 d. All elements of an action for defamation of
14 character, libel, slander, or damage to reputation as
15 established by law are satisfied.
16 2. No cause of action exists, or may be established,
17 in favor of any person against an employer based on the
18 failure of the employer to establish a program or policy on
19 substance abuse prevention or to implement drug or alcohol
20 testing.
21 3. Compliance with this section by employers is
22 voluntary and no cause of action exists, or may be
23 established, in favor of any person against an employer on the
24 basis of the employer having a drug and alcohol testing policy
25 that is not in compliance with this section.
26 Section 4. This act shall take effect October 1 of the
27 year in which enacted.
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HOUSE SUMMARY

Authorizes persons trained and knowledgeable in collecting drug or alcohol specimens to take or collect specimens for drug tests. Authorizes employers to use federal Drug-Free Workplace Program test results and forms instead of conducting drug testing under Florida law. Provides for rebutting a presumption that intoxication or drugs contributed to an injury under a drug-free workplace program and includes alcohol testing within presumption provisions. Deletes a requirement for subjecting job applicants to limited drug testing. Protects employers from litigation by prescribing or limiting causes of action relating to activities or actions of employers in conducting drug testing. See bill for details.